

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

Date of Decision: 23.08.2016.

CRA-S-2151-SB-2003

Amarjeet alias MiniAppellant.

VERSUS

State of HaryanaRespondent.

AND

CRA-S-2183-SB-2003

Mainpal alias DheelaAppellant.

VERSUS

State of HaryanaRespondent.

CORAM : HON'BLE MRS. JUSTICE SNEH PRASHAR

Present: Mr. H.S. Hooda, Senior Advocate with
Mr. C.S. Singh, Advocate
for the appellant (in CRA-S-2151-SB-2003).

Mr. Vijay Saini, Advocate for
Mr. Rakesh Nehra, Advocate
for the appellant (in CRA-S-2183-SB of 2003).

Mr. Ashok Muthreja, Deputy Advocate General, Haryana.

SNEH PRASHAR, J.

This judgment shall dispose of two appeals bearing CRA-S-2151-SB-2003 filed by appellant Amarjeet alias Mini and CRA-S-2183-SB-2003 filed by appellant Mainpal alias Dheela, as both these appellants had been held guilty, convicted and sentenced by a common judgment of conviction and order of sentence dated 03.11.2003 recorded by learned

Additional Sessions Judge, Fast Track Court, Gurgaon, in Session Case No.7 of 2002/2003 based on First Information Report No.625 dated 01.10.2001 registered at Police Station Sadar, Gurgaon.

Appellants-accused were held guilty and were convicted for commission of offence under Sections 307, 332, 353 read with Section 34 of the Indian Penal Code (for short "I.P.C.") and Section 25 of the Arms Act, 1959 and were sentenced as under:-

Sr. No.	Under Section	Sentence
1.	307/34 IPC	To undergo rigorous imprisonment for three years with fine of Rs.500/- each and in default of payment of fine, to further undergo rigorous imprisonment for three months.
2.	332/34 IPC	To undergo rigorous imprisonment for 1½ years with fine of Rs.250/- each and in default of payment of fine, to further undergo rigorous imprisonment for 1½ months.
3.	353/34 IPC	To undergo rigorous imprisonment for one year each.
4.	25 of Arms Act	To undergo rigorous imprisonment for two years with fine of Rs.500/- each and in default of payment of fine, to further undergo rigorous imprisonment for three months.

It was ordered that all the sentences shall run concurrently.

As per story of the prosecution, on 01.10.2001, the appellants had snatched a sum of Rs.4,63,000/- from the Cashier of Dakshin Haryana Bijli Vitran Nigam Limited (for short, "DHBVNL"), Sector-31, Gurgaon and had fled away on a black coloured motorcycle. They abandoned the motorcycle at some place and shifted to a Maruti car-800 CC of white colour with black glasses. Shri Kuldeep Singh Sihag, IPS, S.P. Gurgaon,

while coming from Badshahpur to Gurgaon received a VT message from the

Control Room regarding the robbery. He then took his vehicle from South side of village Islampur towards Sector-31, Jharsa. On the way, he noted that one white coloured Maruti car having black glasses was coming at a very fast speed from the opposite direction and on seeing the police vehicle ahead, the driver of the Maruti car immediately stopped and turned back. He chased that Maruti car and after they had crossed Samaspur village, the occupants of the car opened fire towards the police party. Ultimately, he with the help of his official companions was able to apprehend the occupants of the car who were two in number.

From appellant Amarjeet apprehended by S.P. Kuldeep Singh and Constable Tejpal-driver, one revolver of .38 bore and a bag containing Rs.3,46,000/- were recovered. The other appellant Mainpal was apprehended by ASI Sarup Singh-Reader and Sakuntpal-Gunman and from his possession a .315 bore countrymade pistol and a sum of Rs.50,000/- were recovered. S.P. Kuldeep Singh sent information to the concerned police station by way of a written complaint. Inspector Sanjay Ahlawat reached the spot and conducted investigation. The appellants were arrested. The amount as well as the weapons used during commission of offence were taken in possession. The members of the police party which apprehended the appellants were got medico legally examined as they had suffered some minor injuries at the hands of the appellants. On completion of investigation and other formalities, the final report was submitted by the prosecution for trial of the case.

The appellants were charge-sheeted under Sections 307, 332, 353 read with Section 34 I.P.C. and Section 25 of the Arms Act, to which

they pleaded not guilty and claimed trial.

The prosecution examined PW1 Daya Nand, Sub Inspector (Retd.), PW2 Gulshan Kumar, Patwari Halqa, PW3 Constable Inder Parshad, PW4 Head Constable Mohammad Usman, PW5 Inspector/SHO Ramesh Pal, PW6 Balbir Singh, Reader, PW7 Kuldeep Singh Sihag, IPS, PW8 ASI Sarup Singh, PW9 ASI Jagdish Chander and PW10 Inspector Sanjay Ahlawat.

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 they have been falsely implicated by the police just for the sake of solving an untraced case of decoity which occurred within the jurisdiction of Police Station DLF, Gurgaon in which they have been acquitted.

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 the appellants as indicated above.

Feeling aggrieved by the impugned judgment of conviction and order of sentence dated 03.11.2003 passed by learned trial Court, the appellants preferred these two appeals.

The submissions made by Mr. H.S. Hooda, learned senior counsel representing appellant-Amarjeet alias Mini, Mr. Vijay Saini, learned counsel representing appellant-Mainpal @ Dheela and Mr. Ashok Muthreja, Deputy Advocate General for the State of Haryana have been heard and record perused.

robbery during which as per story of the prosecution, the appellants had snatched a sum of Rs.4,63,000/- from the Cashier of DHBVNL, Sector-31, Gurgaon. The occurrence of robbery was alleged to have taken place during the day i.e. on 01.10.2001 after which the appellants were allegedly apprehended by S.P. Kuldeep Singh with the help of his official companions and a bag containing a sum of Rs.3,46,000/- alongwith one revolver of .38 bore was recovered from appellant Amarjeet and from appellant Mainpal an amount of Rs.50,000/- from his pocket as well as a .315 bore countrymade pistol were recovered. The criminal case bearing First Information Report No.284 dated 01.10.2001 under Sections 395, 397, 120-B I.P.C. was registered against the appellants at Police Station DLF, Gurgaon in respect of the occurrence of robbery. As pointed out by learned counsel for the appellants and conceded by learned Deputy Advocate General for State of Haryana, the appellants were acquitted in the said case by learned Additional Sessions Judge, Gurgaon vide judgment dated 11.01.2003. From that it follows that the prosecution had failed to prove its allegation that the appellants were the culprits who committed robbery during which the Cashier of DHBVNL was robbed of a cash amount of Rs.4,63,000/-. Otherwise also, it is necessary to mention that the prosecution produced no evidence to prove that the currency notes amounting to Rs.3,46,000/- contained in a bag allegedly recovered from appellant Amarjeet or currency notes amounting to Rs.50,000/- allegedly recovered from the pocket of appellant Mainpal were the same which had been snatched from the Cashier of the Office of DHBVNL.

When the allegation of commission of robbery by the

appellants could not be proved by the prosecution, the only allegation which

survives against the appellants is that when on suspicion S.P. Kuldeep Singh alongwith his police party was trying to nab them for which they chased the appellants who were travelling in a Maruti car-800CC having black window glasses, the appellants instead of surrendering had fired towards the police party with an intention to kill them and ultimately on being apprehended a .38 bore revolver and a .315 bore countrymade pistol alongwith the cash amount of Rs.3,96,000/- in all were recovered from their possession. The amount recovered was taken in possession by the police under Section 102 Cr.P.C. Two witnesses of the occurrence namely PW7 S.P. Kuldeep Singh and PW8 ASI Sarup Singh were examined by the prosecution who reiterated the story as incorporated in the written complaint Ex.PE which formed the basis of First Information Report Ex.PA/1. However, on scrutiny of the evidence, there being major infirmities in the prosecution version, the meager ocular testimony of the witnesses fails to inspire truth.

According to the version of PW7 S.P. Kuldeep Singh and PW8 ASI Sarup Singh when they were chasing the Maruti car in which the appellants were travelling, the appellants had opened fire towards the police party. PW7 S.P. Kuldeep Singh stated that on being fired at he directed Constable Sakuntpal to fire on the tyres of the Maruti car and also directed his driver to struck his vehicle against the Maruti car so that it could be halted. Even though PW7 S.P. Kuldeep Singh did not state whether Constable Sakuntpal and his driver complied with his directions or not, the fact remains that according to him (PW7) the appellants had fired towards the police party. The statement of PW7 S.P. Kuldeep Singh is further to the

effect that under pressure of the police party, the appellants stopped the

Maruti car and ran towards the fields. He stated that the appellants while running also fired towards them in order to escape and save themselves. He asked his party-men to lie down on the ground and fire and they did so. So, according to PW7 S.P. Kuldeep Singh, the appellants repeatedly fired towards the police party and on his direction his police officials also fired towards the appellants, but it is worthwhile to note here that admittedly neither the appellants nor any of the police officials suffered any fire arm injury.

The above story of the prosecution indicates that the appellants possessed heavy fire arms which they used during the occurrence. PW7 S.P. Kuldeep Singh as well as PW8 ASI Sarup Singh stated that a .38 bore revolver loaded with five empty cartridges and one live cartridge was recovered from appellant Amarjeet. They also stated that five live cartridges were recovered from his right side pocket. Similarly, their version was that on being apprehended, a .315 bore countrymade pistol with one live cartridge and one empty cartridge were recovered from the possession of appellant Mainpal. In addition to the said weapons, it is not the case of the prosecution that the appellants had any other fire arm or any other weapon which they used during the occurrence.

To prove that the alleged weapons recovered were weapons in true sense and were in working order and to corroborate the story of the prosecution that the appellants had fired shots from the same during the occurrence, it was necessary for the investigation officer to have got them mechanically tested at a Forensic Science Laboratory. However, what to say of getting the weapons tested at a Forensic Science Laboratory, they were

condition. In absence of the required material evidence it remained not established that the so called weapons recovered were real fire arms.

The prosecution examined PW6 Balbir Singh, Reader to District Magistrate, Gurgaon, who proved the sanction order Ex.PE issued by the District Magistrate, Gurgaon for prosecution of the appellants under Section 25 of the Arms Act, 1959. Neither he stated nor it is mentioned in the sanction order that the fire arms allegedly recovered from the appellants were produced before the District Magistrate or that he had verified that the alleged recovered fire arms were in working order before granting sanction for prosecution of the appellants. When the prosecution could not prove that the weapons recovered were actual fire arms and were in working condition, the sanction order loses its sanctity.

Since the prosecution failed to prove that the appellants possessed fire arms which were in working condition and they had fired from the same during the occurrence, its allegation that the appellants had used fire arms towards the police party when it was trying to apprehend them becomes completely doubtful. That is not the end of the matter. It was mentioned in the complaint Ex.PE and was also stated by the investigation officer that the members of the police party, which apprehended the appellants, had suffered some minor injuries at the hands of the appellants. Here again, there is no evidence worth in its name to support the said allegation of the prosecution. The witnesses stated that they were medico legally examined but neither their medico legal examination reports were produced nor the doctor who medico legally examined them stepped into the witness box to corroborate their version. For both the reasons namely (i)

from the appellants were real fire arms and were in working order and (ii) that the prosecution could not prove that the police officials had suffered injuries at the hands of the appellants during the occurrence, as claimed by them, it becomes highly suspicious that the occurrence, as stated by the prosecution, had taken place and that the appellants were apprehended in the manner the witnesses stated.

Consequent 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, both the appeals are accepted, the judgment of conviction and order of sentence dated 03.11.2003 recorded against the appellants are set aside and the appellants stand acquitted of the charges levelled against them. Their bail/surety bonds stand discharged. The weapons shown to be recovered shall be confiscated to the State.

(SNEH PRASHAR)
JUDGE

23.08.2016.
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Whether speaking/ reasoned	:	Yes
Whether Reportable	:	Yes