

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

CRR No.3300 of 2014(O&M)

Date of decision: 07.01.2015

Kuldeep Singh

.....Petitioner

versus

State of Haryana

.....Respondent

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr. Rahul Vats, Advocate for the petitioner
Mr.Chetan Sharma, AAG Haryana

1. *Whether Reporters of Local Newspapers 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?*

Kuldip Singh, J.

Kuldeep Singh has filed this revision against judgment dated 20.8.2014, passed by the learned Sessions Judge, Fatehabad, vide which his appeal against judgment of conviction and order of sentence dated 17.1.2013 and 21.1.2013 respectively, passed by the learned Additional Chief Judicial Magistrate, Fatehabad, was dismissed whereby he along with four other co-accused was held guilty under Sections 392 and 120B IPC and sentenced to undergo RI for three years and fine of Rs.5000/-, in default thereof, to undergo further RI for one month under Section 392 IPC. He was also sentenced to undergo RI for six months and fine of Rs.1000/-, in default thereof, to undergo further RI for seven days under Section 120B IPC. However, the learned Sessions Judge acquitted one of

the convicts Mehar Singh.

The brief facts necessary for the disposal of the present revision are that on 14.2.2009, Mehar Singh hired a taxi belonging to the complainant Binder Singh. Mehar Singh was accompanied by three boys and told that Ajay etc. are his relatives and are to go to village Ding Mandi. In the way, three boys told that they have to pick up one more person from Ratia. When they reached Ratia Bus stand, one more person was picked up and taxi proceeded for Fatehabad. Near village Ayalaki, Ajay @ Kala accused asked Binder Singh complainant to take a turn to village Boswal. When the complainant questioned him that they were to go to village Ding Mandi, then the accused put a pistol on his head and forced him to shift to the rear seat of the Car. One of the accused drove the car and took the same to village Shekhupur Soz. On the way, the complainant was relieved of Rs.4500/- from his purse, one mobile Nokia 1200 bearing Sim No.09814689248 and later on pushed the complainant out of the running car and fled towards Shekhupur Soz. The description of the other boys was also given in the complaint. Suffice to say that during the course of investigation in addition to the other accused, revisionist Kuldeep Singh was also apprehended.

Five persons, namely, Mehar Singh, Kuldeep Singh, Jagdish @ Jaggu, Ajay @ Kala and Ram Mehar were put to face trial.

In support of its case the prosecution examined ASI Hargian Singh (PW1), SI Yogesh Kumar (PW2), ASI Satpal Singh (PW3), HC Dalip Singh (PW4), Inspector Bimla Devi (PW5), SI

Charan Singh (PW6), Inspector Narsi (PW7), Satnam Singh (PW8), E/ASI Gurcharan Singh (PW9), Binder Singh complainant (PW10) and closed its evidence.

When examined under Section 313 Cr.P.C., the accused revisionist claimed innocence.

After hearing the parties and perusing the file, the learned Additional Chief Judicial Magistrate, Fatehabad convicted all of them under Section 392 IPC and 120B IPC and sentenced them as stated above. However, in appeal, Mehar Singh was acquitted. However, sentence of the remaining accused was maintained.

I have heard learned counsel for the parties and have gone through the file carefully.

During the investigation, it came out that on 20.2.2009, police received information that the accused Ajay @ Kala has come to his house. Therefore, a raid was conducted. It is alleged that the accused Kuldeep Singh alerted his brother Ajay @ Kala that police has come and helped him in scaling the wall and absconding from the spot. Therefore, he is alleged to have harboured his brother.

Learned counsel for the petitioner has argued that in this case only allegation against the revisionist Kuldeep Singh is that accused Ajay @ Kala has come to his house on 20.2.2009 and that accused Kuldeep Singh had alerted his brother about visit of police and helped him in scaling the wall and running away. In this regard, only testimony on the file is that of ASI Satpal Singh (PW3), who has asserted, that on 20.2.2009 he had joined the police party headed by SI SHO Narsi they had visited the house of Ajay @ Kala for

conducting the raid to nab Ajay @ Kala, where accused Kuldeep Singh was present and told his brother that police has come and assisted Ajay @ Kala to scale the boundary wall and run away. The cross examination of ASI Satpal Singh shows that house was that of Ajay @ Kala and some neighbours had also gathered at the spot. He claimed that he had seen accused Ajay @ Kala absconding the boundary wall. The boundary wall was of 7 feet height. When accused Ajay @ Kala ran away, the police was at a distance of 20 feet. However, Narsi Inspector while appearing as PW7 only stated that on 20.9.2009, accused Kuldeep Singh was arrested. He does not state that Kuldeep Singh had harboured his brother Ajay @ Kala and helped in running away.

A perusal of trial Court file shows that the trial Court had framed the charge against the accused under Sections 120B and 392 IPC. No charge was framed under Section 216 of Indian Penal Code. The learned Additional Chief Judicial Magistrate, Fatehabad convicted Kuldeep Singh under Sections 392 IPC read with Section 120B IPC, whereas there are no allegation that Kuldeep Singh had ever entered into criminal conspiracy with other co-accused for committing robbery. Therefore, charges under Section 392 IPC and 120B IPC are not proved against the accused Kuldeep Singh. In the absence of the revisionist Kuldeep Singh being charge sheeted under Section 216 IPC, he cannot be convicted for the said offence. Even otherwise, the statement of ASI Satpal Singh is that it was the house of Ajay @ Kala accused, where Kuldeep Singh was also present. Therefore, there is no question of harbouring accused Ajay

@ Kala in his own house. Many people had gathered at the spot and the presence of police was noticed by the neighbours and many other people. Therefore, the statement of ASI Satpal Singh that, only Kuldeep Singh had cautioned his brother Ajay @ Kala about the raid by the police, cannot be relied upon. The police was at the distance of 20 feet and in house it is not clear that there was no construction in between the wall which was scaled by Ajay @ Kala and the police party. Accused Kuldeep Singh might have extended some help to his brother out of sympathy without any criminal intent. It being so, the offence under Section 392 IPC and 120B IPC against the present revisionist is not proved.

Accordingly, the present revision is allowed and the impugned judgment dated 20.8.2014 passed by the learned Sessions Judge, Fatehabad and judgment of conviction and order of sentence dated 17.1.2013 and 21.1.2013 respectively, passed by the learned Additional Chief Judicial Magistrate, Fatehabad are set aside and revisionist Kuldeep Singh is acquitted of the charges under Sections 392 IPC and 120B IPC. He be released forthwith if not required in any other case.

07.01.2015
gk

(Kuldip Singh)
Judge