

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**Criminal Appeal S-1482-SB of 2004
Date of Decision: April 24, 2017**

Naresh and another	Versus	Appellants
State of Haryana		 Respondent

Criminal Appeal S-1489-SB of 2004

Hawa Singh and another	Versus	Appellants
State of Haryana		 Respondent

Criminal Appeal S-1535-SB of 2004

Balwan	Versus	Appellant
State of Haryana		 Respondent

Criminal Appeal S-1793-SB of 2004

Bhira	Versus	Appellant
State of Haryana		 Respondent

CORAM : HON'BLE MR. JUSTICE T.P.S.MANN

Present : Mr. M. S. Kathuria, Advocate for
Mr. Rakesh Nehra, Advocate
for the appellants in CRA S-1482-SB of 2004.

Mr. Avi Dhankar, Advocate for
Mr. Hemant Bassi, Advocate
for the appellants in CRA S-1489-SB of 2004.

Mr. Salil Bali, Advocate
for the appellant in CRA S-1535-SB of 2004.

Mr. Maharaj Kumar, Advocate
for the appellant in CRA S-1793-SB of 2004.

Mr. Ashok S. Chaudhary, Addl. A.G., Haryana.

T.P.S.MANN, J. (Oral)

Naresh, Mukesh Kumar, Hawa Singh, Virender @ Nanhi, Balwan and Bhira were tried for committing offences punishable under Sections 399 and 402 IPC. Hawa Singh was also tried for committing offence punishable under Section 25 of the Arms Act. Vide judgment judgment and order dated 14/15.7.2004, learned Additional Sessions Judge (Adhoc) Fast Track Court, Kurukshetra, convicted all the accused under Section 399 IPC and sentenced them to undergo rigorous imprisonment for four years and six months and to pay a fine of Rs.2,500/- each and in default of payment of fine, to further undergo rigorous imprisonment for a period of three months. Hawa Singh accused was also convicted under Section 25 of the Arms Act and sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.1,000/- and in default of payment of fine, to further undergo rigorous imprisonment for two months. As all the accused stood convicted for major offence under Section 399 IPC, no separate conviction for minor offence under Section 402 IPC was recorded. The sentences of imprisonment imposed upon Hawa Singh accused were ordered to run concurrently.

Aggrieved of their conviction and sentence, Naresh

and Mukesh Kumar filed Criminal Appeal S-1482-SB of 2004, Hawa Singh and Virender @ Nanhi filed Criminal Appeal S-1489-SB of 2004, Balwan filed Criminal Appeal S-1535-SB of 2004 and Bhira filed Criminal Appeal S-1793-SB of 2004. As all the appeals arise out of the same judgment of conviction and order of sentence, they are being disposed of by a common judgment.

According to the prosecution, on 7.8.2002 SI Banwari Lal alongwith other police officials was present at G.T. Road in the area of village Teora Theh, in Government jeep in connection with patrolling duty and detection of crime, where he received a secret information that the appellants while armed with deadly weapons were preparing to commit dacoity in the buses on night service and at that time, were sitting in an abandoned dhaba in the area of village Khanpur Jattan and in case a raid was conducted immediately, all the appellants could be apprehended alongwith their weapons. Believing the information to be correct and reliable, SI Banwari Lal tried to join public witness but it being night time, no public witness was present. Then, he constituted and led a raiding party and halted the jeep at a distance of 200 yards near Khanpur turning and surrounded the dhaba. ASI Siya Nand was directed to listen the conversation going on amongst the appellants while going near the wall on the Northern side

whereas SI Banwari Lal himself moved towards the Southern side in order to listen to the conversation. One of the persons, who was later on found to be Hawa Singh was instructing his co-accused that Bhira would halt the bus by flashing a torch, he himself would handle the driver with his pistol, Virender @ Nanhi would cover the front window with his sword, Naresh would cover the rear window with a knife, Mukesh and Balwant while armed with iron rods alongwith Bhira would enter the bus and loot the cash and parcels from the passengers, and, in case any resistance was offered by anyone, they would launch an assault upon them. After hearing the conversation, ASI Siya Nand gave a signal, upon which, SI Banwari Lal proclaimed that the police had surrounded the persons sitting in the dhaba and they should surrender before the police. With the help of his associates, SI Banwari Lal apprehended all the six appellants. Hawa Singh was found in possession of one pistol, which was loaded with five live cartridges. Virender @ Nanhi was having a sword, Mukesh and Balwan were having iron rods, Naresh was having a spring actuated knife whereas Bhira was holding a torch with two cells in it. The weapons were taken into possession.

Learned counsel for the appellants have not challenged the impugned judgment passed by the learned trial Court to the extent of convicting them. They have, however,

submitted that the appellants are facing the agony of criminal prosecution for the last about 14 ½ years. None of them was attributed causing of any injury to the police officials. They are the sole bread winners of their respective families. They are not previous convicts. They are on bail for the last about thirteen years. They have undergone substantial portion of sentences imposed upon them. Therefore, a lenient view be taken in the matter of sentence of their imprisonment.

Learned State counsel has vehemently opposed the prayer by submitting that the appellants were found at a secluded place and preparing to commit dacoity when they were overpowered by a police party headed by SI Banwari Lal. After being apprehended, they were searched and various weapons were recovered from their possession. He has, however, placed on record the custody certificates in respect of Naresh and Mukesh Kumar. Custody certificates in respect of other appellants have already been brought on record by the learned State counsel. As per the custody certificates, Naresh and Mukesh Kumar appellants have already undergone total sentence of five months and twenty six days each, Hawa Singh has undergone eight months and seven days, Virender @ Nanhi has undergone eight months and one day, Balwan has undergone seven months and seventeen days whereas Bhira has undergone

seven months and twenty three days. None of them is shown to have been convicted in any other case.

Taking into consideration the totality of the circumstances, this Court is of the view that no useful purpose will be served by sending the appellants behind the bars, once again, for undergoing their remaining sentences of imprisonment. Ends of justice shall be suitably met, if their substantive sentences of imprisonment are reduced to the one already undergone by them. At the same time, the fine imposed upon them for the offence under Section 399 IPC can be suitably enhanced.

Resultantly, the conviction of the appellants for the offence under Section 399 IPC is upheld. The conviction of Hawa Singh under Section 25 of the Arms Act is also upheld. The substantive sentences of imprisonment imposed upon the appellants are reduced to the one already undergone by them. The fine of Rs.2,500/- imposed upon each of the appellants for the offence under Section 399 IPC is enhanced to Rs.7,500/- each. The fine of Rs.1,000/- imposed upon appellant Hawa Singh under Section 25 of the Arms Act is upheld. The entire amount of fine be deposited by the appellants with the learned Chief Judicial Magistrate, Kurukshetra, within a period of three months from today, failing which, they shall be required to undergo rigorous imprisonment for four months each.

All the four criminal appeals, i.e. S-1482-SB of 2004, S-1489-SB of 2004, S-1535-SB of 2004 and S-1793-SB of 2004 are, accordingly, disposed of.

April 24, 2017

amit rana

(T.P.S. MANN)

JUDGE

Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No