

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

CRA-S-No.2181-SB OF 2004
DATE OF DECISION : 15th FEBRUARY, 2017

Paramjit & another

.... Appellants

Versus

State of Haryana

.... Respondent

CRA-S-No. 2313-SB- OF 2004

Rajender Singh @ Gunga & others

.... Appellants

Versus

State of Haryana

.... Respondent

CRA-S-No. 2452-SB- OF 2004

Vinod Kumar

.... Appellant

Versus

State of Haryana

.... Respondent

CORAM : HON'BLE MR. JUSTICE A. B. CHAUDHARI

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Present : Mr. Ashit Malik Advocate and
 Mr. Sagar Aggarwal, Advocate for the appellants.

Mr. Surender Singh, Assistant Advocate General, Haryana.

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A. B. CHAUDHARI, J.

1. In these three appeals the appellants have put to challenge the common judgment and order dated 26/27.10.2004 passed by Additional Sessions Judge, Fast Track Court, Kurukshetra by which these

appellants were convicted for offences under Sections 399 and 402 of Indian Penal Code (in short IPC) and Section 25 of the Arms Act only against Vinod Kumar-appellant in CRA-S-2452-SB-2004 and they were sentenced to undergo rigorous imprisonment for five years and to pay fine of ₹2,000/- each for offence under Section 399 IPC and in addition Vinod Kumar was sentenced to undergo rigorous imprisonment for a period of one year and fine of ₹1,000/- under Section 25 of the Arms Act.

2. Briefly stated the prosecution case is that on 07.07.2003 4.30 pm a secret information was received in the Police Station by SI Piara Singh that the accused persons were having unauthorized arms and ammunition with an Esteem car and motor cycle having plan to commit dacoity of the cash brought from the bank on the 'pay day' of Sainsons Papers Mills. On that information they proceeded for conducting raid towards at Seonsar Forest in the area of village Bakhli. On the way they noticed two boys coming on motor cycle being followed by one Esteem Car. SI Piara Singh signaled the boys to stop the motor cycle but they tried to escape and were apprehended. The persons in the Esteem car alighted from the car and ran away in different directions. Upon chasing none were apprehended. On interrogation those two motorcyclists told their name as Vinod Kumar son of Hawa Singh and Paramjit son of Chhailu Ram and also disclosed the names of the occupants of the Esteem car. Upon search of Vinod Kumar a .315 country made pistol and one live cartridge was recovered from his right pocket of pants. The sketch of the pistol was prepared and seized. The car as well as motor cycle was also seized. A search for other co-accused was made but to no

use. Thereafter investigation was made and challan was filed. The accused persons who were nine in number were tried before the Sessions Court in Sessions Case No.9 of 2004 decided on 26.10.2004 resulting into conviction as aforesaid and acquittal of the remaining accused persons.

3. Learned counsel for the appellants assailing the impugned judgment and order of conviction and sentence submitted that there is no evidence against any of the appellants to convict them and as admittedly except Vinod Kumar and Paramjit, none were found by the police. The conviction has been made on disclosure statement by Paramjit which is wholly wrong and illegal. Even according to the prosecution, except Vinod and Paramjit, who were apprehended on the spot while driving the motor cycle, none was found during the search conducted by the police. At any rate, all were required to be acquitted by the trial Court for want of satisfactory evidence. Insofar as Vinod Kumar is concerned though he was found with the country made pistol and a live cartridge that by itself did not lead to proof of evidence for offence under Section 25 of the Arms Act.

4. *Per contra*, the learned State counsel supported the impugned judgment and order and argued that the trial Court had discussed the evidence in details and has rightly convicted the appellants and no fault can be found with the impugned judgment and order of sentence. He prayed for dismissal of all the three appeals.

5. Heard learned counsel for the rival parties at length. I have perused the impugned judgment and reasons therein for convicting and sentencing the appellants.

6. The prosecution evidence is that SI Piara Singh received secret information about the plan to commit dacoity on the 'pay day' of the employees of the paper mill and therefore he proceeded towards Seonsar Forest in the area of village Bakhli. The evidence further shows that SI Piara Singh noticed two boys coming on motor cycle followed by one Esteem Car. He apprehended the said two boys i.e. Vinod Kumar and Paramjit and found a .315 country made pistol and one live cartridge from Vinod Kumar, which was seized, of course, without licence with him. All other occupants of Esteem car had fled away and they could not be found despite search made by the police party. This is the evidence on record.

7. In my opinion, merely because Vinod Kumar and Paramjit were going on a motor cycle, it cannot be inferred that they had a plan to commit dacoity in the absence of any other evidence. Similarly the occupants of the Esteem car who had admittedly run away from the spot, were not apprehended and it is only on the disclosure statement made by Vinod Kumar and Paramjit that their conviction had been recorded. I think the findings of the conviction recorded by the trial Judge based on the disclosure statement of the co-accused would be wrong and illegal. To convict all the accused persons under Sections 399 and 402 IPC only on disclosure statement of the co-accused, would be illegal. The trial

Court has discussed this aspect of the matter in paragraph 23, which I quote hereunder:

“23. In view of the aforesaid, it is clear that apart from arrest of Paramjit and Vinod Kumar at the time of raid on 7.7.2003, the prosecution has mainly relied upon the disclosure statements suffered by the accused persons. In this regard, it is important to first see the evidentiary value of these disclosure statements which are confessional in nature. The confession of the accused persons is not admissible in evidence under Section 25 and 26 of the Indian Evidence Act and it has been specifically provided that no confession made to a police officer whether in custody or not can be proved against accused. However, Section 27 is by way of proviso to these Sections and a statement even by way of confession which distinctly related to the fact discovered is admissible as evidence against the accused in the circumstances as stated in Section 27 of the Evidence Act. Thus, Section 27 is an exception of Section 25 and 26 of the Evidence Act, which prohibit the proof of a confession made to a police officer or made while a person is in police custody unless made in immediate presence of a Magistrate. However, under Section 27, it is only that part which distinctly relates

to the discovery, is admissible but if any part of the statement distinctly relates to the discovery it will be admissible wholly and the court cannot say that it will excise one part of the statement because it is of a confessional nature. Section 27 makes that part of the statement, which is distinctly related to the discovery admissible as a whole, whether it is in the nature of confession, or not. In AIR 1962 1788 K. Chinna Swamy Reddy V. State of A.P., in a case of burglary, it was held that where the accused in police custody made a statement to the police that he would show the place where he had hidden the ornaments and that statement led the discovery of the stolen ornaments, it was held that whole of the statement relates distinctly to the discovery of ornaments and is admissible under Section 27. The word “where he had hidden them” have nothing to do with the past history of the crime and are distinctly related to the actual discovery that took place by virtue of that statement and would therefore not be inadmissible. Thus, from this judgment, it is clear that complete disclosure statement has to be read as a whole and only a part of the statement will not be excised to render it inadmissible.”

8. Though the trial Court has stated that confession of the co-accused would not be binding on the other accused, it has recorded conviction against other relying on the sole statement of Vinod Kumar and Paramjit merely because motor cycle and car was found and the occupants had ran away from the spot. I, therefore, find that the conviction of all the appellants for offence under Section 399 read with Section 402 must be held to be illegal and will have to be set aside.

9. Insofar as the conviction of Vinod Kumar for offence under Section 25 of the Arms Act is concerned, I find that the evidence of the prosecution witnesses about Vinod Kumar in possession of a.315 country made pistol and one live cartridge without any licence, has gone unchallenged. There is no reason for me to disbelieve the evidence lead by the prosecution in that behalf nor there is any explanation by Vinod Kumar for possession the weapon like country made pistol with one live cartridge. I therefore, find that the conviction of Vinod Kumar recorded by the trial Court for offence under Section 25 of the Arms Act must be held to be legal correct and proper.

10. Learned counsel for the appellant-Vinod Kumar vehemently prayed to this court for reducing the sentenced of Vinod Kumar on the ground that he had undergone some sentence. The sentence ordered by the trial Court was one year plus fine of ₹1000/-. There is no explanation whatsoever, by Vinod Kumar as to the possession of the unauthorized weapon like country made pistol with on live cartridge. That is serious. There is no mitigating circumstance brought by him on record for reduction of sentence.

11. In the result I make the following order:

ORDER

- (i) CRA-S-No.2181-SB OF 2004 and CRA-S-No.2313-SB of 2004 are allowed.
- (ii) The judgment and order of conviction of all the appellants namely Paramjit, Vinod, Vijay Kumar, Rajender Kumar @ Gunga, Virender Singh @ Behnga and Sandeep Kumar for offence under Section 399 read with Section 402, is set aside.
- (iii) CRA-S-No.2452-SB of 2004, filed by appellant Vinod Kumar, is partly allowed.
- (iv) The judgment and order of conviction of Vinod Kumar in CRA-S-No.2452-SB of 2004 for offence under Section 25 of the Arms Act, holding him guilty, is upheld so also the sentence awarded to him. He shall be taken in custody for serve out the remaining sentence.
- (v) Bail bonds of appellant-Vinod Kumar stands cancelled.

15TH FEBRUARY, 2017
'raj'

(A. B. CHAUDHARI)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>