

In the High Court of Punjab and Haryana at Chandigarh

Date of decision: 18.01.2016
CRA-S-3105-SB-2009 (O&M)

Sonu @ Sanjay

..... Appellant

Vs.

State of Haryana

..... Respondent

CRA-S-3079-SB-2009 (O&M)

Gobind @ Mukesh

..... Appellant

Vs.

State of Haryana

..... Respondent

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 or not?
3. Whether the judgment should be reported in the Digest?

Argued by: Mr. Amit Khatkar, Advocate for
Mr. Pawan Hooda, Advocate
for the appellant (in **CRA-S-3105-SB-2009**)

Mr. B.P.S.Virk, Advocate
for the appellant (in **CRA-S-3079-SB-2009**)

Mr. Saurabh Mago, AAG, Haryana.

RAJ RAHUL GARG.J.

The aforesaid appeals have been directed against the judgment dated 16.10.2009 rendered by learned Additional Sessions Judge, Hisar, whereby all the accused were convicted for the offence under Sections 398 and 401 of Indian Penal Code (for short 'IPC'), whereas, accused Sonu @ Sanjay and Madan @ Bunty were also held guilty under Section 25 of the

Arms Act. Vide order of sentence dated 19.10.2009, they were also sentenced to undergo rigorous imprisonment for 7 years each for the offence under Section 398 IPC; to undergo rigorous imprisonment for 2 years and a fine of ₹1500/- each for the offence under Section 401 IPC. In default of payment of fine, to further undergo RI for one month each; for the offence under Section 25 of the Arms Act, accused Sonu @ Sanjay and Madan @ Bunty were sentenced to undergo RI for one year and a fine of ₹1,000/- each. In default of payment of fine, to further undergo RI for 15 days each.

Brief facts of the case are like this; that on 29.08.2008, SI Hawa Singh alongwith police officials were present at Parav Chowk, Hisar, on patrol. A secret information was received against the accused that Madan @ Bunty son of Rajender, Sonu @ Sanjay son of Ram Chander and Gobind son of Ajmer are present in Auto Market, Phase-III on a TVS Victor motorcycle which they had stolen from City Hisar. They are preparing to commit robbery on passers-by. Accompanied police officials were apprised about the aforesaid secret information. After reaching near Auto Market, Phase-III gate, EHC Phool Kumar, who was in civil dress, was directed to go near the temple by passing through the inner side of Auto Market, Phase-III. SI Hawa Singh alongwith police officials followed EHC Phool Kumar from different different sides. When EHC Phool Kumar was 20 yards away from the community centre towards temple side, the aforesaid persons made him to stop. Out of them two were armed with pistols and they pointed the aforesaid pistols towards EHC Phool Kumar whereas third person, who was holding an iron rod in his hands, showed the same to EHC Phool Kumar. After seeing all these, SI Hawa Singh

alongwith police officials reached the spot and apprehended the aforesaid three persons with the help of police officials. On inquiry, the first one disclosed his name as Madan @ Bunty and also gave his identity in detail. From his right hand, one country made pistol 12 bore was recovered. On checking, the pistol was found as loaded one. On unloading this pistol, 12 bore live cartridge was recovered. Rough sketch plan of the pistol was prepared as Ex. P1. Pistol alongwith 12 bore live cartridge were sealed into a parcel with the seal of 'HS'. Pistol alongwith live cartridge were taken into police possession vide memo. Ex.P2. Seal after use was handed over to SI Sohan Singh.

On inquiry from the 2nd one, he disclosed his name as Sonu @ Sanjay and also gave his identity in detail as mentioned in *ruqa* Ex. P17. He was having a revolver (Sixer) in his right hand. On checking, it was found empty. Rough sketch plan of this revolver was prepared as Ex. P3. This revolver was sixer county made 32 bore, it was made into a parcel and sealed with the seal of 'HS'. Seal after use was handed over to SI Sohan Singh and this revolver was taken into police possession vide memo Ex. P4.

On inquiry from the 3rd one, he disclosed his name as Gobind with full particulars. Iron rod, held by him in his right hand, was recovered. Rough sketch plan of iron rod was prepared as Ex. P5. It was also made into a parcel and sealed with the seal of 'HS'. Seal after use was handed over to SI Sohan Singh and the same was taken into police possession vide memo Ex. P6. TVS Victor motorcycle, colour Black, without number plate bearing engine and chassis number, as mentioned in the recovery memo, was also recovered from the spot and taken into police possession vide memo Ex.P7. *Ruqa* Ex. P17 was sent to police station for registration of the

case, whereupon, formal FIR Ex. P18 was recorded. Site plan of the spot was prepared as Ex. P19. Scaled site plan Ex.P22 was also got prepared. Accused were arrested.

On interrogation, accused Gobind @ Mukesh, Sonu @ Sanjay and Madan @ Bunty gave disclosure statements Ex.P8 to Ex.P10 respectively to the effect that on 28.08.2008, at about 1:30/2:00 P.M., they all the three in furtherance of their common intention had stolen the motorcycle in question from Gali No. 5, Rampura Mohalla, Hisar. They had thrown away the front side number plate bearing No. HR-20H-8920 after breaking the same whereas the number written at the back of the motorcycle was erased by them. Case property was deposited with the MHC. On 03.09.2008, recovered weapons from accused Sonu and Madan were produced before Satyawar Armourer vide applications Ex. P15 and Ex. P16. He mechanically tested the same and made report Ex. P15/A and Ex.P16/A in this regard. After obtaining sanction orders Ex.P20 regarding accused Sonu and Ex. P21 regarding accused Madan, from District Magistrate, Hisar, the challan was filed in the Court against the accused.

Finding a *prima-facie* case against the accused for committing offence punishable under Sections 398 and 401 IPC, whereas accused Sonu @ Sanjay and Madan @ Bunty have also been charge-sheeted for the offence under Section 25 of the Arms Act, to which they did not plead guilty and claimed trial. After taking entire prosecution evidence, statements of accused under Section 313 Cr.P.C. were recorded wherein they denied each prosecution allegation appearing against them and pleaded their innocence and false implication. They also pleaded that the police has collected false and inadmissible evidence against them. Recovery has also

been planted against them whereas they have no concern with the alleged crime.

After hearing both the counsel for the parties and appraising the entire material and evidence on record, the learned trial Court recorded the impugned judgment of conviction dated 16.10.2009 and order of sentence dated 19.10.2009, as set out in the earlier part of this judgment.

I have heard learned counsel for the appellants and learned State counsel besides going through the record of this case.

At the very outset, I may make a mention that Madan was also accused in this FIR and he was also convicted vide impugned judgment dated 16.10.2009. He filed an appeal No. **CRA-S-78-SB-2010** before this Court. However, since during the pendency of the appeal, appellant Madan @ Bunt had died in the PGI on account of his illness on 27.02.2014 while he was in custody; therefore, vide order dated 14.01.2016, proceedings against him were ordered to be dropped.

It was contended by learned counsel for the appellants-accused that accused have been falsely implicated in this case. Actually no occurrence as stated by the prosecution has ever taken place. EHC Phool Kumar, who is the star witness as per prosecution case, not examined as witness in the Court for the reasons best known to the prosecution. He is the one, who was allegedly stopped by the accused. He is the one who could give the circumstances under which he was stopped. Non-examination of EHC Phool Kumar, makes the prosecution case highly doubtful. As per SI Sohan Singh (PW1) and SI Hawa Singh (PW3), the place of occurrence is a busy road. People were coming and going at that place. It is surrounded by populated area but no independent witness was

joined in the investigations of this case, which further raises serious doubt regarding genuineness of the prosecution case. Apart from it, even the statements of PW1 and PW3 are contradictory to each other. Contradictions regarding time, place of arrest and place where the proceedings of the case were recorded and further from whom the key of the motorcycle was obtained are material contradictions which go to the root of the case. As such, prosecution case cannot be said to be free from doubt, benefit of which has to go to the appellants-accused.

From the above-discussed prosecution case, it is evident that EHC Phool Kumar is the most material witness of the prosecution. He is the one who was in civil dress and was directed by Investigating Officer to go to Auto Market, near temple and he is the one who was made to stop by the accused. Thus, EHC Phool Kumar is the one who could give the circumstances under which he was made to stop by the accused. At that time, neither PW1 nor PW3 were present who could depose about the fact that he was made to stop by the accused. Besides this, there is nothing incriminating against the accused as it is not the prosecution case that after stopping EHC Phool Kumar on pistol point, he was asked to hand over whatever he was possessing at that time nor they obtained anything from him nor recovered from them. Even *Ruqa* Ex. P17 talks that when EHC Phool Kumar was at a distance of 20 yards from community centre towards temple, accused stopped him. There is no mention as to in what manner they made EHC Phool Kumar to a stop. There is no mention that by showing deadly weapons like pistols, he was made to stop or by raising hands or in any other manner.

The statements of PW1 and PW3 that EHC Phool Kumar was

stopped on pistol point are not tenable as they were not the witnesses of this fact. Even it is not believable that at about 6:30 to 7:00 P.M. on 29.08.2008 in a busy place like Auto market, Hisar, the accused would stop a person on pistol point for committing such like crime. The evening time of summers is such a time when maximum people in the market are present. At that juncture, no criminal can think of committing such a crime.

Apart from above, even the statements of PW1 and PW3 are contradictory on the point of time. As per PW1 SI Sohan Singh, they received secret information at about 6:30 P.M. and reached at the spot at 7:00 P.M. whereas as per Investigating Officer PW3 SI Hawa Singh, secret information was received at 5:45 P.M. and they reached the spot at 6:15 P.M. Secondly, as per PW1, accused were arrested from segregated place. He further stated that he cannot tell as to which accused was apprehended by him where as per Investigating Officer, the accused were arrested at the spot. The statements of SI Sohan Singh (PW1) regarding arrest of accused from segregated place further makes the prosecution case doubtful. SI Hawa Singh (PW3) deposed that accused had no key of the motorcycle whereas SI Sohan Singh (PW1) stated that he does not remember as to from which of the accused, the key of motorcycle was obtained. This means that one of the accused was having key of the motorcycle which was obtained by the police. Investigating Officer also stated that he has not shown the place in the site plan where the motorcycle was parked which was unlocked. Thus, all these facts further cast cloud on the prosecution case.

Investigating Officer deposed that when accused stopped EHC Phool Kumar on pistol point near temple, they all encircled the accused and apprehended them. To the same effect is the statement of SI Sohan Singh

(PW1). If we peruse *ruqa* Ex P17, it says that after directing EHC Phool Kumar to go towards temple by going into the Auto Market, Phase-III, SI alongwith police officials followed him from different different sides. This means that the police officials were sent in different directions in the Auto Market, Phase-III. Investigating Officer (PW3) did not state so, even otherwise, if the police in uniform was present in different directions in the Auto Market, Phase-III, Hisar, the accused of this case even if armed with deadly weapons intending to commit crime, would not have acted in the manner alleged by the prosecution. As such, prosecution case, cannot be said to be free from doubt.

PW1 and PW3 stated that the Auto Market is a busy place. People were present in the market. Investigating Officer deposed that he asked some people to join the investigations of this case but none was prepared. He did not take any action against any one of them. This explanation of Investigating Officer is not sufficient to absolve himself of his liability to join the independent witnesses in the investigations of the case. Had Investigating Officer joined some independent witness in the investigations, the prosecution case would have been disclosed. It is also true that simply because no independent witness was joined, the otherwise fully proved prosecution case, cannot be discarded as the testimonies of the officials witnesses are at par with the testimonies of the non-official witnesses. But in the case in hand, as discussed above, the statements of PW1 and PW3 are not consistent, so as to inspire confidence in the mind of the Court regarding guilt of the accused. As such, non-joining of independent witness also makes the prosecution case doubtful.

Though, prosecution has recovered motorcycle in question

from the spot but there is no evidence on the file to show as to who was the owner of this motorcycle. As per prosecution case, it was a stolen motorcycle but the prosecution did not investigate as to who was the owner of this motorcycle. Even as per prosecution case i.e. disclosure statements of accused Ex.P8 to Ex.P10, this motorcycle was stolen by them on 28.08.2008 at about 1:30/2:00 P.M. from Gali No.5, Rampura Mohala, Hisar, whereas PW1 and PW3 when appeared as witnesses deposed that the aforesaid motorcycle was stolen by them from Dogra Mohala, Hisar. Also, Investigating Officer did not take into possession the broken number plate of this motorcycle in pursuance with the disclosure statements of accused. In fact, the disclosure statements Ex.P8 to Ex.P10 are of no meaning as no recovery was effected in pursuance with the aforesaid disclosure statements. As such, viewing from any angle, the prosecution case cannot be said to be free from doubt.

For the reasons recorded above, finding merit in this appeal, setting aside the judgment of conviction dated 16.10.2009 and order of sentence dated 19.10.2009, these appeals are accepted and appellants Sanjay and Gobind are acquitted of the charges for which they faced trial. They be set at liberty at once, if no required in any other case

(RAJ RAHULGARG)
JUDGE

18.01.2016
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