

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CRA-S-1745-SB-2005****DATE OF DECISION :- September 07, 2017****Kala Bihari @ Vikram and others****...Appellants****Versus****State of Haryana****...Respondent****CORAM: HON'BLE MR. JUSTICE H.S. MADAAN****Present:-** Mr. Ramesh Hooda, Advocate for the appellants.

Mr. Neeraj Poswal, Assistant Advocate General, Haryana.

This appeal is directed against the judgment dated 16.7.2005 passed by Additional Sessions Judge, Rewari vide which he had convicted accused Kala Bihari @ Vikram, Vidya Ram, Rakesh and Raj Kumar for offences under Sections 399, 402, 353 IPC and sentenced as follows :-

Accused Name	Offence u/s	Sentence RI	Fine	Imprisonment in default of payment of fine RI
1. Kala Bihari 2. Vidya Ram 3. Rakesh 4. Raj Kumar	399 IPC	4 years	1000/-	One month
1. Kala Bihari 2. Vidya Ram 3. Rakesh 4. Raj Kumar	402 IPC	2 years	500/-	15 days

Accused Name	Offence u/s	Sentence RI	Fine	Imprisonment in default of payment of fine RI
1. Kala Bihari 2. Vidya Ram 3. Rakesh 4. Raj Kumar	353 IPC	6 months	-	-
Kala Bihari	25/54/59 Arms Act	1 year	500/-	15 days

All the sentences were ordered to run concurrently.

5th accused Rakesh was, however, acquitted. Feeling aggrieved by judgment of their conviction and sentence accused/convicts have preferred the appeal before this Court which was admitted on 6.10.2005. Their sentence was suspended and they were ordered to be released on bail on 10.1.2006.

Briefly stated facts of the case are that on 4.5.2003 a police party headed by ASI Ram Avtar from Police Station Dharuhera was on official duty. ASI Ram Avtar was talking with Raj Kumar son of Sardar Singh, resident of Azad Nagar, Dharuhera, when he received a secret information that Kala Bihari @ Vikram, Vidya Ram, Rakesh and Raj Kumar were sitting at a abandoned Kothra (tubewell room) situated near old bridge of 'Sabi' at khaliyawas turning and were planning to loot vehicles i.e. Trucks, Buses etc. coming from Jaipur side, they were armed with weapons and if a raid was conducted they could be apprehended. The police party was joined by another police party lead by ASI Jawahar Singh happened to pass nearby. Four raiding parties were formed and they surrounded the Kothra. ASI Ram Avtar overheard the conversation of accused who were planning to commit a robbery. ASI Ram Avtar challenged them asking them

to surrender and hand over their weapons to the police. Hearing that one of the accused fired at the police party to facilitate the escape of the accused. However fortunately no member of the police party was hit by the bullet. ASI Ram Avtar and Constable Noor Mohamad followed the said accused, who fell in a ditch after covering distance of 20 steps and sustained injuries. On being enquired he disclosed his name as Kala Bihari @ Vikram son of Surajbhan @ Ram Swaroop Bawaria, resident of Dhir Sunaria, District Jhajjar. His personal search revealed that he was carrying a country made pistol of 12 bore which was having an empty shell. A .12 bore live cartridge was also recovered from his shirt. Kala Bihari was brought to the place where the police party had nabbed three persons, who on being enquired disclosed their names as Vidya Ram son of Sher Singh, Rakesh son of Rajpal Bawaria, resident of Silana and Raj Kumar son of Amar Singh Bawaria, resident of Kahari, Vidya Ram and Raj Kumar were found in possession of iron rods whereas a knife was recovered from possession of Rakesh S/o Raj Pal. The members of the police party had suffered injuries in the process and an Indica Car sky blue colour without number plate was found parked at back of the tubewell room. Number plate having No. HR-20F/8772 was found to be lying under the mat of the rear side of the Car. RC was in the name of Subhash son of Parmal, resident of Hisar. Two iron nails, one Kulhari (axe) kept between the front seats of the car were also recovered. The recovered articles were taken into police possession vide seizure memo. It was found that Rakesh son of Hazari Lal Bawaria, resident of Mandiya Khurd, who was also present their had managed to escape taking advantage of the darkness. ASI Ram Avtar had sent ruqa to police

station on the basis of which formal F.I.R. was registered. The accused along with case property were brought to the police station. Case property had been deposited with MHC and accused were put up in lock up. All the accused were interrogated.

After completion of investigation challan against accused Kala Bihari @ Vikram, Vidya Ram, Rakesh and Raj Kumar was filed in the Court. Subsequently accused Rakesh was arrested and supplementary challan against him was prepared. The area Magistrate, in whose Court the challans had been filed had supplied copies of documents relied upon in the challan to accused free of cost under Section 207 Cr.P.C. and then observing that offences were triable by the Court of Sessions committed the case to the Court of Sessions Judge, Rewari from where it was assigned to Additional Sessions Judge, Rewari. Finding a prima facie case, charge for offence under Sections 307/353/399/402 IPC was framed against the accused. In addition to that accused Kala Bihari was charge sheeted under Section 25 of the Arms Act. All the accused pleaded not guilty and claimed trial.

During the course of prosecution evidence, prosecution examined 10 witnesses and thereafter its evidence was closed.

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. During their evidence they placed on record judgment Ex. DA passed in FIR No. 216 dated 2.5.2003 under Sections 392/34 IPC, Police Station, Jhajjar and news item published in 'Dainik Bhaskar' dated 3.5.2003 Mark-A.

After hearing arguments, learned trial Court convicted and sentenced the accused mentioned above, which left such accused aggrieved and they have filed the present appeal.

I have heard learned counsel appearing for the appellant and learned State counsel besides going through the records.

At the very outset, learned counsel for the appellants stated that he does not challenge the impugned judgment as regards the conviction part but has got submissions to make as regards the sentence part. He has contended that they are poor persons and they have remained in custody for a period of three years, the incident is of the year 2003 and 14 years have elapsed since then, therefore, a lenient view in the matter be taken and sentence be reduced.

Learned State counsel has opposed this request. He has placed on file the custody certificates of such appellants which goes to show that Rakesh has undergone total sentence of 3 years 4 months and 13 days, Kala Bihari @ Vikram has undergone 3 years 4 months and 13 days, Raj Kumar had undergone 3 years 4 months and 10 days and Vidya Ram has undergone 3 years 4 months and 24 days.

He has pointed out that Vidya Ram is involved in two more criminal cases, Raj Kumar in one more case, Kala Bihari @ Vikram in another criminal case and was convicted for offence under Section 25 of the Arms Act and this fact should be taken into consideration while considering the request of counsel for the appellants for reduction in sentence.

Learned counsel for the appellants has contended that as far as Vidya Ram is concerned, he is on bail in F.I.R. No. 434 of 2001, whereas

has been convicted in case F.I.R. No. 273 of 2002,/ Regarding Raj Kumar, he states that he has been acquitted in F.I.R. No. 273 of 2002. Kala Bihari @ Vikram has also been acquitted in that case, whereas Rakesh also stood acquitted in the FIR in question.

After hearing the rival contentions, going through the record and considering the family circumstances of the appellants, I am of the considered view that it would be proper and appropriate if sentence under Section 399 IPC is reduced to one already undergone by them while in custody in this case. It is ordered accordingly. Whereas, their sentence as regards offence under Sections 402, 353 IPC and in addition to that of Kala Bihari @ Vikram under Section 25 of the Arms Act remain intact. With such modification, the appeal stands disposed of.

**(H.S. MADAAN)
JUDGE**

September 07, 2017
p.singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No