

In the High Court of Punjab and Haryana at Chandigarh

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(1) Criminal Appeal No.S-450-SB of 2015

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Date of decision:18.2.2016

Jagdeep Singh

...Appellant

v.

State of Haryana

...Respondent

....

(2) Criminal Appeal No.S-619-SB of 2015

.....

Major Singh

...Appellant

v.

State of Haryana

...Respondent

....

(3) Criminal Appeal No.S-918-SB of 2015

.....

Amrik Singh and another

...Appellants

v.

State of Haryana

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Harkeerat Singh, Advocate for the appellant in Criminal Appeal No.S-450-SB of 2015.

Mr. Vivek Goel, Advocate, Legal Aid Counsel for the appellants in Criminal Appeal Nos.S-619-SB and 918-SB of 2015.

Mr. Himmat Singh, Deputy Advocate General, Haryana for

the respondent-State.

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Inderjit Singh, J.

This judgment will dispose of the above mentioned three appeals filed by Jagdeep Singh, Major Singh, Amrik Singh and Gurdev Singh as these arise out of the same impugned judgment dated 20.12.2014 passed by learned Additional Sessions Judge, Kurukshetra, whereby the accused Major Singh, Amrik Singh, Jagdev Singh and Jagdeep Singh have been held guilty for the offences under Sections 224, 225, 328 read with Section 120-B IPC. They have been sentenced to undergo rigorous imprisonment for one year each for the offence under 224 read with Section 120-B IPC; for one year each for the offence under Section 225 read with Section 120-B IPC and for five years and to pay a fine of ₹1,000/- each and in default of payment of fine to further undergo simple imprisonment for six months each for the offence under Section 328 read with Section 120-B IPC. However all the sentences have been ordered to run concurrently.

The brief facts of the prosecution case are that a complaint was moved by Ashwani Kumar, SI/SHO, Police Lines, Ludhiana, alleging that HC Surender Singh and HC Ranjeet Singh were posted in Police Lines, Ludhiana. On 19.4.2012, both the said officials had come to Kurukshetra and produced accused Major Singh in the Court of learned Additional Sessions Judge, Kurukshetra in case FIR No.280 dated 31.8.2011 registered for the offences under Sections 392, 328, 467, 468 and 471 IPC at Police Station Sadar, Thanesar. At around 6.30 p.m., the complainant received information from Police Control Room, Ludhiana that accused Major Singh

had run away from the custody and both the officials were admitted in LNJP Hospital, Kurukshetra. The complainant along with other police officials came to Pipli and during inquiry, it was found that after producing the accused in the Court, both the officials proceeded in a private car and took meal at Baba Hotel in the area of Village Sanwla, which was just ahead of five kilometers away from Pipli towards Shahabad. Accused Major Singh and his accomplices gave some sweet to the police officials and after eating the same, they became unconscious. The other three accomplices of accused Major Singh took out the key from the pocket of the police officials and made accused Major Singh flee from handcuff. It was also alleged that both the officials were negligent in performing their duties. After completion of investigation, the challan was presented in the Court against accused Major Singh, Amrik Singh, Jagdeep Singh and Gurdev Singh and Surender Singh Head Constable.

On presentation of challan, the trial Court finding *prima facie* case against the accused, framed charges for the offences under Sections 223 and 224 IPC against accused Surender Singh and for the offences under Sections 225, 328 and 120-B IPC against accused Major Singh, Gurdev Singh, Amrik Singh and Jagdeep Singh (wrongly mentioned as Jagdev Singh), to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW-1 SI (Retd.) Pritam Singh, who deposed about preparation of report under Section 173 Cr.P.C. against accused Major Singh, Amrik Singh, Gurdev Singh and Jagdeep Singh after completion of investigation. PW-2 Subhash

Chand EHC deposed that on 11.9.2012, he joined the investigation with ASI Kehar Singh. Accused Major Singh was interrogated by the Investigating Officer. On interrogation, he suffered disclosure statement Ex.P.1 regarding the present occurrence. PW-3 Dr. Nitin Gupta, P.G. Resident, MMIMSR, Mulana medico-legally examined Ranjeet Singh and Surender Singh and proved the copies of MLRs Ex.P.4 and P.5. PW-4 Natha Singh, Inspector deposed that on 7.7.2012 accused Amrik Singh, Gurdev Singh and Jagdeep Singh were already in custody in case FIR No.38 of 2012 registered for the offences under Sections 302, 392, 397 and 34 IPC at Police Station, Tarsika. They were taken out from the lock-up of Police Station Tarsika and were interrogated by him in the presence of ASI Mukhtiyar Singh and HC Harjeet Singh. They suffered the statements regarding their involvement in the present case and deposed regarding the occurrence. PW-5 HC Satish Kumar, deposed that he joined the investigation with SI Chander Bhan. PW-6 ASI Subhash Chand is a formal witness, who tendered in evidence his affidavit Ex.P.15 regarding depositing the case property with him by SI Chander Bhan. He also deposed regarding recording the formal FIR Ex.P.17 on the basis of complaint Ex.P.16. PW-7 HC Gurdev Singh mainly deposed that on 10.9.2012 he joined the investigation of this case with ASI Kehar Singh. Accused Amrik Singh, Gurdev Singh and Jagdeep Singh were interrogated by the Investigating Officer in his presence. On interrogation, they suffered their disclosure statements Exs.P.19 to P.21. Thereafter, in pursuance of their disclosure statements all the accused led the police party to the place of occurrence i.e. Baba Hotel at Village Sanwla and got the

place of occurrence demarcated. PW-8 SI Chander Bhan (Retd.) deposed that on 19.4.2012, he received an information to the effect that two officials of Punjab Police were lying in unconscious condition at Baba Hotel. He reached at the Hotel and both the police officials were brought to LNJP Hospital, Kurukshetra for medical examination. On that day, Dr. Nitin Gupta, who had conducted the medical examination of HC Surender and HC Ranjeet, handed over two blood sample vials and one gastric lavage jar along with two envelopes in the name of FSL to him. PW-9 SI Kehar Singh (Retd.) deposed that on 10.9.2012 accused Amrik Singh, Gurdev Singh and Jagdeep Singh were interrogated by him in the presence of HC Gurdev. Accused suffered disclosure statements Ex.P.19 to Ex.P.21. PW-10 ASI Kuldeep Singh mainly deposed regarding getting prepared the scaled site plan from Bhagwan Dass, Patwari. PW-11 Bhagwan Dass, Patwari deposed that on 28.10.2012, he prepared scaled site plan Ex.P.28. PW-12 Mam Chand turned hostile and deposed that he is neither owner nor employee of Baba Hotel and he did not know about the facts of this case. PW-13 ASI Kamal Kumar deposed that on 20.4.2012, he delivered the special reports to higher authorities. PW-14 Constable Kuldeep Kumar is a formal witness, who tendered in evidence his affidavit Ex.P.26. PW-15 Rakesh Kumar, Criminal Ahlmad brought the summoned record i.e. case FIR No.38 of 2012 under Sections 302, 392, 397, 472 and 34 IPC registered at Police Station Tarsika. PW-16 Ritu Batra, Additional Ahlmad brought the original record of case FIR No.280 of 2011 under Sections 392, 411, 467, 468, 471 and 328 IPC registered at Police Station Sadar, Thanesar. PW-17 DSP Ashwani

Kumar, Sub Division Shahkot deposed regarding the posting of HC Surender and HC Ranjeet Singh and also deposed that the custody of accused Major Singh was handed over to HC Surender and HC Ranjeet Singh to produce him in the Court of learned Additional Sessions Judge, Kurukshetra in case FIR No.280 dated 31.8.2011. He also deposed that on the same day at about 6.30 p.m., he received an information to the effect that accused Major Singh fled away from the custody of police officials and both the employees were admitted in the LNJP Hospital, Kurukshetra for treatment. PW-18 EASI Harjeet Singh corroborated the testimony of Natha Singh, Inspector.

At the close of prosecution evidence, the statements of the accused were recorded under Section 313 Cr.P.C., but they denied the correctness of the evidence and pleaded themselves as innocent.

After going through the evidence on record, the learned trial Court vide its impugned judgment and order convicted and sentenced the accused-appellants for the offences as mentioned above. Accused Surender Singh was held guilty for the commission of offences under Sections 223 and 224 IPC and was released on probation. Aggrieved against the impugned judgment and order, the present appeal has been filed.

Learned counsel for the appellants argued that there is no cogent evidence produced on the record by the prosecution to prove the guilt of the present appellants. The prosecution has only relied upon the disclosure statements made by the accused/appellants which amount to confessional statements before the Police and are inadmissible under

Section 25 of the Evidence Act. They also argued that in view of these disclosure statements nothing has been got recovered by these accused/appellants. Therefore, these disclosure statements are only confessional statements made before the Police. There is no other evidence to show the participation and commission of the offences as alleged.

On the other hand, learned Deputy Advocate General, Haryana, appearing for the respondent-State argued that the case of the prosecution has been duly proved by the PWs by leading cogent evidence.

After hearing learned counsel for the appellants and learned Deputy Advocate General, Haryana and going through the record, I find that there is no identification parade in the present case. No eye witness to the occurrence has been examined by the prosecution. Even Head Constable Ranjeet Singh, who was with the Police party, has not been charge-sheeted and also has not been examined. The eye witness had turned hostile and stated that he is neither owner nor employee of Baba Hotel and he does not know any facts of this case. The only evidence remained on the file is the disclosure statements of the accused-appellants recorded by the Police.

In pursuance of the disclosure statements Ex.P.19 to P.21, nothing has been recovered from the accused/appellants. It is stated that they identified the place of occurrence, but everybody knows regarding the Baba Hotel. As in pursuance of the disclosure statements nothing has been recovered, therefore, these disclosure statements cannot be held to be made under Section 27 of the Evidence Act. Rather, these disclosure statements confessing the guilt by the accused/appellants amount to confession before

the Police and hit under Section 25 of the Evidence Act. These disclosure statements, therefore, are inadmissible in the evidence and cannot be relied upon. Even there is no evidence on record that accused Major Singh ran away from custody from Baba Hotel as alleged.

Therefore, from the above discussion, I find that no cogent evidence has been led by the prosecution to prove the guilt of the accused-appellants and there is no cogent evidence against them to connect them with the crime.

Therefore, by giving benefit of doubt to the accused-appellants, they are liable to be acquitted of the charges framed against them.

Resultantly, finding merit in these appeals, the same are allowed, the impugned judgment of conviction and order of sentence passed by the learned Additional Sessions Judge, Kurukshetra, are set aside and the appellants are acquitted of the charge as framed against them by giving them the benefit of doubt. The accused-appellants, namely, Major Singh, Jagdeep Singh, Amrik Singh and Gurdev Singh, who are in custody, be released forthwith, if their custody is not required in connection with any other case.

February 18, 2016.

(Inderjit Singh)
Judge

hsp