

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

319

CRA-S-2046-SB-2003

Date of Decision:20.05.2015

Kalu @ Kala

...Appellant

versus

State of Haryana

...Respondent

CORAM: HON'BLE MAHAVIR S. CHAUHAN

Present: Mr. Keshav Partap Singh, Advocate
Amicus Curiae, for the appellant.

Mr. Praveen Bhadu, AAG, Haryana.

MAHAVIR S. CHAUHAN, J.(Oral)

Affidavit of Vishnu Dutt, EASI, office of Superintendent of Police, Panipat produced by the learned State counsel, is taken on record. Copy has been supplied to learned Amicus Curiae.

In the affidavit, it is stated by Sh. Vishnu Dutt, EASI that notwithstanding best efforts taken by him, he has not been able to trace the whereabouts of the appellant. In view of these circumstances, the Court is left with no option but to hear the appeal on merits.

Heard.

The appellant Kalu @ Kala @ Kalia, along with one Satpal, was tried for commission of offence punishable under Sections 395, 397 and 216 of Indian Penal Code, 1860 ('IPC' for short) on the allegations that on 11.03.2000 at about 2:00 a.m., complainant Maman Singh (the village watchman) heard some noise from the side of residential quarters of school

teachers. As there was darkness, he came there and found that 2/3 persons were standing near the room and a few others were breaking open the door. He came out of the boundary wall and raised an alarm which attracted Ajit Singh, Baljit Singh, Kuldeep Singh and Manjit Singh to the spot. They tried to overpower the miscreants and also caused injuries to one of them with the help of a Kirpan. That accused asked Birbal, Rajbir and Kalu that he had been apprehended and requested them to get him released. However, the others managed to escape after firing 2/3 shots in the air. Accused who was apprehended on the spot disclosed his name as Kala, the present appellant. On checking their belongings, the occupants of the quarters found some articles to be missing. Matter was reported to the police. An investigation followed. On completion of investigation, a report in terms of Section 173 (2) of Code of Criminal Procedure, 1973 ('CPC' for short) was presented before the learned Area Magistrate. The matter having been committed to the Court of Session, learned Additional Sessions Judge, Panipat (for short 'trial Court') on appraisal of the report along with the enclosures and hearing the prosecutor and defence found a *prima facie* case punishable under Sections 395, 397 and 216, IPC, to be made out against the accused. A charge was, accordingly, framed to which the accused pleaded not guilty and claimed to be tried.

After evidence of the prosecution was complete, accused was examined under Section 313, Cr.P.C. All the incriminating circumstances appearing against him in the evidence of prosecution were denied by him and plea of innocence and false implication was reiterated but he did not

lead any evidence in defence. Ultimately, on hearing the parties, learned trial Court came to the conclusion that the prosecution was able to prove the charge against the accused and accordingly vide judgment/order dated 4.4.2003 convicted and sentenced the appellant to rigorous imprisonment for 7 years with fine amounting to Rs. 500/- and in default of payment of fine, to further rigorous imprisonment for 15 days for commission of an offence punishable under Section 395, IPC; rigorous imprisonment for a period of 7 years for commission of an offence punishable under Section 397, IPC, and ordered both the substantive sentences to run concurrently.

To challenge judgment/order dated 04.04.2003 appellant has brought this appeal.

As nobody appeared on behalf of the appellant, Mr. Keshav Partap Singh, Advocate was appointed as amicus curiae to assist the Court on behalf of the appellant. Learned Amicus Curiae after going through the custody certificate which is available on record submits that the appellant has completed the term of imprisonment awarded to him by the learned trial Court and as such he does not press this appeal.

Dismissed as not pressed.

(Mahavir S. Chauhan)
Judge

20.05.2015
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