

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

CRA-S No.1396-SB of 2003

Date of decision: 22nd July, 2015

Vinay Kumar

... Appellant

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Amninder Preet Singh, Advocate
Amicus Curiae for the appellant.

Mr. J.S. Brar, Asstt. Advocate General, Punjab.

FATEH DEEP SINGH, J.

Appellant/convict Vinay Kumar, who was found guilty for commission of offences under Sections 399/402 IPC, has been sentenced to undergo rigorous imprisonment for 7 years and to pay a fine of ₹1,000 and in default of payment of fine to further undergo rigorous imprisonment for 6 months and which the convict/appellant has assailed in this appeal.

The brief sketch of the prosecution allegations is that on 13.07.2002 a police party headed by ASI Varinder Singh, CIA Staff, Patiala received secret information that the convict appellant Vinay

Kumar @ Binni along with his co-accused Sushil Kumar @ Timpa @ Dimpa, Jony, Devinder Singh @ Cheecha and Sunny were habitual of committing dacoities and armed with deadly weapons were sitting in the Beer (forest area) of village Meeranpur, on the basis of which information raid was conducted and from the personal search of accused/appellant Vinay Kumar one country-made .303 bore pistol was recovered from the right dub of his trousers along with one live cartridge of the same bore. Necessary proceedings by way of rough sketch Ex.PA of the weapon was prepared and which was sealed in a parcel through memo Ex.PB. Rough site plan Ex.PK of the place of occurrence was made and after necessary formalities challan against the accused was presented in the Court to which the accused had pleaded not guilty.

The prosecution examined PW1 HC Sunil Kumar and PW2 ASI Varinder Singh who in their stand taken in statement under Section 313 Cr.P.C. denied the allegations and examined DW1 Gopal Krishan, DW2 C.Ranjit Singh, DW3 Bimal Devi, DR4 Hema and DW5 Kamlesh in their defence and proved documents Ex.DA to Ex.DC. It is thereupon the impugned findings were recorded.

Heard Mr. Amninder Preet Singh, Advocate appointed as Amicus Curiae for the convict/appellant and Mr. J.S. Brar, Assistant Advocate General, Punjab on behalf of the State.

It has been forcefully contended on behalf of the appellant by learned Amicus Curiae Mr. Amninder Preet Singh that the appellant has been acquitted for the charges under Arms Act and the learned

trial Court has brushed aside this alleged recovery and therefore, merely sitting at a desolate place did not imply committing of an offence punishable under Section 399/402 IPC when the verbal dialogue amongst the accused has neither been recorded nor is alleged to have been listened by any of the witnesses.

On behalf of the State, much emphasis has been laid that the appellant along with others belong to a gang of vagabonds and that they are facing innumerable cases and that the trial Court has rightly appreciated the evidence.

Appreciating these submissions, a close look at the evidence of the prosecution upon whom lays a heavy onus to establish its case to the hilt, in the light of golden principle of law that prosecution is supposed to prove its case beyond the shadow of reasonable doubt. Learned State counsel has squarely accepted that there is not even an iota of evidence of what the accused were talking to each other or on what basis the Investigating Officer has formed an opinion that the accused were conspiring or had assembled for the purpose of committing dacoity. Mere recovery of weapons and that too, which version has been brushed aside by the Court, cannot be a ground to hold the culpability of the appellant.

Hon'ble the Supreme Court of India in the case of '**Chaturi Yadav and others v. State of Bihar**' 1979 SCC (Criminal) 502 has laid the perception that the mere fact that accused have assembled at a lonely place in odd hours of the night armed, does not show or is evidence to prove that they have assembled for the purpose of

committing dacoity. Even otherwise, the evidence led by the official witnesses, the Investigating Officer PW2 ASI Varinder Singh and that of HC Sunil Kumar PW1 do not advance the case of the prosecution. The trial Court has misconstrued this evidence and on the mere premise that the accused were sitting at a desolated place duly armed, has reached the conclusion holding the accused guilty for commission of this offence. The evidence, which is of impeccable nature comprising of testimonies of DW2 C.Ranjit Singh, who has proved the telegram Ex.DA, report of SHO Police Station Kotwali Patiala Ex.DB and that of DSP Patiala Ex.DC are matters which further advances the case of the defence that it was a fabricated allegation and thus, casts a heavy onus upon the prosecution to lead independent corroboration of the same. No doubt, under the settled law it is not mandatory to examine an independent witness but where there is a creeping doubt over the authenticity and credibility of the prosecution story, it is safe before passing a judgment of conviction against the accused to seek corroboration from the independent evidence and which is not forthcoming in the present case, besides the fact that it was ASI Jai Pal Singh as per the prosecution version who had apprehended the present appellant but he has not been examined by the prosecution, is a material lacuna in this case, as has been submitted on behalf of the appellant by learned Amicus Curiae Mr. Amninder Preet Singh.

Thus, from this all what has been discussed, the impugned findings certainly are unsustainable being wrong appreciation of the evidence and law, and therefore, in the light of the same the

prosecution having failed to establish its case necessitates setting aside the impugned judgment of conviction and order of sentence thereby accepting the present appeal setting at liberty the appellant.

Necessary intimation be sent to the concerned quarter.

(FATEH DEEP SINGH)
JUDGE

July 22, 2015
rps