

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

CRA-S No. 95-SB of 2010(O&M)

Date of Decision: July 29 , 2015.

Bhim Singh @ Bheela @ Bhima and others

..... APPELLANT (s)

Versus

State of Haryana

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Rahul Vats, Advocate
for the appellants.

Mr. Suneel Ranga, Advocate for
Mr. G.S.Hooda, Advocate
for appellant No.2 – Satish Kumar.

Mr. Vivek Saini, AAG, Haryana.

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?

LISA GILL, J.

Appellants – Bhim Singh @ Bheela @ Bhima, Satish Kumar, Randhir Singh @ Ranga and Amandeep @ Nanga have preferred the instant appeal challenging their conviction and sentence by the learned Additional Sessions Judge, Fast Track Court, Karnal vide judgment and order dated 18.11.2009. All the appellants have been convicted for offences punishable under Sections 394/397 read with Section 34 IPC and Section 25 of the Arms

Act and sentenced to undergo rigorous imprisonment for ten years each besides, pay a fine of ₹2,000/- each for offence punishable under Section 394/34 IPC, to undergo rigorous imprisonment for seven years for offence punishable under Section 397/34 IPC and to undergo rigorous imprisonment for two years each for offence punishable under Section 25(1)(b)(a) of the Arms Act. In default of payment of fine, to further undergo rigorous imprisonment for one year each. However, all the sentences were ordered to run concurrently.

Prosecution was set in motion on a complaint Ex.P1 by Jagdish Singh Rathore PW1. He revealed that he was working as Branch Manager at J.P.International Company, Santa Cruz, Mumbai. His residence is at Kurukshetra. He was on leave for 10 days from the company. He boarded the Jhelam Express train from Delhi to proceed to Kurukshetra on 10.03.2009. Four young boys boarded the train at Panipat. He alongwith 3/4 other persons were sitting in-between the door and bathroom of the train. After the train crossed Karnal, the young boys snatched bananas from him and ate them. On his protest, one of the boys brandished a knife and asked him to keep quiet. One of the accused took ₹500/- from the front pocket of his shirt and another ₹500/- from his purse. Other accused also snatched two notes of ₹100/- each. Thereafter the complainant and two others were locked up in the toilet. The accused jumped from the train at Kurukshetra railway station. Complainant apprised three railway employees about the incident but they informed him that it is the duty of the GRP and they did not take any action. As he did not find any police over there and he being tired, proceeded to his residence. On the next day i.e., 11.03.2009 complainant went to police station Kurukshetra where he

got the entire facts recorded. He was told that it is a matter of GRP Karnal. Consequently, complainant approached them and prayed for legal action to be taken against the accused. Formal FIR No.70 dated 11.03.2009 Ex.P17 was registered on the basis of this complaint.

Appellants-accused Satish Kumar and Bhim Singh were arrested in another case i.e., FIR No.94/2009 dated 06.05.2009, under Sections 392/394/397 IPC and Section 141 of the Railways Act on 10.05.2009. In that case, accused Bhim Singh suffered a disclosure statement Ex.P4 to the effect that in the night intervening 10/11.03.2009, he alongwith other co-accused, namely, Satish Kumar, Randhir @ Ranga and Aman had committed a robbery in the Jhelam Express while threatening a passenger with a knife (Ustra) and three passengers were locked in the train toilet after committing the robbery. They alighted the train near the outer signal of Kurukshetra Junction. ₹300/- had come to his share. Said amount was kept concealed by him in the house of his family friend Rekha at Panipat. On the same day, accused Satish Kumar also suffered a disclosure statement Ex.P5 in the said case with respect to the occurrence in the present FIR. He revealed that ₹400/- had come to his share. The cash and knife used in the crime had been kept concealed by him in his house and he could get the same recovered. On the basis of these disclosure statements, accused Bhim Singh and Satish Kumar were arrested in the present case. Bhim Singh suffered a disclosure statement Ex.P6 in the present case revealing the commission of the crime on the intervening night of 10/11.03.2009.

Accused Satish Kumar also suffered a disclosure statement Ex.P7

revealing the commission of the crime by him alongwith three other co-accused. Investigation was handed over to ASI Jasbir Singh PW2. PW4 ASI Darya Singh proved the arrest of accused Randhir Singh @ Ranga. PW5 Guru Dutt Inspector proved the arrest of accused Amandeep on 09.07.2009 in another FIR No.36/2009. Said two accused namely Randhir Singh and Amandeep also suffered separate disclosure statements in respect to the commission of the crime in the present case.

On completion of the investigation, report under Section 173 Cr.P.C. was prepared by SI Krishan Kumar PW6. Charge was framed against all the accused for the offences punishable under Section 394/397 read with Section 34 IPC as well as Section 25 of the Arms Act. Accused pleaded innocence and claimed trial.

Prosecution examined as many as twelve witnesses to prove its case against the accused. All the accused while denying the incriminating evidence put to them pleaded false implication and innocence in their statements under Section 313 Cr.P.C. They have taken a specific stand that they have been made scapegoat in the present case. Investigations are biased and conducted with a mala fide intention in lackadaisical manner while sitting in the police station GRP Karnal itself. All documents got signed by them were after exerting undue pressure upon them when they were in custody. Therefore, their false implication in this case. However, no evidence was led in defence.

Learned trial court on appraisal of the evidence on record concluded that the prosecution has proved its case beyond reasonable doubt against the accused persons thereby, convicting and sentencing them as detailed

above. Aggrieved therefrom, the instant appeal has been preferred.

Learned counsel for the appellants argues that all the appellants have been falsely implicated in this case and there is no evidence on record which justifies their conviction and consequent sentence. On behalf of the appellants – Bhim Singh @ Bhima, Randhir Singh @ Ranga and Amandeep @ Nanga, it is specifically averred that there is no evidence on record which indicates complicity of the said appellants in the commission of the crime as alleged by the prosecution. Reliance on the disclosure statements of the co-accused to convict them, is not tenable. Furthermore, the recoveries allegedly made pursuant to the disclosure statements of the accused themselves cannot be linked to the offence in question. Evidence of the witnesses is discrepant on material points and does not corroborate the prosecution version in any manner. The money allegedly recovered cannot be connected with the offence alleged. There is vital contradiction in regard to the exact money recovered from accused Satish Kumar. Furthermore, the prosecution case rests on the investigation conducted by the police in FIR No.94/2009 in which all the accused persons except Satish Kumar i.e., accused Bhim Singh, Randhir Singh and Amandeep have been acquitted by this Court in CRA-S No.23-SB of 2010 (Bhim Singh and others v. State of Haryana) decided on 10.03.2015. Therefore, it is prayed that the conviction and consequent sentence imposed upon the appellants be set aside.

Learned counsel for the State while refuting the abovesaid arguments submits that there is overwhelming evidence on record to prove the complicity of the appellants in this case. Evidence on record clearly proves that

the appellants routinely indulge in such acts. Acquittal of three of the accused in appeal pertaining to FIR No.94/2009 cannot be of any benefit to them in this case. Disclosure statements suffered by all the accused followed by recovery of the articles specifically the money and the knife establish the participation of all the accused in the robbery committed in the train.

I have heard learned counsel for the parties and gone through the evidence on record with the assistance of the learned counsel.

PW1 Jagdish Singh Rathore, complainant in this case, has deposed that after lodging the complaint Ex.P1 on 11.03.2009, he had gone to GRP Karnal on 17.05.2009 where he was apprised that some persons were arrested in connection with the offences disclosed by him. He was shown one visiting card Ex.P2 which pertains to the company he works for. Said visiting card is stated to have been recovered from appellant – Satish Kumar. PW1 Jagdish Singh Rathore has identified only accused Satish Kumar in court. He has not identified the other three accused as the persons who were involved in the robbery as alleged. Admittedly, no test identification parade was conducted by the police. Accused Satish Kumar and Bhim Singh were arrested in another case, namely, FIR No.94/2009. Satish Kumar accused was arrested in the abovesaid FIR No.94/ 2009 on 10.05.2009. He was identified by PW3 Surinder Kumar who was the complainant in FIR No.94/2009. PW2 ASI Jasbir Singh has specifically deposed that Satish Kumar was arrested on 10.05.2009 duly identified by PW3 Surinder Kumar. Disclosure statement Ex.P4 in the said FIR was suffered by Satish Kumar and the names of the other three accused were disclosed.

Subsequently, accused Bhim Singh @ Bhima was arrested on 11.05.2009 on identification of the complainant Surinder Kumar. Both the said accused suffered their disclosure statements revealing their involvement in the present case. On the basis of the disclosure statement in the other case, accused Satish Kumar got recovered currency notes worth ₹2,300/- and one knife (Ustra) from a suitcase lying on a trunk in his house. Out of the said ₹2,300/- , ₹300/- allegedly pertained to the present case whereas, ₹2,000/- pertained to FIR No.94/2009. One visiting card Ex.P2 of J.P.International Company was also recovered from Satish Kumar. Currency notes and the knife were taken in possession vide memo Ex.P8 in FIR No.94/2009. Site plan was also prepared. Accused Bhim Singh got recovered currency notes of ₹2,300/- out of a suitcase lying on an Almirah in the corner of his house. One currency note of ₹500/- and 18 currency notes of 100 denomination each were recovered. ₹300/- pertained to the present case and ₹2,000/- pertained to FIR No.94/2009. Currency notes were taken in possession vide recovery memo Ex.P10 in the other case. PW3 Surinder Kumar who is complainant in FIR No.94/2009 was examined in the present case too. He has sought to prove the incident in the night intervening 5/6.5.2009. He has identified accused Satish Kumar. PW3 Surinder Kumar has however specifically testified that no other accused was interrogated in his presence. In regard to other accused Bhim Singh, this witness states that the accused had declined about his involvement in the said case. He has denied that accused Bhim Singh at any stage admitted his involvement in the occurrence of the present case.

PW4 ASI Darya Singh has testified that appellant-accused Randhir

Singh @ Ranga was in custody in another case i.e., FIR No.36/2009. Appellant Randhir Singh @ Ranga confessed about the occurrence in the present case and his involvement therein. Accused Randhir Singh @ Ranga was then arrested in the present case. He got recovered ₹900/- from a iron box in his village Jorasi. Pursuant to his disclosure statement Ex.P15, ₹400/- was stated to be pertaining to the present case, ₹500/- pertained to FIR No.94/2009. The said currency notes were taken in possession in FIR No.94/2009.

Perusal of the evidence on record reveals that all the recoveries effected from the accused were in connection with FIR No.94/2009. Undoubtedly, this Court in CRA-S No.23-SB of 2010 has held that appellants – Bhim Singh @ Bhima, Randhir Singh @ Ranga and Amandeep @ Nanga cannot be convicted on the basis of the alleged recoveries effected from them. In this respect, it is observed as under:-

“The star witness PW1-Surender Mann has not deposed about the involvement of the other accused, except accused Satish Kumar. There is no reason to disbelieve his testimony.

PW4-Head constable Raj Kumar, of course speaks about the disclosure statement suffered not only by accused Satish Kumar but also by Bhim Singh @ Bheela @ Bhima. He comes out with a contradictory statement as regards the quantum of currency notes recovered from accused Satish Kumar and Bhim Singh @ Bheela @ Bhima. PW1-Surender Mann has deposed that a sum of Rs.4,500/- out of Rs.5,000/- robbed from him was recovered from accused Satish Kumar. But unfortunately PW4-Head Constable Raj Kumar comes out with a version that only a sum of Rs.2000/- in connection with this case was recovered from accused Satish Kumar. He would also depose that a sum of Rs.2,300/- was recovered from accused Bhim Singh. The alleged recovery of sum

of Rs.2,300/- from Bhim Singh as per the evidence of PW4 is found not consistent with the recovery from accused Satish Kumar spoken to by PW1-Surender Mann. If a sum of Rs.4,500/- out of Rs.5000/- was already recovered from accused Satish Kumar as per the evidence of PW1-Surender Mann, the recovery of Rs.2,300/- shown from accused Bhim Singh is found to be little confusing.

Coming to the evidence of PW5-Head Constable Darya Singh, it is found that he deposed that a sum of Rs.500/- was recovered from accused Randhir Singh @ Ranga from his house. PW9-Inspector Gurudutt speaks about the recovery of Rs.200/- on the basis of disclosure statement suffered by accused Amandeep @ Nanga.

The recovery of the above amount has been reportedly made from the house of the respective accused Bhim Singh @ Bheela @ Bhima, Randhir Singh @ Ranga and Amandeep @ Nanga. Further such an amount recovered from the above three accused did not tally with the amount allegedly looted from the possession of PW1-Surender Mann. No other witness was examined to speak about the robbery committed from any other passengers in the train.

The Hon'ble Supreme Court in *Haricharan Kurmi Vs. State of Bihar 1964 AIR(SC) 1184* has held as follows:

“As we have already indicated, this question has been considered on several occasions by Judicial decisions and it has been consistently held that a confession cannot be treated as evidence which is substantive evidence against a co-accused person. In dealing with a criminal case where the prosecution relies upon the confession of one accused person against other accused person, the proper approach to adopt is to consider the other evidence against such an accused person, and if the said evidence appears to be satisfactory and the Court is inclined to hold that the said evidence may sustain the charge framed against the said accused person, the Court turns to the confession with a view to assure itself that the conclusion which it is inclined to draw from the other evidence is right”.

In the instant case, the prosecution has largely relied upon the disclosure statement suffered by the co-accused Satish Kumar to rope in the other three accused and not an extra judicial confession. In other words, except the reference made by accused Satish Kumar in the disclosure statement made by him as regards the role of the other three accused, there is no substantial evidence available on record as against them. It is a well settled position of law that only that portion of information in the disclosure statement which lead to recovery of new fact alone is admissible in evidence. Therefore, the above decision will not apply to the facts of this case.

Coming to the recovery from the above three accused, I find that it cannot be the sole basis to record conviction as against them. Further, it is found that there is a material contradiction as regards the quantum of currency notes recovered from the above three accused. These small amounts would have been earned and kept by the respective accused in their house. Therefore, such a recovery would not lead to an inference that those amounts have connection with the robbery committed in the train.

For all these reasons, I am of the considered view that the prosecution has miserably failed to establish beyond reasonable doubt that accused Bhim Singh @ Bheela @ Bhima, Randhir Singh @ Ranga and Amandeep @ Nanga committed the offences charged as against them.”

In the present case, Surinder Kumar has been examined as PW3. Raj Kumar as PW7, ASI Darya Singh as PW4 and Inspector Guru Dutt as PW5. It is evident that prosecution case against the said three accused rests entirely on the evidence collected in relation to FIR No.94/2009. This Court in CRA-S No.23-SB of 2010 while deciding the appeal of the four accused (appellants in this case) in respect to FIR No.94/2009 has conclusively held that no case is made out against the said three accused. They have been acquitted extending

the benefit of doubt.

Entire edifice of the prosecution version in the present case rests upon the evidence collected in the aforementioned FIR No.94/2009 which was the subject matter of CRA-S No.23-SB of 2010. Thus it is writ large that prosecution has not been able to prove its case against accused Bhim Singh @ Bhima, Randhir Singh @ Ranga and Amandeep @ Nanga beyond reasonable doubt in the instant case too i.e., FIR No.70 dated 11.03.2009. Hence, they are entitled to the benefit of doubt.

In respect to accused Satish Kumar, PW1 Jagdish Singh Rathore has specifically delineated the role played by him. Accused Satish Kumar has been duly identified by the complainant as the person who had robbed him of his money, beaten him and then bolted him in the toilet alongwith other passengers. He has not identified any of the other three accused.

Contention of learned counsel for the appellant that identification of the accused in the court for the first time is not sustainable, is rejected. Currency notes were recovered on the basis of disclosure statement of Satish Kumar as well as one Visiting Card Ex.P2 relating to J.P. International Company for which the complainant works for. An argument was raised on behalf of appellant Satish Kumar that the currency notes and the knife which were allegedly recovered cannot be linked with Satish Kumar and the offence in question as these notes were not marked and there is no specific identification mark on the knife which was recovered. This argument pales into insignificance in view of the specific identification by the complainant of accused Satish Kumar as well as the recovery of the Visiting Card of J.P. International

Company who was employer of complainant Jagdish Singh Rathore PW1. Trial court has rightly convicted accused Satish Kumar. It is to be noted at this juncture that conviction of Satish Kumar in the case pertaining to FIR No.94/2009 has been upheld by this Court in CRA-S No.23-SB of 2010.

Therefore, this appeal qua appellant Satish Kumar is dismissed. His conviction and sentence is upheld. There is no justifiable ground for reduction of the sentence imposed upon him.

Having held that the prosecution has failed to establish its case beyond reasonable doubt against appellants Bhim Singh @ Bheela @ Bhima, Randhir Singh @ Ranga and Amandeep @ Nanga, they are extended the benefit of doubt and are acquitted of the charges against them.

Consequently, this appeal qua aforesaid three accused Bhim Singh @ Bheela @ Bhima, Randhir Singh @ Ranga and Amandeep @ Nanga is allowed. They be released forthwith if not required in any other case.

July 29 , 2015.
'om'

(LISA GILL)
JUDGE