

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRA-S-18-SB of 2004 (O&M)
Date of decision: 1.4.2015

Bhim Singh ...Appellant

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. Saurabh Sharma, Advocate,
Mr. Sailender Singh, Advocate &
Ms. Archana Sharma, Advocate, for the appellants.
Mr. P.K. Jhanda, AAG, Haryana.

Rajan Gupta, J. (oral)

This judgment shall dispose of three Crl. Appeals i.e. CRA-S-18-SB-2004, CRA-S-70-SB-2004 and CRA-S-248-SB-2004, filed by appellants namely, Bhim Singh alias Billa, Vijay alias Ravi, Surinder Singh alias Rajesh, Rajesh Kumar, Ravinder Kumar alias Lillu and Kanwarjit Singh, emanating from judgment of conviction dated 11.10.2003 and order of sentence dated 13.10.2003, passed by Additional Sessions Judge, Kurukshetra, vide which all the appellants have been convicted and sentenced to undergo maximum rigorous imprisonment of five years for offences under sections 399 IPC, four years under section 402 IPC, one year for offence under section 25 of the Arms Act, except Surinder alias Rajesh, who was sentenced to undergo R.I. for three years

under the Arms Act as a pistol was recovered from him.

Prosecution case in brief is that on 24.3.2003, Inspector Jai Singh alongwith other police officials was present at Platform No.3, Railway Station, Sector 13, Kurukshetra. At about 7.20 P.M., the train Himalyan Queen came from Ambala side. Passengers alighted from the same. A secret information was received by the police officials that the accused (appellants herein) were found walking near Platform No.1 at Railway Station, Kurukshetra and were proceeding towards the F.C.I. Godown. They were carrying dangerous weapons. Finding the information credible, Inspector Jai Singh formed a raiding-party and found the accused sitting near the ditches at the railway line. With the help of other police officials, he apprehended the accused and conducted their personal search. From the possession of Surinder Singh alias Rajesh one country made pistol alongwith two cartridges were recovered. One knife was recovered from accused Rajesh Kumar and other knife was recovered from the possession of accused Ravinder Kumar alias Lillu. Two spring actuated knives were also recovered from the possession of accused Kanwarjit Singh and Bhim Singh alias Billa. Rough sketch of the weapons were prepared and same were sealed with the seal 'JS'. The case property was taken in possession. Inspector Jai Singh sent information to police station where FIR was registered. Investigation ensued thereafter and police recorded statements of witnesses. All the accused were charged for commission of offence under sections 402, 399 IPC and Section 25 of the Arms Act. Accused pleaded not guilty and

claimed trial.

During the trial, prosecution examined as many as six witnesses. While Head Constable Kashmiri Lal appeared as PW1, he produced a parcel containing a pistol. Another witness Arjun Dass only deposed with regard to sanction of prosecution of the accused under the Arms Act. ASI Ramesh Lal appeared as PW3 and gave detailed description of the incident. According to him, he was a part of the raiding-party. Other official witnesses such as S.I. Tirath Ram, Constable Rajesh Kumar and Inspector Jai Singh, investigating officer of the case, also deposed before the court.

Learned counsel for the appellants have argued that judgment of conviction is based solely on the testimonies of official witnesses. There is no corroboration thereto by any independent witness. He submits that there are serious discrepancies in the deposition of prosecution witnesses. According to him, ASI Ramesh Lal stated before the court that his police party was at a distance of 80-90 feet from the accused. However, in cross-examination, he changed his version and stated that he could hear conversation of the accused as he was at a distance of 10 feet.

Learned State counsel has opposed the plea. According to him, recoveries were effected from the accused. In view of same, prosecution case is proved to the hilt.

I have heard learned counsel for the parties.

Apart from the discrepancies, as pointed out in the

deposition of ASI Ramesh Lal, it appears, in cross-examination Inspector Jai Singh admitted that no independent witness was asked to join investigation either from Sector 13 or from the Administrative Block. No such request was made to any shopkeeper or passenger. Undoubtedly, entire prosecution rests upon testimonies of official witnesses. There are certain discrepancies even in their deposition. Though every such discrepancy cannot be given undue weight, yet it may create reasonable doubt in the mind of the court regarding the prosecution version. In the entire case only two witnesses are relevant i.e. PW3 and PW6, who were heading the raiding-party. While ASI Ramesh Lal stated that investigating officer Jai Singh made an effort to join some independent witness, but investigating officer himself admitted that no such effort was made. Others have merely testified regarding recoveries of weapons, sanction for prosecution under Arms Act etc. However, there being discrepancies in deposition of these two material witnesses, this court is unable to uphold the judgment under appeal. Besides, recovery effected is of ordinary knives except a pistol which was recovered from accused Surinder Singh alias Rajesh. Head Constable Kashmiri Lal, who appeared as PW1, stated in his cross-examination that the pistol recovered was a country made weapon and had no markings thereon. There is nothing on record to connect said weapon with accused Surinder Singh alias Rajesh. In my considered view, prosecution has been unable to prove this case beyond a shadow of doubt. In such circumstances, benefit of doubt will naturally go to the

accused/appellants.

For the reasons stated above, all the three appeals are accepted and impugned judgment of conviction and order of sentence are set-aside. Needless to observe, appellants are acquitted of the charges levelled against them.

(RAJAN GUPTA)
JUDGE

1.4.2015
'Rajpal'

Whether to be referred to reporter? Yes / No