

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-1209-SB-2002

DATE OF DECISION: October 5, 2016

Ravinder and others

...Appellants

versus

State of Haryana

...Respondent

CRA-S-1345-SB-2002

Pardeep alias Ballu and others

...Appellants

versus

State of Haryana

...Respondent

CORAM:- HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: S/Sh. M.S.Khaira, Advocate for the appellants (in
CRA-S-1209-SB-2002).

Mr.Aman Dhir, Advocate and Rishav Jain, Legal Aid
Counsel for the appellants (in CRA-S-1345-SB-2002).

Ms.Shubra Singh, Addl.A.G., Haryana.

RAMENDRA JAIN, J.

These two appeals have arisen out of judgment of
conviction dated 7.6.2002 and order of sentence dated
10.6.2002, relating to the similar incident and facts, rendered
by the Additional Sessions Judge(Adhoc), Hisar, therefore, this

Court deems it appropriate to dispose of the same by this common judgment.

On 10.5.2000, an application was presented by the complainant, namely, Banarsi Dass to the Sub Inspector Chandgi Ram, while he was on patrol duty on Mirzapur Road bypass, alleging therein that he was working as Driver in Jindal Strips Limited, Hisar for the last ten years. On 1.3.2000, he along with his Officers had gone to Chandigarh for some Court case. Around 4 O'Clock, they started their journey back for Hisar and reached Barwala around 9.00 p.m. However, when around 9.15 p.m., when they were on Barwala-Hisar Road and were at a distance of one kilometre from Juglan, a jeep hit their car and was parked in front of their car. Resultantly, the car went in Kuccha portion. Five-six boys around 20 to 25 years of age, alighted from the jeep. They were wearing 'KHES' and carrying sword and other weapons. The window pane was broken by one of the assailants with the sword. Then, the sword was put on his neck. He was shifted to one corner. That assailant sat in the car on driver seat. He noticed that other assailants had put their pistols on the heads of his Officers. The car was made to follow the jeep via kacha passage to the fields. They were asked to hand over an amount of Rs.7 lacs allegedly brought by them from Panchkula. On refusal of there being no amount, the assailants asked them to hand over, whatever they had with them. The assailants took the cash,

ring, clothes, mobile phone, card and addresses of his officers worth Rs.60,000/-. They were subjected to beatings. A threat was given that in case the police was informed, they would be killed. Somebody from the assailants was saying that they should be killed, while others were saying to spare them. They came on foot on the road and took lift in a truck and reached Hisar. They were under shock. Injuries were dressed in Jindal Hospital, Hisar. The persons from the workshop took the car from the place of incident. Under the apprehension of threat, the matter was not reported to the police. Now they had decided that the matter would be reported to the police without bothering the consequences.

By making endorsement on the said application, formal FIR was registered under Sections 395,397 IPC and Section 25 of the Arms Act. Investigation was commenced. Rough site plan of the place of occurrence Ex.PR was prepared. Statements of relevant witnesses were recorded.

During investigation, on interrogation by CIA staff on 13.5.2000, in case No.285, the appellant Pardeep suffered disclosure statement Ex.PJ that around 2-1/2 months earlier, he along with Ravinder alias Antar, Ravinder alias Jangli, Anoop, Satish, Krishan and another Krishan had looted the cash, gold ring and mobile phone from the occupants of one Esteem car, near Juglan turning point. Pursuant to it, he got recovered the mobile phone from his house in Hansi Bir Farm from the box.

The place of recovery is exhibited as Ex.PU. The said mobile phone was taken into police possession vide recovery memo Ex.PF and sealed with seal CR.

Appellant Krishan son of Mahabir suffered disclosure statement Ex.PK on 13.5.2000 that he along with other co-accused, namely, Krishan, Satish, Anoop, Ravinder @ Jangli and Ravinder alias Antar had looted the cash. A gold ring had fallen to his share and got recovered the same from his house which was taken into police possession vide recovery memo Ex.PE/1 and sealed with seal CR. The place of recovery is exhibited as Ex.PT.

Similarly, appellants Ravinder alias Antar, Ravinder @ Jangli, Anoop and Satish suffered disclosure statements Exs.PG, PH, PL and PM on 13.5.2000 and 19.5.2000 that the looted cash amount fallen to their share had been spent by them.

The identification memo Ex.PS of the place of occurrence was prepared at the behest of appellants Ravinder alias Jangli, Ravinder alias Jantar, Pardeep and Krishan.

Thereafter, appellant Krishan son of Ghisa Ram was arrested, who suffered disclosure statement Ex.PN on 5.10.2000 and led the police party to identify the place of occurrence. The identification memo in this regard is Ex.PQ.

On completion of investigation, final report under Section 173 CrPC was prepared and filed in the Court against appellants.

Accordingly, the appellants were charge sheeted under Sections 395,397 IPC, besides, appellants Pardeep and Krishan son of Mahabir were charge sheeted under sections 412 IPC

In order to prove its case, the prosecution examined as many as fourteen witnesses.

The entire incriminating evidence was put to the appellants. They pleaded their false implication.

After hearing learned counsel for both the parties, the trial Court convicted appellants under Section 395 read with section 397 IPC and sentenced them to suffer rigorous imprisonment for seven years.

However, the trial Court acquitted appellants Pardeep son of Jagdish and Krishan son of Mahabir under Section 412 IPC.

I have heard learned counsel for the parties and have also gone through the records of the case.

The sum and substance of the arguments of learned counsel for the appellants are as under:

1. That the impugned judgment is based on surmises and conjectures. The trial Court failed to appreciate the material contradictions in the depositions of witnesses.
2. That there is an ordinate and unexplained delay of around 2-1/2 months in lodging the FIR.

3. That the victim and the eye witnesses of the occurrence did not support the prosecution version, inasmuch as, they did not identify the appellants.

4. That the trial Court did not consider that the disclosure statements in the police custody are inadmissible in evidence in view of the provisions of Section 25 and 27 of the Evidence Act. Moreover, no independent witness was associated in the proceedings.

5. That weapons allegedly used in the commission of crime were not recovered by the police which shows that the prosecution is false and fabricated.

6. That no reliance can be placed on the testimonies of the official witnesses.

7. That the prosecution did not prove its case against the appellants beyond all reasonable doubts.

On the other hand, learned counsel appearing for the State argued that the prosecution has succeeded in proving the guilt of the appellants beyond shadow of doubt by leading cogent and reliable evidence.

I have perused the judgment of the trial Court and have also heard the arguments of learned counsel for the parties.

PW14 Khairati Lal, Sub Inspector proved the disclosure statements Ex.PJ suffered by appellant Pardeep and Ex.PK suffered by appellant Krishan son of Mahabir on 13.5.2000 claiming that the looted mobile phone and gold ring had fallen to their shares. Similarly, appellants Ravinder alias Antar, Ravinder @ Jangli, Anoop and Satish suffered disclosure statements Exs.PG, PH, PL and PM on 13.5.2000 and 19.5.2000 that the looted cash amount fallen to their share had been spent. The identification of the appellants were duly proved at the trial. PW7 Bani Singh, Head Constable and PW8 Parhlad Singh who remained associated in the investigation of this case with this witness also testified regarding above disclosure statements suffered by appellants Satish and Anoop.

PW12 Inspector Chandgi Ram, who has received the first hand information, deposed that the complainant Banrasi Dass met him with an application Ex.PD/1, whereupon he made endorsement Ex.PD/3 and processed the matter for registration of FIR. The formal FIR Ex.PD/2 was registered. The rough site plan Ex.PR was prepared in the presence of the complainant. He further deposed that he recorded the statements of Madan Lal, Anand Parkash, Kuldeep Jain and supplementary statement of Banarsi Dass on 16.5.2000. On interrogation, the appellants Ravinder alias Jangli, Ravinder alias Janter, Pardeep and Krishan son of Mahabir identified the place of occurrence vide identification memo Ex.PS. The booty comprising of gold ring

was recovered from the house of appellant Krishan which was taken into police possession vide recovery memo Ex.PE/1. The rough site plan Ex.PT of the place of recovery was prepared. The recovered gold ring was sealed with seal CR. Similarly, the mobile phone was recovered in the box from the house of appellant situated in Hansi Bir Farm which was taken into police possession vide recovery memo Ex.PF. The rough site plan Ex.PU of the place of recovery was prepared. The recovered article was sealed with seal CR. The identification of the above appellants at the trial was again duly established. PW5 Ramesh Kumar, Head Constable who remained associated in the investigation with this witness also testified regarding recovery and identification memo of the aforesaid appellants.

PW11 ASI Vijay Singh deposed that on 5.10.2000, appellant Krishan son of Ghisa Ram was arrested, who suffered disclosure statement Ex.PN, and led the police party to identify the place of occurrence. The identification memo in this respect is Ex.PQ. PW10 Om Parkash, constable and PW13 Jagdish Chander, Constable were also associated in the investigation with PW11 ASI Vijay Singh.

PW8 Perhald Singh, Sub Inspector is the witness regarding disclosure statements of appellants Pardeep, Krishan son of Mahabir, Ravinder alias Antar and Ravinder alias Jangli.

PW6 Jagbir Singh, Sub Inspector was the author of FIR Ex.PD/2 on receipt of ruqa Ex.PD. He also testified that the final report under Section 173 CrPC was prepared by Inspector Maan Singh.

PW10 Jai Singh, Inspector is the witness who prepared the supplementary challan qua Krishan son of Ghisa.

PW4 Banarsi Dass, who is the complainant, deposed in a parrot like manner giving complete narration regarding the incident. He also proved the application Ex.PD. However, he showed his ignorance in identifying the appellants at the trial. Similar is the position of PW1 Anand Parkash, PW2 Madan Lal and PW3 Kuldeep Jain who narrated the incident and corroborated PW4 Banarsi Dass but backed out in identifying the assailants at the trial.

After discussing the evidence, as aforesaid, now the question is that whether the testimonies of the witnesses are reliable and credible to uphold the conviction of the appellants herein or not.

The participation of the appellants in the commission of crime can be seen from the disclosure statements Ex.PJ suffered by appellant Pardeep that around 2-1/2 months earlier, he along with Ravinder alias Antar, Ravinder alias Jangli, Anoop, Satish, Krishan and another Krishan had looted the cash, gold ring and mobile phone from the occupants of Esteem car, near Juglan turning point. Pursuant to it, he got recovered the

mobile phone from his house in Hansi Bir Farm from the box. The place of recovery is exhibited as Ex.PU. The said mobile phone was taken into police possession vide recovery memo Ex.PF and sealed with seal CR. Similarly, appellant Krishan son of Mahabir suffered disclosure statement Ex.PK on 13.5.2000 that he along with other co-accused, namely, Krishan, Satish, Anoop, Ravinder @ Jangli and Ravinder alias Antar had looted the cash. A gold ring had fallen to his share and got recovered from his house which was taken into police possession vide recovery memo Ex.PE/1 and sealed with seal CR. The place of recovery is exhibited as Ex.PT. Similarly, appellants Ravinder alias Antar, Ravinder @ Jangli, Anoop and Satish suffered disclosure statements Exs.PG, PH, PL and PM on 13.5.2000 and 19.5.2000 that the looted cash amount fallen to their share had been spent. The identification memo Ex.PS was prepared disclosing by appellants Ravinder alias Jangli, Ravinder alias Jantar, Pardeep and Krishan, the place of occurrence. Appellant Krishan son of Ghisa Ram was arrested who suffered disclosure statement Ex.PN on 5.10.2000 and led the police party to identify the place of occurrence and got identified the same vide memo Ex.PQ. The identities of these assailants were duly proved at the trial by PW5, PW11, PW12 and PW14. Moreover, the lengthy cross-examination of prosecution witnesses could not shake the veracity of their depositions. That apart, the

circumstances adverted to by the trial Court are almost clinching which shows the correctness of the version of these witnesses.

The incident alleged by the prosecution had taken on 1.3.2000 at Juglan turning. The assailants at the first instance hit the car occupied by the occupants. The assailants, five-six in numbers, around 20 to 25 years of age, wearing 'KHES' alighted from the jeep carrying sword and other weapons. The window pane was broken by one of the assailants with the sword. Then, the sword was put on the neck of driver and shifted to one corner. That assailant sat in the car. PW4 Banarsi Lal, Driver noticed that other assailants had put the pistols on the heads of his Officers. The car followed the jeep via kacha passage to the fields. Rs.7 lacs were asked the victims to hand over which was brought from Panchkula. On refusal, the assailants asked the victims for handing over whatever they had with them. The assailants took the cash, ring, clothes, mobile phone, card and addresses of his officers. The witnesses had no axe to grind and had no personal motive to implicate the appellants on a false charge and the recovery of incriminating articles cannot be disbelieved by characterising it as natural and credible. It is difficult in an incident of this kind to have evidence as strong and clinching, inasmuch as, the witnesses, namely, PW1 to PW4 have all the times apprehension in their mind that deposing against the assailants would again put their

lives in dock. However, these witnesses do not dispute regarding the incident.

The argument of learned counsel that there is an inordinate and unexplained delay of around 2-1/2 months in lodging the FIR does not hold water, inasmuch as, the PW4 Banarasi Dass (complainant) and PW1 to PW3 were threatened that in case the matter was reported to the police, they would be killed. They were under shock and kept silent for a long period. Under the apprehension of threat, the matter was not reported to the police. Ultimately, the matter was reported to the police on 10.5.2000 without bothering any consequence. The delay in this case was properly explained which cannot be said to be unjustified, because in such type of cases, the victim does not come out of the shock and its repercussions for many a days. He does not forget the incident for several months. The situation in this case was that the victims were grilled and tortured brutally for considerable time which resulted into coming the apprehension/shock in their minds qua danger to their life and property for quite sufficient long time causing the delay in lodging the FIR.

The other argument that PW1 to PW4 did not identify the assailants at the trial has no merit, because PW4 Banarsi Dass duly proved the complaint Ex.PD narrating the incident. As earlier discussed in the preceding para that normally in such type of cases, the witness has all the times

apprehension in his mind that deposing against the assailant would again put his lives in dock. However, these witnesses do not dispute regarding the incident.

The third argument of learned counsel is that that no reliance can be placed on the statements of the official witnesses. Moreover, the disclosure statements made during the police custody is inadmissible. These arguments have no merit. The witnesses had no personal motive to implicate the appellants on a false charge and the recovery of incriminating articles cannot be disbelieved by characterising it as natural and credible, inasmuch as, the recovery corroborates the testimonies of PW1 to PW4. This view has been endorsed by Hon'ble the Apex Court in Sanjay @ Kaka v. The State (NCT of Delhi) 2001(1) RCR (Criminal) 677 wherein, it has been held that the recovery, in pursuance of the disclosure statement, is sufficient to constitute the offence. Similarly, this Court also took the view in Anupam alias Anup v. State of Haryana and other connected appeals 2006(1) RCR (Criminal) 56 that the recovery as a result of disclosure statement cannot be said to be inadmissible in evidence.

So far as, no independent witness was joined at the time of recording disclosure statements is concerned, that is true that no witness from the public was associated. There is no law which says that in the absence of any independent witness, the evidence of official witnesses should be thrown out or should

not be relied upon for convicting an accused. What the law requires is that where the witnesses are official, the court should scrutinize their evidence with care and caution in order to exclude the possibility of false implication. It may be mentioned that in a dacoity case, as in the instant case, it will really be impossible to find independent persons to come forward and give evidence. Thus, non association of independent witnesses in the disclosure statements, keeping in view the facts and circumstances of the case, does not shake the credibility of prosecution witnesses.

The last argument that no weapon was recovered used in the commission of crime and the material contradictions in the depositions of witnesses has no substance. Mere non recovery of weapons does not adversely affect the credibility of the prosecution story, particularly, when the snatched articles belonging to PW1 to PW4 were recovered which shows that the appellants had participated in the commission of crime. All the material prosecution witnesses deposed in parrot like manner giving complete narration regarding the incident. No discrepancy is pointed out to displace the chain of irrefutable inferences flowing from the chain of events/circumstances established by evidence.

In the light of this evidence, it can be very well inferred that the aforesaid appellants had participated in the commission of crime on 1.3.2000.

In view of the aforesaid discussion, the present appeals being devoid of any merit are dismissed. Resultantly, the bail bonds and surety bonds furnished by the appellants are cancelled and forfeited to the State.

The copy of this order be sent to the Chief Judicial Magistrate, Hisar for preparing the warrants of arrest for serving/undergoing the remaining part of sentence.

October 05,2016
KD

(RAMENDRA JAIN)
JUDGE