

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

1. CRA-S-54-SB-2004

Raj Kumar and others

..... Appellants

Versus

State of Haryana

..... Respondent

2. CRA-S-187-SB-2004

Hare Ram

..... Appellant

Versus

State of Haryana

..... Respondent

Date of decision: 05.08.2015

CORAM: HON'BLE MR. JUSTICE R.P. NAGRATH

- 1. Whether Reporters of the local papers 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?*

PRESENT: Mr. HS Jalal, Advocate, Amicus Curiae
for the appellants (in CRA-S-54-SB-2004) except
Hare Ram S/o Ram Prabhav Yadav .

Ms. Nidhi, Advocate for
Mr. SS Behl, Advocate
for the appellant (in CRA-S-187-SB-2004).

Ms. Dimple Jain, AAG, Haryana (in both cases).

R.P. NAGRATH, J.

By this common order two appeals bearing CRA-S-54-SB-
2004, filed by 5 accused including Hare Ram S/o Ram Prabhav Yadav

and CRA-S-187-SB-2004 separately filed by Hare Ram S/o Ram Prabhav Yadav, are being disposed of as these arise out of same judgment of conviction dated 29.09.2003 and order of sentence dated 30.09.2003, passed by learned Additional Sessions Judge, Fast Track Court, Ambala, in Sessions Case No. 120/2001/2003 dated 08.08.2001/ 08.04.2003, in FIR No. 100 dated 29.04.2001 under Sections 399/402 of the Indian Penal Code (IPC) and Section 25 of the Arms Act Police Station Sadar, Ambala.

2. CRA-S-54-SB-2004 was forwarded by the Superintendent, Central Jail, Ambala. The appellants, namely; Raj Kumar S/o Sadhu Ram, Raj Kumar S/o Nichku Lal, Dev Raj S/o Bithla, Hare Ram and Pawan Kumar S/o Indersain (in CRA-S-54-SB-2004) were represented by another Advocate but none having appeared on their behalf on certain dates, Mr. HS Jalal, Advocate was appointed as Amicus Curiae to assist this Court on their behalf. However, there is a separate appeal (CRA-S-187-SB-2004) filed by Hare Ram through counsel and being represented by Ms. Nidhi, Advocate.

3. The appellants faced trial of the charges under Sections 399/402 IPC. The other head of charge against Raj Kumar @ Raju @ Kalia S/o Nichku Lal (appellant in CRA-S-54-SB-2004) was under Section 25 of the Arms Act for being found in possession of .315 bore countrymade pistol and live cartridge without any licence. Appellants, namely; Pawan Kumar (in CRA-S-54-SB-2004) and Hare Ram (in CRA-S-187-SB-2004) were also charged under Section 25 of the Arms Act for keeping in possession a sword and knife, respectively without any permit

or licence. Against Pawan-appellant (in CRA-S-54-SB-2004) it was stated that the length of sword was 2' 3" and with regard to charge against Hare Ram-appellant (in CRA-S-187-SB-2004) the length of blade of the knife was 7' 7". Learned trial Court convicted the appellants of the charges framed against them. They were all sentenced to undergo rigorous imprisonment for a period of 5 years under Section 399 IPC and to pay a fine of ₹ 500/- each and in default of payment of fine to further undergo rigorous imprisonment for one month each. Learned trial Court also awarded them the sentence to undergo rigorous imprisonment for a period of three years under Section 402 IPC and to pay a fine of ₹ 500/- each and in default of payment of fine to further undergo rigorous imprisonment for a period of one month each. Appellants namely; Raj Kumar S/o Nichku Lal, Pawan Kumar (in CRA-S-54-SB-2004) and Hare Ram-appellant (in CRA-S-187-SB-2004) were further sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of ₹ 200/- each and in default of payment of fine to further undergo rigorous imprisonment for a period of 15 days each under Section 25 of the Arms Act. The substantive sentences of imprisonment were to run concurrently.

4. Prosecution story emerging during trial was that on 29.04.2001, police party headed by Inspector Mange Ram of Detective Staff was present near Radha Swami Satsang Bhawan, Durga Nagar, Jalbera Road, Ambala, in connection with patrol duty. The other police party headed by SI Darshan Pal Singh of Detective Staff, Ambala also joined them. A secret information was received by Inspector Mange Ram

that 06 (six) boys are sitting in un-inhabited houses/quarters built by Housing Board Haryana in Sector-10, Ambala City and those boys were equipped with weapons and they were planning to commit dacoity in Sector-8, Urban Estate, Ambala City.

5. Two raiding parties were constituted one was headed by Inspector Mange Ram and the other by SI Darshan Pal. Amarjit Singh, a private witness was also associated by Inspector Mange Ram. It is further the story of prosecution that when the police party reached near the said vacant quarters they saw 06 boys sitting there. The police party overheard the conversation of accused persons that they would commit dacoity in Sector-8, Urban Estate, Ambala City and thereafter re-assemble at the same place. According to PW-8 Inspector Mange Ram, these words were uttered by Raj Kumar @ Raju @ Kalia S/o Nichku Lal-appellant (in CRA-S-54-SB-2004). On hearing this conversation, the police party raided the place. Out of 06 boys one, namely; Rajesh Pandey was able to escape. The other accused-appellants were apprehended at the spot.

6. On personal search of Raj Kumar @ Kala a countrymade pistol of .315 bore was recovered. The pistol was unloaded and a live cartridge was recovered from the weapon. Rough sketch of the pistol Ex. PE was also prepared. The pistol and cartridge were made into sealed parcels by putting seal bearing impression 'MR' of the Investigating Officer. The pistol Ex. P-1 and cartridge Ex. P-2 were produced during the examination of PW-7 SI Suraj Bhan and PW-8 Inspector Mange Ram.

7. On personal search of Hare Ram-appellant (in CRA-S-187-

SB-2004) a knife was recovered for which rough sketch Ex. PG was prepared and it was taken into possession vide memo Ex. PH. The knife was also prepared into sealed parcel. The knife Ex. P-3 was produced during the examination of PW-7 and PW-8.

8. On personal search of Pawan Kumar-appellant (in CRA-S-54-SB-2004) recovery of sword Ex. P-4 was made for which rough sketch is Ex. PJ and the same was made into a sealed parcel. Dev Raj-appellant (in CRA-S-54-SB-2004) was found in possession of hockey stick which was taken into police possession vide recovery memo Ex. PL. On search of Raj Kumar S/o Sadhu Ram a wooden rod Ex. P-6 was recovered vide memo Ex. PM. Ex. PN is the rough site plan of place of recovery. Ruqa Ex. PB was sent to the police station on the basis of which formal FIR Ex. PB/1 was registered.

9. PW-6 Head Constable Bhim Singh, Armourer tested the working condition of pistol recovered from Raj Kumar @ Raju @ Kala S/o Nichku Lal. The sanction to prosecute this accused under the Arms Act was also accorded by the District Magistrate, Ambala. The case was committed to the Sessions Court for trial.

10. Prosecution examined 8 witnesses in support of its case. Amarjit Singh, the private witness was given up as won over by the accused persons. During examination of appellants under Section 313 Cr.P.C., they denied all the incriminating circumstances appearing against them in the prosecution evidence and pleaded false implication. No evidence in defence was led. Learned trial Court acquitted Rajesh Pandey, the sixth accused who was apprehended subsequently. Rest of

the accused were convicted and sentenced as aforesaid.

11. As per custody certificates placed on record by the learned State counsel appellants, namely; Raj Kumar S/o Sadhu Ram, Dev Raj S/o Bithla and Pawan Kumar S/o Indersain (in CRA-S-54-SB-2004) were released by the jail authorities on completion of sentence after granting them the benefit of Section 428 Cr.P.C. and adding certain period towards remissions. Appellant, namely; Raj Kumar S/o Nichku Lal was released on bail under the orders of this Court by suspending rest of his sentence. Similarly, Hare Ram-appellant in (CRA-S-187-SB-2004) was released on bail under the orders of this Court. Appellant-Raj Kumar S/o Nichku Lal has already undergone 03 years, 09 months and 15 days of the actual sentence and by adding the period of remissions earned by him he has undergone about 04 years, 02 months and 19 days of imprisonment. Hare Ram-appellant (in CRA-S-187-SB-2004) has already undergone almost 03 years, 11 months and 26 days and by adding remissions he has undergone about 04 years 05 months and 17 days, before he was released on bail.

12. I have heard learned Amicus Curiae for four of the appellants out of five (in CRA-S-54-SB-2004), learned counsel for Hare Ram-appellant (in CRA-S-187-SB-2004), learned State counsel and also perused the record quite extensively with their able assistance.

13. Learned counsel for the appellants have challenged the judgment of conviction on the grounds *inter alia* (a) that there are only official witnesses in support of the prosecution case and the only independent witness allegedly associated was not examined and (b) that

the story of prosecution is highly improbable and even if accepted on the face value it would not attract ingredients of Sections 399 and 402 IPC.

14. The prosecution version has been testified by PW-8 Inspector Mange Ram, Investigating Officer and he is materially supported by PW-7 SI Suraj Bhan a member of police party.

15. Learned Amicus Curiae for the appellants (in CRA-S-54-SB-2004) referred to the scaled site plan Ex. PA prepared by PW-1 Constable Manohar Lal, Draftsman in the office of Superintendent of Police, Ambala. The official visited the spot on 06.06.2001 and the scaled site plan was statedly prepared on the instructions of Amarjit Singh an independent witness who was later on given up. It was stated by PW-1 that distance between the place where the police party was standing and the site where the accused persons were sitting and discussing the plan was about 28 feet. PW-8 Inspector Mange Ram, in cross-examination stated the aforesaid distance to be 10-15 yards. Both PW-7 SI Suraj Bhan and PW-8 have categorically stated that they overheard the conversation between miscreants that they were to commit dacoity in Sector-8, Urban Estate, Ambala and to reassemble there after the dacoity. No question was put to PW-7 about the possibility of overhearing the conversation at such a distance. Even there was no suggestion to PW-8 in this regard except bringing on record the facts that distance between two places to be 10-15 yards. Pertinently it was night time and the accused persons had assembled in secluded and inhabited quarters and it does not seem improbable that the said conversation which the miscreants were discussing themselves could not be possibly over-heard.

16. There is in fact no suggestion either to PW-7 or PW-8 that any of the appellant was illegally detained even for one day much less a number of days before registration of this FIR which could possibly bring suspicion to the prosecution story. According to PW-8, the police party reached the spot at about 9.00 p.m. The ruqa Ex. PB was completed at 10.20 p.m. and the same was sent to police station to register the FIR. The endorsement on FIR Ex. PB/1 would show that it was delivered to the Area Magistrate, at about 2.00 a.m. during the same night on 30.04.2001. This was thus the prompt delivery of FIR to the Area Magistrate, ruling out the possibility of frame up of the accused persons.

17. PW-8 stated that there were about 30-40 built-up quarters and all were lying vacant. PW-7, however, stated that there were about 250-300 quarters built there, out of which 100-150 were occupied and rest were vacant. So, it is quite apparent that there was a cluster of quarters where the miscreants were hiding in the uninhabited area armed with weapons late at night. The facts and circumstances would give rise to the presumption which convincingly support the testimony of the witnesses examined.

18. PW-8 stated in cross-examination that distance between the place where secret information was received and the spot from where the accused were apprehended was about 2-3 furlongs. The police party proceeded towards the spot on foot. So this was a well organized and closely guarded operation conducted by the police party for which the miscreants could not comprehend the arrival of police during late hours.

19. There are certain responses in the cross-examination of PW-

8 which would make him quite a truthful person leaving no scope of suspicion in the story. PW-8 stated that he was not knowing any of the accused persons earlier. The rooms of the quarters were closed at that time but the accused persons were sitting in courtyard in front of a room. They were sitting in the open space enclosed by wall. There had been extensive cross-examination of PW-8 and he withstood the test of scrutiny. There is nothing suspicious in his testimony and the story put forward by prosecution is proved to be truthful and not imaginary in any way. No contradiction in the testimonies of PW-7 and PW-8 or discrepancy has been pointed out to bring suspicion to the story.

20. I also find that non-examination of independent witness itself would not make any dent in the prosecution story especially when the witness was given up as won over. It was not at all suggested and also no material was brought on record that Amarjit Singh was a stock witness of the police except a simple suggestion to PW-7 SI Suraj Bhan, which was denied. PW-8 Inspector Mange Ram, rather stated in his cross-examination that PW Amarjit Singh was not known to him earlier. Anyhow, the official witnesses who have no ulterior motive to falsely implicate the appellants in such a heinous crime cannot be disbelieved on that score alone. All the accused persons were found in possession of deadly weapons late at night in an uninhabited area would further give rise to assumption against the appellants for accepting the testimonies of PW-7 and PW-8.

21. PW-5 Satnam Singh, Reader-cum-Superintendent, in the office of District Magistrate, Ambala stated that the sanction order

Ex. PC for prosecuting Raj Kumar S/o Nichku Lal is signed by Sh. DD Gautam, IAS, the then Deputy Commissioner, Ambala.

22. PW-6 Head Constable Bhim Singh, Armourer, stated that on 07.06.2001, Mange Ram Inspector, produced before him a sealed parcel containing pistol and a cartridge wrapped in a paper envelop for testing the same. PW-6 further stated that he broke the seals and took out the pistol and cartridges. He mechanically tested the pistol and found that the same was in working condition and the cartridge was alive and it was KF .8mm of .315 bore. He prepared report Ex. PD in this regard. The sealed parcel of case property was produced during the examination of PW-6. He stated that Ex. P-1 is the pistol and Ex. P-2 is the cartridge produced during his examination.

23. Learned counsel for the appellants, however, submitted that the weapon and cartridge produced during examination of PW-6 cannot be said to be in working condition. PW-6 stated that the pistol produced contains rust but he categorically stated that it was not rusted at the time of his examining the weapon. PW-6 rather stated that pistol Ex. P-1 is still in workable condition. The fact that weapon was not test fired by the Armourer was not significant as the Armourer is competent to give opinion about the working condition of weapon. There is nothing in the elaborate cross-examination of PW-6 to bring any defect in the prosecution story on this aspect. Rest of the evidence led by prosecution is of formal nature.

24. From the above discussion, I find that charges against the appellants have been rightly held to be proved beyond suspicion and

conviction recorded by the trial Court is affirmed. Since three of the appellants; namely; Dev Raj S/o Bithla, Raj Kumar @ Ravi S/o Sadhu Ram and Pawan Kumar S/o Indersain (in CRA-S-54-SB-2004) have already undergone the sentence awarded to them and rest of the two appellants, namely; Raj Kumar S/o Nichku Lal (in CRA-S-54-SB-2004) and Hare Ram S/o Ram Prabhav (in CRA-S-187-SB-2004) have undergone the major portion of imprisonment as already discussed, I find that after so many years i.e. about 14 years it will not be appropriate that the other appellants should be now sent for undergoing rest of the sentence as imprisonment undergone by Raj Kumar and Hare Ram appellants is found sufficient punishment.

25. In view of the above, both the appeals CRA-S-54-SB-2004 and CRA-S-187-SB-2004 are dismissed on merits with the modification in the quantum of sentence that the sentence undergone by appellants, namely; Raj Kumar S/o Nichku Lal (in CRA-S-54-SB-2004) and Hare Ram S/o Ram Prabhav (in CRA-S-187-SB-2004) is reduced to the period already undergone by them.

August 05, 2015

rishu

**(R.P. NAGRATH)
JUDGE**