

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

- (1)

CRA-S-390-SB of 2001 (O&M)
Date of Decision:22.4.2015
- Rajpal alias Babli and another

....Appellants
- Versus
- State of Haryana

....Respondent
- (2)

CRA-S-391-SB of 2001 (O&M)
- Ved alias Krishan

....Appellant
- Versus
- State of Haryana

....Respondent
- (3)

CRA-S-429-SB of 2001 (O&M)
- Naveen alias Minha

....Appellant
- Versus
- State of Haryana

....Respondent

CORAM: HON'BLE MS. JUSTICE NAVITA SINGH

Present: Mr. Sunil Saharan, Advocate for
Mr. Jitender Dhanda, Advocate for the appellants in
CRA-S-390-SB of 2001.

Mr. Rahul Vats, Advocate for the appellant in CRA-S-391-SB
of 2001.

Mr. K.D.S. Hooda, Advocate for the appellant in
CRA-S-429-SB of 2001.

Mr. Chetan Sharma, AAG, Haryana for the respondent.

NAVITA SINGH, J.

1. Though the FIRs in the above-mentioned cases were different, the trial Court passed a common judgment as the weapons allegedly used by appellants Ved alias Krishan and Rajpal alias Babli were in relation to the offences under Sections 395,397,399 and 402 read with Section 511 of the Indian Penal Code (IPC for short), which was the main case.

2. Out of the persons named as accused at that time, Sanjay was declared proclaimed offender while Ram Mehar died during trial. It is now submitted that during the pendency of the appeal, Rajesh also died. The appellants now are Ved alias Krishan, Rajpal alias Babli and Naveen alias Minha.

3. The prosecution case was that on 1.7.1998 Roshan Lal, Assistant Sub Inspector (ASI) along with Puran Singh and Indraj Singh, Head Constables and some constables was present at Higher Secondary School, Rakhi Shahpur road on patrolling duty in Government jeep No.HNT-17, which was being driven by Ramesh Kumar. Secret information was received that all the persons accused were sitting behind the khokhas at Kheri Chowk and were planning to commit dacoity by stopping the vehicles on road and they were also having arms. In view of the above, a raiding party was organized and the red light atop the Government jeep was put out.

4. The raiding party proceeded towards Kheri Chowk and when they reached there, all the six persons came out from the place of hiding and advanced towards the jeep. Ved alias Krishan armed his pistol towards the jeep but seeing police official in the vehicle they tried to escape but were apprehended.

5. One country made pistol of .315 bore was recovered from Ved alias Krishan and one loaded pistol of .315 bore along with three cartridges were recovered from Rajpal alias Babli. Naveen alias Minha was carrying a Jaily, Rajesh was carrying a lathi while Sanjay and Ram Mehar were with iron rods. All the weapons were taken into possession at the spot. Information was sent to the Police Station, on which the FIRs were registered.

6. The prosecution examined seven witnesses in the main case. Five witnesses were examined against accused Ved alias Krishan for the separate

case registered against him under the Arms Act whereas seven witnesses were examined in the third case against Rajpal alias Babli also under the Arms Act.

7. When statements of the persons facing trial were recorded, they took a defence that there was factional fight in the village and police had visited their houses and harassed them. In order to avoid further harassment, Sarpanch of the village i.e. Suresh Kumar produced them in the Police Station Narnaund on 29.6.1998 where they were held for 2/3 days and then falsely implicated. However, they did not lead any evidence in defence.

8. Counsel for the appellants argued that case of the prosecution was not believable because the police party was using the official jeep. The appellants would not have stopped the jeep which was a Government vehicle. If on secret information, the police had proceeded, they would have used some private vehicle or at least would have removed the red light.

9. It was also contended that the offence under Section 398 IPC was not made out because even if it be taken that the convicts were armed with deadly weapons, attempt to commit robbery or dacoity was not made. If this contention is believed, no offence is made out at all because then there would be no attempt to commit dacoity and it could not also be said that the appellants had assembled for the purpose of committing dacoity. If the vehicle was stopped at gun point but the appellants could not succeed in their ultimate aim, it would not mean that no attempt to commit dacoity was made by them.

10. Counsel for the appellants then referred to the statement of Puran Singh, PW6, stating that the Investigating Officer did not join any person from the public and further that none of the alleged assailants was known to any member of the police party. Reference was then made to the

statement of the Investigating Officer Roshal Lal, ASI, PW7, who stated that he had put out the red light fixed on the roof of the jeep. As already mentioned above, it was argued that once the appellants had noticed that there was a jeep with a red light on it, though it may not be burning at that time, they would have refrained from carrying into action their plan to commit dacoity even if they had made any.

11. The above arguments would, however, not be acceptable. At around 10 O'clock in the night in a small place, it is not necessary that the assailants could notice, when they came out of the hiding, that the vehicle was a government jeep. The red light if it is not burning remains of dark colour and is not visible from a distance. Once the appellants stopped the jeep, then even if they had noticed the light, it was too late for them.

12. It was then contended that the police reached the spot at 8 pm and the occurrence took place at 10 pm, which was not reconcilable. This argument is probably based on a mistake in reading the evidence. The Investigating Officer said that the police party had left the Police Station at about 8 pm and had visited Village Budan on the way and then reached Rakhi Shahpur where the secret information was received. The information was received between 9.30 and 10.00 pm and the police reached the place of incident at 10 pm.

13. A very interesting suggestion was put to the Investigating Officer on behalf of the appellants to which he replied that it was correct that he did not receive any information from the accused that they had committed dacoity on that day. If such information had been received by the appellants, then the arguments would have been that the same was

extracted from them as they were in police custody. Appellant Ved alias Krishan was rightly identified by the Investigating Officer because his right hand was found crippled and he was having some injury on his person. The fact regarding appellant Ved alias Krishan being incapacitated in the right hand is an admitted one.

14. The police received an information, which was found reliable and then the appellants were apprehended from the spot when they stopped the jeep. It, therefore, cannot be said in the given facts and circumstances that attempt to commit dacoity was not there. The police was not required to wait for the offence to be completed before apprehending the culprits. Had there been any other vehicle the appellants would have succeeded in their designs.

15. Lastly it was urged on behalf of Ved alias Krishan that there were three separate FIRs and the trial was held accordingly because Ved alias Krishan and Rajpal alias Babli were also tried for the offence under the Arms Act and, therefore, the trial Court committed an illegality in reading evidence of the other cases in the main case as well and vice-versa. This contention would, however, not be acceptable because though technically speaking evidence was taken separately, yet the weapons having been used for attempting to commit dacoity, the cases were otherwise inseparable.

16. No other point was urged before me and rather the appellants had practically no impressive arguments to offer. The evidence in the cases under the Arms Act was not touched and nothing was argued in those cases relating to the facts and evidence.

17. Crime rate is rising by the day and people resort to crime for making easy money. The appellants were young persons, who planned to rob people on the road for making money, which was an easy way of doing it than to earn a livelihood by legitimate means. If persons like the appellants are acquitted, the message in the society would go the wrong way.

18. All the appeals are dismissed.

19. Since the convicts have been on bail during the pendency of these appeals, they through their counsel are hereby directed to surrender before the trial Court on 26.5.2015 so as to serve the remaining part of sentence awarded to them. In case, the convicts fail to surrender before the trial Court on the date fixed, the trial Court shall take further action in accordance with law.

(NAVITA SINGH)
JUDGE

22.4.2015
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