

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal S- No.67-SB of 2004 (O&M)

Date of decision : 15.07.2015

Subash Chander and others

.....Appellants

Versus

State of Punjab

....Respondent

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Ms. Gaganjot Kaur, Advocate for
Mr. M.S. Sidhu, Advocate
for the appellants.

Ms. Shivali, AAG, Punjab

LISA GILL, J.

Appellants - Subash Chander, Hans Raj, Ranjit Kumar and Bhupinder Singh have preferred the present appeal challenging their conviction for the offence punishable under Section 402 IPC and sentence of rigorous imprisonment for three years besides a fine of ₹500/- each and further rigorous imprisonment for three months in default of payment of fine imposed upon them vide impugned judgment and order dated 16.12.2003 passed by the learned Additional Sessions Judge, Fast Track Court, Ferozepur.

Prosecution was set in motion on ruqa Ex. P1 being sent by SI Darshan Singh for registration of an FIR. SI Darshan Singh revealed that he was present at the bus stand of village Sappanwali alongwith ASI Naranjan Singh, ASI Dogar Singh, ASI Surinder Singh and other police officials. Secret information was received by him to

the effect that all the four accused alongwith another person armed with fire arms and other weapons were present in a deserted kotha in the area of Saidan Wali. They had one maruti car with them. They were preparing to commit dacoity and in case raid is conducted they could be apprehended with a large quantity of weapons and dacoity can be avoided. Formal FIR No. 23, Ex. P2 was registered against the accused.

SI Darshan Singh constituted three parties, one headed by him, another by ASI Dogar Singh and third headed by ASI Surinder Singh. They raided the disclosed place in the area of village Saidanwali. Accused Subash Chander and Ranjit Kumar were found present in the room whereas Hans Raj and Bhupinder Singh tried to run away. Accused Subash Chander and Ranjit Kumar were arrested by the police party headed by SI Darshan Singh. Hans Raj and Bhupinder Singh were arrested by ASI Dogar Singh and ASI Surinder Singh while trying to flee. Fifth unknown accused succeeded in escaping.

.12 bore country made pistol was allegedly recovered from right dub (side) of accused Subash Chander by SI Darshan Singh. Three live cartridges were recovered from the right pocket of his trouser. Another .12 bore country made pistol alongwith five live cartridges were recovered from accused Hans Raj by ASI Dogar Singh, which was taken in possession vide memo Ex. P8. From the accused Ranjit Kumar an iron hockey wrapped in a Maroon coloured cloth was recovered, which was taken in possession vide memo Ex.

P4. Maruti car No. DL4CB-3335 parked outside the deserted kotha

was taken in possession vide memo Ex. P5 alongwith registration certificate in the name of Balram father of accused Ranjit Kumar. A kirch was recovered from Bhupinder Singh by ASI Surinder Singh, which was taken in possession vide memo Ex. P10. Site plan Ex. P7 of the place of occurrence was prepared.

FIR No. 24 dated 25.02.2002 was registered separately against Subash Chander under Section 25 of the Arms Act and FIR No. 25 dated 25.02.2002 was registered under the Arms Act against the appellant Hans Raj. They were tried separately for the said offences.

Charge in the present case was framed against the accused under Sections 399, 402 IIPC. Prosecution examined five witnesses to prove its case against the accused. All the accused in their statements under Section 313 Cr.P.C. while denying incriminating evidence put to them pleaded innocence and false implication. Their specific stand was that in the elections of the legislative assembly held in February 2002 they had not supported the candidate who ultimately won and had rather supported the opponent. They were falsely implicated in this case due to his influence. Alleged recoveries stated to have been made from them were denied. In defence DW2 Mohan Lal was examined who deposed that kotha in questions belong to him and he has been residing therein and no such occurrence as alleged took place at the said premises on February, 2002.

Learned trial Court on consideration of the evidence on record concluded that the prosecution had proved its case beyond

reasonable doubt. All the accused were convicted for the offences punishable under Section 399, 402 and sentenced as detailed above.

Hence, the present appeal.

It is brought to the notice of this Court that in the cases registered separately under the Arms Act against the appellant - Subash Chander and Hans Raj said accused have since been acquitted. This was so reflected in the affidavits of the officiating Superintendent, Central Jail, Ferozepur indicating the period of custody undergone by the said appellants. Thereafter, judgment dated 17.04.2010 pertaining to FIR No. 25 dated 25.02.2002 under Section 25 of the Arms Act was placed on record duly accompanied by an affidavit of the Deputy Superintendent of Police, Sub Division Abhor, Fazilka. It is confirmed by learned counsel for the State that on similar reasoning co-accused Hans Raj has also been acquitted by the trial Court in the case registered under the Arms Act.

Learned trial Court in the said case under the Arms Act after going through the evidence concluded that Subash Chander and Hans Raj are entitled to the benefit of doubt as the prosecution was unable to prove recovery of the said arms from them. It is verified by learned counsel for the State that no appeal has been preferred/entertained against the said judgment.

The appellants in the present case have been convicted for the offence punishable under Section 402, which reads as under:-

“402. Assembling for purpose of committing dacoity.—
Whoever, at any time after the passing of this Act, shall be one of five or more persons assembled for the purpose of committing dacoity, shall be punished with rigorous

imprisonment for a term which may extend to seven years, and shall also be liable to fine.”

Entire gravamen of the prosecution case was that the accused were in possession of deadly weapons including fire arms which reflected that they had assembled for the purpose of committing dacoity. Trial Court in this case has found the charge under Section 399 IPC not substantiated by the evidence on record. Except for having been allegedly found in possession of the fire arms and the kirch there is no other evidence on record to show that the said accused had gathered or assembled for purpose of committing dacoity. There is not a shred of evidence on record to indicate the same. It is also a matter of record that the said weapons i.e. fire arms and the kirch etc. were never produced before the trial Court in this case. Iron rod/hockey allegedly in possession of Ranjit Kumar has also not been produced. Once the accused have been acquitted in the case registered against them under the Arms Act for possession of the said illegal arms, foundation of the prosecution case itself is demolished. There is no evidence on record to justify the conviction of the accused under Section 402 IPC in the given set of circumstances.

Consequently, present appeal is allowed. Impugned judgment and order dated 16.12.2003 are set aside and all the appellants are acquitted of the charges against them.

July 15, 2015
rts

(Lisa Gill)
Judge