

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

**Criminal Appeal S-400-SB of 2004
Date of Decision: September 11, 2017**

Ram Singh and others	Versus	Appellants
State of Haryana		 Respondent

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

Present : Mr. Gaurav Sharma, Advocate
as legal aid counsel
for the appellants.

Mr. Pramjeet Singh, Asstt. A.G., Haryana.

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

The appellants, namely, Ram Singh, Seena, Hari Bhan, Kaluwa and Dev Raj were tried for committing offences punishable under Sections 399 and 402 of IPC. Dev Raj and Kaluwa appellants were also tried for committing offence punishable under Section 25 of the Arms Act. Vide judgment and order dated 20.1.2004, learned Additional Sessions Judge, Bhiwani, convicted all the appellants for the offence under Section

Criminal Appeal S-400-SB of 2004**-:2:-**

399 IPC and sentenced them to undergo rigorous imprisonment for five years and to pay a fine of Rs.200/- each and in default of payment of fine, to further undergo rigorous imprisonment for three months. They were also convicted under Section 402 IPC and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.200/- each and in default of payment of fine, to further undergo rigorous imprisonment for three months. Dev Raj and Kaluwa appellants were further convicted under Section 25 of the Arms Act and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.200/- each and in default of payment of fine, to further undergo rigorous imprisonment for three months. The substantive sentences of all the appellants were ordered to run concurrently.

Aggrieved of their conviction and sentence, the appellants filed the instant appeal, which was admitted on 20.2.2004. Subsequently, Hari Bhan, Kaluwa and Dev Raj appellants were granted the concession of suspension of their sentence of imprisonment on 7.12.2004 whereas Ram Singh and Seena appellants were granted the same concession on 9.9.2005.

The case of the prosecution, in nutshell, is that on 18.8.2002, Inspector Ram Avtar, C.I.A. Staff, Bhiwani, had sent a ruqa Ex.PO to Police Station Civil Lines, Bhiwani, mentioning therein that on that day when he alongwith other police officials

Criminal Appeal S-400-SB of 2004

-:3:-

was present at Meham Road near Gaushala, Bhiwani for patrolling. In the meantime, a secret information was received by him to the effect that five persons armed with weapons were sitting in an abandoned plot having boundary walls near Sector 23, H.U.D.A., Bhiwani and they were making preparation to commit dacoity at residential houses of Sector 13, H.U.D.A. Bhiwani. If a raid was carried out, they could be caught red handed. On receipt of said information, Inspector Ram Avtar constituted four raiding parties of police officials headed by him and Sub-Inspector Subhash Chand to gherao the site of occurrence from all the sides. Thereafter, raiding parties proceeded towards the disclosed place and apprehended all the accused persons, namely, Ram Singh, Seena, Hari Bhan, Kalu and Dev Raj. During the course of search of accused Ram Singh, one battery containing two cells Ex.P1 was recovered. From accused Seena one iron rod (Sariya) Ex.P6 was recovered and its sketch Ex.PE was prepared at the spot. One danda Ex.P5 was recovered from accused Hari Bhan and its sketch Ex.PF was also prepared. From the possession of accused Dev Raj one country made pistol .12 bore Ex.P3 loaded with one cartridge Ex.P4 was recovered and the sketch of pistol Ex.PC was prepared on the spot. Apart from that, during the course of search of accused Kaluwa, one knife having blade of 7¾" Ex.P2 was recovered and the sketch of said knife Ex.PD was prepared.

Criminal Appeal S-400-SB of 2004

-:4:-

Abovesaid articles as recovered from the accused persons were kept in separate sealed parcels bearing seal of inscription 'RA' and the seal after use was handed over to Sub-Inspector Ram Kumar and then the said articles were taken into possession vide recovery memo Ex.PB. On those allegations, FIR Ex.PP was recorded by Sub-Inspector Sube Singh. Necessary investigation was conducted. Site plan of the place of occurrence Ex.PR was prepared. Disclosure statements Ex.PG of accused Dev Raj, Ex.PH of accused Seena, Ex.PJ of accused Hari Bhan, Ex.PK of accused Kaluwa and Ex.PL of accused Ram Singh were recorded. Abovesaid fire arm, ammunition, iron rod (Sariya), danda, knife and battery were deposited in the Malkhana of Police Station Civil Lines, Bhiwani. Accused were arrested. On 18.9.2002, application Ex.PA was moved by Assistant Sub-Inspector Vidya Nand for examination of one country made pistol .12 bore and cartridge .12 bore and the said fire arm and ammunition were examined by Constable Jaipal Singh, Armourer, who vide his report Ex.PN gave his opinion that pistol as well as cartridge were in working condition. Requisite sanction Ex.PM in respect of prosecution of accused Dev Raj under Section 25 of the Arms Act was accorded by the District Magistrate, Bhiwani on 4.10.2002. Statements of the witnesses were recorded. After completion of necessary investigation, challan was presented against the accused in the Court.

After hearing learned counsel for the appellants as well as learned State counsel, this Court finds that the prosecution has led cogent and convincing evidence, from which, it can safely be inferred that all the appellants at the relevant time were making preparation to commit dacoity and once they were apprehended, different types of weapons were recovered from them. Under these circumstances, no case is made out for any interference in the impugned judgment of conviction passed by the learned trial Court.

As regards the question of sentence, the appellants, who are on bail for the last about twelve years have been facing the agony of criminal prosecution since the year 2002. They claimed to be the sole bread winners of their respective families. Besides, none of them is a previous convict.

As per the custody certificates produced by the learned State counsel, Ram Singh appellant has undergone total sentence of three years, eight months and seven days including remission, Seena (Sinha) appellant has undergone three years, eight months and twenty six days, Hari Bhan appellant has undergone two years, ten months and seventeen days, Kaluwa appellant has undergone two years, ten months and twenty two days whereas Dev Raj appellant has undergone two years and eleven months. One of them, i.e. Seena (Sinha) appellant is shown to be involved in another case 782/96 B/G 165/96

Criminal Appeal S-400-SB of 2004

-:6:-

registered at Police Station Bhojpur. However, all the offences therein, i.e. under Sections 336, 504 and 323 IPC are bailable in nature. There was one more case, in which, Dev Raj appellant was shown to be involved, i.e. FIR No. 9 dated 7.1.2002 under Sections 302 and 394 IPC registered at Police Station City Bhiwani, but he stands acquitted therein by the Court of learned Sessions Judge, Bhiwani, on 14.9.2004.

After hearing learned counsel for the parties, 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 him.

Resultantly, the conviction of the appellants under Sections 399 and 402 IPC and of Kaluwa and Dev Raj appellants under Section 25 of the Arms Act is upheld. However, their substantive sentences of imprisonment are reduced to the one already undergone by them. The sentences of fine alongwith their default clauses are maintained.

The appeal is, accordingly, disposed of.

September 11, 2017

amit rana

(T.P.S. MANN)

JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No