

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-726-SB of 2004

Date of Decision : July 1, 2015

Ram Niwas and another

..... Appellants

Vs.

State of Haryana

..... Respondent

CORAM: HON'BLE MRS. JUSTICE RAJ RAHUL GARG

1. Whether Reporters of 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. Amit Kumar Jain, Advocate
for the appellants.

Mr. Munish Dev Sharma, Assistant Advocate General
Haryana.

RAJ RAHUL GARG, J.

Ram Niwas son of Mewa Singh and Swaran @ Kala son of Sumer Singh have assailed the judgment of conviction dated 05.03.2004 recorded by Sh. M.P.Mehndiratta, the then Sessions Judge, Jind, by way of this appeal.

The appellants faced the trial for committing offences punishable under Section 398 and 401 of Indian Penal Code (for short 'IPC')

After completion of the trial, the learned Sessions Judge, Jind held both the appellants guilty for committing offence punishable under Section 398 IPC whereas no case for the offence punishable

under Section 401 IPC was made out and thus they were acquitted for the offence under Section 401 IPC. It was also observed by the then learned Sessions Judge, that there is absolutely no evidence to show that they are habitual of committing theft or robbery or that they belong to any such gang. For offence under Section 398 IPC, both the accused were sentenced to undergo rigorous imprisonment for a period of 7 years each and to pay a fine of ₹2,000/- each with default clause.

Brief facts of the case are like this; that SI/SHO Parkash Chand along with ASI Dalbir Singh, Constable Rajbir Singh, Constable Naresh Singh and Constable Satyawan were present on patrol duty and checking of crime at bus-stand, Nagura. A secret information was received that two young boys, armed with '*chhuri*' and 'knife', were standing at bus-stand, Hasanpur in order to loot and snatch the vehicles. In case of raid, they can be apprehended. At this SI/SHO prepared the raiding party. The police officials from the police post, Nagura, were joined in the raiding party. As it was night time, therefore, no independent witness could be joined in the raiding party. SI/SHO along with police officials reached bus-stand, Hasanpur by private Jeep being driven by driver Constable Rajbir Singh. On reaching bus-stand, Hasanpur the police party saw that two young boys were standing in the middle of the road and waving 'knife' and '*chhuri*' signaled the driver of the vehicle to stop. When a vehicle came to a halt, a voice was heard, asking Ram Niwas to apprehend the driver of the vehicle on the point of 'knife' telling him that he himself will loot

the occupants of the Jeep. As such, both the culprits came towards Jeep. One of the boys hit the Bonnet of the Jeep with '*chhuri*' and asked the occupants of the Jeep to come out. At this, and on seeing the police party, both the young boys had tried to run away, due to fear of the police. However, they were apprehended by SI/SHO along with police officials. The person who was holding '*chhuri*' in his hand disclosed his name as Swaran @ Kala son of Sumer Singh and the boy who was holding 'knife' disclosed his name as Ram Niwas son of Mewa Singh. '*Chhuri*' and 'knife' as Ex.PC and Ex.PB were measured. Rough site plan of '*chhuri*' and 'knife' were prepared and, thereafter, the same were taken into police possession vide memo.Ex.P1 and P2. The site plan of the spot Ex.PG was prepared. Ruqa Ex.PD was sent to the Police Station for registration of the case whereupon formal FIR Ex.PD/1 was recorded. Scaled site plan of the spot was also got prepared. Accused were arrested. Statements of witnesses were recorded.

After completion of necessary investigations, the challan was put in the Court.

Finding a prima-facie case under Sections 398 and 401 IPC, both the accused were charge sheeted to which they did not plead guilty but claimed trial.

After taking prosecution evidence, statement of accused under Section 313 Cr.P.C. were recorded, wherein they denied each prosecution allegation and pleaded their innocence. Their defence is

only to the effect that they are innocent and further that they have been falsely implicated in this case.

After hearing both the counsel for the parties and appraising the evidence and material coming on record, Sh. M.P.Mehndiratta, the then Sessions Judge, Jind recorded the judgment of conviction against both the appellants for committing offence punishable under Section 398 IPC and sentenced each one of them to undergo rigorous imprisonment for a period of 7 years and to pay a fine of ₹2,000/- and in default of payment of fine to further undergo imprisonment for 6 months. However, so far as offence under Section 401 IPC is concerned, they were acquitted.

I have heard learned counsel for the appellants and learned State counsel, besides appraising the entire material coming on record.

It is a case in which the police machinery was set in motion on receipt of secret information against the appellants to the effect that they were standing at bus-stand, Hasanpur and shall loot and snatch the passing-by vehicles. From reading the prosecution case as well the statement of witnesses, no confidence is inspired in the mind of the Court regarding genuineness of the prosecution story. As per SI/SHO Parkash Chand (PW-5), Investigating Officer of the case, he was posted in police Alewa on that day. He started from Alewa at about 5:00 A.M. and took the Jeep with him from bus-stand, Alewa. As per him, there is only one Jeep of Government in police station, Alewa and the same was out of order on that day. In the earlier part of his cross-

examination, he deposed that on that day, he was on patrol duty in routine. He was having Jeep which was private one. He contacted the driver earlier to the receiving of secret information of this case. He took the Jeep at about 5:00 P.M. At about 8:30 P.M, he reached bus-stand, Nagura where Dalbir Singh etc. met him. Thus statement of Investigating Officer is not consistent with the above mentioned statement that he started from Alewa at about 5:00 A.M. Not only this, even in his examination-in-chief, he deposed that on receipt of secret information he prepared the raiding party and tried to join independent witness but it was night time and nobody was available to join in the raiding party. He further deposed that he arranged private vehicle and reached at bus-stand, Hasanpur. This shows that SI/SHO Parkash Chand arranged private vehicle at Nagura bus-stand that is too after receipt of secret information. This statement of PW-5 is contradictory to the statement made by him in his cross-examination. In FIR Ex.PD, it finds mentioned that private Jeep by which SI/SHO Parkash Chand travelled, was driven by Constable Rajbir Singh. During the course of cross-examination, the question was put to SI/SHO Parkash Chand (PW-5), as to who was driver of the Jeep. He said that he does not remember as to who was the driver of the Jeep. It is highly improbable for a police official from the same police station i.e. Constable Rajbir Singh if actually driven the Jeep, the Investigating Officer would not know his name. Thus by not disclosing the name of the driver of the Jeep, the prosecution case cannot be said to be free from doubt.

Learned counsel for the appellants contended that if a private person was driving the Jeep, he could well be kept as independent witness of this case and if the police official was driving the Jeep, the prosecution witness who are the police officials must be knowing about his name and as Constable Naresh Singh (PW-2) and ASI Dalbir Singh (PW-4) deposed that they do not know the name of the driver of the Jeep; this shows that, in fact, the vehicle in question which was private vehicle was not being driven by police official. The statement of Constable Naresh Singh (PW-2) gives different story about the Jeep in question. As per this witness, they had gone to the spot by private Jeep but he also deposed that SHO had come to police post, Nagura by Government Jeep along with driver and one Constable. The Government Jeep was being driven by Constable Rajbir Singh. From the spot they had gone to police station, Alewa, lodged the accused in the police lock-up and from there they along with SHO came to police post, Nagura and, thereafter, SHO left the police post, Nagura by Government Jeep. Of course, this witness firstly stated that from the spot they returned to the police post, Nagura at 12 mid-night but later on realizing about the leaving of Government Jeep at police post, Nagura, he immediately turned round and deposed in the aforesaid manner.

As per ASI Dalbir Singh (PW-4), from the spot they had gone to the police station, Alewa and, thereafter, he returned to police post, Nagura but SI/SHO did not come back with him at Nagura. Thus

on the point as to if SI/SHO came back Nagura and then left Nagura by Government Jeep, the statement of witnesses are not in conformity. PW-4 deposed that no vehicle was taken from bus-stand, Nagura as SI/SHO was already having private Jeep. PW-5 deposed that after receipt of secret information he arranged private vehicle, contradicts the statement of PW-4 on this point.

Even the statement of PW-4 is contradictory to the statement of Constable Naresh Singh (PW-2) when he says that private vehicle which they boarded was parked at the Naka, it is not understandable as to what necessity has arisen for the Investigating Officer for arranging the private Jeep. Thus by the very mode of conveyance by which police party travelled to the spot is not established on the file and at least not free from doubt.

It is of course true that the testimonies of police officials are at par with the testimonies of non-official witnesses in case the same are consistent and inspire confidence in the mind of the Court regarding guilt of the accused. It is the case in which testimonies of police officials are not consistent rather contradictory. In that eventuality, joining of independent witness particularly in a case of secret information would have disclosed the genuineness of the prosecution case and since no independent witness was joined in the investigation, therefore, the prosecution case cannot be said to be free from doubt. The place where the secret information received was Nagura. Petrol pump was near that place. The spot was Hasanpur bus-

stand. Investigating Officer also deposed that he tried to join independent witness. This shows that independent witnesses were available but not joined by the Investigating Officer and no action was taken by the Investigating Officer against the persons who refused to stand as witnesses. Had independent witness not been available at all, in that eventuality, the Investigating Officer would not have stated that he tried to join the independent witness.

It is also highly improbable that the miscreants who had intention to loot the vehicle would brandish 'knife' and '*chhuri*' in the air and would give signal to vehicle to stop.

In that manner, no driver of the vehicle would stop the vehicle as it was quite obvious that the boys who were signaling the vehicle to stop are miscreants and would commit some offence. In such like cases always the miscreants got the vehicle stopped and thereafter in order to loot the passengers or the vehicle, they take out weapons and then on the point of weapon, they commit offence of robbery etc.

Under these circumstance, the prosecution case does not inspire confidence in the mind of the Court regarding its genuineness and cannot be said to be free from doubt.

Learned State counsel contended that there was no personal enmity of the police officials i.e. Investigating Officer and witnesses with the accused and further as 'knife' and '*chhuri*' were recovered from the possession of appellants at the spot itself, therefore, the question of their false implication is not there and since the occurrence was of odd

hours, therefore, if any independent witness was not joined in the investigations, it hardly makes any difference.

The above contention of learned State counsel are not sustainable in view of above discussion.

Thus, for the reasons recorded above, the prosecution has failed to prove its case against the appellants beyond reasonable doubt. Therefore, the appeal is accepted and the judgment of conviction dated 05.03.2004 and order of sentence of even date are set aside and by giving benefit of doubt, both the appellants are acquitted. Their bail bonds and surety bonds are discharged. Fine, if any paid, is ordered to be refunded to the appellants. Copy of the order be sent to the trial Court.

(RAJ RAHUL GARG)
JUDGE

July 1, 2015
smriti