

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

CRA S-736-SB of 2004

Date of Decision : September 21, 2016

Vijay Pal @ Shastri and others		Appellants
	Versus	
State of Haryana		Respondent

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

Present : Mr. Dilpreet Singh, Advocate
for the appellants.

Mr. Ashok S. Chaudhary, Addl. A.G., Haryana.

T.P.S.MANN, J.

The appellants, namely, Vijay Pal @ Shastri, Pale Ram and Ravinder, residents of village Rawaldhi, District Bhiwani were tried for committing offences punishable under Sections 398 and 401 IPC. Vijay Pal @ Shastri was also tried for committing offence punishable under Section 25 of the Arms Act. Vide judgment and order dated 1/3.3.2004, learned Additional Sessions Judge (Fast Track Court) Bhiwani convicted them for the aforementioned offences and sentenced them as below:-

- (i) All the appellants to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs.1,000/- each under Section 398 IPC and in default of payment of fine, to further

undergo simple imprisonment for a period of six month;

- (ii) All the appellants to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.1,000/- each for the offence under Section 401 IPC and in default of payment of fine, to further undergo simple imprisonment for a period of six months; and
- (iii) Vijay Pal @ Shastri appellant was also sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.500/- for the offence under Section 25 of the Arms Act and in default of payment of fine, to further undergo simple imprisonment for a period of three months.

All the sentences were ordered to run concurrently. The period, which the convicts had already undergone during investigation and trial was ordered to be set off against the period of sentences awarded to them.

According to the prosecution, on 22.4.2003, Sub-Inspector Pehlad Singh, Station House Officer, Police Station Sadar, Dadri along with his fellow officials was present at Bus Stand of Samaspur, where he received secret information that Vijay Pal @ Shastri, Pale Ram and Ravinder were present at the Canal bridge Samaspur-Behrod in a Tata Spacio vehicle of white colour but without registration number and were attempting to commit robbery at pistol point upon the occupants of the vehicles passing through that road after getting them stopped

and in case a raid was conducted, they could be apprehended. The information, so received was found to be reliable. Accordingly, Sub Inspector Pehlad Singh tried to join public witnesses but due to night hours no one was available. Sub-Inspector Pehlad Singh prepared a raiding party. They switched off red light atop their vehicle and proceeded towards the site of occurrence. On reaching canal bridge, one person signaled their vehicle to stop by showing the torch light. Another person tried to hit the vehicle with iron rod whereas the third person pointed the pistol towards the vehicle. Sub-Inspector Pehlad Singh got stopped his vehicle and with the assistance of other police officials apprehended the three accused persons at the spot. One of the accused persons disclosed his identity as Vijay Pal @ Shastri. When searched, he was found to be having one country made pistol of .12 bore along with one cartridge. The second person disclosed his identity as Pale Ram. He was having iron rod in his hands, which was taken into possession. The third person disclosed his identity as Ravinder. He was carrying a torch in his hand, which was taken into possession. Tata Spacio vehicle of the accused was also taken into possession. Ruqa was prepared by Sub-Inspector Pehlad Singh and sent to Police Station Sadar, Dadri where on its basis FIR No. 97 dated 22.4.2003, under Sections 398 and 401 IPC and Section 25 of the Arms Act was registered. Sub-Inspector Pehlad Singh, then carried out further investigation and arrested the accused.

At the trial, the prosecution examined Assistant

Sub-Inspector Jai Ram as PW1, Assistant Sub-Inspector Sultan Singh as PW2, Rajpal as PW3, Head Constable Jai Pal Singh, Armourer as PW4, Bhisham Chander, Reader to District Magistrate as PW5, Balbir Singh, Patwari as PW6 and Sub-Inspector Pehlad Singh as PW7.

When examined under Section 313 Cr.P.C., the appellants denied all the allegations levelled against them.

In their defence, the appellants did not examine any evidence.

The trial Court, after going through the evidence brought on record and hearing learned counsel for the parties, held the appellants guilty of the offences, for which, they stood charged and, accordingly, convicted and sentenced them, as mentioned above.

This Court has heard learned counsel for the parties and scanned the evidence with their able assistance.

Learned counsel for the appellants has submitted that it was well nigh impossible for the secret informer to know the names of the three appellants, who according to the secret informer were standing at Samaspur-Behrod road and attempting to commit robbery on pistol point. However, it has come on record that the secret informer while passing the information to Sub-Inspector Pehlad Singh had clearly mentioned the names, parentages and addresses of the assailants and the information, so received by SI Pehlad Singh was found to be reliable. This fact is further corroborated from the testimonies of PW7 and other police officials, who had overpowered

the appellants and after inquiry, they had confirmed the fact that they were the same persons about whom the secret informer had apprised Sub-Inspector Pehlad Singh.

The defence has tried to argue that the prosecution has examined only official witnesses in support of its case and no independent witness was joined in the investigation. However, the fact remains that it was night time, when Sub-Inspector Pehlad Singh had received secret information when no independent witness was likely to be available for being associated in the investigation. At the same time, it may be noticed that some persons were available but they refused to join the police party. Even otherwise, prosecution case cannot be rejected solely on the ground that only official witnesses have been examined by the prosecution in support of its case.

Learned counsel for the appellants has submitted that it was highly improbable, that the appellants would have stopped a police vehicle. On the other hand, on noticing that the police vehicle was coming, they would have run away so as to avoid apprehension.

It is the case of the prosecution that after receiving secret information and constituting a raiding party, Sub-Inspector Pehlad Singh and others started for the place where the appellants were committing robbery upon the occupants of the passing vehicles. Before starting for the aforementioned purpose, Sub-Inspector Pehlad Singh ensured that the red light atop the police vehicle was switched off and under such a situation, none of the appellants could have

imagined that the vehicle whom they were trying to stop belonged to the police.

Another argument raised by learned counsel for the appellants is that once Sub-Inspector Pehlad Singh had apprehended the appellants and recovered the weapons from them, he assumed the character of a complainant and, thus, could not have investigated the case.

It is the case of the prosecution that Sub-Inspector Pehlad Singh had received secret information, pursuant to which, he constituted a raiding party and reached the spot in the official vehicle. After apprehending the appellants and recovering various articles from them, he prepared ruqa, on the basis of which, FIR came to be registered against the appellants. Apart from the testimony of PW7 Sub-Inspector Pehlad Singh, prosecution relied upon the testimony of PW2 ASI Sultan Singh, who was also part of the raiding party and reached the place of occurrence in the vehicle. Head Constable Sheotaj Singh, who was also in the raiding party was given up by the learned Public Prosecutor as unnecessary. With the apprehension of the appellants and recovery of various articles from them, Sub-Inspector Pehlad Singh was required to prepare and send ruqa, which he did and on its basis, FIR came to be registered. Beyond that he had nothing else to do excepting conducting certain formalities by way of obtaining an order of sanction for prosecuting Vijay Pal @ Shastri, appellant for the offence under Section 25 of the Arms Act,

besides, getting the country made pistol recovered from Vijay Pal @ Shastri mechanically examined from PW4 Constable Jai Pal Singh, Armourer. Thus, no prejudice was caused to any of the appellants in case Sub-Inspector Pehlad Singh after assuming the character of the complainant, carried out some more investigation.

For making out commission of offence under Section 398 IPC, the prosecution is required to establish that the assailants were armed with deadly weapons at the time of the occurrence. In the present case, Ravinder appellant was shown to be carrying a torch which was duly recovered. Said torch cannot be said to be a deadly weapon and, thus, his conviction for the offence under Section 398 IPC cannot be sustained. At the same time, Vijay Pal @ Shastri appellant was holding .12 bore country made pistol. It cannot be said that the pistol is not a deadly weapon and, therefore, his conviction for the offence under Section 398 IPC is perfectly in order. Now comes the case of Pale Ram appellant, who was carrying an iron rod and trying to hit the vehicle with the same. The question is as to whether an iron rod can be considered to be a deadly weapon. This issue arose before the High Court of Delhi in the case of **Bijender @ Naushad Vs. State**, Criminal Appeal No.414/2013, decided on 13.2.2014. After observing that the expression "deadly weapon" had not been defined anywhere in the Code and the natural and grammatical meaning of "deadly weapon" would be a weapon which could cause death of a human being, it was held that though every

iron rod may not qualify as a deadly weapon an iron rod which was 53 cms. long and had pointed ends on both sides could certainly cause death of human being, if it is used as a weapon of offence at a vital part of the body, such as head of human being. The relevant observation is reproduced here-in-below :-

"Coming to the question as to whether the iron rod can be said to be a deadly weapon or not, admittedly, the expression "deadly weapon" has not been defined anywhere in the Code. The natural and grammatical meaning of "deadly weapon" would be a weapon which can cause death of a human being. It has come in the evidence that the iron rod which the appellant was having in his hand had pointed ends on both sides. The length of the iron rod was 53 cms. as noted in the seizure memo Ex.PW2/A. In my view, though every iron rod may not qualify as a deadly weapon, an iron rod which is 53 cms long and has pointed ends on both sides can certainly cause death of a human being, if it is used as a weapon of offence at a vital part of the body such as head of a human being".

In the present case, both the ends of the iron rod were blunt and not pointed. Under these circumstances, merely because the length of the iron rod was 2'-4", it cannot be said that Pale Ram appellant was armed with a deadly weapon. Therefore, he deserves

exoneration of the offence under Section 398 IPC.

At the same time, no case is made for for any interference in the conviction of the appellants for the offence under Section 401 IPC and also of Vijay Pal @ Shastri under Section 25 of the Arms Act.

The appellants are facing the agony of criminal prosecution for the last more than thirteen years. As per the custody certificates produced by the learned State counsel, Ravinder appellant is not involved or convicted in any other case whereas Pale Ram was implicated in one more case i.e. FIR No.137 dated 12.7.2005 under Sections 8/9 of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 as he had over-stayed parole. For these reasons, a case is made out for granting some concession to Pale Ram and Ravinder appellants in the matter of sentence of imprisonment for the offence under Section 401 IPC.

Resultantly, the conviction of Vijay Pal @ Shastri appellant for the offences under Sections 398 and 401 IPC and also for the offence under Section 25 of the Arms Act is upheld. His sentences of imprisonment and fine along with their default clauses are maintained. All the substantive sentences shall run concurrently. At the same time, conviction and sentence of Pale Ram and Ravinder appellants for the offence under Section 398 IPC is set aside, whereas their conviction for the offence under Section 401 IPC is upheld. Their substantive sentences of imprisonment for the offence under Section

401 IPC is reduced from five years to rigorous imprisonment for four years. However, the sentence of fine for the offence under Section 401 IPC along with its default clause is maintained.

The appeal is, accordingly, disposed of.

September 21, 2016
amit rana

(T.P.S. MANN)
JUDGE

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