

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA No.S- 1993-SB of 2007
Date of decision: 21.01.2015

Gopal

.....Appellant

versus

State of Haryana

.....Respondent

CRA No.S- 1250-SB of 2010

Basant @ Bhola

.....Appellant

versus

State of Haryana

.....Respondent

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.R.N. Lohan, Advocate for the appellants
in both the appeals
Mr.Anil Mehta, DAG Haryana

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

Kuldip Singh, J.

By this single judgment, I shall dispose of CRA No.S-1993-SB of 2007 filed by the appellant Gopal and CRA No.S-1250-SB of 2010 filed by the appellant Basant @ Bhola against judgment dated 9.8.2007, passed by learned Additional Sessions Judge (FTC), Hisar vide which the appellants were convicted under Sections 395 and 412 IPC and sentenced to undergo RI for ten years on each count and fine of Rs.2000/- on each count, in default thereof,

imprisonment for 60 days on each count. Appellant Gopal was further convicted under Sections 25 of Arms Act 1959 and sentenced to undergo RI for two years and fine of Rs.2000/-, in default thereof, to undergo further RI for 60 days. All the sentences were directed to run concurrently.

Today, none has come present on behalf of the appellant Basant @ Bhola. On asking of the Court, learned counsel for the appellant appearing for Gopal has agreed to address arguments on behalf of appellant Basant @ Bhola also.

The case was registered on the statement of complainant Jaipal (Ex.PA). In his statement dated 7.4.2003 recorded at 7.30 p.m., by S.I. Balbir Singh, SHO Police Station, Narnaund, Jaipal stated that he is a contractor of milk plant at Rohtak and Sirsa. He had purchased a new Maruti Car 800 of white colour from Tara Automobiles Abohar in his own name. On 7.4.2003 at about 3.00 p.m., Jaipal accompanied by his friend Amit Hooda, who is also a contractor with him at Sirsa, were coming from Sirsa in their car. They were carrying Rs.3,85,000/- in brief case to pay the salary to the workers at Rohtak Milk plant. When they reached about 1 km ahead of Hansi towards Delhi, one maruti car Zen bearing registration No.HR-12C-0717, in which three youths were sitting, was found following them. Another maruti car Esteem bearing registration No.DL-CG-5135 of white colour, in which two youths were sitting, was also following them. Both cars in order to compel him (complainant) to stop car, over took his car. In the meanwhile, he found that in maruti Zen car Goginder @ Gogi, Tea vender at Rohtak,

his friend Basant @ Bhola and Gopal son of Satbir were sitting. In the Esteem car, Lila and Ballu were sitting. The Zen car was being driven by Basant @ Bhola. He knows all the five persons as they used to visit tea shop of Goginder at premises of milk plant. When they reached about half km from Pipla bridge towards Rohtak then Bhola driving the maruti car suddenly over took his car and stopped in front of him with the result that Jaipal also stopped his car. All the five persons after alighting from their respective cars surrounded his car. Goginder carrying sword and Gopal carrying *Gupti* threatened them to hand over their belongings otherwise they will be killed. Basant @ Bhola picked up the briefcase lying on the rear seat which was containing cash. Ballu broke front glass of the car and Leela hit steel iron rod on the roof of the car with steel iron rod. In the brief case, there was a letter pad book belonging to the complainant bearing head note 'The Sirsa Jagdamba Colony Sahkari Sharam and Nirman Samiti' along with his driving licence and papers of his car. Leela and Ballu while driving esteem car ran towards Rohtak, whereas Goginder, Bhola and Gopal after carrying briefcase went towards the bank of the canal of Pipla bridge towards village Sukhpura. Jaipal took a lift in a jeep and met police party at Pipla bridge police post Bass, where SI Balbir Singh recorded his statement (Ex.PA) at 7.30 p.m. The same was sent to the police station, where formal FIR (Ex.PC) was registered at 8.50 p.m. on the same day.

On receiving the VT message about the robbery, the police party headed by Balbir Singh, which included ASI Hawa Singh reached the spot and recorded the statement of the complainant

Jaipal and also requisitioned additional police force through the wireless message. SHO Police Station Meham, SHO Sadar Bhiwani and CIA staff also reached at the spot and area was surrounded. When the entire police force reached near village Badsara, three persons who were riding the maruti car abandoned the maruti car and fled towards fields. Police chased them. The accused Goginder, Gopal and Basant @ Bhola were apprehended and beaten up by Bhat community. The police then took them into custody.

On reaching the place where the car was abandoned, it was found that in the abandoned maruti car HR -12C-0717, one brief case carrying cash of Rs.3,85,000/-, one letter pad bearing head note 'The Sirsa Jagdamba Colony Sahkari Sharam and Nirman Samiti' along with driving licence of Jaipal and sale letter of the car applied for, were found, which were taken into possession through recovery memo (Ex.PF). The engine number and chasis number of the car were also recorded. It was found that on the rear glass of the car, number was engraved as UP-16-5336. One number plate bearing No.0717 was also found in the car which was also taken into possession through said recovery memo. The car of Jaipal was also taken into possession through recovery memo (Ex.PG).

On 8.4.2003, accused Goginder, Gopal and Basant @ Bhola were interrogated and they suffered disclosure statements Ex.PJ, Ex.PK and Ex.PL.

On 9.4.2003, in pursuance to their statements, accused Basant @ Bhola got recovered number plate which was taken into possession through recovery memo (Ex.PN). Accused Goginder got

recovered sword from the fields of village Badsara, which was taken into possession through recovery memo (Ex.PR). Accused Gopal got recovered one *Gupti*, which was taken into possession through recovery memo (Ex.PT).

Anil son of Tek Ram was arrested on 9.4.2003. Accused Anil son of Dharampal was arrested on 12.4.2003 and accused Jagphool @ Ballu was arrested on 14.4.2003.

During investigation, it was found that Zen car recovered from the accused was a stolen car belonging to Anita Chaudhary and the actual number of the car was UP- 16-5336.

After the completion of investigation, challan was presented in Court.

Accused were charge sheeted under Sections 395, 398, 120-B, 468, 471 and 412 IPC.

In support of its case, the prosecution examined Premveer Singh (PW1), Budh Ram, Licence Clerk SDM Office, Sirsa (PW2), SI Dharampal (PW3), Dharmender Registration Clerk (PW4), Mauzi Ram, Patwari (PW5), Jaipal (complainant) (PW6), EHC Hanuman Singh (PW7), SI Hawa Singh (PW8), SI Balbir Singh (PW9) and ASI Ram Kumar (PW10).

When examined under Section 313 Cr.P.C., accused stated that they are innocent and have been falsely implicated.

After hearing learned Public Prosecutor, learned counsel for the accused and going through the file, the trial Court acquitted the accused Anil son of Tek Ram, Jagphool and Anil son of Dharampal. However, the present appellants along with Goginder

were convicted and sentenced as aforesaid.

It is to be noted that accused Goginder was absent at the time of pronouncement of sentence by trial Court.

I have heard learned counsel for the appellants, learned State counsel and have also carefully gone through the record.

Jaipal complainant examined as PW6. He stated that on 7.4.2003, when he alongwith Anil Hooda reached near Sugar Mill, Meham at 5.30 p.m., two cars intercepted them and that 5-6 persons who were sitting in both the cars, alighted and robbed their entire cash of Rs.3,85,000/- and fled away in their respective cars. He stated that the accused present in the Court had not snatched the money from them. The witness was declared hostile by the prosecution and question in the nature of cross-examination was put to him by the learned Public Prosecutor. However, the witness maintained that his signatures were obtained on the blank papers. In this way, though Jaipal stated about the robbery but he did not identify the accused.

The prosecution sought to establish the identity of at least three of the accused, namely, Gopal, Basant and Goginder by examining SI Balbir Singh SHO PW9. SI Balbir Singh stated that on receiving VT message from Pipla bridge about the robbery, he along with SI Hawa Singh Incharge Police Post Bass reached the spot recorded the statement of the complainant. On the wireless message SHO Meham, SHO Sadar Bhiwani and CIA staff also reached the spot and surrounded the area. When they reached near village Badsara, three persons, who were occupying maruti car,

abandoned the maruti car and fled towards the fields. They were identified as Goginder, Gopal and Basant @ Bhola. They were apprehended and beaten up by Bhat community. Later on, they were taken into custody and brought near the car abandoned by them, from which briefcase containing Rs.3,85,000/-, some papers were taken into possession. He also stated about disclosures statements made by the accused on 8.4.2003 and recovery of number plate, sword and *Gupti* from the said three accused on 9.4.2003. The witness was cross-examined at length. In cross-examination, he stated that message was received by him at 6.15 p.m. They reached Pipli bridge after 20 minutes. Accused were apprehended at 8.30 / 8.45 p.m. on 7.4.2003. He stated that Pipli Bridge is situated on national highway and is busy place and vehicles are plying on the road 24 hours. Regarding recovery, he stated that number plate was got recovered by Basant @ Bhola from ditches of the road which is on the national highway. Sword was got recovered by Goginder from the fields of Badsara, which is just near the main road. *Gupti* was got recovered by Gopal from the fields of Badsara.

The third witness to corroborate the statement of investigating agency is SI Hawa Singh (PW8). He stated that when they reached the spot, after recording the statement of the complainant, they started searching for the accused in Bhani Chelawala and Badsara villages. Three young boys fled away from the car and later on they were apprehended by them. They disclosed their identity as Goginder, Basant and Gopal. He further stated about recovery of money and other items from the car. In cross-

examination, he stated that they had received information about the occurrence on 7.4.2003 at 5.00 p.m. Thereafter, he started from police post towards Pipla bridge at 5.00 p.m. Then he received a VT message from Naka of Pipla bridge. SHO at that time was present in the police station. They reached the Pipla bridge in two vehicles. SHO was having his own vehicle. Accused were apprehended at 9.30 p.m. No private person was joined as it was night time. He stated that while chasing the accused, they did not fire any shot in air. The accused persons abandoned their car when they were at a distance of half kilometre from their jeep.

It further comes out that Premveer Singh (PW1) proved that his wife Anita Chaudhary is the registered owner of car bearing No.UP16-5336. Dharmender, Registration Clerk (PW4) proved that car bearing No.UP16-5336, engine No.341041 and chasis No.347474 is registered in the name of Anita Chaudhary, resident of C-152, Sector 26 Noida. He proved the RC of the said car. It is the same Zen car which was abandoned by the accused Gopal, Basant and Goginder, from which, the stolen money was recovered.

Learned counsel for the appellants has vehemently argued that in this case, the complainant Jaipal had not identified the accused. Therefore, the identity of the accused is not established. I am of the view that identity of accused Gopal and Basant is proved beyond all reasonable doubts by the statements of SI Balbir Singh and SI Hawa Singh. It is to be noted that on receiving the information of the robbery, the police from other police stations was also requisitioned. Fields were surrounded. The police started

manhunt for the accused. As per the statement of SI Balbir Singh, the accused were apprehended and beaten up by Bhat community. Later on, they were arrested by the police. It goes to show that the accused were apprehended by public while the police party was hunting for them. The accused had abandoned their stolen Zen car when they were merely at a distance of half kilometre from the jeep of the police and thereafter, they fled towards the fields. The police party chased them. They were identified at the spot, when they were leaving the car and after their apprehension, they were found to be the same persons, who had abandoned the car. In this way, even though the complainant did not identify the accused in the Court, yet it is established that they are the same persons, who were riding the stolen Zen car and had fled away leaving the stolen Zen car at the spot when the police party chased them. It was found that Zen car was bearing fake number plate. In fact, its real registration number was UP16 5336 belonging to Anita Chaudhary of Noida. From the said car, money, which Jaipal complainant claimed was robbed from him was found lying in the same brief case alongwith writing pad and driving licence of Jaipal. It goes to establish the identity of atleast Gopal, Basant and Goginder as the persons who had robbed Jaipal of his money, after waylaying him. There is no explanation with the accused as to how the stolen car came in their possession and how they were using it. The fact that the police from other police stations was also called for and massive manhunt was launched and that the accused were in fact apprehended by the general public, goes to show that the story of the police is trust worthy and identity of present

appellants was established at the spot.

Learned counsel for the appellants has further argued that there are contradictions in the statements of SI Hawa Singh and SI Balbir Singh regarding the time of robbery. SI Hawa Singh has stated that he left the police post at 5.00 p.m., whereas the occurrence took place at 5.30 p.m., whereas SI Balbir Singh claimed that he left the police station at 6.30 p.m. on receiving VT message. I am of the view that discrepancy in time when the police left the place of occurrence is immaterial. In this case, dacoity was committed on the national highway at 5.30 p.m. when there was sun light. Therefore, possibility is that somebody from the public might have informed the police and wireless message was flashed. It was for this reason that police immediately swung into action and was able to collect police force from adjoining police stations also.

Non-joining of independent witness is also immaterial. Reluctance of general public in joining the police investigation against the criminals can be well understood. This is clear from the fact that even Jaipal complainant, who was victim, did not identify the accused in the Court though he had named all the five accused in his complaint (Ex.PA) saying that he knows them as they used to visit tea shop of Goginder at milk plant, Rohtak. His statement (Ex.PA) is apparently true and correct version of the occurrence and he has resiled from some part of the same. However, recording of his statement as correct and true version, was proved by ASI Balbir Singh and same is trust worthy.

Learned counsel for the appellants has vehemently

argued that the recovery of weapons, number plate, sword and *Gupti* from the accused is not trust worthy. They were apprehended on 7.4.2003. They suffered disclosure statements on 8.4.2003 and the recovery is stated to have been effected on next day i.e. 9.4.2003 from the place which is near the place of their arrest. I am of the view that number plate was recovered from near the main highway. Therefore, possibility of accused Basant throwing the number plate while travelling, is there. The sword and *Gupti* were recovered from near the place of arrest of the accused Goginder and Gopal. It is to be noted that on seeing the police party the accused had abandoned their car and ran towards the fields. The police was chasing them. Therefore, the possibility is that they dropped sword and *Gupti* on the way that is why the same was found near the place of the occurrence. At the time of their arrest, it was night time and the police might be in a hurry to take them to police station and therefore, recovery of sword and *Gupti* on 9.4.2003 cannot be considered doubtful.

Minor contradictions in the statements of the witnesses are to be ignored.

From the foregoing discussions, I come to the conclusion that the prosecution case has been proved beyond all reasonable doubts. Accordingly, there is no ground to interfere in the judgment of the trial Court, convicting the accused under Sections 395 and 412 IPC and further convicting the accused Gopal under Section 25 of the Arms Act, 1959.

Learned counsel for the appellants has argued that some

leniency in the sentence may be shown to the accused. They were arrested in the year 2003 and have faced agony of trial for the last 12 years.

Keeping in view facts and circumstances, the sentence of ten years passed under Sections 395 and 412 IPC is reduced to RI for seven years on each count. The remaining part of the sentence is kept intact.

With this modification, both the appeals are dismissed.

Accused be arrested and committed to jail to undergo remaining part of sentence.

21.01.2015
gk

(Kuldip Singh)
Judge