

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

**CRA-S-728-SB of 2012 (O&M)  
Date of Decision: 01.07.2015**

Sabbir

...Appellant

Versus

State of Haryana

...Respondent

2. **CRA-S-881-SB of 2012**

Fakru

...Appellant.

Versus

State of Haryana

...Respondent

3. **CRA-S-1486-SB of 2012**

Mustkeen @ Kala

...Appellant.

Versus

State of Haryana

...Respondent

**CORAM: HON'BLE MR.JUSTICE R.P. NAGRATH**

1. *Whether Reporters of the 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. Jamshed Ahmed, Advocate  
for the appellant (In CRA-S-728-SB of 2012)

Mr. Vikas Kumar, Advocate  
for the appellant (In CRA-S-881-SB of 2012)

Mr. Rajesh Lamba, Advocate  
for the appellant (In CRA-S-1486-SB of 2012.

Mr. Surender Singh Pannu, DAG  
Haryana for the State.

**R.P. Nagrath, J.**

881-SB of 2012 and CRA-S-1486-SB of 2012 are being disposed of as these arise out of the same judgement of the trial Court in FIR No.185 dated 28.12.2007 under Section 395 IPC, Police Station Nagina, District Mewat.

2. The police swung into action on the complaint Ex.PE dated 28.12.2007 made by Gafoor PW6 about the incident. It was stated that the complainant purchased Truck No.HR-55-A-9930 Model 2003 which was got financed but all the installments had been paid. The complainant used to drive the truck himself and had also employed Umar PW7 as second driver.

3. The incident took place on 26.12.2007. On that day, the complainant was returning to his village in the truck alongwith his son Farukh after getting some maintenance work in the workshop at Badkali Chowk. PW7 was driving the truck. It was about 9.00 pm when they reached near Badarpur turning that some miscreants were following them in Max Pickup Van No.RJ-32-GA-2581. Those were 7/8 persons in the Max Pickup van which crossed the truck and the miscreants stopped their vehicle in front of the truck. Those culprits robbed the complainant of the truck by throwing them out of the truck. The miscreants were armed with weapons. The names of two as per the conversation between them were Faku and Sabbir. It was, however, the version that the miscreants had come with their faces muffled. There was no clue of the truck or the miscreants. Complaint of the incident dated 26.12.2007 was made to the police on 28.12.2007. On the basis of complaint, FIR No.185 dated 28.12.2007 Ex.PC was registered.

4. Appellant Mustkeen @ Kala in CRA-S-1486-SB of 2012 was apprehended by the police party headed by PW8 ASI Bacchu Singh, while he was driving aforesaid Max Pickup Van No.RJ-32-GA-2581 on 02.01.2008 and the pickup van was taken into possession vide Ex. PA. Registration certificate was also recovered from the vehicle which was admittedly not in the name of any of the appellants.

5. The challan initially was presented against Mustkeen @ Kala only and the other accused were not arrested as yet. The charge against him was framed by the learned trial Court under Section 395 IPC on 05.06.2008.

6. The prosecution examined six witnesses while appellant Mustkeen @ Kala only was facing trial. Thereafter Faku appellant in CRA-S-881-SB of 2012 was arrested in some other case for whom production warrants were obtained. He was taken into custody in the present case on 23.07.2009. The supplementary challan was presented against Faku and amended charge was framed on 12.01.2010 against the two accused.

7. Subsequent to that Sabbir appellant in CRA-S-728-SB of 2012 was arrested on 20.10.2009 against whom supplementary challan was also presented. This is how the amended charge was again framed against the three accused on 23.03.2010.

8. The learned trial Court recorded the statements of all the three appellants on 27.04.2010 to the effect that they have no objection if statements of PW1 to PW6 recorded before the arrest of Sabbir and Faku appellants, are read against them and they do not

want to further cross-examine these witnesses. It was also stated that cross-examination of these witnesses already conducted before 23.03.2010 be treated as cross-examination on their behalf. In view of the above joint statement of the accused/appellants, the learned trial Court passed the consequential order on the same day.

9. The prosecution examined 13 witnesses in all. During their examination under Section 313 Cr.P.C., the appellants denied all the incriminating circumstances appearing in the prosecution evidence against them and they pleaded innocence. They have not led any evidence in defence.

10. The learned trial Court convicted the appellants of the charge framed against them and awarded them the sentence to undergo Rigorous Imprisonment for a period of seven years and to pay a fine of Rs.2,000/-; in default of payment of fine to further undergo Simple Imprisonment for a period of two months. The appellants have preferred these appeals feeling aggrieved by the judgement of the learned trial Court.

11. I have heard learned counsel for the appellants, learned State counsel and also perused the trial Court record extensively with their able assistance.

12. There is some evidence led by the prosecution connecting Mustkeen @ Kala in CRA-S-1486-SB of 2012 with the incident of dacoity but there is no incriminating evidence worth while against the other two appellants.

13. The eye witness account of the version is testified by Gafoor complainant PW6, PW7 Umar driver of the truck and PW10

Farukh the son of complainant. PW7 and PW10 were examined after the arrest of the appellants Sabbir and Fakru.

14. The incident took place at about 9.00 pm. According to PW6 and PW10 it was dark at that time. PW6 stated that the miscreants were addressing themselves by name as Iqbal, Mustkeen @ Kala, Sabbir, Fakru, Majlis etc. PW6 also stated that appellant Mustkeen @ Kala was one of the robbers. In cross-examination he stated that he did not know this accused prior to the occurrence. He also admitted that name of this appellant Mustkeen @ Kala was not mentioned in the complaint Ex.PE. This is material contradiction in the statement of PW6 as compared to the version contained in the FIR where it was stated that the culprits were in their faces muffled.

15. PW7 in chief examination identified Mustkeen @ Kala out of the appellants facing trial. In cross-examination he stated that he did not know any of the accused persons previously. PW10 Farukh stated that the culprits were 7/8 persons. Names of two of them are Fakru and Sabbir as they were addressing themselves. The witness stated categorically that Fakru and Sabbir were not present in the Court. In fact the statement of PW10 was recorded on 26.10.2010 when Mustkeen and Fakru appellants were present on bail and Sabbir appellant was produced in custody. In the next breath PW10, however, stated that the accused present in the Court are the same persons who looted the truck. PW10 also stated in cross-examination that he was not joined in any test identification parade of the culprits.

16. Learned State counsel, however, contended that there is important evidence of recovery of the same pickup van, which was

mentioned in the FIR, from Mustkeen @ Kala on 02.01.2008. There is evidence about the arrest of Mustkeen @ Kala alongwith pickup van on 02.01.2008. Registration certificate of the vehicle is admittedly not in the name of Mustkeen @ Kala. Mere recovery of the vehicle which was mentioned in the FIR after about seven days of the incident cannot be sufficient to hold the accused to be one of the culprits having committed robbery on 26.12.2007 especially when this accused is admittedly not the owner of the vehicle. He may be only the driver of the vehicle. But this was for the prosecution to connect this accused with the crime especially when his name is not mentioned in the FIR.

17. The version with regard to the arrest of accused Mustkeen @ Kala is also highly suspicious. PW8 simply stated that Mustkeen @ Kala was arrested on 02.01.2008 alongwith pickup van but has not uttered a word where the police party was present.

18. PW1 ASI Tara Chand was member of the police party headed by ASI Bacchu Singh PW8 on 02.01.2008. PW1 stated that they were present at T-point of village Khanpur where ASI Bacchu Singh received secret information with regard to the pickup van. They saw Pickup Van No.RJ-32-GA-2581 coming from the side of Pingawa which was stopped and Mustkeen @ Kala who was driving the vehicle was arrested and the vehicle was taken into possession vide Ex.PA. In cross-examination PW1 stated that he does not remember who had brought the pickup van from the spot to the police station. PW8 has not uttered a word about the secret information received by him.

19. PW4 HC Sukhbir Singh was also member of the police party on 02.01.2008 and stated about the arrest of Mustkeen @ Kala in the area of village Khanpur where the police party was present and the pickup van was recovered from appellant Mustkeen @ Kala.

20. PW9 HC Vinod Kumar has been examined with regard to the confessional statement made by Mustkeen @ Kala while in custody but that is inadmissible in evidence as no discovery consequent to that statement was made. In cross-examination PW9 stated that Mustkeen @ Kala was apprehended from Punhana by ASI Bacchu Singh. PW9, however, was not present alongwith ASI Bacchu Singh at the time of recovery.

21. The charge against the accused is of the incident of dacoity committed on 26.12.2007. PW6 and PW7, however, stated that the incident took place on 28.12.2007. Even during examination of the accused under Section 313 Cr.P.C., the incriminating evidence put to them was relating to the incident taking place on 28.12.2007 and not on 26.12.2007. In the normal circumstances the above discrepancy could have been ignored provided that the other evidence led by the prosecution was trustworthy. But the cumulative effect of the aforesaid factors for calling the accused to explain the circumstances with regard to the incident taking place on 28.12.2007 would definitely prejudice the appellants in their defence.

22. Rest of the evidence in the case is formal or inadmissible. PW2 Inspector Manphool Singh being SHO of the police station prepared the challan under Section 173 Cr.P.C. PW3 Naresh

Kumar, Draftsman prepared the scaled site plan Ex.PB by visiting the spot on 15.03.2008.

23. PW5 ASI Munshi Ram recorded formal FIR Ex.PC on receipt of *ruqa* from ASI Bacchu Singh. PW11 ASI Narayan Singh arrested accused Fakru on 23.07.2009 and made statement about the confessional statement made by the appellants and demarcation of the place of occurrence. This accused was arrested more than one and a half year after the incident. The evidence of confessional statement without leading to the discovery/recovery of any incriminating article would be inadmissible. Similarly the evidence of demarcation of the site of occurrence is inadmissible as the said place was already known to the investigating agency on 28.12.2007. Similar is the fate of the statement of HC Nasim Akhtar PW12 and ASI Devander Singh PW13 who arrested Sabbir accused on 20.10.2009 and stated about the confessional statement of accused and demarcation of the site.

24. What is lacking in the instant case is the recovery of the stolen truck of the complainant or mobile phone but the investigating agency has failed to do so or even to recover the parts of the vehicle by making any real effort. The investigating agency seems to have felt satisfied with the arrest of the culprits but without making real headway in collecting the material evidence. This brings out total inefficiency of the functioning of the investigating agency that has resulted in failure of the prosecution case.

25. I would find in the instant case the learned trial Court to have not analysed the evidence properly and has not dealt with the

aforesaid serious lacunae in the case, otherwise it would not have been possible to accept the prosecution case. After narrating the facts of the case, noting the contentions raised by the learned defence counsel and reproducing the evidence in extenso, the learned trial Court disposed of the matter with the following observations at the end:-

*“16. The legal position of the authorities relied upon by the learned defence counsel for the accused are not disputed but with due regards, the facts of the authorities do not completely tally with the facts of the present case. Although there are some minor contradictions in the testimonies of the PWs regarding the date of alleged commission of offence but in the considered opinion of the Court, these contradictions do not affect the prosecution case. Further the testimony of PW ASI Bacchu Singh, the investigating officer is regarding the moving of the application on 28.12.2007. Therefore, the time of the commission of the offence, the place of the commission of the offence and the identity of the accused for the commission of an offence is proved and is established on the record. Therefore, there is no force in the contentions of the learned defence counsel for the accused. Therefore, the accused are held' guilty of the commission of the offence punishable under section 395 of IPC. Accused Faku who is on bail in this case, be taken into custody forthwith. Let the accused-convicts be*

*heard on the quantum of sentence on 21.1.2012.”*

26. Learned trial Court has not dealt with the issue of identity of the culprits or the admissibility of the confessional statements or the alleged demarcation of the site.

27. From the above discussion, I am of the firm view that there was no credible evidence against any of the appellants to prove the charge beyond suspicion and they deserve to be granted the benefit of doubt. The appeals are allowed and judgement of the learned trial Court convicting the appellants is set aside. Consequently the appellants are acquitted of the charge framed against them. The appellants who are undergoing sentence, be set at liberty forthwith if not required in any other case.

01.07.2015  
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(R.P. Nagrath)  
Judge