

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

SANJIV KUMAR SHARMA
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Date of decision : 7.1.2015

1. CRA No. S-170-SB of 2004 (O/M)
Basant @ Bhola Appellant

Versus
State of Haryana Respondent
2. CRA No. S-275-SB of 2004 (O/M)
Goginder Appellant

Versus
State of Haryana Respondent
3. CRA No. S-410-SB of 2004 (O/M)
Jagphool Appellant

Versus
State of Haryana Respondent
4. CRA No. S-717-SB of 2004 (O/M)
Gopal Appellant

Versus
State of Haryana Respondent

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Chirag Kundu, Advocate, for,
Mr. R.S. Kundu, Advocate, for the appellant
in CRA No. S-170-SB of 2004.

Mr. R.N. Lohan, Advocate, for the appellant
in CRA No. S-717-SB of 2004, CRA No. S-275-SB of
2004 and CRA No. S-410-SB of 2004.

Mr. Gaurav Goel, Assistant A.G. Haryana.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH, J.

By this single judgment, I will dispose of CRA No. S-170-SB of 2004, CRA No. S-275-SB of 2004, CRA No. S-410-SB of 2004 and CRA No. S-717-SB of 2004, filed by accused/appellants Basant @ Bhola, Goginder, Jagphool and Gopal respectively.

On asking of the Court, Mr. R.N. Lohan, Advocate, has addressed the arguments on behalf of accused/appellant Goginder and Jagphool also, on whose behalf none is present today.

Impugned in the present appeal is the judgment and order dated 10.1.2004, passed by the learned Additional Sessions Judge, Rohtak, vide which accused/appellants Gopal, Basant and Goginder were convicted under Section 392 IPC and sentenced to undergo rigorous imprisonment for ten years each and to pay fine of Rs. 10,000/- each, in default thereof, to further undergo rigorous imprisonment for two years each. Accused/appellant Jagphool alongwith accused Anil son of Dharampal (non-appellant) was convicted under Section 25 of the Arms and sentenced to undergo rigorous imprisonment for two years each and to pay fine of Rs. 2,000/- each, in default thereof, to further undergo rigorous imprisonment for six months each.

The prosecution case, as coming out from the prosecution evidence, is that on 5.4.2003 Premveer Singh (complainant), who is resident of Sector-26, Noida (UP) accompanied by his wife Anita Chaudhary came on their Maruti Zen

(white colour) car bearing registration No. UP-16-5336 to attend a marriage of the daughter of their friend at Sitara Garden Hotel, Rohtak. At about 10:45 PM, they started their journey back to Noida. At about 11:00 PM, when they reached Ismaila bridge on Delhi-Rohtak highway, one Esteem car of white colour came from behind and after overtaking their car, blocked the way. Complainant Premveer Singh stopped his car. From the said Esteem car, three youths, aged about 25 to 30 years alighted. They were wearing pants and shirts and were speaking *Hariyanvi* language. One of them demanded the key of the car, on which complainant Premveer Singh stated that he is resident of village of Karontha. On this, one of the boys snatched the key of the car from complainant Premveer Singh and thereafter they drove away the car leaving the complainant and his wife at spot. The complainant and his wife took lift in a car and were going to the police station when at Bus Stand Sampla, they met ASI Jai Kishan where a written complaint (Ex.PF) was handed over by complainant Premveer Singh to the said ASI, who after making his endorsement, sent the same to the police station, where formal FIR (Ex.PJ) was recorded on 6.4.2003.

It comes out that on 7.4.2003, SI Balbir Singh, who was posted as a Station House Officer, Police Station Narnaund, District Hisar, received a wireless message that a sum of Rs. 3,85,000/- has been looted from a Maruti car near Pipla bridge in District Hisar, falling within jurisdiction of Police Station Narnaund. Thereafter, SI

Balbir Singh accompanied by other police officials visited the said Pipla bridge. There, one Jai Pal, resident of Jagdamba Colony, Sirsa, met them and made the statement regarding the crime, on which formal FIR No. 65 dated 7.4.2003 was registered at Police Station Narnaund. Thereafter, SI Balbir Singh alongwith ASI Hawa Singh started search of the accused. In between Sukhpura and Chelawali Bhaini, they spotted a Maruti Zen car, in which three persons were travelling. On seeing the police party, the occupants of the car took to their heels after leaving the said Maruti Zen car by the side of road. ASI Hawa Singh was left there to guard the said Maruti Zen car and SI Balbir Singh with the help of other police officials chased the culprits by shouting '*Chor*' '*Chor*'. The miscreants were encircled by the people of "Bhatto Ka Dera" and the police party. They were apprehended from the spot. They disclosed their names as Goginder, Gopal, and Basant. The looted money of Rs. 3,85,000/- alongwith the documents of the said car were recovered from their possession. Later on, it was found that the said Maruti Zen car, in which said Goginder, Gopal, and Basant were travelling, was the same car which was robbed in the present case. At the time of recovery, it was found that the said Maruti Zen car was bearing fictitious registration No. HR-12-C-0717.

On 8.4.2003, during interrogation, the accused disclosed to the police that the said Maruti Zen car was looted on the night of 5.4.2003 from the area of Ismaila over bridge.

On 8.4.2003, ASI Ram Kumar alongwith ASI Har Narain and HC Atam Parkash, on receiving a secret information about accused Jagphool and Anil alias Lila son of Dharampal and Anil alias Lila son of Tek Ram of being involved in the robbery of the said Maruti Zen car, conducted a *Nakabandi* at T-point, GT Road and the road approaching to village Ismaila. Accused Jagphool @ Ballu, Anil son of Dharampal and Anil son of Tek Ram came riding an Esteem car bearing No. DL-3CG-5135 from the village side. They were stopped and apprehended. From the search of the accused Jagphool, a 12 bore country made pistol and one live cartridge of the same bore were recovered. From the search of accused Anil alias Lila son of Dharampal, resident of Chiri, a .315 bore country made pistol alongwith one live cartridge of the same bore were recovered. The same were taken into possession through recovery memo Ex.PU. The rough sketches of the pistols were prepared, vide memos Ex.PU/1 and Ex.PU/2.

On 9.4.2003, the police moved an application (Ex.PK) for test identification parade of accused Jagphool and Anil @ Lila son of Dharampal. The accused, vide their separate statements Ex.PK/1 and Ex.PK/2, refused to participate in the test identification parade. During the interrogation, the accused confessed their involvement in the crime.

On 10.4.2003, on receiving the intimation from Police Station Narnaund, District Hisar, about the apprehension of

Goginder, Gopal and Basant in FIR No. 65 dated 7.4.2003, registered under Sections 395, 397 IPC at Police Station Narnaund. ASI Ram Kumar alongwith other police officials, after getting the permission of the Court on application (Ex.PZ), apprehended the accused Goginder, Gopal and Basant in this case. They were later on interrogated and the accused also got demarcated the place of occurrence.

The police obtained sanctions (Ex.PA and Ex.PB) of the District Magistrate, Rohtak, for prosecution of accused Anil @ Lila son of Dharampal and accused Jagphool @ Ballu under Section 25 of the Arms Act. After the completion of investigation, the challan was presented in the Court. The trial Court chargesheeted all the six accused under Section 395 IPC. Accused Anil @ Lila son of Dharampal and accused Jagphool were also separately chargesheeted under Section 25 of the Arms Act. Accused did not plead guilty and claimed trial.

In support of its case, the prosecution examined as many as 17 prosecution witnesses i.e. Shri Niwas Gupta, Reader to the District Magistrate, Rohtak (PW1), Gurcharan Singh, Additional Ahlmad of the Court of Shri Satish Ahlawat, Additional District and Sessions Judge, Hisar (PW2), complainant Premveer Singh (PW3), Anita Chaudhary, wife of the complainant Premveer Singh (PW4), ASI Shri Krishan, PS Sampla (PW5), SI Om Parkash (PW6), Ms. Madhu Khanna, Presiding Officer, Special Environment Court,

Faridabad (PW7), HC Ram Kumar (PW8), HC Satpal (PW9), HC Ram Parkash (PW10), EHC Satpal (PW11), ASI Jai Kishan (PW12), SI Balbir Singh (PW13), HC Gulab Singh (PW14), ASI Ram Kumar (PW15), ASI Ishwar Singh (PW16), ASI Har Narain (PW17) and closed the prosecution evidence.

When examined under Section 313 Cr.P.C., accused denied as incorrect the evidence led against them claiming that they are innocent and nothing was recovered from them. Accused did not lead any evidence in defence.

After hearing the learned Public Prosecutor for the State, learned counsel for the accused and going through the evidence, the learned Additional Sessions Judge, Rohtak, convicted the accused aforesaid. Only four of the accused have come up in the present appeal.

I have heard the learned counsel/amicus-curiae Mr. R.N. Lohan for the accused/appellants, learned Assistant Advocate General for the State and have also carefully gone through the file.

A close scrutiny of the prosecution evidence reveals that in this case, robbery was committed on Rohtak-Delhi National Highway. Premveer Singh (complainant) as well as his wife Anita Chaudhary, while appearing as PW3 and PW4 respectively, have stated about their visit to Rohtak to attend the marriage of daughter of their family friend Vijay Kumar, which was solemnized at Sitara Garden Hotel, Rohtak. They further stated that at 11:00 PM, when

they were returning to Delhi and reached near Ismaila bridge, a Maruti Esteem car was chasing them and it blocked their way by stopping it in front of their car. They got down from the car and noticed that 2/3 youths, aged about 25 to 30 years, were advancing towards them. They were speaking *Haryanavi* dialect. He (complainant) was pushed aside. He told the accused in *Haryanavi* that he belongs to village Karontha. Thereafter, accused snatched the key of the car and drove away the car. Then, they took lift from a sikh person and reached petrol pump Sampla where the police party met them. There, complainant made a written complaint (Ex.PF) to the police. Both of them stated that they cannot identify the person, who snatched the key of the car from them. Premveer Singh (complainant) stated that on the said day, it was a dark night and he could only draw outline of the person, who snatched the key of the car.

Now, coming to the apprehension of accused in this case, the statement of SI Balbir Singh (PW13) is crucial. SI Balbir Singh was posted as SHO at Police Station Narnaund, where the accused were apprehended on 7.4.2003 alongwith the stolen Maruti Zen car, which was bearing a fake number plate. SI Balbir Singh deposed that he received an information about the robbery of Rs. 3,85,000/- from a Maruti car over Pipla bridge in District Hisar, falling within the jurisdiction of Police Station Narnaund. He reached the spot and recorded the statement of Jaipal, who was robbed of the

money. On the basis of said statement, FIR No. 65 dated 7.4.2003 was registered. Then, they started hunting for the accused. The accused were spotted between Sukhpura and Chailawali Bhaini. On seeing the police party, the accused left the car on the road side and started running. The police chased them and raised the alarm of 'Chor' 'Chor' and then with the help of the people of "Bhatto Ka Dera", the accused were encircled and nabbed. They disclosed their names as Goginder, Gopal and Basant. The stolen money of Rs. 3,85,000/- was recovered from them.

The recovery memo Ex.PN dated 21.4.2003 shows that the car was taken into possession in this case. It was found that it was bearing fake plat HR-12-C-0717. Then, ASI Ram Kumar (PW15), ASI Ishwar Singh (PW16) and ASI Har Narain (PW17) proved the arrest of accused Jagphool and accused Anil son of Dharampal and recovery of 12 bore and 315 bore country made pistols alongwith one live cartridge each of the same bore.

Learned counsel for the accused/appellants has vehemently argued that in this case the accused were not identified by the complainant. The statements of the complainant and his wife regarding the lodging of FIR is discrepant and there are also material discrepancies in the statement of SI Balbir Singh regarding the apprehension of the accused in FIR No. 65 dated 7.4.2003. Therefore, accused cannot be convicted on the basis of discrepant evidence. It has been argued that complainant Premveer Singh had

admitted that on the day of occurrence i.e. 5.4.2003, it was a dark night at 11:00 PM and he could only see the outline of the person, who committed the robbery. He also states that though he had shown the place of occurrence, but site plan was not prepared in his presence. Both of them (complainant and his wife) could not identify the accused. However, the fact remains that according to complainant Premveer Singh, three persons had robbed him of his Maruti Zen car bearing No. UP-16-5336.

The statement of SI Balbir Singh clearly establishes that the present occurrence took place at night intervening 5/6.4.2003, at about 11:00 PM, which is around midnight. On the next day i.e. 7.4.2003, SI Balbir Singh, on receiving the intimation of robbery of Rs. 3,85,000/- in his area, chased the accused when they were riding Maruti Zen car, looted in the present case. Accused Goginder, Gopal and Basant took to their heels after leaving the said Maruti Zen car by the side of road and were chased by the police. Then, with the help of public, they (accused) were surrounded and apprehended at the spot. All the three accused were identified by SI Balbir Singh.

Learned counsel for the accused/appellants has vehemently argued that in this case, the people of Dera of Bhatto, who had helped the police party, have not joined the investigation. Nor they were examined in the Court.

The cross examination of SI Balbir Singh makes it clear

that the said persons at “Bhatto Ka Dera” were not permanently settled there and they can move at any time. Therefore, Sub Inspector felt that their joining in the investigation will be a useless exercise.

It has been further argued that no independent witness was joined in the investigation.

I am of the view that the robbery was committed at midnight. Then, the accused, who were stated to be involved in another robbery, were chased by the police. Keeping in view the background of the accused, it was hard for the police to get the services of an independent witness to join the investigation. The difficulty of the police in this regard has to be appreciated.

Accused Goginder, Gopal and Basant have not furnished any explanation as to how this robbed Maruti Zen car came in their possession. It was found in their possession on the very next day of the robbery after they had committed another robbery. The robbed money of the subsequent robbery was found from their possession. When the police officials chased them, they left the car and started running and when they were surrounded by the public and apprehended by the police, at that time, the said Maruti Zen car was bearing fake registration No. DL-3CG-5135.

Section 106 of the Indian Evidence Act, 1872, provides as under :-

“S.106. Burden of proving fact especially within knowledge.-

When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.”

Therefore, the fact as to how the Maruti Zen car, which was robbed only one day earlier and found in the possession of the accused, was within their special knowledge. Therefore, they were required to explain as to how the Maruti Zen car robbed one day earlier was found in their possession bearing fake number plate. The accused have failed to furnish any explanation or explain the circumstances. In these circumstances, it has to be concluded that accused persons are the same persons, who committed the robbery in the present case and after affixing fake number plate, committed the robbery next day, about 70 kilometers away from the place of occurrence in the present case and were apprehended red handed. Some minor discrepancies in the statements of the witnesses are natural and can be attributed to lapse of time.

So far as the role of accused Jagphool is concerned, the recovery of a 12 bore country made pistol from his possession is proved by the testimony of ASI Ram Kumar (PW15), ASI Ishwar Singh (PW16) and ASI Har Narain (PW17). The said pistol was found to be in working order by HC Satpal (PW9). It is to be noted that the Esteem car recovered from accused Jagphool and Anil was also later on found to be stolen one.

From the foregoing discussion, I come to the conclusion that the accused/appellants were rightly convicted by the trial Court under Section 392 IPC. Accused Jagphool was also rightly convicted under Section 25 of the Arms Act by the trial Court.

Learned counsel for the accused/appellants prayed for leniency saying that the accused are young persons and the sentence of rigorous imprisonment for ten years under Section 392 IPC is quite harsh.

Considering the facts and circumstances, the sentence of ten years rigorous imprisonment under Section 392 IPC is reduced to seven years, while the sentence passed on accused/appellant Jagphool under Section 25 of the Arms Act is maintained. Accused Goginder, Gopal and Basant are on bail. They are directed to surrender before the jail authorities immediately to undergo the remaining period of sentence, failing which they be arrested and committed to jail.

With this modification, all the aforesaid appeals stand dismissed.

(KULDIP SINGH)
JUDGE

7.1.2015
sjks