

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

**CRA-D-745-DB of 2013 and
CRM 11857 of 2014**
Date of Decision : August 30, 2016

Vinod and others

....Appellants

Versus

State of Haryana

....Respondent

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

Present : Mr. J.K. Verma, Advocate
for appellants No.1, 2, 5, 6, 8 and 10.

Mr. Aman Pal, Advocate
for appellants No.3 and 4.

Mr. Nitin Rathee, Advocate
for appellant No.7.

Mr. Parmod Parmar, Advocate
for appellant No.9.

Mr. Rakesh Nehra, Advocate
for appellant No.11.

Mr. M.S. Sidhu, Additional Advocate General, Haryana.

T.P.S. MANN, J.

The convicts have filed the present appeal for challenging the judgment of conviction dated 1.5.2013 and order of sentence dated 10.5.2013 passed by learned Additional Sessions Judge, Rohtak.

Vide impugned judgment and order, learned trial Court convicted the appellants, as mentioned below:-

- (i) Convicted under Section 342 IPC and sentenced to undergo rigorous imprisonment for one year each;
- (ii) Convicted under Section 395 IPC and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.5,000/- each and in default of payment of fine, to undergo further simple imprisonment for six months;
- (iii) Convicted under Section 396 IPC and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.5,000/- each and in default of payment of fine, to undergo further simple imprisonment for six months; and
- (iv) Convicted under Section 397 IPC and sentenced to undergo rigorous imprisonment for a period of seven years each.

Besides, Raju-appellant was also convicted under Section 25 of the Arms Act and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.2,000/- and in default of payment of fine, to undergo further simple imprisonment for two months. All the sentences were ordered to run concurrently.

The facts leading to the conviction and sentence of the appellants are that Monu son of Ram Bhaj submitted written complaint Ex. P26 before Inspector Bharat Bhushan, Station House Officer, Police

Station Sadar, Rohtak on 25.10.2008 at 4.05 a.m. at Madhak Temple, Kiloj, which was sent to the Police Station for registration of case and, accordingly, FIR Ex.P26/2 was registered at Police Station Sadar, Rohtak on 25.10.2008 at 5.25 a.m. by ASI Satnam Singh under Sections 342/395/397 IPC and Section 25 of the Arms Act. Special report sent through Constable Malkiat Singh was received by the Ilaqa Magistrate on 25.10.2008 at 9.05 a.m. Contents of written statement Ex.P26 are as under :-

“Sir, Tonight, I, alongwith Mukesh son of Suraj Bhan, caste Harijan, resident of village Kiloj (Dupana) was sleeping on the second storey of Madhak Mandir. We do wrestling in the Akhara there. At about 2.15 a.m., there was a knock at the door and someone asked for opening the door. I got up and opened the door found 8/9 boys in front of the door. They were in the age group of 20-25 years. All of them were with muffled faces. One of them was having French cut beard and aged about forty years. They were of medium heights and wearing trousers and shirts. They were of dark complexion and speaking in Hindi, which showed that they belonged to Mewat side. All of them were armed with pistols, knives and iron rod. They put the weapons on my temple. They asked as to what the place was? I replied that it was a temple where we

perform rituals. They told me that we should lay ourselves on the ground and they would not do any harm to us. They snatched our mobiles and bolted the door from outside after detaining us inside the room. Out of them one kept standing in front of the door whereas one or two went up the roof and the remaining went towards the temple. Out of them some went inside the temple where Baba Pappu Dass, also known as Baba Sarvan Dass, was sleeping. His door was forcibly opened and they started to loot the luggage. When it was resented by Baba, they fired at him. They left the place after carrying the money and luggage lying in the almirah. We would inform you about the articles after verifying. Thereafter, I informed my coach Ajit on mobile, who came from village Jasrana on motorcycle and, thereafter, information was given in the village. When a crusier vehicle came we immediately brought the Baba to PGIMS, Rohtak for treatment. I can identify the assailant who was having French cut beard, if brought before him. Legal action be taken.

Sd/-
(Monu)
s/o Ram Bhaj, caste Jat,
village Kiloj (Dujana)
25.10.2008"

During the investigation, Inspector Bharat Bhushan called FSL team, dog squad, photographers and Fingerprint Expert at the spot. He lifted blood stained earth, pellet, small danda, blood stained clothes and iron rod from the spot, which were taken into possession. After receiving information that the Baba, who had received injuries, had expired in PGIMS, Rohtak, he went to Emergency Ward of the hospital and prepared inquest. The dead body was, thereafter, subjected to post-mortem.

It is also the prosecution case that on 29.11.2008, Inspector Sajjan Kumar interrogated Pappu, Ganja @ Karma, Mangu, Rajesh son of Chanda, Shiv Kumar and Arjun and recorded their disclosure statements to the effect that they alongwith their co-accused had murdered Pappu Maharaj in Kilo Mandir and robbed the cash from there. On the same day, Inspector Devinder arrested Vinod son of Ram Avtar, Raju, Suresh, Vinod and Rajesh son of Shri Pal and recorded their disclosure statements that they had murdered Baba Maharaj and robbed cash therefrom. They also stated that they had caused injuries with lathis and dandas and could get the place of occurrence demarcated.

On 10.12.2008, Inspector Ram Kishan produced Vinod son of Ram Avtar and after obtaining permission, joined them in the investigation on 14.12.2008. SI Banarsi Dass interrogated Raju who disclosed about the occurrence and got recovered pistol of .315 bore

alongwith empty cartridges. Vinod son of Ram Avtar got recovered iron rod. On 2.1.2009, SI Banarsi Dass interrogated Rajesh son of Chanda and Shiv Kumar and recorded their disclosure statements. Pappu accused also suffered disclosure statement regarding having committed murder alongwith his co-accused and had snatched Rs.22,000/-, one watch and a lota from the priest. Arjun accused also suffered disclosure statement of being an accomplice and iron rod with which he was armed with taken into possession. Rajesh son of Chanda accused made disclosure statement that he was carrying an iron rod when the Baba was killed and received Rs.2,000/- as his share. The amount had already been spent by him and he got recovered the iron rod. Rajesh son of Shri Pal got demarcated the place of occurrence. Mangu and Karma accused also demarcated the place of occurrence. Pappu accused also got recovered a kamandal of brass on which the name of Madha Mandir Kiloj was inscribed. He also got recovered a watch. On 5.1.2009, Mangu and Arjun accused suffered disclosure statements and after demarcating the place of occurrence, got recovered iron rods. On 17.2.2009, HC Sumit Kumar visited the place of occurrence and prepared scale site plan on the pointing of Monu.

On completion of investigation, Inspector Simardeep, SHO, Police Station Sadar, Rohtak prepared the challan of the case after completing necessary formalities. The case was, thereafter, committed to the Court of Sessions where the appellants were charged for

committing the offences punishable under Sections 342, 395 read with Sections 397, 396 read with 397 and 460 IPC. Raju, Mangu, Arjun, Vinod son of Ram Avtar were also charged under Section 25 of the Arms Act, to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined 29 witnesses.

PW1 Baba Aapka Dass deposed that on 25.10.2008 at about 1.30 a.m. he and Satyawaan were sleeping in a room of the Mandir and 15-20 young boys came in the room and put a pistol in his mouth and they broke open the almirah and took out articles from the same. After that they went near Baba Sarvan Dass who tried to stop them but they fired at him and after looting the articles ran away from the spot. He further deposed about Arjun-accused getting recovered a country-made pistol and an empty cartridge from the Mandir.

PW2 Chela Seva Dass deposed about the accused entering in the Mandir in the night armed with deadly weapons and he heard a gun shot. The accused had a fight with Baba Sarvan Dass and he was killed. He also deposed about accused snatching his wrist watch.

PW3 Dr. Sushma Jain conducted the post-mortem of Baba Sarvan Dass and proved the post-mortem report. She also deposed about the police producing before her the iron rods for seeking her opinion about the injuries caused by the same and another application was also moved by the police asking her opinion about the injuries

caused by the wooden pieces. She opined that possibility cannot be ruled out that the injuries were caused by those wooden pieces.

PW4 Baba Hoshier Singh, who was also present in the Mandir at that time, deposed about the accused removing Rs.22,000/- from his pocket and also taking away one kamandal. He also stated that he heard the gun shot and came to know about the murder of Baba Sarvan Dass.

PW5 Monu, complainant in the present case, reiterated the version as made in the complaint made by him to the police about the occurrence in the Mandir and committing dacoity, snatching his mobile and committing the murder of Baba Sarvan Dass.

PW6 Satyawaan was also present in the Mandir when the accused came there and he also deposed about the dacoity committed by the accused and he also heard gun shot. He deposed that on the calling of Monu, Ajit had also come at the spot. Subsequently, on 5.1.2009 accused Mangu and Arjun got recovered iron rods from the bushes of the temple.

PW7 Om Parkash proved the sanction granted by the District Magistrate for prosecution of accused-Raju.

PW8 ASI Satnam Singh deposed about recording the formal FIR in the present case and sending of the special reports.

PW9 EHC Rustam deposed about getting conducted the

post-mortem of deceased on the asking of Inspector Bharat Bhushan and handing over the documents given to him by the doctor to the Investigating Officer.

PW10 HC Sumit Kumar deposed about the preparation of scaled site plan by him.

PW11 ASI Hardawari Lal deposed that on 29.11.2008 during the investigation of FIR No. 272/08, Police Station Tauru accused Pappu, Karma, Mangu, Rajesh, Shiv Kumar and Arjun were interrogated in his presence and they had disclosed about committing the murder of the Baba in Kilo Mandir and having robbed cash from there.

PW12 EHC Mukhtiar Singh deposed that he was witness to the disclosure statement made by Pappu, Ganja @ Karma, Mangu Rajesh, Shiv Kumar and a Arjun in a case registered at Police Station Tauru, Mewat.

PW13 EHC Surender Singh deposed about taking photographs of the spot.

PW14 Mukesh was also present at the spot when accused committed the dacoity and he also deposed about the murder committed by accused Pappu. He also deposed about police visiting the spot and lifting the blood stained earth, a piece of pellet, an iron rod and blood stained clothes.

PW15 Inspector Sajjan Kumar deposed being posted as

SHO, Police Station Tauru on 29.11.2008 where he had interrogated accused Pappu, Ganja @ Karma, Mangu, Rajesh, Shiv Kumar and Arjun who disclosed about committing the murder of Baba in Kilo Mandir, Rohtak.

PW16 HC Malkiat Singh deposed about delivering of special report to the Ilqa Magistrate.

PW17 Yashpal Sapra proved the disclosure statement made by the accused in the case arising out of FIR No. 272/08, Police Station Tauru.

PW18 ASI Jaiveer Singh deposed about the disclosure statement made by accused on 4.1.2009 before SI Banarsi Dass. Accused Mangu and Arjun also demarcated the spot and got recovered the iron rods.

PW19 ASI Jai Bhagwan deposed about the accused making disclosure statement in his presence.

PW20 ASI Anesh Kumar was also a witness to the disclosure statement made by accused Pappu, Arjun, Shiv Kumar, Rajesh and Mangu and on the basis of the same getting the spot demarcated and accused Arjun and Mangu getting the iron rods recovered.

PW21 Inspector Bharat Bhushan deposed that on receiving information about firing in village Kilo on 25.10.2008 he went to the Mandir and complainant Monu gave him a complaint Ex.P26 and he got

the FIR registered. FSL team and the dog squad were called at the spot and he lifted blood stained earth, a danda of wood and blood stained clothes. He also received the information of death of Baba in PGIMS, Rohtak and he prepared the inquest report. He also got conducted the post-mortem of the deceased.

PW22 SI Balwaan Singh deposed about making of disclosure statements by the accused in his presence.

PW23 Constable Amit Kumar deposed that on the interrogation of accused-Pappu a kamandal of brass was recovered and accused Ganja @ Karma got recovered a watch from the house of Pappu.

PW24 Baljeet Singh deposed about depositing the case property in FSL, Madhubana.

PW25 Sukhdarshan deposed on similar lines.

PW26 SI Ram Pal deposed that on interrogation accused-Raju made a disclosure statement to him and got recovered a pistol in the presence of Baba Aapka Dass and accused Vinod got recovered an iron rod. Accused Raju, Rajesh, Vinod, Suresh and Vinod Babu got demarcated the place of occurrence.

PW27 SI Banarsi Dass deposed about the disclosure statement made by accused Raju, on the basis of which he got recovered a pistol and empty cartridge. Accused Vinod son of Ram

Avtar got recovered an iron rod and other accused got demarcated the place of occurrence. On 4.1.2009, accused Ganja @ Karma made a disclosure statement and got recovered a watch and accused-Pappu got recovered a kamandal of brass. On 5.1.2009, accused Mangu and Arjun got recovered iron rods.

PW27(A) SI Balwaan Singh also deposed about various steps taken by him during the investigation of the case.

PW28 Inspector Ram Kishan deposed about joining accused Vinod son of Ram Avtar, Vinod Babu son of Mukesh, Rajesh and Suresh in the investigation and recording their disclosure statements.

PW29 Inspector Devender Singh deposed about the disclosure statements made by accused in case FIR No. 272/08 registered at Police Station, Tauru.

When examined under Section 319 Cr.P.C., all the appellants pleaded that they were innocent and falsely implicated in the case after a long gap of one year. No independent witness was joined by the Investigating Officer at the time of recording of disclosure statements. No identification parade was conducted. False recoveries were planted upon them. The police obtained their signatures on blank papers and, later on, those papers were converted into police proceedings. It was a case of planned murder by some unknown persons. None of the appellants was named as accused in the FIR.

However, in their defence, the appellants did not produce any evidence.

After hearing learned counsel for the parties and on going through the evidence, learned trial Court convicted and sentenced the appellants, as mentioned above.

This Court has heard learned State counsel, learned counsel for the appellants, besides going through the record.

PW1 Baba Aapka Dass testified that on 25.10.2008 at about 1.30 a.m., he and Satyawaan were sleeping in a room of Mandir when 15/20 young boys came in the room after opening the door. They put the pistol in his mouth and also in the mouth of Satyawaan. They broke open the almirah and took articles and cash amount with them. Thereafter, they reached Dhuna near the Mandir where Baba Sarwan Dass was sleeping. They started looting the Mandir. When Baba Sarwan Dass tried to stop them, they fired at him hitting on his right thigh, neck and head. All the accused, thereafter, ran away from the spot. He could identify those persons. Three of them had not covered their faces while rest were in muffled faces. He could identified those three boys who were not in muffled faces. He then identified Pappu, Vinod @ Babu and Raju son of Shri Pal accused. He also deposed about Arjun accused getting recovered a country made pistol and empty cartridge.

PW2 Chela Sewa Dass corroborated the prosecution case, including fatal assault upon Baba Sarwan Dass. However, he deposed that he could not identify the accused as he had a weak eye-sight.

PW4 Baba Hoshiair Singh testified about the occurrence. However, he stated that all the accused were in muffled faces but he could recognize three of them. He identified those three by touching Vinod @ Babu, Vinod son of Ram Avtar and Raju son of Shri Pal. In his cross-examination, he stated that it was dark at the time of the incident and there was no light. All the accused were in muffled faces. He went on to add that he could recognize the above three accused as per his guess as they were in muffled faces. He also stated that he could see the muffled faces of the accused and the police had shown the above said three accused to him.

PW5 Monu complainant stated that 8/9 young boys had come with muffled faces and one of them was having a french cut beard. He deposed about the ocular account. He went on to state that the person having french cut beard that day was present in the Court. However, he did not state as to who was the accused who was having french beard and present in the Court. In his cross-examination, he stated that he never gave any statement to any authority after that day. He also deposed that he had never met the accused before appearing in the Court. According to him, the occurrence had taken place at about 1.30 a.m. and it was too dark at that time. He also stated that he had not informed the police about the occurrence and excepting one accused, all the accused were in muffled faces.

PW6 Satyawaan testified that on 25.10.2008 at about

1.00/1.30 a.m. when he and Baba Aapka Dass were sleeping in the Dharamshala/Temple someone knocked at the door and when he opened the door, 15/20 young boys were present there. Out of them, three were with muffled faces. He went on to narrate the details of the occurrence. In his cross-examination, he testified that excepting three persons, all the other accused were in muffled faces. He then stated that he could not identify the accused by name but he could identify them by face.

PW14 Mukesh also deposed about the manner in which the occurrence had taken place. In his cross-examination, he stated that he could not identify the assailants who were present in the Court.

From the FIR as well as from the statements of PW1 Baba Aapka Dass, PW2 Chela Sewa Dass, PW4 Baba Hoshier Singh, PW5 Monu, PW6 Satyawaan, and PW14 Mukesh made in the Court, it is clear that none of the appellants was named as accused. During the investigation of FIR No.272 dated 23.11.2008 registered at Police Station Tauru under Sections 458 and 460 IPC, the Investigating Agency came to know about the accused to be involved in the present case and, accordingly, they were arrested and subjected to interrogation.

During the investigation of the case, Vinod son of Ram Avtar, Raju, Pappu, Mangu, Arjun and Ganja @ Karma accused pursuant to their disclosure statements got recovered iron rod Ex.P4,

county-made pistol Ex.P1, brass lota (kamandal) Ex.P86, iron rod Ex.P27, iron rod Ex.P28 and wrist watch Ex.P29. Similarly, PW1 Baba Aapka Dass had identified Vinod Babu, Rajesh son of Shri Pal and Pappu in the Court, whereas PW4 Baba Hoshier Singh had identified Vinod son of Ram Avtar, Vinod Babu and Rajesh son of Shri Pal to be the accused while deposing before the trial Court. PW2 Chela Sewa Dass has deposed that he could not identify any of the accused in the Court because of weak eye sight. PW5 Monu referred about one of the accused having french cut beard to be involved in the crime. However, he did not identify the said accused in the Court. PW6 Satyawaan and PW14 Mukesh also did not identify any of the accused while deposing before the learned trial Court.

These accused were, thus, found to be involved in the crime. At the same time, no recovery was effected at the instance of Rajesh son of Shri Pal, Suresh, Rajesh son of Chanda and Shiv Kumar accused and if that be the position, merely because they had got demarcated the place of occurrence or admitted their involvement, is no ground to fasten the liability upon them. In any case, extending the benefit of doubt to the said accused would be justified.

Resultantly, the conviction and sentence of Rajesh @ Shri Pal (appellant No.4), Suresh (appellant No.5), Rajesh son of Chanda (appellant No.8) and Shiv Kumar (appellant No.9) is set aside and they are acquitted of the charge against them. The conviction and

sentence of Vinod son of Ram Avtar (appellant No.1), Vinod Babu (appellant No.2), Raju (appellant No.3), Pappu (appellant No.6), Mangu (appellant No.7), Arjun (appellant No.10) and Ganja @ Karma (appellant No.11) is upheld.

The appeal is, accordingly, disposed of.

CRM 11857 of 2014

This application has been filed by convict-Karma @ Ganja seeking directions to the effect that the substantive sentences awarded to him in three criminal cases, i.e. Sessions case No.13/2009 (CRA-D-745-DB of 2015), Sessions case No.RT-4 of 2009-10 (CRA-S-51-SB-2011) and Sessions case No.21/2010 (CRA-S-613-SB of 2012) shall run concurrently.

From a perusal of the application it is made out that the applicant stands convicted and sentenced in three cases. First in point of time was FIR No.316 dated 29.10.2008, Police Station Model Town, Rewari in which he was convicted under Sections 459 and 380 IPC and sentenced to undergo imprisonment for seven years. Second one in point of time was the case arising out of FIR No.219 dated 31.10.2008, Police Station Kosli, District Rewari in which he was convicted under Sections 450, 395 and 397 IPC and sentenced to undergo imprisonment for seven years. The third one had arisen out of FIR No.303 dated 25.10.2008, Police Station Sadar Rohtak, in which he was convicted under Sections 342, 395, 396 and 397 IPC and sentenced to undergo

imprisonment for life.

From the above, it is made out that the applicant is a hardened criminal, having been convicted and sentenced in three cases which are graver in nature. Therefore, it would not be fit and proper to order the sentences of imprisonment imposed upon him in the three cases to run concurrently.

The application is without any merit and, therefore, dismissed.

August 30, 2016
satish

(T.P.S. MANN)
JUDGE

(GURMIT RAM)
JUDGE

Whether reasoned/speaking : YES / NO

Whether reportable : YES / NO