

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Appeal. No. S-1235-SB-2004

Date of decision: May 06, 2015

Harjinder Singh alias Bobby

.. Appellant

Vs.

State of Punjab

.. Respondent

Crl. Appeal No.S-1271-SB-2004

Sham Paul

.. Appellant

Vs.

State of Punjab

.. Respondent

Coram: Hon'ble Mr. Justice Surinder Gupta

Present: Mr. Sandeep Sharma, Advocate for
Mr. Veneet Sharma, Advocate
for the appellant (in CRA-S-1235-SB-2004)
Mr. Imran Farooqi, Advocate
for the appellant (in CRA-S-1271-SB-2004)
Mr. Amritpal Singh Gill, AAG, Punjab.

Surinder Gupta, J

This judgment shall dispose of two connected Criminal Appeal Nos. S-1235-SB and 1271-SB of 2004, arising out of the same judgment dated 25.5.2004 passed by the learned Additional Sessions Judge, Amritsar whereby the appellants were convicted for offence punishable under Section 402 IPC.

The case of the prosecution, in brief, is that on 13.12.2002, SI Randhir Singh, In-charge Police Post Vijay Nagar, Amritsar received a secret information that the appellants along with few other persons, who are habitual in indulging in thefts and robberies etc. were present in Bagh Nakha near Sun City Park and were preparing for committing dacoity. On the basis of secret information SI Randhir Singh along with his police party committed raid at the disclosed place. On the sight of police party, the appellants and their associates, namely, Mohd. Shamsheer, Moti Rahiman, Updesh Kumar alias Rajau and Balraj Singh tried to ran away but were apprehended by the different police parties. From appellant Harjinder

Singh, recovery of golden jewellery was effected, while from appellant Sham Paul one VCP and one *sabbal* which he was carrying in his left hand was recovered. Recovery of weapons and other articles was effected from the other accused.

The trial court acquitted the appellants for offence punishable under Sections 399 IPC but convicted them for offence under Section 402 IPC with the observations as follows :-

“..... In view of these circumstances and the fact that the prosecution has not been able to bring evidence on record to show that the accused and their accomplice were over heard by any of the members of the raiding party making preparation for committing dacoity or any other offence the mischief of Section 399 IPC though is found not to have been proved but the ingredients of of Section 402 IPC are found to have been proved beyond any reasonable doubt against the accused, more so when the accused, either in the cross examination of the witnesses of the prosecution or by leading any evidence in defence have not been able to bring forth any explanation for their assemblage in Bagh Nakha near Sun City Park, Amritsar along with the weapons of offence as aforesaid. The question posed hereinbefore is answered accordingly and the accused are acquitted of the offence under Section 399 IPC but are held guilty and convicted under Section 402 IPC.”

Learned counsel for appellant(s) has argued that there was no evidence on record that the appellants had assembled for the purpose of committing dacoity, a main ingredient to constitute an offence under Section 402 IPC. The prosecution has also not proved that the articles recovered from the appellant (s) were stolen articles. In the absence of any evidence appearing against the appellant (s) that their assembly was for the purpose of committing dacoity, the trial court has committed error of law and facts while reaching this conclusion.

Learned State counsel has argued that the accused were sitting at a place near Sun City Park, Amritsar armed with weapons. Some articles were also recovered from them on which they did not lay any claim. Even if the persecution has not been able to prove that these articles were stolen articles still from the facts and circumstances of the case this can be inferred that their purpose of assembly was to commit dacoity.

Section 391 IPC defines dacoity as follows :-

“391. Dacoity.—When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit “dacoity”.”

As per above section, the ingredients for offence of dacoity are as follows :

- i) The accused commit or attempt to commit robbery;*
- ii) person committing or attempting to commit robbery and the persons present and aiding must not be less than five;*
- iii) all such persons should act conjointly.*

The word “conjointly” refers to united or consorted action of five or more persons participating in the act of committing the offence.

The appellant (s) have been convicted by the trial court with the observations that they have assembled together and were having in their possession certain articles for which they could not account for , and inferred that they have assembled for the purpose of committing dacoity. The trial court has further observed that for the purpose of proving the offence under Section 402 IPC mere assembly of five or more persons is sufficient.

Section 402 IPC reads as follows :-

“402. Assembling for purpose of committing dacoity.—Whoever, at any time after the passing of this Act, shall be one of five or more persons assembled for the purpose of

committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.”

On perusal of above section, the ingredient to prove the offence under Section 402 IPC are as follows :-

- i) that five or more persons assembled (as in this case);*
- ii) the persons assembled for committing dacoity;*
- iii) that the appellants were amongst those five more more persons who have assembled.*

Perusal of Section 402 IPC clearly makes out that intention to commit dacoity is an essential element of the offence under this section. There may not be direct evidence about the purpose for which the appellants and other persons have assembled but the same could be gathered from the circumstances of the case and the articles recovered in this case. In this case certain articles like VCP, gold jewellery etc. were recovered but the prosecution failed to produce any evidence to prove that these were stolen articles. In the absence of any such evidence on record, the case of the prosecution is bereft of any circumstance leading to draw an inference that the appellants have assembled near Sun City Park, Amritsar with the intention to commit dacoity.

In view of my discussion above, the trial court has committed error of law and fact while reaching the conclusion that mere assembly of five or more persons at a particular place is sufficient to prove the offence under Section 402 IPC.

These appeals have merits and are accepted. The appellants in both the appeals are ordered to be acquitted of the charge framed against them. The appellants are stated to be on bail as such their bail bonds and surety bonds stand discharged.

May 06, 2015

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(Surinder Gupta)
Judge