

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) Crl. Appeal No.S-2182-SB of 2012

Maman Singh

...Appellant

VERSUS

State of Haryana

...Respondent

(2) Crl. Appeal No.S-2580-SB of 2012

Parkash

...Appellant

VERSUS

State of Haryana

...Respondent

Date of Decision: February 11, 2015

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Rakesh Dhiman, Advocate
for the appellant (in CRA No.S-2182-SB of 2012).

Mr.Bipan Ghai, Senior Advocate with
Mr.Mandeep Kaushik, Advocate
for the appellant (in CRA No.S-2580-SB of 2012)

Mr.S.S.Pannu, Deputy Advocate General, Haryana
for the respondent-State.

INDERJIT SINGH, J.

Above two appeals have been filed by the appellants against the judgment of conviction dated 28.05.2012 and order of sentence dated 07.06.2012, passed by learned Addl. Sessions Judge, Rewari whereby the accused-appellants were convicted under Sections 392/34 IPC and sentenced both of them to undergo rigorous

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imprisonment for a period of ten years and to pay a fine of ₹5000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of three months. Both the appellants were also held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of three years and to pay fine of ₹3000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of two months under Section 25 of the Arms Act. Appellant Maman was also convicted under Sections 4 and 5 of the Explosive Substances Act, 1908 and sentenced him to undergo rigorous imprisonment for a period of ten years and to pay a fine of ₹5000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of three months. All the sentences were ordered to run concurrently.

The brief facts of the prosecution case are that on 07.07.2007, ASI Om Parkash received telephonic message about committing dacoity in Gurgaon Gramin Bank, Kaprwas, upon which, he along with other police officials reached Gurgaon Gramin Bank, Kapriwas where Rohtash Saini, Branch Manager of the Bank met him and presented application Ex.PA alleging therein that he along with other officials was busy for doing work. Customers Shadi Ram and Krishan Lal were also present at that time. At about 12.00 noon, two young boys with muffled faces armed with country made pistol entered the premises of the bank and looted a cash amount of ₹12,98,170/- from Cashier Amar Singh at gun point. One of them, also hit the glass of the cabin with the butt of the weapon and thereafter, they fled away

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on their motorcycle standing outside the premises of the bank after closing the shutter at the main gate of the bank. The FIR under Sections 392/34 IPC and Section 25 of the Arms Act was registered at Police Station, Dharuhera. During investigation, accused Parkash was arrested on 07.02.2010, whereas accused Maman was arrested on 12.02.2010. On interrogation of accused Maman, on the basis of disclosure statement, he got recovered weapon of offence and cash amount. During investigation, accused further made disclosure statement on 14.02.2010 that he had purchased country made pistols, some arms and ammunition after depositing ₹25,000/- in the account of Constable Gautam and he also disclosed that he had purchased arms and ammunition through him and he had also purchased some arms and ammunition in the year 2007 from one Sohan Lal. Thereafter, accused Parkash suffered disclosure statement admitting his involvement in the present crime along with Maman regarding robbery. He stated that weapon used at the time of robbery was handed over to accused Maman. Thereafter, in pursuance of disclosure statement, accused Parkash got recovered the weapons of offence and cash amount. After necessary investigation, challan was presented against the accused-appellants.

In support of its case, prosecution examined twenty witnesses. At the closure of the prosecution evidence, accused-appellants were examined under Section 313 Cr.P.C. and they denied the correctness of the evidence and pleaded themselves as innocent.

In defence, accused have tendered documents and closed their

evidence.

The learned trial Court, after appreciation of the evidence, convicted and sentenced the accused-appellant, as stated above.

At the time of arguments, learned counsel for the appellants argued that first of all, the accused-appellants have not been identified regarding the bank dacoity and it is in the FIR that accused were with muffled faces. No identification parade has taken place nor there was any description given in the FIR. Therefore, appellants are entitled to acquittal under Section 392/34 IPC. Learned counsel for the appellants further argued that currency notes allegedly recovered from the appellants, are not connected with the present robbery and as per evidence, the currency notes have the stamp of other banks etc. Learned counsel for the appellants also argued that statements given before the police regarding the occurrence in the disclosure statements, are inadmissible in evidence. Only upto that, statement can be based on the basis of which some recovery has been made. It is further argued that no sanction was taken under the Explosive Substances Act, therefore, appellant Maman is also entitled to acquittal under the Explosive Substances Act. Learned counsel for the appellants, therefore, argued that there being merit in both the appeals, the same should be allowed and accused-appellants should be acquitted.

On the other hand, learned State counsel argued that case of the prosecution has been duly proved. The Court has discussed regarding the sanction order in detail in the judgment and due to

inadvertence in the last line, the Explosive Substances Act has not been mentioned in the sanction order but the document is to be read as a whole and the sanction was granted under the Explosive Substances Act also. He further argued that case of the prosecution has been duly proved by the witnesses and accused-appellants have been correctly convicted and sentenced by the trial Court. Learned State counsel, therefore, argued that there being no merit in both the appeals, the same should be dismissed.

I have heard learned counsel for the appellants as well as learned State counsel and have gone through the record minutely and carefully.

From the evidence on the record, I find that PW-1 Rohtash Saini, who is complainant in the bank robbery case, mainly deposed regarding the occurrence of the bank robbery. He specifically stated in the chief-examination that two unknown persons having muffled faces entered the premises and they were having pistol in their hands. He further stated that both the accused were present in the Court. In cross-examination, he stated that they were not knowing the accused previously. They could not see the face of the accused as they were having muffled faces. He also deposed that accused were shown to him by the police about 5-6 months back at police post CIA, Rewari and at Kapriwas. The police had told him that they were the persons who had committed robbery in their bank and police also brought those persons to the bank at Kapriwas and had told them about their involvement in the bank robbery. The police had also brought some

other accused persons along with them but they were told by the police that accused present in the Court were the accused persons. He further deposed in cross-examination that he identified the accused on the basis of their height only. He also deposed that accused hardly remained in the bank for one or two minutes. PW-2 Amar Singh, Cashier also in cross-examination deposed same thing. He stated that they could not see the faces of the accused as their faces were muffled. He also cannot tell as to which of the accused had taken away the cash volunteered that he was asked to keep his neck down and as such, he had no opportunity to see the accused and for this reason, he is not in a position to identify the accused. He further deposed that in February, 2010, the police had shown him accused and told that Parkash was the person who had committed robbery in the bank. He also stated that some other accused were also in police custody and police had told them that all those persons were suspected in the present case. He further stated that he identified the accused on the basis of information given by the police to them in February 2010.

PW-3 Om Parkash, Clerk also stated in the cross-examination that police had produced accused Parkash in their bank and told them that Parkash was the person who committed bank robbery. Same is the reply regarding accused Maman. He further deposed that they were not knowing the accused previously and they came to know about the accused only when the police told them about their identify.

Keeping in view the above statements of PW-1 to PW-3, it is clear that the PWs have not proved the identity of the accused. They have deposed only on the basis of what police told them and had brought the accused to their bank and shown them as the persons, who have committed robbery in the bank. No identification parade has taken place. As per the prosecution version, the accused were with muffled faces at the time of committing robbery. No description has been mentioned in the FIR. Therefore, from this evidence, it is clear that prosecution has failed to identify the accused, who committed the bank robbery.

As regarding currency notes, PW-1 Rohtash Saini, Branch Manager stated that there was no specific mark of identification on the currency notes of ₹12,98,170/-. To his knowledge, currency notes have not been recovered till date. He further deposed that they had claimed robbery amount from the Insurance Company and the company had made the payment of ₹12,98,170/-. He further stated in the cross-examination that he cannot tell the detail of transaction which had taken place on the date of occurrence. The above-mentioned amount of ₹12,98,170/- was entirely taken out of the bank chest. They had given the relevant documents and accounts to the police to prove that an amount of ₹12,98,170/- was taken away in the incident.

Keeping in view the statement of Branch Manager PW-1 regarding the currency notes, the amount recovered from the accused after more than three years, cannot be connected with the robbed

bank notes. It is the case of the prosecution that accused are involved in so many bank dacoities. As Rohtash Saini, Branch Manager, himself saying that there was no identification on the currency notes, therefore, the currency notes allegedly recovered from the accused, cannot be connected with this case.

From the evidence on record, I find that there is no other evidence on the record to connect the accused with the bank robbery. The statements given by the accused before the police officials regarding the fact that they have committed the robbery, amounts to confession before the police and is inadmissible in evidence. Therefore, from the above, I find that prosecution has failed to proved its case under Section 392/34 IPC against both the accused-appellants by leading cogent evidence beyond reasonable doubt. Accordingly, both the appellants are acquitted under Section 392/34 IPC.

PW-13 Dr.Parmila Rathi Sangwan, Senior Scientific Officer deposed that on receipt of the message, a Bomb disposal team headed by her was constituted comprising ASI Suraj Bhan and other police officials for diffusing three hand grenades and four detonators. After taking all the safety precaution, all the three hand grenades were tied in the vice one by one and open the base plug with the help of pipe wrench. After diffusing these hand grenades, they made five sealed parcels and all the five sealed parcels were handed over to ASI Karan Singh. She also deposed that she has seen the hand grenades and detonators and the same are Ex.P1 to Ex.P5. PW-14

Pyare Lal, Reader to District Magistrate proved the sanction letter Ex.PL. PW-17 SI/SHO Rajender Singh deposed regarding the disclosure made by accused Parkash that he has kept one pistol and six cartridges concealed in a heap of bricks and thereafter, he led the police party to his residential house and got recovered one country-made pistol and six live cartridges of 7.65 mm. The recovered pistol and cartridges were sealed in sealed parcels. He also deposed that on 12.02.2010 accused Maman was arrested in this case and his disclosure statement was recorded and as per his disclosure statement, he got recovered one country-made pistol with magazine, one country-made pistol, three hand grenades and detonators including one *desi* type Bomb, 59 cartridges of 7.62 mm, 13 empty cartridges of same bore kept in a pouch, 101 cartridges kept in a white and black bundoliars of clothes of 3.22 mm and 3.21 mm, 20 cartridges in black color cloth and 28 cartridges of different bore. All the recovered cartridges were converted into different sealed parcels. As per statement of this witness, ₹7,50,000/- were also got recovered by accused Maman.

Keeping in view the evidence produced on the record and recoveries made from both the accused-appellants, I find that the prosecution has duly proved the recovery of country-made pistols and the cartridges from both the accused. The prosecution has duly proved sanction Ex.PL. The perusal of this Ex.PL shows regarding recovery of three hand grenades and the requirement of sanction under Section 4 and 5 of the Explosive Substances Act has been duly

mentioned in this sanction order but in the last paragraph, it is written as under:-

*“Now, therefore, I, A.Sreenivas, IAS, District Magistrate, Rewari in exercise of the powers conferred upon me by virtue of sec-39 of the Indian Arms Act & Explosive Substances Act do hereby accords sanction for the prosecution against above said accused u/s 392/34 IPC and 25/54/59 of the Arms Act.
Given under my hand and seal of the court today the 1-4-10.”*

The perusal of the document as a whole shows that inadvertently the sanction under Sections 4 and 5 of the Explosive Substances Act has not been mentioned in the last line but the whole sanction order shows that recovery and necessity of the sanction has been discussed in the sanction order. Therefore, in no way, it can be held that no sanction was granted under the Explosive Substances Act.

Keeping in view the recovery of the explosive substances i.e. three hand grenades and four detonators on the basis of disclosure statement of accused-appellant Maman, I find that prosecution duly proved the offence under Explosive Substances Act against appellant Maman by leading cogent evidence beyond reasonable doubt. There is nothing in the statements of the witnesses, which may make their statements unreliable. There is nothing on the record as to why the police officials would depose falsely to implicate the accused-appellants. Such a huge recovery cannot be falsely implicated upon the accused-appellants.

In view of the above discussion, the judgment of conviction

passed under Section 25 of the Arms Act qua both the appellants and under Sections 4 and 5 of the Explosive Substances Act, 1908 qua appellant Maman are upheld.

Learned counsel for the appellants prayed for reduction of the sentence.

Keeping in view the facts and circumstances, I find that under Section 25 of the Arms Act, the sentence is of rigorous imprisonment for a period of three years only, which need not to be reduced as there is no ground for reduction.

Keeping in view the facts and circumstances of the case and in view of the fact that accused Maman is in custody since 2010, therefore, his sentence is reduced under Sections 4 and 5 of the Explosive Substances Act, 1908 to rigorous imprisonment for a period of six years from ten years under each Section.

In view of the above discussion, both the appeals stand partly allowed.

Since, appellant Parkash has already undergone three years of sentence passed under Section 25 of the Arms Act, therefore, he be set at liberty forthwith in this case, subject to payment of fine, if already not paid, and further if his custody is not required in connection with any other case.

February 28, 2015
Vgulati

(INDERJIT SINGH)
JUDGE