

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. Criminal Appeal No. S-1811-SB of 2011

Rachin Kamboj

...Appellant

Versus

State of Punjab

...Respondent

2. Criminal Appeal No. S-2896-SB of 2011

Amit Kamboj

...Appellant

Versus

State of Punjab

...Respondent

Date of Decision: 18.01.2016

Coram: HON'BLE MRS. JUSTICE RAJ RAHUL GARG

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters? Yes
3. Whether the judgment should be reported in the Digest?

**Argued By: Ms. Aditi Girdhar, Advocate as amicus-curiae
for appellant-Rachin Kamboj.**

**Ms. Puja Chopra, Advocate
for appellant-Amit Kamboj.**

**Mr. Surjeet Singh Chaudhary, Deputy Advocate General,
Punjab for the respondent-State.**

Raj Rahul Garg, J.

The aforesaid two appeals have been directed against the judgment dated 08.03.2011 rendered by learned Additional Sessions Judge, Patiala whereby appellants-accused were convicted for committing offence punishable

under Section 392 of the Indian Penal Code (for short “IPC”). Vide order on sentence of the even date, each one of the aforesaid accused was sentenced to undergo rigorous imprisonment for ten years and a fine of Rs. 5000/- for committing offence punishable under Section 392 of the IPC; in default of payment of fine, to further undergo rigorous imprisonment for one month.

2. Briefly, prosecution case is like this; that on 08.06.2007 Neeraj (complainant) gave statement to the police. On the basis of which, FIR, Ex. PA, was recorded. Firstly, DDR No. 43 was written as Ex. PA and thereafter FIR was recorded. As per Neeraj, on 07.06.2007, he boarded a bus of Uttar Pradesh Roadways from ISBT, Dehradun at 5.30 PM and left the bus at Ambala Cantt. in front of Railway Station, from where he along with other persons boarded a Tata Sumo for Patiala at about 12.00 in the midnight. Two persons were already sitting in the aforesaid Tata Sumo. After crossing Rajpura City, the person, who was sitting in the front seat, handed over a pistol to the person sitting in the rear seat. Thereafter, the person sitting in the front seat also took out another pistol and on the pistol point, he snatched away a sum of Rs. 3500/-, three ATM cards, Library Card, Passport, Voter Card, Driving Licence, Mobile Set, Wrist Watch, one Pen Drive and other documents from him. Thereafter, crossing Bhakhra Bridge, they dropped him out of the aforesaid Tata Sumo and fled away towards Patiala. After registration of this case, during the course of investigations, the police had gone to the spot and prepared rough site plan of the occurrence. A case under Section 399, 307, 402 of the IPC and under Section 25 of the Arms Act bearing FIR No. 164 dated 19.07.2007 was registered against the accused at PS-Rajpura. On 24.07.2007,

ASI Salinder Singh received a telephonic call from MHC of the PS-Rajpura that all the four accused of FIR No. 123/08.06.2007 (FIR of this Case) have been arrested by the police of Police Station-City Rajpura in FIR No. 164 of 19.07.2007. Thereafter, the accused were arrested in this case. After completion of necessary investigations, the challan was presented in the Court against the accused.

3. Finding a prima-facie case against the accused, all the five accused were charge-sheeted for committing offence punishable under Section 395/382 of the IPC. After taking entire prosecution evidence, statements of accused, under Section 313 Cr.P.C., were recorded, wherein accused denied each prosecution allegation and pleaded their innocence and false implication. However, Amit took the defence that nothing was recovered from him in this case. The case is planted on him by the police by fabricating false documents. Witnesses have made false statements in connivance with police to falsely implicate innocent persons in this case. He found some bag containing some articles and had sent the same to one Mr. Deepak Suri through courier after locating the address from the phone number lying in those documents. He had mentioned his name and his phone number on the courier itself. Instead of appreciating his honest efforts, he has been falsely charge-sheeted by the police in this case on false allegations.

4. After hearing learned counsel for the parties and appraising the entire evidence and material coming on record, the learned trial Court recorded the impugned judgment of conviction dated 08.03.2011 and order on sentence of the even dated as set out in the earlier part of this judgment.

5. I have heard Ms. Aditi Girhdar, Advocate as amicus-curiae for appellant-Rachin Kamboj; Ms. Puja Chopra, Advocate for appellant-Amit Kamboj and Mr. Surjeet Singh Chaudhary, Deputy Advocate General of Punjab for the respondent-State besides appraising the entire evidence and material on record.

6. Of course, it is a case of serious nature in which an innocent person, who boarded a Tata Sumo at the dead of night to go to Patiala, was way laid, robbed of his belongings and then after coming to know that he was an army personnel, thrown out of the aforesaid vehicle.

7. The accused were unknown to the complainant Neeraj (PW-6). During the course of his stay in the vehicle, none of the accused called each other by name. Of course, complainant sit for a considerable time in the vehicle, yet, he must not be having an opportunity to look at the person sitting in the front seat i.e. Amit. As per the case of the prosecution, PW-6 Neeraj did not mention the names of accused in the FIR nor their identification. Neeraj as PW-6, during the course of his cross-examination categorically stated that he did not know any of the assailants nor had seen any of the assailants against whom he lodged the complaint in this case, prior to 07.06.2007 nor he knows them as to who are they. He further deposed that in the complaint lodged by him, the names, patronage or address of any of the assailants did not figure. Similarly, he did not mention any of the assailants to the police. As he could not make out the physical structure of any of the assailants, therefore, he did not state the same to the police nor mentioned in his written complaint. He further deposed that he had identified the accused for the first time in Court

that day. He was informed through his superior by the police that the accused of this case have been arrested by them and are in their custody. He had been categorically stating that he lodged the complaint which was in his own hand writing with Rajpura Police but when complaint Ex. PA/1 was shown to him he stated that it was not in his hand writing nor bears his signatures. He also deposed that the persons who were arrested by the police were shown to him in the police custody stating that they were arrested in his case. Amit Kamboj was one of them who was shown to him by the police as the accused arrested in this case. He further voluntarily stated that he did not know his name at that time nor he had given his name in his examination-in-chief as he did not know the same. Under these circumstances, the argument of learned state counsel that during the course of investigations accused gave the name of Amit Kamboj as one of the accused to the police; cannot be said to be established on the file. In fact, complainant was not knowing his name nor he made a mention of it in his complaint nor to the police at any stage.

8. Now, the question arises regarding identity of the accused of which learned counsel for the appellants-accused laid much stress during the course of arguments. In this case, in fact, prosecution made five accused in order to attract the provisions of Section 395 of the IPC. Without five persons, the offence of dacoity cannot be said to be there. The learned trial Court concluded that the complainant deposed that there were only four assailants in the vehicle. As such, the offence under Section 395 IPC cannot be said to be there. Not only this, even the learned trial Court concluded that the prosecution has failed to prove the identity of accused Satnam Singh, Gautam Lal and Sunil

Kumar. As such, they were acquitted. However, present appellants-accused were convicted by the learned trial Court holding that the accused was having enough time and opportunity to see and identify them and since he has identified them during the course of trial, therefore, their identity cannot be said to be doubtful in any manner.

9. On the question of identity of accused, it is not understandable as to how the learned trial Court concluded that the identity of Amit and Rachin is proved on file beyond reasonable doubt. Investigating Officer ASI Salinder Singh as PW-1 deposed that he did not move any application before the Magistrate for arranging test identification parade of the accused from the prosecution witnesses. Though, he was aware of the fact that the names of the accused were not mentioned in the FIR nor identity of any of the accused was mentioned by any of the prosecution witnesses. He further deposed that he had shown the accused to the prosecution witnesses. Neeraj Kumar, complainant as PW-6, deposed that the identification parade was got conducted in the police station where he identified two of the assailants namely Amit Kamboj and Rachin Kamboj. Both the accused were got identified by him in the police station. He voluntarily stated that there were many persons lined up in the police station from whom he was made to identify his assailants and he identified the aforesaid two accused. Thus, from this statement of complainant, it is evident that identification parade was not got conducted in the presence of Magistrate. If the police had shown the accused in the police station that cannot be said to be conducting of identification parade in accordance with law. With the statement of PW-6 that he identified the accused for the first time in the

Court on the day his statement was recorded is in fact no identification in the eyes of law particularly when accused were already shown to the witness. As such, the accused cannot be convicted on such identification. Of course, appellant-Amit Kamboj had sent certain articles allegedly belonging to complainant by courier to one Deepak Suri under his name and telephone number, yet, the prosecution has failed to prove as to what were those articles and further that the articles sent by him through courier were belonging to complainant of this case. Amit Kamboj did not state in his statement, under Section 313 Cr.P.C., that the articles sent by him were belonging to Neeraj, complainant of this case. Had prosecution produced on record the articles sent by Amit through courier to Deepak Suri and had those documents were pertaining to Neeraj-complainant, accused Amit could well be said to have been connected with this crime. But in the absence of those documents/articles on the file, it cannot be said to be established on the file that the articles, sent by Amit through courier, were the articles belonging to the complainant of this case. Deepak Suri has not been produced as witness in this case. As per complaint, accused robbed of him Rs. 3500/-, three ATM cards, Library Card, Passport, Voter Card, Driving Licence, Mobile Set, Wrist Watch, one Pen Drive and other documents. Neeraj when appeared as witness, he deposed that the bag was containing his clothes and documents. In the FIR, there is no mention of any bag containing clothes of complainant. But the fact remains is that neither of the articles/documents belonging to the complainant was produced on the file so as to connect the accused with this crime. Learned counsel for the appellants-accused have also pointed out that there is

discrepancy in the statement of complainant regarding the robbed amount. In the FIR, he made a mention that he was robbed of Rs. 3500/- whereas when he appeared in the Court he stated that it was Rs. 4000-4500/-.

10. In this case, no recovery was effected from the accused. Even the weapon of offence i.e. pistols were recovered by the police in FIR No. 164 of 19.07.2007 under Sections 399, 307, 402 IPC. Those have not been taken into possession by the police as weapons of offence of this case as well. Investigating Officer Salinder Singh, ASI deposed that he did not recover anything or any article or any amount in the present case from any of the accused. He further stated as correct that recovery relating to this case was already effected before arrest of the case in this case. With this statement of Investigating Officer, there is in fact nothing on record to connect the appellants-accused with the crime of this case.

11. Learned counsel for the appellants-accused also raised arguments that as per complainant two passengers also boarded the aforesaid Tata Sumo at the time when complainant boarded the same. But those persons have not been examined as witness nor investigated in this case. This further makes the prosecution case doubtful. This argument of learned counsel for the appellants-accused is not sustainable as there is nothing on record to show as to who were those persons and even their names and addresses were not known to the accused or to the complainant. Under those circumstances, if those two persons were not joined in the investigations or examined as witness, it hardly makes any difference.

12. No other point was urged before me.

13. For the reasons recorded above, finding merit in these appeals, the impugned judgment of conviction dated 08.03.2011 and order on sentence of the even date are set aside. These appeals are accepted. Appellants-accused Amit Kamboj son of Brij Bhushan Kamboj and Rachin Kamboj son of Ramesh Kamboj are acquitted of the charge for which they faced trial. They be set at liberty, if not required in any other case.

(Raj Rahul Garg)
Judge

18.01.2016
Waseem Ansari