

In the High Court of Punjab and Haryana at Chandigarh

CRA- 1808-SB of 2002
Date of Decision: 07.01.2015

Piru and others

---Appellants

versus

State of Haryana

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. B.S.Saroha, Advocate
for the appellants
Mr. P.S.Sullar, Addl. A.G.Haryana
for the respondent-State

- 1. Whether Reporters of local papers may be allowed to see the judgment?
- 2. To be referred to the Reporter or not?
- 3. Whether the judgment should be reported in the Digest?

REKHA MITTAL, J.

The present appeal has been directed against the judgment of conviction and order of sentence dated 4.10.2002 and 5.10.2002, respectively passed by the Additional Sessions Judge, Kaithal whereby the appellants have been convicted and sentenced for commission of offence punishable under Sections 399 and 402 of the Indian Penal Code (in short “IPC”), extracted hereinbelow:-

U/S 399 IPC	To undergo rigorous imprisonment for four years and to pay a fine of Rs. 1,000/- each. In default of payment of fine, to further undergo rigorous imprisonment for six months.
U/S 402 IPC	To undergo rigorous imprisonment for three years and to pay a fine of Rs. 700/- each. In default of payment of fine, to further undergo rigorous imprisonment for four months.

In brief, case of the prosecution is that on 30.7.2001 at about

11.50 p.m., police party consisting of Sh. Ram Chander, Inspector, Raj Pal, Assistant Sub Inspector, Pale Ram, Assistant Sub Inspector and other police officials was on patrol duty on Padla Road in a government jeep bearing No. HR-08B-8827 driven by Constable Raj Pal 702. When the police party reached on drain bridge, Padla Road, a person gave a signal for stopping the jeep whereupon Inspector Ram Chander directed the driver to stop the jeep. That person gave a secret information to the Inspector that on Padla Road, Franswala bus stand under a shed, six young persons were sitting and they were talking to each other in Uttar Pradesh language that they would commit dacoity at Padla Shiv Shakti petrol pump and were armed with deadly weapons. After getting secret information, Inspector informed all the members of the police party and started towards bus stand Franswala. The government jeep was parked at a distance of 2 killas from bus stand and lights were switched off. The Inspector along with ASI Pale Ram, HC Devinder Kumar, HC Krishan Lal and Constable Attar Singh proceeded towards bus shed, Franswala whereas SI Raj Pal along with ASI Parmod Kumar, HC Mange Ram, Constable Kuldeep Singh, Constable Mahavir Singh and Constable Lajwant were directed to surround the place from fields side. The Inspector and other police officials heard conversation of persons sitting under the bus shed, Franswala to the effect that they would commit dacoity that night on Shiv Shakti petrol pump, Padla. The Inspector with the help of other police officials surrounded the bus shed and warned those persons not to leave the place as they have been surrounded by the police. Three persons escaped under cover of darkness towards kacha rasta but could not be apprehended despite chase by SI Raj

Pal and other police officials. Three persons were apprehended by the police and on asking they disclosed their names and particulars. On search of accused Piru son of Lal Mohammad, a country made pistol 315 bore was recovered from right dub of his trouser and three live cartridges of 315 bore were recovered from pocket of his shirt. On search of accused Amru son of Lal Mohammad, one country made pistol of 315 bore was recovered from right dub of his trouser and three live cartridges were recovered from pocket of his shirt. However, gandasi was recovered from right hand of third accused Rehshu. Regarding recovery of country made pistols and live cartridges, separate cases were registered against Piru and Amru. The gandasi was taken into police possession vide recovery memo. The arrested accused disclosed names of absconders as Dilshad, Irfan and Akbar.

A ruqa was sent to the police station for registration of case on the basis whereof formal FIR was registered in Police Station, Sadar, Kaithal by Bharat Singh ASI. On completion of investigation, challan was presented in the Court. The case was committed to the Court of Sessions as offence under Sections 399 and 402 IPC is exclusively triable by the said court. After hearing counsel for the parties, all the accused were charged for commission of offence punishable under Sections 399, 402 IPC to which they pleaded not guilty and claimed trial.

To prove its case, the prosecution examined as many as 05 witnesses namely, Subhash Chand PW1, ASI Bharat Singh PW2, Parmod Kumar PW3, Inspector Ram Chander PW4 and HC Dharam Singh PW5.

On evidence of the prosecution being closed, the accused were

examined in compliance with provisions of Section 313 of the Code of Criminal Procedure and they denied the incriminating circumstances appearing in evidence against them and pleaded their innocence and false implication. However, they did not examine any witness in defence.

On due consideration of evidence adduced by the prosecution and rival submissions made by respective counsels, the learned trial court held that the prosecution has succeeded in proving its case against the accused for the charged offences beyond reasonable doubt and accordingly, the accused were convicted and sentenced, noticed hereinbefore.

Feeling aggrieved by the verdict of the learned trial court, the present appeal was preferred by the appellants in the year 2002 and has now matured for final hearing.

Counsel for the appellants has submitted that the story of the prosecution is nothing but the result of concoction and is improbable. As per case of the prosecution, the police party headed by Inspector Ram Chander received secret information that six persons were sitting and planning to commit dacoity at Shiv Shakti Petrol Pump. It is argued that if accused were talking to each other and planning to commit dacoity and conversation between them was heard by the informant, it is beyond acceptance to reason that they would continue with the same conversation till the police party reached the spot or heard the conversation. It is further submitted that no prudent person would make such a planning at a public place or would talk at a volume audible to others. The police registered a false case against the accused with a view to show their performance in nabbing the criminals. In support of his contention, he has relied upon

judgment of the Hon'ble Supreme Court of India *Suleman vs. State of Delhi through Secretary* 1999(2) R.C.R.(Criminal) 377. He has also cited judgment of this Court *Bagga alias Bangu vs. State of Haryana* 2011 (2) R.C.R.(Criminal) 238.

Counsel for the State, on the other hand, has supported the judgment passed by the trial court with the submissions that the prosecution witnesses are quite firm and consistent in their depositions to establish guilt of the accused beyond reasonable doubt. The accused have not alleged any animosity against them by the police party to indict them in the crime without any motive.

I have heard counsel for the parties and perused the records.

The story propounded by the prosecution seems to be incorrect. Firstly, it is against normal human conduct that if a man intends to commit dacoity, the planning would be made at a public place. Secondly, it is highly improbable that if the accused were sitting at a public place and making some planning to commit dacoity, they would talk at a volume which can be heard by others. Thirdly, if conversation between the accused to commit dacoity at night at Padla Shiv Shakti petrol pump was heard by the informant, it is difficult to believe that the accused would continue with the same conversation till the police party arrived at the disclosed place and could overhear the conversation. Above all, if the Inspector and members of his police force could overhear the conversation secretly, it is difficult to believe that three persons could escape from the spot because conversation could be heard only from close distance as the accused were not expected to talk at a louder pitch. In view of these circumstances, I find merit in the

contentions of the appellants that the story brought forth by the prosecution is highly improbable and difficult to believe. This Court in *Bagga alias Bangu's case (Supra)* in similar circumstances held that it is improbable that after secret information was received, till the police party reached at the spot, the accused were continuing to repeat their plan. It is also very improbable that at the very nick of the moment, when the police party reached at the spot, the accused started their conversation.

The Hon'ble Supreme Court of India in *Chaturi Yadav and others vs. State of Bihar 1979 AIR (SC) 1412* has held that merely because the accused had assembled, armed with weapons is not sufficient to hold that they were planning to commit dacoity. A similar view was taken by Patna high Court in *Gholtu Modi and others vs. State of Bihar 1986 Crl. Law Journal 1031*.

In view of the observations made hereinabove, I find it difficult to uphold the conviction of the appellants for commission of offence punishable under Sections 399, 402 IPC. As a consequence, conviction of the accused for the aforesaid offences is set aside and they are acquitted of the offence charged against them. The appellants be set at liberty forthwith, if they are not required in any other case.

(REKHA MITTAL)
JUDGE

07.01.2015
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