

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

**CRA-S-737-SB of 2004.
Date of Decision: July 27, 2016.**

PAWAN KUMAR AND OTHERSAPPELLANTS.

VERSUS

STATE OF HARYANARESPONDENT.

CORAM : HON'BLE MRS. JUSTICE SNEH PRASHAR

Present: Mr. Vijay Saini, Advocate for
Mr. Rakesh Nehra, Advocate for the appellants.

Mr. Ashok Mutreja, Deputy Advocate General, Haryana.

SNEH PRASHAR, J.

This appeal was preferred by appellants Pawan Kumar, Jai Bhagwan, Joginder Singh and Heera Singh, assailing the judgment of conviction dated 19.02.2004 and order of sentence dated 21.02.2004 recorded by learned Additional Sessions Judge (Fast Track Court), Bhiwani, in case bearing First Information Report No.19 dated 26.01.2003 under Sections 392/397 of the Indian Penal Code (for short, "I.P.C.") and Section 25 of the Arms Act, 1959 (for short "the Act") registered at Police Station Badhra.

The necessary facts are as under:-

On 26.01.2003, on a written complaint Ex.PC given by Krishan Kumar son of Chelu Ram to Head Constable Mahabir Singh, who alongwith his official companions was present at Badhra Chowk, Charkhi Dadri in

connection with patrol duty and excise checking, a First Information Report No.19 (Ex.PB) under Sections 392/397 I.P.C. was registered. The version of the complainant was that he was owner of truck bearing registration No.HR-39A-3565. Vinod son of Pirthi Singh was employed as driver on the said truck. On 23.01.2003, they had loaded 'kalai boranda' in the truck from Rajasthan and had started for Murthal. Vinod Kumar was driving the truck and he was accompanying him. In the evening, they had their dinner at village Pichopa Kalan and they started for the destination at around 11:00 p.m. At around 11:30 p.m., when they reached near village Atela, four young boys came and stood on the road in front of the truck. Vinod Kumar stopped the truck on which one of the boys, who was having a pistol in his hand pointed the pistol towards temple of Vinod Kumar and the remaining three opened the window of his (complainant's) side and dragged him down on the road and asked him to handover whatever he was having. Out of fear, he gave his purse containing Rs.7000/- and one photograph. The boys entered the cabin and also took away the small bag white coloured having inscription of 'KK' in English on it and containing Rs.9000/-. They snatched the purse of Vinod Kumar containing Rs.70/- and also took away the registration certificate of the truck. While leaving they made the complaint and the driver sit in the truck, closed the windows and threatened them of dire consequences if the matter was reported to the police. They also threw stones on the window panes and broke the same.

The complainant stated that the boys, who looted them, were in the age group of 25-26 and they will be able to recognize all four if brought before them.

Based on the complaint Ex.PC, a formal First Information

Report Ex.PB was registered. Investigation commenced. Appellants-accused were arrested and after completion of investigation and other formalities, the appellants-accused were challaned and sent to the Court for trial.

The appellants were charge-sheeted under Sections 392/397 I.P.C. and appellant Joginder was also charged-sheeted under Section 25 of the Act, to which he pleaded not guilty and claimed trial. The prosecution examined PW1 Bhisham Chander, PW2 ASI Maha Singh, PW3 Constable Jaibir Singh, PW4 Krishan Kumar, PW5 Vinod Kumar, PW6 Rameshwar Dass Patwari, PW7 Head Constable Jaipal Singh, PW8 Sub Inspector Sube Singh, PW9 Head Constable Jai Kishan, PW10 Constable Surender Singh and PW11 ASI Mahabir Singh. After closure of evidence of the prosecution, statements of appellants under Section 313 of the Code of Criminal Procedure (for short "Cr.P.C.") were recorded by putting to them the incriminating evidence available on record. They pleaded innocence and contended that no recovery was effected from them and they had been falsely implicated in this case.

Analyzing the evidence available on record and the submissions made by learned Public Prosecutor and learned counsel representing the appellants, learned trial Court convicted and sentenced them to undergo rigorous imprisonment for ten years each with a fine of Rs.2000/- each for commission of offence punishable under Section 392 read with Section 397 I.P.C. In default of payment of fine, they were to further undergo simple imprisonment for six months. Appellant Joginder was further convicted and sentenced to undergo rigorous imprisonment for two years and to a fine of Rs.500/- for commission of offence punishable

undergo simple imprisonment for four months.

Feeling aggrieved by the impugned judgment of conviction dated 19.02.2004 and order of sentence dated 21.02.2004 passed by learned trial Court, the appellants preferred the instant appeal.

The submissions made by Mr. Vijay Saini, learned counsel representing the appellants and Mr. Ashok Mutreja, Deputy Advocate General for the State of Haryana have been heard and record perused.

The two star witnesses of the prosecution for proving the allegation of commission of robbery by the appellants were complainant Krishan Kumar and his driver Vinod Kumar. Both the said witnesses appeared as PW4 and PW5 respectively. As pointed out by learned counsel for the appellants, they gave a detailed narration of the occurrence as contained in the written complaint Ex.PC which formed the basis of First Information Report, but unfortunate for the prosecution they unequivocally stated that the accused (appellants) facing trial and present in the Court were not the persons who had robbed them on 25.01.2003. On the pretext that the witnesses were suppressing the truth, learned Public Prosecutor was allowed to cross examine each of them but to no better result. They firmly reiterated that the accused shown to them in the Court were not the persons who committed robbery. Nothing favourable to the prosecution could be derived from either of the witnesses.

Finding no support from the material witnesses, who only could offer direct evidence regarding identity of the robbers, the prosecution was left to rely on the statement of some official witnesses including the Investigation Officer in the presence of whom some recoveries were made

case. The recoveries were stated to have been made in pursuance of disclosure statements suffered by the appellants. It is worthwhile to mention here that according to the testimony of PW11 ASI Mahabir Singh and other official witnesses the disclosure statements made by the appellants and the recoveries effected in pursuance of the same were witnessed by complainant Krishan Kumar. However, PW4 complainant Krishan Kumar without any hesitation deposed that no disclosure statement of either of the appellants was recorded in his presence and also no recovery of any article, currency note or pistol was made from any of the appellants in his presence. Thus, on the aspect of recoveries also, the prosecution could derive no support from the testimony of the witnesses who were the victims of robbery.

Learned Trial Court appears to have been swayed away by the statements of the official witnesses namely PW9 Head Constable Jai Kishan, PW10 Constable Surender Singh and PW11 ASI Mahabir Singh who stated that the appellants were apprehended, interrogated and arrested in their presence and their disclosure statement were recorded in pursuance of which the recoveries were effected. PW9 Head Constable Jai Kishan alongwith PW11 ASI Mahabir Singh was said to have witnessed on 26.01.2003 the disclosure statements Ex.PL and Ex.PD made by appellants Jai Bhagwan and Joginder @ Billu respectively as well as the recovery memos Ex.PJ vide which one purse containing photo of Vinod and currency notes of Rs.70/- were recovered from possession of accused Jai Bhagwan and the recovery memo Ex.PG which was prepared in respect of recovery of a countrymade pistol Ex.PI from appellant Joginder.

Similarly, PW10 Constable Surender Singh corroborated the

and Heera Singh were apprehended from a tea shop at bus stand Atela Khurd and on interrogation they made disclosure statements Ex.PE and Ex.PF respectively and in pursuance of their disclosure statements, appellant Pawan got recovered one bag containing currency notes of Rs.9000/- which was taken in possession vide recovery memo Ex.PH and appellant Heera Singh got recovered one purse containing currency notes of Rs.7000/- and a photograph of complainant Krishan Kumar which were taken in possession vide recovery memo Ex.PI.

Firstly, mere recovery of some articles and currency note, if proved to be stolen, was not sufficient to connect the appellants with commission of robbery especially when victims of robbery in the First Information Report had claimed that they were in position to identify the robbers if brought before them and thereafter during their deposition in the Court they specifically stated that the accused (appellants) facing the trial were not the persons who had committed robbery. Secondly, the stand of the prosecution was that the disclosure statements of the appellants and the recoveries effected in pursuance of the same were witnessed by complainant PW4 Krishan Kumar, but he out-rightly denied the said factum and stated that his signatures on the documents being relied upon by the prosecution were obtained by the police when they were blank papers. His statement not only makes the documents doubtful but also renders the investigation as well as conduct of the Investigation Officer completely suspicious.

Another factor which leaves no scope to rely on the testimony of official witnesses is that no independent public witness was examined to corroborate their version with regard to the story of disclosure statements

same. It is not a case where no independent public witness was available or the public persons present, for some justifiable reason, had expressed their helplessness to join investigation. Rather, PW9 Head Constable Jai Kishan stated that on 27.01.2003 when he alongwith ASI Mahabir Singh and other police officials was present in village Atela Kurd in connection with investigation in the present case, complainant Krishan Kumar and his driver Vinod Kumar had met them and taking them along they had gone to village Barsana where Sarpanch of that village was also joined in investigation and then they went to village Billawal where appellants Jai Bhagwan and Joginder @ Billu were apprehended on identification by complainant Krishan Kumar. The aforesaid statement of PW9 was not corroborated by PW11 ASI Mahabir Singh. He neither stated that Vinod Kumar, driver of the complainant was accompanying the police party nor that Sarpanch of village Barsana was joined in investigation before they went to village Billawal and apprehended appellants Jai Bhagwan and Joginder @ Billu. It is further in the statement of PW9 Head Constable Jai Kishan that the Investigation Officer had met one respectable person at village Billawal also and several persons had gathered at the bus stand when the two appellants Jai Bhagwan and Joginder were apprehended. However, it was not so stated by PW11 ASI Mahabir Singh.

In any case, as per testimony of PW9 Head Constable Jai Kishan, Sarpanch of village Barsana and one more respectable person of village Billawal were present when the disclosure statements of appellants Jai Bhagwan and Joginder @ Billu were recorded and beside making recovery of some currency notes, a countrymade pistol was recovered from

disclosure statements, sketch of the pistol or the recovery memos prepared by PW11 ASI Mahabir Singh, Investigation Officer bear the signatures of either of the said independent and important witnesses. Even their identity was not disclosed during investigation or evidence. Non joining of the independent witnesses, present and available to the police, leaves a strong shadow of doubt in the credibility of the official witnesses.

Similarly, from the testimony of PW10 Constable Surender Singh as well as PW11 ASI Mahabir Singh, it is proved that several independent public witnesses were present when the alleged disclosure statements Ex.PE and Ex.PF of appellants Pawan and Heera Singh were recorded and the alleged recovery of currency notes and purse etc. was made from them. However, none of the said persons was named or joined in investigation. Except for the complainant, no other person was shown to have attested the disclosure statements or the recovery memos. The independent witnesses who were available to the investigation officer were not made witnesses and that gives a reason to believe the testimony of the complainant that the documents were not prepared in the process as alleged by the prosecution and that his signatures were obtained on blank papers and subsequently the documents were manufactured. In other words, neither the ocular nor the documentary evidence put forth by the prosecution was trustworthy.

As a consequence to the above discussion, I conclude that the evidence of the prosecution is not at all consistent, cogent and worth reliance. Finding that the prosecution had failed to prove its charges against the appellants, the appeal is accepted, the judgment of conviction dated

appellants are set aside and the appellants stand acquitted of the charges levelled against them. Their bail/surety bonds stand discharged.

(SNEH PRASHAR)
JUDGE

27.07.2016.
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Whether speaking/ reasoned	:	Yes
Whether Reportable	:	Yes