

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

1 **Criminal Appeal S-1084-SB of 2004**
Date of Decision: October 9, 2015

Devinder Singh @ Sita

.....Appellant

Versus

State of Haryana

..... Respondent

2 **Criminal Appeal S-1162-SB of 2004**

Amarpal @ Pali and others

.....Appellants

Versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE T.P.S.MANN

Present : Mr. Yogesh Goel, Advocate
for the appellant in Crl. Appeal S-1084-SB of 2004.

Mr. Gaurav Gaur, Advocate for
Mr. Surinder Mohan Sharma, Advocate
for the appellants in Crl. Appeal S-1162-SB of 2004.

Mr. Dhruv Dayal, Deputy A.G., Haryana.

T.P.S.MANN, J. (Oral)

The appellants in the aforementioned appeals along
with Jitender Kumar @ Kalia and Raj Kumar @ Raju were tried

for committing offences punishable under Sections 399 and 402 IPC. Jitender Kumar @ Kalia was also tried for committing offence under Section 25 of the Arms Act. Vide judgment and order dated 7/8.5.2004, learned Additional Sessions Judge, Panchkula convicted the aforementioned appellants under Section 399 IPC and sentenced them to undergo rigorous imprisonment for four years and to pay a fine of Rs.500/- each and in default of payment of fine, to further undergo simple imprisonment for two months. They were also convicted under Section 402 IPC and sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.500/- each and in default of payment of fine, to further undergo simple imprisonment for two months. Raj Kumar @ Raju and Jitender Kumar @ Kalia, co-accused of the appellants were similarly convicted and sentenced. In addition, Jitender Kumar @ Kalia was convicted under Section 25 (1-A) of the Arms Act and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.500/- and in default of payment of fine, to further undergo simple imprisonment for two months. The substantive sentences imposed upon the appellants and their co-accused were ordered to run concurrently.

It may not be out of place to mention that Raj Kumar @ Raju, co-convict of the appellant, did not prefer any appeal

against his conviction and sentence. Further, Jitender Kumar @ Kalia, another co-convict of the appellants filed Criminal Appeal S-1925-SB of 2004, which has been disposed of vide an order of even date, as having become infructuous as he has already undergone the entire sentence of imprisonment imposed upon him and deposited the amount of fine.

The case of the prosecution, in nutshell, is that on 28.5.2002, Inspector Mange Ram, CIA Staff, Panchkula while on patrolling and checking in the area of Madawala T Point on Pinjore-Nalagarh road, received a secret information that the accused had assembled in the area of village Rampur Jangi where they were making preparation for committing dacoity and they were also armed with weapons. In case a raid was conducted, they could be caught red handed. Finding the information to be credible, Inspector Mange Ram formed four raiding parties. All the raiding parties gheraoed the designated place and overheard the accused, who were preparing to commit dacoity. One of them, who later on transpired to be Jitender Kumar @ Kalia was telling his companions that they were to commit dacoity at the petrol pump situated opposite to HMT, Pinjore. Three of them would go into the Office of petrol pump for committing dacoity while other three would keep a watch outside and if need be, Jitender Kumar @ Kalia would open fire.

Inspector Mange Ram challenged the accused that they have been surrounded on all sides by the police and, therefore, they should surrender themselves along with their weapons. All the six accused surrendered and were, accordingly, apprehended. One country made pistol along with two live cartridges were recovered from the possession of Jitender Kumar @ Kalia whereas one air gas pistol was recovered from the possession of Devinder Singh @ Sita. An iron rod each was recovered from Amarpal @ Pali, Raj Kumar @ Raju and Harjit Singh whereas Kulwinder Singh @ Bhola was found in possession of a danda. One truck bearing registration No. HR29-2545 standing nearby was also taken into possession. During the checking of the truck, five wire cutters and one iron saw were recovered. A ruqa was prepared by Inspector Mange Ram and sent to Police Station Pinjore where FIR No. 97 dated 28.5.2002 under Sections 399 and 402 IPC and Section 25 of the Arms Act was registered against the accused. All the accused were formally arrested.

The trial Court, after going through the evidence brought on record and hearing the learned counsel for the parties, accepted the prosecution case and convicted and sentenced all the accused including the appellants, as mentioned above. Hence, the present appeals by them.

Having heard learned counsel for the parties and on

going through the evidence with their able assistance, this Court finds that the prosecution has been successful in establishing the guilt of the appellants. All the prosecution witnesses were subjected to lengthy cross-examination but no material could be brought on record, which could suggest that they were deposing falsely. Even no enmity has been brought on record by the defence, which may indicate that the appellants have been falsely implicated by the police. In view of the above, no case is made out for any interference in the impugned judgment of conviction passed by the trial Court.

As regards the quantum of sentence, it may be worthwhile to notice that though the appellants were found preparing to commit dacoity yet none of them had made any attempt to open an attack on the police party or use their weapons in causing injuries to any of the members of the police party. Further, from the custody certificates produced by the State counsel, it is made out that appellant-Devinder Singh @ Sita has already undergone an actual sentence of two years, one month and two days, appellant Harjit Singh has undergone a period of six months and twenty eight days whereas appellant Kulwinder Singh @ Bhola has undergone a period of six months and seven days out of the sentence of four years imposed upon them. Still further, in the custody certificate pertaining to appellant-Amarpal

@ Pali, it has been mentioned that he had expired on 29.6.2004 in T.B. Hospital, Ambala City. Learned counsel for appellant-Amarpal @ Pali has submitted that as the said appellant has died, the appeal filed by him abates. It is, however, submitted that the sentences of imprisonment imposed upon the appellants, namely, Devinder Singh @ Sita, Harjit Singh and Kulwinder Singh @ Bhola be reduced to the one already undergone by them. Further, there is no other case either registered or pending against appellants Harjit Singh and Kulwinder Singh @ Bhola. However, State counsel has submitted that appellant-Devinder Singh @ Sita is involved in four other criminal cases.

Having heard learned counsel for the parties, this Court finds that no useful purpose will be served by sending appellants, namely, Devinder Singh @ Sita, Harjit Singh and Kulwinder Singh @ Bhola, behind the bars, once again, to undergo their remaining sentences of imprisonment. Though Devinder Singh @ Sita is shown to be involved in four other criminal cases, yet he has already undergone more than half of the sentence of imprisonment imposed upon him whereas Harjit Singh and Kulwinder Singh @ Bhola are not shown to be involved in any other criminal case.

Resultantly, the appeal filed by appellant- Amarpal @

Pali is disposed of, as having abated. The conviction of appellants Devinder Singh @ Sita, Harjit Singh and Kulwinder Singh @ Bhole for the offences under Section 399 and 402 IPC is upheld. However, their substantive sentences of imprisonment on all the counts are reduced to the one already undergone by them. The sentences of fine alongwith their default clauses, are maintained.

The appeals are, accordingly, disposed of.

October 9, 2015
amit rana

(T.P.S. MANN)
JUDGE