

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No.S-225-SB of 2004

Date of Decision : September 14, 2016

Subhash Kumar @ Bura and others

....Appellants

VERSUS

State of Punjab

....Respondent

CORAM : HON'BLE MR. JUSTICE T.P.S. MANN

Present : Mr. Vishwas Arora, Advocate for
Mr. Aman Kashyap, Advocate
for the appellants.

Mr. Vikram Bishnoi, Assistant Advocate General, Punjab.

T.P.S. MANN, J.

The appellants, namely, Subhash Kumar @ Bura, Ashok Kumar @ Patwari and Vipin Kumar, alongwith Rajiv Kumar and Sushil Kumar were tried for committing offences punishable under Sections 399 and 402 IPC. Vide judgment and order dated 23/24.12.2003, learned Additional Sessions Judge (Fast Track Court), Kapurthala acquitted all of them of the charge under Section 399 IPC. However, they were convicted under Section 402 IPC and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.2,000/- each and in default of payment of fine, to undergo further rigorous imprisonment for two months. Their period of detention during the investigation or trial was ordered to be set off against the substantive sentences awarded to them.

Aggrieved of their conviction and sentence, the appellants

filed the aforementioned appeal, which was admitted on 5.2.2004. Subsequently vide order dated 17.1.2005, this Court suspended their sentences of imprisonment subject to their furnishing bail bonds to the satisfaction of the Chief Judicial Magistrate, Kapurthala.

The case of the prosecution, in nutshell, is that on 1.1.2003, the police party headed by SI Gurwinder Singh, Station House Officer, Police Station Bholath, was present at Bus Stand, Bholath, in connection with patrolling where he received a secret information that the appellants and their co-accused Rajiv Kumar and Sushil Kumar, who used to indulge in extortion, were planning to commit dacoity while sitting in the cremation ground outside the *abadi* of village Bholath near the katcha passage leading to Gurudwara. He was also informed that all the five accused were armed with weapons and if raid was conducted, they could be apprehended. Finding the information to be reliable, SI Gurwinder Singh sent *ruqa* to the Police Station for registration of the case. He then conducted a raid at the designated place and apprehended the accused. Country made pistols and live cartridges were recovered from Ashok Kumar @ Patwari and Vipin Kumar, whereas spring actuated knife was recovered from Subhash Kumar @ Bura. One country made pistol and one sword were also recovered from the possession of Rajiv Kumar and Sushil Kumar, respectively.

In order to prove its case, the prosecution had examined PW1 HC Balwinder Singh, PW2 SI Gurwinder Singh and PW3 Shri Jaswant Singh, Reader.

When examined under Section 313 Cr.P.C., all the accused pleaded their innocence and false implication.

In their defence, the accused examined DW1 Ranbir Singh and DW2 Vipin Kumar accused, besides tendering documents Ex.DX, DX/A to Ex.DX/G.

The trial of the case ended with the conviction and sentence of all the accused, including the appellants, as mentioned above.

After hearing learned counsel for the parties and on going through the record, this Court finds that at the time of their apprehension, all the five accused were present in the cremation ground near the katcha passage leading to Gurudwara and planning to commit dacoity. Sushil Kumar accused was found in possession of a sword whereas Subhash Kumar @ Bura was carrying a spring actuated knife. The remaining three accused were armed with country made pistols, besides live cartridges. Despite lengthy cross-examination, the defence could not elicit any material from PW1 HC Balwinder Singh and PW2 SI Gurwinder Singh, from which it could be inferred that the appellants had been falsely implicated in the case. Their testimonies are cogent and convincing and can, thus, be relied upon to uphold the conviction of the appellants. Merely because no independent witness had been joined by the raiding party is no ground to reject the prosecution case, especially when PW2 SI Gurwinder Singh testified that when he had received secret information, no public person was available and the shops nearby were closed. Even on way to the designated place, attempt was made to join independent witnesses but none came forward.

In view of the above, this Court has no other option but to uphold the conviction of the appellants.

Coming to the question of sentence, it may be noticed that the appellants are facing the agony of criminal prosecution for the last more than 13½ years. It is pleaded on their behalf that apart from the present case as well as the connected case under Section 25 of the Arms Act, none of the appellants is involved in any other criminal case. It is also submitted that out of the sentence of five years imposed upon them, they have already undergone an actual period of more than 1 year and 3 months. They are on bail for the last more than 11 years. There is no material on the record from which it could be inferred that after being granted the concession of suspension of their sentence, they have misused the same in any manner. Prayer has, accordingly, been made for setting aside the remaining sentences of imprisonment of the appellants.

As per the custody certificate produced by the learned State counsel, Subhash Kumar @ Bura appellant has undergone an actual period of 1 year, 3 months and 18 days, Ashok Kumar @ Patwari has undergone 1 year, 3 months and 23 days, whereas Vipin Kumar appellant has undergone 1 year, 3 months and 4 days.

Taking into consideration the totality of the circumstances, this Court is of the view that no useful purpose will be served by sending the appellants behind the bars, once again, for undergoing their remaining sentences of imprisonment. Ends of justice would be suitably met if their substantive sentence of imprisonment is reduced to the one already undergone by them.

Resultantly, the conviction of the appellants for the offence under Section 402 IPC is upheld. Their substantive sentence of imprisonment is reduced to the one already undergone by them. The fine of Rs.2,000/- imposed upon each of them is, however, enhanced to Rs.6,000/- and in default thereof, they shall undergo rigorous imprisonment for six months.

The appeal is, accordingly, disposed of.

September 14, 2016
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(T.P.S. MANN)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No