

In the High Court of Punjab and Haryana at Chandigarh

Date of Decision: August 05, 2015

1. CRA-S-1405-SB of 2009

Shankar and another ... *Appellants*

Versus

State of Haryana ... *Respondent*

2. CRA-S-1882-SB of 2009

Suresh .. *Appellant*

Versus

State of Haryana ... *Respondent*

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

Present: Mr. Gurpal Singh Sandhu and
Mr.S.P.S. Sidhu, Advocates,
for the appellants.

Mr. Naveen Sheoran, DAG, Haryana.

Paramjeet Singh, J.

This judgment shall dispose of CRA-S-1405-SB of 2009 titled “Shankar and another vs. State of Haryana” and CRA-S-1882-SB of 2009 titled “Suresh vs. State of Haryana” as challenge in both the appeals is to the judgment of conviction dated 04.05.2009 and order of

Hisar, whereby appellants have been convicted and sentenced as under:-

<i>“Under Section</i>	<i>Imprisonment & Fine</i>	<i>In default</i>
<i>398 IPC</i>	<i>R.I. for 7 years & ₹ 1,000/- each</i>	<i>R.I. for 2 months</i>
<i>401 IPC</i>	<i>R.I. for 3 years & ₹ 1,000/- each</i>	<i>R.I. for 2 months</i>

Appellant – Shankar has also been convicted and sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs. 1,000/- for commission of offence punishable under Section 25 of the Arms Act, in default of payment of fine, to further undergo rigorous imprisonment for a period of two months.

All the sentences have been ordered to run concurrently.

The factual matrix of the case is that on 18.07.2007 police party headed by ASI Dalbir Singh of C.I.A. Staff, Hisar was present at G.T. Road, Mirjapur Turn, Hisar, in connection with patrolling duty. A secret information was received that three persons armed with illicit weapons were present at Raipur turn, G.T. Road, and were trying to loot vehicles and if a raid be conducted, they could be apprehended. Thereafter, a raiding party was formed. When the raiding party reached near the spot, three young boys stopped a jeep in order to loot the same.

ASI Dalbir Singh with the help of other police officials apprehended all

the three young boys. On enquiry, one of them disclosed his name as Shankar @ Rinku son of Raj Kumar, resident of Hanuman Colony, Hansi from whose possession one loaded pistol of .315 bore was recovered. Thereafter the pistol was unloaded, which was converted into a sealed parcel and taken into possession vide a separate memo. Second person told his name as Suresh Kumar son of Amar Singh, resident of Mohalla Sainian, who was also having a *Chhura*, which was taken into possession vide separate memo and the third person told his name as Arvind son of Subhash Chander, resident of Hanuman Colony, who was also having an iron rod, which was taken into possession vide separate memo. Ruqa was sent to Police Station, on the basis of which FIR No. 546 dated 18.07.2007, under Sections 398, 401 of the Indian Penal Code and 25 of the Arms Act was registered. After completion of investigation, challan was presented in the Court. Thereafter, charge was framed under Sections 398/401 IPC, to which the appellants did not plead guilty and claimed trial.

To prove its case, prosecution examined PW1 Sub Inspector Dalbir Singh, PW2 EHC Om Parkash, PW3 HC Daya Nand, PW4 Inspector Hanuman, PW5 HC Bhana Ram and PW6 ASI Mohinder Singh.

313 of the Code of Criminal Procedure. The appellants denied allegations of the prosecution and pleaded their false implication. In defence, they have examined DW1 Tirlok, DW2 Rohtash, DW3 Kuldeep Singh, DW4 Ram Kumar and DW5 Vijay Kumar.

On appreciation of evidence, appellants were sentenced and convicted as aforesaid by learned Additional Sessions Judge, Hisar vide judgment of conviction dated 04.05.2009 and order of sentence dated 09.05.2009. Hence, present appeals.

I have heard learned counsel for the parties and perused the record.

Learned counsel for the appellants vehemently contended that no offence under Sections 398 and 401 of the Indian Penal Code and 25 of the Arms Act is made out against the appellants. Learned counsel further contended that no independent witness was joined, although prior information was given to the police. G.T. Road is a thoroughfare where factories are existing and independent witness should have been joined. Non-joining of independent witness is fatal to the prosecution case. Learned counsel further contended that police officer who has lodged the case has also investigated the matter and he cannot do the same. Learned counsel further contended that weapon in question was never used by the

appellants-convicts. Learned counsel further contended that there are

discrepancies in the prosecution version which goes to the root of the case. Defence evidence led by the appellants also clearly proves that entire prosecution story has been falsely concocted and the appellants have been involved in a false case.

Per contra, learned State counsel vehemently contended that the appellants had tried to stop a vehicle with a purpose to loot and they were armed with deadly weapons. The incident was of night i.e. about 10.15 p.m. and the appellants have tried to stop the vehicle with a purpose to loot and similar attempt was made with regard to stop the vehicle of the police officials, as a result of which they were apprehended along with weapons. Learned State counsel further contended that learned trial Court, after appreciating the evidence on record, has rightly convicted the appellants.

I have considered the contentions raised by learned counsel for the parties and perused the record.

So far as the contention of the learned counsel for the appellants that police has not joined the independent witness and the prosecution case is weak, is concerned, the same are baseless. No evidence has been brought on record with regard to prior enmity of the police officials with the appellants. The police officials can be the

there was no previous hostility. There was no reason for the police officials to arrest the innocent persons. In such like cases, non-joining of independent witnesses is not fatal.

So far as the contention of the learned counsel for the appellants that weapons have not been used, is concerned, the same is also devoid of merit. It is not necessary that for the commission of offence, weapons must be used. The possession of loaded pistol in the hands of appellant – Shankar and one knife in the possession of another appellant – Suresh Kumar has been proved which clearly indicates that the appellants were armed with deadly weapons and had made an attempt to stop the vehicle of the police party even. It has also come in the evidence that the appellants had tried to stop another vehicle. Hence, offence under Sections 398 and 401 IPC read with Section 25 of the Arms Act is made out. So question of not using the weapons will be of no help to the appellants.

So far as the contention with regard to discrepancies in prosecution version are concerned, it is natural. Some discrepancies come in the evidence with the passage of time. No material discrepancy has been pointed out which may go to the root of the case. Two of the appellants were armed with deadly weapons and they had come on the

committing robbery.

On a conspectus of the evidence and the findings of the trial Court and reasons stated above, I am satisfied that appellants' version has been correctly rejected by the trial Court. The judgment of conviction and order of sentence passed by learned trial Court are upheld. Both the appeals being devoid of merits are dismissed. The appellants-convicts in both the appeals are stated to be on bail. Their bail bonds stand cancelled and they are directed to surrender before the trial Court forthwith to undergo remaining part of the sentence. In case, the appellants-convicts do not surrender before the Court, it shall issue warrant of arrest of the appellants-convicts.

August 05, 2015
vkd

[Paramjeet Singh]
Judge