

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Crl. Appeal No. 1078-SBA of 2004

Date of Decision : 26.11.2015

State of Haryana

..... Appellant

Versus

Mukesh and others

..... Respondents

***CORAM:* HON'BLE MR. JUSTICE DARSHAN SINGH**

Present : Mr.Ashok Muthreja, Deputy Advocate General, Haryana
for the appellant-State of Haryana.

Respondent no.1 (reported to have died).

Mr. Anil Ghanghas, Advocate
for respondents no.2 and 5.

Respondent no. 3 (Proclaimed Offender).

None for respondent no.4.

1. **Whether Reporters of Local papers may be allowed to see the judgment? Yes**
2. **To be referred to the Reporters or not? Yes**
3. **Whether the judgment should be reported in the Digest? Yes**

DARSHAN SINGH, J.

1. The present appeal has been preferred by the appellant-State of Haryana against the judgment dated 26.08.2003 passed by the learned Additional Sessions Judge, Gurgaon, vide which the respondents were acquitted.

2. In nutshell, the case of the prosecution is that on 12.11.1998 PW-5 Kaptan Singh, SHO Police Station Taoru along with other police

employees was present at Pataudi Chowk Taoru in-connection with investigation of case FIR No. 250 of 1998, under Section 395 IPC. He received a secret information that in a hut situated on *katcha rasta* just short of B.K.Crusher Stone, six persons were making preparations to commit dacoity. SI Kaptan Singh along with his fellow police officials proceeded towards the disclosed place. He formed the separate parties to conduct the raid. The members of the police party reached near the hut and heard the conversation between the accused assigning the roles to be performed at the time of committing dacoity. SI Kaptan Singh challenged the accused persons and asked them to surrender. On hearing this, the accused became panicky and started running. However, respondent Mukesh was apprehended by SI Kaptan Singh and he recovered one single barrel .12 bore country made gun along with two live cartridges from his possession. Respondent Sunder was apprehended by ASI Dharamvir. He recovered one country made .12 bore pistol and two live cartridges from his possession. Respondent Deepak was over-powered by ASI Om Parkash and recovered one country made pistol of .303 bore loaded with cartridge from his possession. Respondent Kamal was caught by HC Karan Singh and recovered five live cartridges of .303 bore from his possession. Two persons managed to escape. Respondent no.5 Atam Singh was later on arrested. Separate cases were got registered under Section 25 of the Arms Act (for short Act) against respondents Mukesh, Deepak, Sunder and Kamal.

3. All the respondents were charge sheeted for the offences punishable under Sections 399 and 402 IPC. Respondents Mukesh,

Deepak, Surinder @ Sunder and Kamal were separately charge sheeted for the offence punishable under Section 25 of the Act, to which the respondents pleaded not guilty and claimed trial.

4. In order to substantiate its case, the prosecution examined as many as seven witnesses.

5. When examined under Section 313 Cr.P.C, the respondents claimed themselves to be innocent and pleaded that they were picked up by the police from their respective houses and were falsely implicated in this case. They also pleaded that false recoveries have been planted upon them. In the defence evidence, the accused examined DW-1 Rattan Lal, Sr. Telegram Master, Telegraph Office, Gurgaon, who proved the receipts Ex.DB, Ex.DC, Ex.DD regarding the dispatch of telegrams and certified copies of the message Ex.DE and Ex.DF sent through the said receipts.

6. On appreciating the material on record and the contentions raised by learned counsel for the parties, the learned trial Court acquitted the respondents of all the charges.

7. Aggrieved with the aforesaid judgment of acquittal, the present appeal has been preferred by the appellant-State of Haryana.

8. I have heard Mr. Ashok Muthreja, learned DAG for the appellant-State of Haryana, Mr. Anil Ghanghas, learned counsel for respondents no.2 and 5 and has meticulously examined the record of the case.

9. Initiating the arguments, learned State counsel contended that the accused-respondents were charge sheeted with the serious charges of making preparations to commit dacoity while armed with the

fire arms. All the respondents except respondent no.5 Atam Singh were apprehended at the spot. The case of the prosecution is fully proved from the statements of the prosecution witnesses, who has participated in the operation. He contended that the learned trial Court has acquitted the respondents simply on the ground that no independent witness has been associated and that the articles of the case property i.e. arms and ammunition were not kept in sealed parcels. He contended that in such type of offences no independent person comes forward to join the investigation. There was no reason to disbelieve the statements of the official witnesses. He further contended that mere this fact that the arms and ammunition recovered from the respondents were not sealed is no ground to reject the substantive evidence. He contended that no prejudice has been caused to the respondents due to the lapse on the part of the Investigating Officer to keep these articles in the sealed parcels. Thus, he contended that the acquittal of the respondents as recorded by the learned trial Court has resulted in miscarriage of justice.

10. On the other hand, learned counsel for respondents no. 2 and 5 contended that the judgment of acquittal passed by the learned trial Court is well reasoned. The story of the prosecution was highly improbable. The respondents were already in the illegal custody of the police, which is evident from the defence evidence adduced by them. He contended that it is not probable that the accused persons would have made the plan in a loud voice to commit the dacoity which could have been overheard by the police officials standing at distance. He further contended that it is also not probable that the persons armed with deadly

weapons will not offer any resistance and will not cause any harm to the police officials. Thus, he pleaded that acquittal of the respondents as recorded by the learned trial Court does not suffer from any illegality.

11. I have duly considered the aforesaid contentions.

12. The present appeal is an appeal against acquittal. The law is well settled that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of the criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent Court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial Court. It is further the settled principle of law that the Appellate Court can only interfere with the conclusion of acquittal arrived at by the trial Court if the said conclusion is palpably wrong or based on erroneous view of law or if such conclusion is allowed to stand it is likely to result in grave injustice. Merely, because the appellate Court on re-appreciation and re-evaluation of the evidence is inclined to take a different view interference with the judgment of acquittal is not justified. If the view taken by the trial Court is a possible view, the evenly balanced view of the evidence must not result in interference by the appellate Court in the judgment of the trial Court. If two reasonable conclusions are possible on the basis of evidence on record, the appellate Court should not disturb the findings of acquittal recorded by the learned trial Court. The powers under Section 378 Cr.P.C can only be exercised by the Appellate Court in order to prevent the

failure or miscarriage of justice. To support the aforesaid view reference can be made to cases **C.K. Dasegowda @ Ors. V. State of Karnataka 2014(3) R.C.R (Criminal) 696**, **Muralidhar @ Gidda & Anr. V. State of Karnataka 2014(2) R.C.R (Criminal) 507**, **A.P. Raju V. State of Orissa 1995 S.C.C (Criminal) 675** and **Basappa V. State of Karnataka 2014(2) R.C.R (Criminal) 144**. In view of the aforesaid settled ratio of law, we have to examine the case in hand.

13. The non-joining of the independent witness and the non sealing of the articles of the case property are not the only grounds for acquittal of the respondents. The entire story of the prosecution is based on the statements of PW-2 HC Karan Singh, PW-5 SI Kaptan Singh, the Investigating Officer of the case, PW-6 ASI Dharamvir and PW-7 ASI Om Parkash. Naturally they being the police officials had supported the prosecution story as set up by it. But, there are various circumstances which renders the prosecution case improbable. It is alleged that the respondents were armed with fire arms and they had assembled to commit the dacoity. As per the prosecution story on being challenged by SI Katpan Singh, the respondents got panicky and started running and they were easily apprehended by the police officials. There is no evidence that they offered any resistance to their apprehension by the police officials, though, they were armed with fire arms and were having enough ammunition. It does not appeal to the reasons that a gang of dacoits who had assembled with a desperate object of committing dacoity would meekly submit to the police officials without offering any exchange of fire, resistance and physical violence. Admittedly, the accused did not

tried to fire upon the police officials, who had come-forward to apprehend them. So, no weapon was used by them against the police officials. Even, two persons who allegedly managed to escape from the spot also did not tried to use any weapon to attack the police officials. There was no evidence of even scuffle in the process of the arrest. Thus, the manner of apprehension of the respondents as projected by the prosecution is highly suspicious and negates the allegations of the prosecution that they were planning to commit dacoity by assembling at the alleged place of occurrence.

14. As per the statements of PW-2 HC Karan Singh and PW-5 SI Kaptan Singh, the hut where the accused had assembled was open from all the sides. It is highly improbable that the accused-respondents might not had noticed the approaching police officials who were quite large in number. It is also highly improbable that the police officials may have been able to over-hear the conversation between the accused from a distance of more than 20 steps. The Court regrets its inability to accept that the accused might be addressing each other loudly while planning to commit dacoity, so that it could be over-heard by the police officials standing at a distance of more than 20 steps as such plans are always secretive. Thus, there is no escape from the conclusion that the prosecution version with respect to the conversation between the accused has only been introduced to insert the name of the respondents and to strengthen the prosecution case with respect to the object of their alleged assembling.

15. The prosecution witnesses are also discrepant with respect to

the place of receiving secret information, with respect to the wordings used by the accused during the conversation and about the shape of the hut.

16. In the defence evidence, accused-respondents examined DW-1 Rattan Lal an official of Telegram Office. He has proved on the basis of record the receipts Ex.DB to Ex.DD dated 11.11.1998 and the messages Ex.DE and Ex.DF. Ex.DE is the copy of the message dated 11.11.1998 sent by Sant Lal, the father of respondent Mukesh to the Chief Justice, Punjab & Haryana High Court, Chandigarh, wherein it is mentioned that the Gurgaon Police in civil dress abducted his son Mukesh resident of village Chakkarpur from Sikanderpur Bus Stand in unnumbered Police Gypsy on 10th November evening and is being tortured for false implication. He has appealed the telegram to be considered as *habeas corpus*. The same allegations have been repeated in the message Ex.DF dated 13.11.1998. The present case has been got registered on 12.11.1998, whereas the telegram Ex.DE was already dispatched by Sant Lal, the father of accused Mukesh on 11.11.1998. This telegram fully corroborates the defence plea raised by respondents that they have been falsely implicated in this case.

17. When the story of the prosecution with respect to the main occurrence is highly improbable, suspicious, unreliable and indicates the false implication of the respondents, the prosecution version with respect to the recovery of the arms and ammunition from the possession of respondents, which are also alleged to have been effected in the same transaction, also cannot be believed.

18. Thus, keeping in view my aforesaid discussion, I do not find that the conclusion arrived at by the learned trial Court is palpably wrong or based on erroneous view of law or is perverse and does not invite any interference by this Court.

19. Consequently, the present appeal has no merits and the same is hereby dismissed.

November 26, 2015

s.khan

(DARSHAN SINGH)
JUDGE