

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-1133-SB-2005
Date of decision: May 20, 2016.

Naresh

... **Appellant**

v.

State of Haryana

... **Respondent**

2.

CRA-S-1127-SB-2005

Sat Narain @ Santu and Narender

... **Appellants**

v.

State of Haryana

... **Respondent**

CORAM: **HON'BLE MR. JUSTICE A.B. CHAUDHARI**

Present: Shri Rakesh Nehra, Advocate for the appellant
in CRA-S-1133-SB-2005.

Shri Rahul Vats, Advocate for the appellants
in CRA-S-1127-SB of 2005.

Shri Vijesh Sharma, Deputy Advocate General, Haryana.

1. *Whether Reporters of local papers 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?*

A.B. Chaudhari, J. (Oral):

These two appeals are directed against the judgment and
order dated 15.6.2005 in Sessions Case No.23 of 2004 decided by
learned Additional Sessions Judge, Rohtak in FIR No.114 dated
18.3.2004, registered under Sections 379, 398, 401 and 411 IPC and

Section 25 of the Arms Act, at Police Station City, Rohtak, by which the appellants were convicted for offences under Section 398 IPC and were sentenced to undergo RI for a period of 10 years and to pay a fine of Rs.15,000/- each under Section 398 IPC, in default to undergo further RI for two years. In addition, accused-appellant Narender was convicted and sentenced to undergo RI for two years and to pay a fine of Rs.4,000/- for offence under Section 25 of the Arms Act and in default of payment of fine, to undergo RI for further six months.

FACTS:

Briefly stated, the prosecution case was that on 18.3.2004, SHO Pawan Kumar was present at Sukhpura Chowk, Rohtak along with other police personnel in a private vehicle. He received a secret information that three boys having a motorcycle, armed with knife, iron rod and chain of motorcycle, were attempting to commit robbery near Chamaria turning. He rushed to the place with the police personnel. No sooner did he reach the spot, he stopped the jeep. All the accused rushed towards jeep pointing knife, iron rod and chain and asked the inmates to hand over the belongings but they were overpowered at the spot and were interrogated. They disclosed their respective names. The recoveries of the weapons were made. The motorcycle was seized which was found to have been stolen by accused Sat Narain and Narender 3-4 days ago from Ganaur. Ruqa Ex.P1 was then sent to the Police

Station City Rohtak and FIR Ex.P4 was accordingly registered. Rough site plan Ex.DB was prepared. Investigation was undertaken. Statements under Section 161 Cr.P.C. were recorded. After completion of investigation, a final report under Section 173 Cr.P.C. was prepared by SHO Pawan Kumar and was sent to the court.

In support of its case, the prosecution examined its witnesses including SHO Pawan Kumar. The prosecution closed its case. Statements of the accused under Section 313 Cr.P.C. were recorded. Finally the learned trial Judge convicted them, as stated above. Hence, this appeal.

ARGUMENTS:

In support of these two appeals, learned counsel for the respective appellants vehemently submitted that the impugned judgment and order of conviction and sentence of the appellants in both these appeals is perverse, illegal and contrary to the evidence on record. The counsel contended that the evidence of PW4 SHO Pawan Kumar and PW2 HC Jai Bhagwan was most unnatural, untrustworthy and liable to be rejected. The counsel contended that the very genesis of the prosecution case is wholly doubtful, in that there is no explanation coming forth from SHO Pawan Kumar as to how he endeavoured to perform his duty by hiring a private vehicle and then going to the spot with his alleged police officials. The theory that PW4 SHO Pawan Kumar had seen the entire incident and that the accused demanded the belongings from the inmates of the

jeep was liable to disbelieved since PW2 was sitting at the back of the jeep and it was improbable that he would have heard the alleged conversation of the demand of the belongings. The counsel then contended that there is hardly any evidence about attempt to commit robbery since Pawan Kumar did not say a word in his evidence that any demand was made from him. The counsel, therefore, contended that no offence could be made out or could be said to have been proved against the appellants and therefore, they are liable to be acquitted.

In the alternative, learned counsel for the appellants in both these appeals contended that the appellants have undergone sufficient sentence and since there is conviction recorded in the other case against the appellants, it is necessary to make an order of running of sentences concurrently in order to have reformist approach. Learned Counsel for the appellants submitted that at any rate, the sentence of 10 years in both the cases is also very harsh and therefore, power under Section 482 Cr.P.C. is required to be exercised.

Per contra, learned Deputy Advocate General appearing for the State of Haryana supported the impugned judgment and order and submitted that PW2 HC Jai Bhagwan in clear terms stated about the demand made by the accused persons who were having deadly weapons in their hands and who had stopped the jeep and clearly made an attempt to commit robbery. According to the Learned

Counsel for the State, there is no evidence that prosecution evidence has been shattered in any manner. The evidence of SHO Pawan Kumar and PW2 HC Jai Bhagwan is consistent, not at all disturbed in the cross examination in any manner and therefore, the trial Court was right in believing the same and recording conviction against the accused, appellants in these appeals.

As to the plea for running of the sentences concurrently, he opposed the plea and submitted that the appellants in these two appeals are the regular offenders and should not be given such benefit.

CONSIDERATION:

I have heard learned Counsel for the parties at length. I have perused the entire evidence of the prosecution witnesses who had tendered their evidence before the trial court. I have seen the documents as well. I have checked up the reasons recorded by the trial Judge for recording the conviction.

Having carefully read the entire evidence, I find that PW2 HC Jai Bhagwan and PW4 SHO Pawan Kumar are the star witnesses examined by the prosecution. Their evidence in the cross examination has not at all been shattered in any manner whatsoever. The submission that they had hired the private jeep and not the official jeep and that therefore their evidence should be discarded, in my opinion, is misconceived. There is no such requirement in law that the evidence of the police witnesses should be discarded if they

conduct the raid by going in a private jeep. I therefore reject the submission.

The evidence of SHO Pawan Kumar and PW2 HC Jai Bhagwan when read carefully, will clearly show that the appellants were having deadly weapons in their hands and were waiting to commit robbery. The SHO having received the secret information about the appellants attempting to commit robbery, reached the place in a private jeep and all the accused persons in an attempt to commit robbery, stopped the jeep and showed their weapons to the inmates of the jeep with a further demand to hand over the belongings. The incident occurred in the night. The evidence of the witnesses has not been shaken in the cross examination and PW2 clearly stated and corroborated the evidence of SHO. There is no reason for me to disbelieve their evidence in the instant appeals. It would be appropriate for me to quote the reasons given by the learned trial Judge on evidence for recording the conviction. The defence argument stated in para 25 has been correctly answered in para 26. I quote the following portion from para 25 and 26 of the learned trial Judge, which reads thus:-

“25. ... There are also so many improvements due to which the prosecution case becomes doubtful. PW2 stated that in Ruqa Ex.P1, it was mentioned that the accused asked to hand over the articles but this fact is missing in the statement of PW4. PW2 stated that one

boy came from one side and two boys came from other side. Whereas, PW4 stated that all the accused came in front of their jeep. This fact is missing in Ruqa Ex.P1. PW2 stated that the accused were threatened to be shot dead but PW4 did not say so. They also failed to tell the name of jeep driver. Had he taken them, they must have remembered his name. PW2 stated that he was sitting in the back portion of the jeep; then how he was able to see. PW2 stated that site plan Ex.DB was prepared by PW4 whereas PW4 stated that site plan Ex.DB was in the hands of Assistant Subordinate Inspector (ASI) Bhim Singh. Some of the documents i.e. Ex.P1 and Ex.DB and some statements of witnesses were also got prepared from him. I.O. has not explained why these documents were got prepared from other person. As per statement of PW4 it is clear that they were in civil dress when the raid was conducted whereas according to rule 4.4. of Chapter IV of Punjab Police Rules (PPR) police official can leave the police station without dress without prior permission from Superintendent of Police (SP). It was nowhere stated by PW4 that they obtained the permission. It shows that they did not go out of the police station and entire prosecution story is altogether false.

26. This argument is devoid of any force. The

discrepancies pointed out by learned defence counsel are minor. If the fact of handing over the articles was not stated by PW4, it does not mean that the statement of PW2 and ruqa Ex.P1 are altogether false. It is not possible for a person to tell all the facts in the subsequent statement. If the statement of a witness is recorded again after his statement, it may not be possible for him to tell all the facts in the same sequence. If PW2 was sitting in the back portion of jeep, it does not mean that he was unable to see anything. A person sitting in the back portion will always look forward and will be able to see. In the present case, the police people were going to apprehend the dacoits and he might be looking towards all the directions. PW2 has given the details about the act done by each accused, whereas PW4 has stated about their joint action. On the basis of site plan Ex.DB, it cannot be presumed that the entire prosecution case is false. PW2 might have remained under the impression of getting the site plan prepared. If PW4 got some documents prepared from ASI Bhim Singh, it does not mean that his investigation was not fair. As lot of writing work was to be done, he might have tired and taken help of ASI Bhim Singh. Even if they were not in dress, it cannot be presumed that they have committed any

illegality in this case. Such like matter can be looked into by the department. If they did not seek permission from SP, it does not mean that the accused should be allowed to go. They are to be tried for the offence committed by them.”

I, therefore, concur with the reasons recorded by the learned trial Judge for recording the conviction for the offence for which the appellants were convicted.

The finding of conviction is therefore confirmed.

The next question is about the sentence. The appellants Narender and Sat Narain were also convicted in Sessions case No.124 of 2003 arising out of FIR No.61 dated 8.5.2003, PS GRP Rohtak for an offence under Section 397 IPC and were sentenced to undergo RI for 7 years. A separate judgment is being written by me in these two appeals, namely CRA-S-901-SB of 2005 and CRA-S-2254-SB of 2008. The prayer made by counsel for the appellants to make an order for running of the sentences concurrently is being considered by me in those appeals which would obviously govern the said aspect in the other two appeals, i.e., CRA-S-901-SB-2005 and CRA-S-2254-SB-2008 arising out of FIR No.61.

The appellants were sentenced to undergo RI for 10 years for offence under Section 398 IPC and appellant Narender in addition was sentenced to under RI for 2 year and to pay a fine of Rs.4,000/- for an offence under Section 25 of the Arms Act. In the

other FIR, namely, FIR No.61, the appellants Narender and Sat Narain were sentenced to undergo RI for 7 years for offence under Section 397 IPC. Obviously, Naresh who was sentenced to undergo RI for 10 years was not convicted in the case arising out of FIR No.61. That is a fact which is clear from the custody certificates produced on record with these appeals. The appellants have undergone sufficient number of years of sentence in these appeals. The appellants Narender and Sat Narain, so also Naresh have been sentenced to undergo imprisonment for 10 years in the case arising out of FIR No.114. In addition, the appellant Narender and Sat Narain only will have to undergo imprisonment for 7 years arising out of FIR No.61. I find that though it is true that these appellants were involved in multiple offences, the imprisonment for 10 years for these offences of attempt to commit robbery with deadly weapons should sub-serve the interest of justice. If the sentence for a period of 7 years arising out of FIR No.61 is not made concurrent, these appellants namely, Narender and Sat Narain will have to undergo total imprisonment for 17 years. I think that would be a very long period. It would be appropriate to make the sentence to run concurrently. Nevertheless, the appellants will have to undergo imprisonment for 10 years and that should sub-serve the interest of justice. In that view of the matter, applying the parameters laid down by the Full Bench of this Court in the case of Jang Singh v/s State of Punjab, 2008(1) RCR (Crl.) 323, I am inclined to make the sentence

of 7 years arising out of FIR No.61 (Sessions case No.124 of 2003) concurrent with the sentence of 10 years arising out of FIR No.114 (Sessions case No.23 of 2004).

In the result, I make the following order:-

ORDER

[i] Crl. Appeals No.1127-SB and 1133-SB of 2005 are dismissed;

[ii] Conviction of the appellants Narender, Sat Narain and Naresh for offence under Section 397 IPC is confirmed.

[iii] Conviction of appellant Narender under Section 25 of the Arms Act is confirmed.

[iv] Sentence awarded to the appellants Narender and Sat Narain in Sessions case No.124 of 2003 arising out of FIR No.61 for offence under Section 397 IPC of 7 years is ordered to run concurrently with the sentence of 10 years awarded to them for offence under Section 398 IPC arising out of FIR No.114 (Sessions Case No.23 of 2004).

[v] This order shall be carried out accordingly.

May 20, 2016.
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[A.B. Chaudhari]
Judge