

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

**CRA-S-1245-SB of 2005
Date of decision:-13.10.2017**

Sher Singh and others

....Appellants

Versus

State of Haryana

....Respondent

CORAM : HON' BLE MR. JUSTICE H.S. MADAAN

Present : Mr.Narender Hooda, Advocate
for the appellants.

Mr.Neeraj Poswal, AAG, Haryana.

H.S. MADAAN, J.

This appeal has been preferred by accused namely Sher Singh, Rambir, Rajbir @ Pappu and Rajender alias Jogender against the judgment dated 13.7.2005 passed by the Court of learned Additional Sessions Judge, Rohtak vide which they were convicted for offences under Sections 395 and 341 IPC and order dated 15.7.2005 vide which they were sentenced as under:

Under Section	Sentence Awarded
395 IPC	Rigorous imprisonment for three years and to pay a fine of Rs.500/- each and in default thereof, to further undergo rigorous imprisonment for a period of 15 days each.
341 IPC	Rigorous imprisonment for a period of one month each.

Both the sentences were ordered to run concurrently.

It is pertinent to mention here that there were three other co-accused of the present accused appellants in this case namely Pardeep, Sanjay and Rampal, amongst them Sanjay and Rampal were acquitted of the charges framed against them, whereas Pardeep was also sentenced along with appellants – accused for the offences under Sections 395 and 341 IPC and additionally for the offence under Section 25 of the Arms Act.

The accused-convicts, who are appellants before this Court pray that the appeal be accepted, the impugned judgment of conviction and order of sentence be set aside and they be acquitted of the charge framed against them.

Briefly stated, the prosecution story is that on 28.10.2002, ASI Shri Krishan heading a police party was on patrol duty at Dehkora turn, Sampla, where complainant Sant Kumar accompanied by one Gurbachan Chawla came and submitted an application to him. *Inter alia*, it was contended that he was residing at village Jajokhar, Police Station Kankarkhara, District Meerut (U.P.) and was working as driver on truck No.HR38D/7411 and Munni son of Ramnath, resident of Mukari, Police Station Balani, District Baghpat (U.P.) was working as conductor with him; that on 27.10.2002 at about 7:00 p.m. the truck was loaded with tomato soup packets and apple murabba, which consignment was to be delivered at Jaipur; that at about 11:00 p.m. when the truck had reached near Bhainshru Kalan, then front right side tyre of the truck got punctured; that while complainant along with Munni was replacing that tyre, then 7-8 persons with muffled faces came there from the side of

kikar trees, out of them one was armed with a knife, another with a pistol and remaining with dandas; that they took Sant Ram and conductor to the fields and tied them with a rope lying in their truck with a tree and also gagged their mouths with their *baniyans* (vests) and then they took away the truck; that they were calling each other as Khan and Sleem and were of medium height in the age group of 25-26 years, talking in UP dialect; that out of them three were having black shawls on their bodies; that those criminals had snatched an amount of 4,400/-, from the complainant, which he was having in his pocket and Rs.500/- were taken away from the pocket of Munni. According to the complainant, he and his conductor could identify the assailants; that they remained tied with a tree at a distance of 4-5 killas from the road and were untied by a woman going to the fields in the morning and then they came on the road and after enquiring about the location of the police station, reached village Bhainshru Kalan on foot, from there went to Meerut to their employer and searched about the vehicle but were unsuccessful. After registration of formal FIR, the case was investigated.

During the course of investigation, accused Pardeep, Rajbir, Rajender, Sher Singh and Rambir were arrested on 29.10.2002 alongwith loaded truck. During further interrogation, accused Pardeep got recovered country-made pistol of .315 bore, Rajender a knife, Sher Singh a stepney of truck and Rajbir alias Pappu a danda of eucalyptus, which was so done by them in pursuance of their disclosure statements. Accused Sunil son of Krishan, Kuldeep son of Surat Singh, Rampal son of Kishan Lal, Sanju alias Sanjay son of Rampal could not be arrested, they were declared proclaimed offenders and proceedings under Section

299 Cr.P.C. were conducted against them.

On presentation of challan in the Court of learned Judicial Magistrate Ist Class, Rohtak, she supplied copies of documents relied upon therein to the accused free of costs as provided under Section 207 Cr.P.C. Then finding that the offence under Section 395 IPC is exclusively triable by Court of Sessions, learned Judicial Magistrate Ist Class, Rohtak vide her order dated 14.2.2003 committed the case to the Court of Sessions, Rohtak from where it was entrusted to the Court of learned Additional Sessions Judge, Rohtak.

On receipt of case in the Court, learned Additional Sessions Judge, Rohtak, observing that prima facie charge for offences under Sections 395 and 341 IPC was made out against accused Pardeep, Sher Singh, Rambir, Rajbir and Rajender @ Jogender and in addition to that, charge for the offence under Section 25 Arms Act was disclosed against accused Pardeep, the accused were charge-sheeted accordingly. The accused pleaded not guilty and claimed trial.

Since on 12.11.2003, accused Sanjay alias Sanju, who had earlier been declared a proclaimed offender was arrested by the police, a supplementary challan was submitted in the Court, which was committed to the Court where the trial was earlier pending. Challan was framed afresh.

On 14.9.2004, accused Rampal son of Kishan Lal, who was declared proclaimed offender earlier was also arrested. His supplementary challan was filed in the Court and after commitment charge was again amended and Rampal was charge-sheeted for the offence under Sections 395 and 341 IPC.

During the course of its evidence, the prosecution examined as many as twelve witnesses i.e. Raj Singh, Patwari as PW1, SI Sat Narain as PW2, Constable Umesh Kumar as PW3, HC Dharambir as PW4, Shri Niwas, Deputy Superintendent, SDM Office, Rohtak as PW5, Constable Jogender Singh as PW6, Sant Ram, complainant as PW7, SI Om Parkash as PW8, Muni Raj alias Munish as PW9, ASI Shri Krishan as PW10, Sh.H.S Dahiya, learned ACJM, Rohtak as PW11 and Daya Ram, Retd. SI as PW12.

With that the prosecution evidence got concluded.

Statements of accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against them were put to them but they denied the allegations contending that they are innocent and had been falsely involved in this case and they also stated that nothing was recovered from them.

Accused did not lead any evidence in their defence.

After hearing arguments, learned trial Court convicted and sentenced accused as mentioned above, which left accused – appellants Sher Singh, Rambir, Rajbir @ Pappu and Rajender alias Jogender aggrieved and they have filed the present appeal.

I have heard learned counsel for the appellants – accused - convicts, learned Assistant Advocate General for the State of Haryana besides going through the record and I find that there is no merit in the present appeal.

The main contentions raised by learned counsel for the appellants are that accused are not named in the FIR and PW7 Sant Ram as well as PW9 Muni Raj alias Munish did not support the prosecution

story and were declared hostile witnesses; that no independent witness was associated during the investigation and place of recovery does not fall on route from Delhi to Meerut, as such the accused were wrongly convicted by the trial Court and they should be acquitted.

On the other hand, learned State counsel has contended that though PW7 Sant Ram and PW9 Muni Raj alias Munish had shown hostile tendency not toeing the prosecution story fully but then on other material aspects, they had lent corroboration. Since no previous enmity between the official witnesses and the accused has been alleged or proved, they had no motive to depose falsely against the accused and further the prosecution has successfully proved its charge against all the accused – convicts.

I find the explanation rendered by learned State counsel to be plausible and convincing. Although in the FIR, it is mentioned that 7-8 persons with muffled faces had come to the spot when complainant along with Muni Raj alias Munish was replacing the defective tyre of the truck but factors establishing their identity such as that they were calling each other as Khan and Sleem, were of medium height and in the age group of 25-26 years, talking in UP dialect have been given. It is not disputed that the accused fit in with that description. Although accused Pardeep, Rajbir, Rajender, Sher Singh and Rambir had been arrested along with loaded truck on 29.10.2002, which points out towards their participation in the crime. They have failed to account for possession of the said loaded truck, which had been taken away in the incident, that goes to show that it were such accused, who had taken away the truck forcibly from complainant and Muni Raj alias Munish. The very fact

that accused Pardeep had got recovered country-made pistol of .315 bore, Rajender a knife, Sher Singh a stepney, Rajbir alias Pappu a danda in pursuance of disclosure statements made by them goes a long way in showing their participation in the crime. The pistol recovered at the instance of Pardeep was tested and as per report submitted by SI Sat Narain, it was found to be functional. PW5 Shri Niwas, Deputy Superintendent, SDM Office, Rohtak had duly proved the sanction order Ex.P8 for launching prosecution under Section 25 of the Arms Act against accused Pardeep. PW6 Constable Jogender Singh had proved disclosure statements made by accused Sher Singh and Rajbir Singh before the Investigating Officer and then getting recovered stepney and danda, respectively from their possession from the disclosed places. From the statements of PW7 Sant Ram, complainant, PW9 Muni Raj alias Munish, the prosecution story to a major extent stands proved. From the statement of PW8 SI Om Parkash, PW10 ASI Shri Krishan and PW12 Retired Inspector Daya Ram, it comes out that as a result of investigation, involvement of accused in the incident was found to be there. The accused could not render any reasonable or plausible explanation for alleged their alleged false implication in this case, as such the prosecution had successfully proved its charge against the accused for the offences under Sections 395 and 341 IPC. The trial Court by a well reasoned judgment by proper appraisal and appreciation of evidence and correct interpretation of law vide impugned judgment has returned the verdict of guilty against the accused for such offences. The learned trial Court after considering all the facts and circumstances explained by the accused – convicts has awarded punishment to them.

Section 395 IPC carries punishment for 10 years but the trial Court has awarded punishment of only three years to the accused – convicts. I do not see any scope for reduction of sentence.

There is no illegality or infirmity therein. The said judgment of conviction and order of sentence are upheld, whereas appeal is found to be without any merit and the same is dismissed accordingly.

It is stated that appellants – accused namely Sher Singh, Rambir, Rajbir @ Pappu and Rajender alias Jogender are on bail in terms of the orders passed by this Court. The bail orders are cancelled. They are ordered to be taken into custody and made to undergo the remaining sentence. Necessary direction in that regard be issued to Chief Judicial Magistrate, Rohtak.

13.10.2017
Brij

(H.S.MADAAN)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No