

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No.S-2347-SB of 2013

Date of Decision : September 16, 2015

Pawan and others

....Appellants

VERSUS

State of Haryana

....Respondent

CORAM : HON'BLE MR. JUSTICE T.P.S. MANN

Present : Mr. R.A. Sheoran, Advocate
for the appellants.

Mr. Dhruv Dayal, Deputy Advocate General, Haryana.

T.P.S. MANN, J.

The appellants, namely, Pawan, Manjeet and Neeraj were tried for committing offences punishable under Sections 401/398 IPC. Appellant Pawan was also tried for committing offence under Section 25 of the Arms Act. Vide judgment and order dated 10/11.6.2013, learned Additional Sessions Judge, Bhiwani convicted them under Section 398 IPC and sentenced them to undergo rigorous imprisonment for a period of seven years each. They were further convicted under Section 401 IPC and sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.2,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for six months each. Appellant Pawan was also convicted under

Section 25 of the Arms Act and sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.1,000/- and in default of payment of fine, to further undergo rigorous imprisonment for two months. All the sentences were ordered to run concurrently. The period of detention already undergone by them during the investigation, enquiry or trial was ordered to be set off against the sentences of imprisonment. Hence, the present appeal.

Briefly stated, the case of the prosecution is that on 17.10.2012, SI Bhoop Singh, alongwith EASI Rajender Singh, Constable Bijender Singh and Constable Naresh was present at Badhra Chowk, Badhra for patrolling and crime checking in a government vehicle driven by Constable Vinod Kumar. Said SI Bhoop Singh received a secret information that three young boys had assembled at Umarwas Canal Bridge and planning robbery and they were armed with weapons. In case a raid was conducted, they could be caught red handed. On receiving the information, SI Bhoop Singh formed a raiding party and reached near Umarwas Canal Bridge. He found three boys were sitting on a kacha rasta of the canal. After being apprehended, they disclosed their identities. One of them was Pawan son of Mange Ram, another was Neeraj son of Balwan, while the third one Manjeet son of Hawa Singh. On search of appellant Pawan, a country made pistol loaded with three cartridges was recovered from the right dub of his trouser. Sketch of the country made

pistol was prepared. Pistol and cartridges were taken into possession. Ruqa was sent to Police Station Badhra and, accordingly, FIR No. 197 dated 17.10.2012 under Sections 398 and 401 IPC and Section 25 of the Arms Act was registered against the appellants.

During investigation of the case, SI Bhoop Singh prepared rough site plan of the place of occurrence. The appellants were formerly arrested and their disclosure statements were recorded. Statements of witnesses were also recorded under Section 161 Cr.P.C. Upon completion of investigation, final report under Section 173 Cr.P.C. was presented in the Court of Ilaka Magistrate. The case was, therefore, committed to the Court of Sessions where the appellants were charged for committing offences punishable under Sections 401/398 IPC. Appellant Pawan was also charged under Section 25 of the Arms Act. All of them pleaded not guilty and claimed trial.

In support of its case, the prosecution examined seven witnesses.

PW1 SI Japan Singh testified that on 17.10.2012, he received ruqa Ex.PA through EASI Rajender Singh sent by SI Bhoop Singh and on its basis recorded formal FIR Ex.PB.

PW2 ASI Jaipal Singh, Armourer deposed that on

13.11.2012, SI Bhoop Singh moved application Ex.PD alongwith one sealed parcel. He opened the seal of the parcel which contained one country made pistol of .32 bore alongwith three live cartridges. He found the pistol to be in working condition. He made his report Ex.PD/1 in that regard.

PW3 Ved Parkash, Patwari, Halqa Badhra deposed that on 22.11.2012 he visited the spot and prepared scaled site plan Ex.PE with correct marginal notes.

PW5 SI Lila Ram testified that on 17.11.2012, he was posted as Station House Officer, Police Station, Badhra. On that day, he prepared final report under Section 173 Cr.P.C.

PW6 SI Bhoop Singh testified that on 17.10.2012 he alongwith his fellow officials was present at Bus Stand, Badhra in a government vehicle on patrol duty, where he received a secret information about the appellants having assembled near the canal bridge and preparing to commit dacoity while armed with deadly weapons. Accordingly, he raided the said place and apprehended the appellants. One pistol was recovered from the right pocket of the pant worn by appellant Pawan. There were three live cartridges in the magazine of the pistol. He then prepared ruqa Ex.PA and sent it through EASI Rajender Singh for registering the FIR. During investigation, he prepared rough site plan Ex.PJ of the place of occurrence, recorded the statements of witnesses under Section 161 Cr.P.C., besides recording

disclosure statement Ex.PH of appellant Pawan regarding his involvement in the case and also being involved in other criminal cases. He further testified that on 13.11.2012, he produced the case property, i.e. pistol and the cartridges for mechanical examination by EASI Jaipal Singh, who made his report Ex.PD/1.

PW4 Constable Bijender Singh corroborated the testimony of PW6 SI Bhoop Sihnggh regarding apprehension of the appellants and the various steps taken during the investigation of the case.

PW7 Krishan Singh, Reader to District Magistrate, Bhiwani proved the sanction order dated Ex.PK issued by Shri Ashok Kumar Meena, IAS, District Magistrate, Bhiwani on 10.12.2012.

When examined under Section 313 Cr.P.C., all the appellants denied the incriminating evidence brought on record by the prosecution and pleaded false implication. However, no evidence in defence was adduced by them.

After hearing learned counsel for the parties and on going through the evidence available on the record, the trial Court accepted the prosecution version and, accordingly, convicted and sentenced the appellants, as mentioned above.

Learned counsel for the appellants has submitted that the prosecution case rests entirely upon the testimonies of official

witnesses. No public witness was joined or examined by the prosecution.

Merely because the investigating officer did not associate any public witness is no ground to throw the prosecution case out. The police officials are like any other witnesses and in case their testimonies are found to be worthy of credit, the same can be relied upon to return a finding of guilt against the appellants, especially when the defence could not bring any material on the record to show that they had reasons to falsely implicate the appellants. Even otherwise, the public witnesses are generally reluctant to associate themselves with the police party as they remain busy with their day to day affairs, instead of coming forward to assist the police agency to nab the criminals.

On going through the testimonies of PW6 SI Bhoop Singh as well as PW4 Constable Bijender Singh, it stands well established that the appellants were apprehended when they were preparing to commit robbery. The defence could not point out any discrepancy or contradiction in the statements of the said two witnesses and also the other police officials who had helped in completing the investigation of the case. After receipt of the secret information SI Bhoop Singh and his fellow officials had left for the designated place where they noticed the three appellants hiding themselves near the passage. All of them were preparing

to commit robbery. After apprehending the appellants, SI Bhoop Singh had conducted search of appellant Pawan, which led to recovery of .32 bore country made pistol and three live cartridges were present in its magazine. Besides, appellant Pawan had suffered disclosure statement Ex.PH which was recorded by SI Bhoop Singh wherein he mentioned his involvement in other cases.

During the investigation of the case, SI Bhoop Singh had produced the country made pistol, which he had recovered from appellant Pawan, before PW2 SI Jaipal Singh, Armourer, who, after checking the same, found it to be in working order. In this regard he prepared his report Ex.PD/1. During the investigation of the case, the investigating agency obtained sanction from the District Magistrate, Bhiwani for prosecuting appellant Pawan under Section 25 of the Arms Act. The order of sanction Ex.PK was issued by Shri Ashok Kumar Meena, IAS, District Magistrate, Bhiwani on 10.12.2012.

In view of the above, this Court finds that appellant Pawan has rightly being convicted and sentenced for committing offences under Sections 398 and 401 IPC and Section 25 of the Arms Act. At the same time, the case of appellants Manjeet and Neeraj is somewhat different. None of them was found to be in possession of any weapon, much less deadly weapon. They had also not suffered any disclosure statement regarding involvement

in any crime. Under these circumstances, they cannot be held guilty under Sections 398 and 401 IPC. Instead, they are liable to be convicted and sentenced for committing the offence under Section 393 IPC.

Resultantly, the conviction and sentences of appellant Pawan under Sections 398 and 401 IPC and Section 25 of the Arms Act are maintained. The conviction and sentences of appellants Manjeet and Neeraj under Sections 398 and 401 IPC are set aside. Instead, they are convicted under Section 393 IPC and sentenced to undergo rigorous imprisonment for four years and to pay a fine of Rs.5,000/- each. In default of payment of fine, they shall undergo rigorous imprisonment for one year.

The appeal is, accordingly, disposed of.

September 16, 2015
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(T.P.S. MANN)
JUDGE