

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. **CRA-S-2010-SB of 2012**

DATE OF DECISION: JULY 20, 2015

PARVEEN KUMAR @ SONU & ANOTHER ...APPELLANTS

VERSUS

STATE OF HARYANA ...RESPONDENT

2. **CRA-S-2441-SB of 2012**

DATE OF DECISION: JULY 20, 2015

JAGDISH KAUSHIK @ AJAY ...APPELLANT

VERSUS

STATE OF HARYANA ...RESPONDENT

CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.

1. Whether the judgement should be reported in the digest? Yes

PRESENT: MR. BIPIN GHAI, SR.ADVOCATE
WITH MR. PARAS TALWAR, ADVOCATE
FOR THE APPELLANTS IN CRA-S-2010-SB of 2013.

MR. B.S.SAROHA, ADVOCATE FOR THE APPELLANT
IN CRA-S-2441-SB of 2012.

MR. TANUJ SHARMA, AAG, HARYANA.

M. JEYAPPAUL, J.

1. Accused Parveen Kumar @ Sonu, Deepak Mehta @ Dabbu and Jagdish Kaushik @ Ajay were convicted under Section 395 read with Section 34 IPC and were sentenced to undergo RI for 10 years and to pay a fine of ₹5000/- each and in default, to undergo a further period of 3 months R.I. each. Accused Parveen Kumar @ Sonu and Deepak Mehta have

challenged the above judgement of conviction by preferring CRA-S-2010-SB of 2012 and accused Jagdish Kaushik @ Ajay has challenged the above conviction by preferring CRA-S-2441-SB of 2012.

2. It is the case of the prosecution that accused Parveen Kumar, Deepak Mehta, Jagdish Kaushik and Munna Khan and some other unknown persons waylaid the truck driven by PW1 Lachhi and committed dacoity of the Bidi bundles and tea bags.

3. PW1 Lachhi was the driver and PW4 Chander Pal was the conductor of the truck bearing registration No.UP-15-Z-9720. PW1 and PW4 have deposed that on 25.3.2010, the said vehicle loaded with 195 bags of Bidi and 7 bags of tea was driven by PW1. Near Sarai Chowk, Faridabad, red lights were shown to stop the vehicle. Three men in police uniform entered into the cabin of the vehicle and took their seats. They asked for papers. Thereafter, four persons in black Santro car came from behind. Three persons who occupied the cabin of the truck pulled out PW1 and PW4 and forcibly boarded them in Santro car. Four persons who came in the Santro car left their vehicle and fled away in the truck. The other three persons also left PW1 and PW4 after tying their hands in the fields. PW1 Lachhi and PW4 Chander Pal have deposed that the three accused who faced the trial were not all the persons who looted the truck.

4. PW2 Raj Singh Rawat was the owner of the vehicle.

5. Inspector Satya Parkash got a secret information through Constable Sunil Kumar that looted Bidis from Faridabad were kept in the godown situated at A-14, Budh Nagar, Delhi. PW6 ASI Ramesh Chander

was part of the team formed by Inspector Satya Prakash. PW6 deposed that the car driven by Munna was stopped near the said godown. Munna remained seated in the car. Three persons, namely, accused Deepak, Jagdish and Parveen got down from the car and opened the shutter of the godown and entered into it. They suffered disclosure statements Ex.PI, PJ and PK respectively. 186 boxes of Bidis and 6 empty gunny bags were taken into possession vide memo Ex.PN. Two tea bags were also taken into possession vide memo Ex.PM. PW5 Constable Satish Kumar spoke about the disclosure statement made by all the accused. But no recovery was made on the basis of the disclosure statements individually suffered by the accused. PW11 Constable Ravinder testifies that accused Jagdish and Munna suffered disclosure statements. Based thereupon, the truck which was looted was recovered in the State of Uttar Pradesh on 4.4.2010. They also demarcated the place of occurrence.

6. The accused have set up a plea in their statements under Section 313 Cr.P.C. that they were innocent, but they have been implicated with planted recovery.

7. The trial Court having adverted to the evidence on record returned a finding that the accused committed dacoity alongwith others.

8. The prosecution was bound to establish that five or more persons conjointly committed dacoity.

9. It was the case of the prosecution that accused Parveen Kumar @ Sonu, Deepak Mehta @ Dabbu, Jagdish Kaushik @ Ajay and Munna Khan alongwith other unknown persons hijacked the truck owned by PW2

at knife point and committed dacoity.

10. Learned senior counsel appearing for the appellants would submit that there is virtually no evidence to establish the offence of dacoity allegedly committed by the accused. *Per contra*, learned AAG, Haryana would submit that the disclosure statements and the recovery of the looted articles including the truck at the instance of the accused would go to establish that they have committed dacoity.

11. The entire evidence of PW1 and PW4 was thoroughly scanned by me. They have spoken about the dacoity committed on the highway by unknown persons. The fact remains that they could not identify the accused who faced the trial. Rather, they have come out with an assertion that the accused who were facing trial were not the persons who committed dacoity. No witness has spoken to the fact that these accused participated in the commission of dacoity.

12. PW5 spoke about the disclosure statement allegedly suffered by the accused. But it is to be noted that no recovery was effected based on such disclosure statement. Therefore, the alleged disclosure statement suffered by the accused before PW5 loses its evidentiary value.

13. Now let me take up the evidence of PW6 ASI Ramesh Chander who spoke about the arrest of these accused, the disclosure statements individually suffered by them and the recovery of the material objects. Inspector Satya Parkash had received secret information through Constable Sunil Kumar. They have also got information that looted articles were stored in the godown situated at A-14, Budh Nagar, Delhi. PW6 who was a part of

the team formed by Inspector Satya Parkash was waiting for a vehicle to arrive at the godown as per the secret information received by the police. Accordingly, Munna arrived over there and three persons who got down from the vehicle opened the godown. The police party headed by Inspector Satya Parkash seized the looted articles found in the said godown.

14. As rightly pointed out by the learned senior counsel appearing for the appellants, the looted articles in the godown were seized by the police primarily not based on the disclosure statement suffered by the accused, but based on the secret information they received. In other words, the disclosure statement allegedly suffered by the accused had not led the police party to detect the articles from the godown. Even otherwise, these three accused, namely, Parveen Kumar, Deepak Mehta and Jagdish Kaushik who got down from the car driven by Munna opened the godown and entered into the godown. The police party headed by Inspector Satya Parkash also entered into godown and found the looted articles lying over there.

15. In the above facts and circumstances, the disclosure statements allegedly suffered by the accused had not led to the discovery of material objects. Therefore, the disclosure statements suffered by the accused cannot be relied upon as a piece of evidence. The fact remains that all the three accused-appellants were found in the godown alongwith articles looted from the truck driven by PW1. PW6 has categorically deposed that the looted articles were recovered from the godown in the presence of these accused.

16. Under Section 114, Illustration (a) of the Indian Evidence Act,

the Court can presume that a man who was in possession of the stolen goods soon after the theft was either the thief or had received the goods knowing them to be stolen, unless he could account for his possession.

17. There is no evidence that the appellants were involved in the commission of offence of dacoity. But the prosecution has established through the evidence of PW6 that all the three accused entered into the godown in Delhi which led to the seizure of the looted articles. No explanation was offered by the accused as to how they came into possession of the looted articles. Therefore, I presume that the accused had received the looted articles knowing them to be stolen.

18. PW11 Constable Ravinder also spoke about the disclosure statement made by accused Jagdish alongwith accused Munna which led to the recovery of the truck. Recovery of truck at the instance of accused Jagdish gives rise to the presumption that accused Jagdish alongwith another accused had received the stolen truck. At any rate, it cannot be presumed that accused Jagdish alongwith Munna committed dacoity simply based on the recovery of truck as accused Jagdish was not identified as one of the dacoits who hijacked the truck and looted the articles.

19. Learned AAG, Haryana submits that the accused in fact refused to participate in the test identification parade. Therefore, presumption will have to be drawn that they avoided test identification parade to shield them from the charge of dacoity. I find that there is no weight in the above submission made by learned AAG, Haryana. Test identification parade is conducted to check the course of investigation and also to facilitate the

witnesses to recall their memory. Identification during the course of test identification parade is not a substantial evidence. The identification by the witnesses before Court during the course of trial alone is substantial evidence. In the instant case, PW1 and PW4 who are the most material witnesses failed to identify the accused as dacoits.

20. The next question that arises for consideration is whether the accused-appellants could be convicted under Section 412 IPC. On a perusal of the entire materials on record, I find that there is specific charge against the accused under Section 412 IPC. But unfortunately, the trial Court had not discussed the commission of the above charge by the accused. Inasmuch as the accused had faced the charge under Section 412 IPC as well, there is no impediment for the Court to convict the accused under Section 412 IPC.

21. In my considered view, the prosecution miserably failed to establish that accused-appellants committed the offence under Section 395 IPC. But it has been proved that the accused have committed the offence under Section 412 IPC.

22. Therefore, the conviction and sentence passed by the trial Court as against accused Parveen Kumar @ Sonu, Deepak Mehta @ Dabbu and Jagdish Kaushik @ Ajay under Section 395 read with Section 34 IPC stands set aside but they are convicted under Section 412 IPC and sentenced to the period already undergone by them and to pay a fine of ₹5,000/- each and in default to undergo a further period of 3 months rigorous imprisonment. Accordingly the Criminal Appeals CRA-S-2010-SB of 2012 and CRA-S-

2441-SB of 2012 are partly allowed.

23. Accused Parveen @ Sonu, Deepak Mehta are on bail. The bail bonds executed by them shall stand discharged subject to the payment of fine of ₹5,000/- each on or before 4.8.2015. If fine is not paid within the period stipulated above, they shall undergo the default sentence.

24. Accused Jagdish Kaushik @ Ajay is undergoing the sentence. He be released on payment of fine of ₹5,000/-, if his custody is not required in connection with any other case. If fine is not paid by him, he shall undergo the default sentence.

July 20, 2015
Gulati

(M. JEYAPPAUL)
JUDGE