

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

I.

CRA-S-230-SB of 2010

Date of Decision : March 09, 2017

Sudeep

.....Appellant

Versus

State of Haryana

.....Respondent

II.

CRA-S-3108-SB of 2009

Anil Kumar and another

....Appellants

Versus

State of Haryana

.....Respondent

III.

CRA-S-1913-SB of 2010

Bunty Sharma

....Appellant

Versus

State of Haryana

.....Respondent

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

Present : Mr. Vivek Khatri, Advocate for the appellant
(in CRA-S-230-SB of 2010).

Mr. Kuldip Singh, Advocate for the appellants
(in CRA-S-3108-SB of 2009).

Mr. Surinder Sharma, Advocate for the appellant
(in CRA-1913-SB of 2010)

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

T.P.S. MANN, J.

Sudeep, Anil Kumar, Amit @ Mitta and Bunty Sharma were
tried for committing the offences punishable under Sections 398 and
401 IPC. Sudeep was also charged under Section 25 of the Arms Act.

Vide judgment and order dated 18/19.11.2009, learned Sessions Judge, Jind convicted the appellants under Section 398 IPC and sentenced them to undergo rigorous imprisonment for seven years and to pay a fine of Rs.5,000/- each and in default of payment of fine, to undergo simple imprisonment for six months. Sudeep was also convicted under Section 25 of the Arms Act and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.2,000/- and in default of payment of fine, to undergo simple imprisonment for three months. The sentences of imprisonment awarded to Sudeep were ordered to run concurrently and the period of custody of all four of them during investigation and trial was to be deducted from the period of sentence awarded.

According to the prosecution, on 5.4.2009, a police party headed by SI Ram Chander was present at Patiala Chowk, Jind in connection with patrolling duty and detection of crime. SI Dharam Pal and driver Constable Asha Singh were also present there in gypsy vehicle. A secret information was received that accused Anil Kumar, Sudeep, Bunti Sharma and Amit @ Mitta were present armed with arms and a motorcycle near Hadwara (place meant for putting dead animals) on Hansi Road, Jind and they were making preparation to rob passengers travelling in the vehicles passing through that road. Accordingly, a raiding party was prepared and blue light atop the gypsy vehicle was removed whereas mud was pasted on the gypsy to hide the signs and words mentioned showing it a police vehicle. The police party headed by SI Ram Chander in the gypsy vehicle raided the

specified place. Soon thereafter, a young boy appeared from the fields and gave a signal with the help of torch to stop the gypsy vehicle. Another boy also appeared from the fields on a motorcycle and put his motorcycle in front of the gypsy vehicle. The two other boys also appeared there. One of the accused asked the police official traveling in the gypsy vehicle to come out. Two of the assailants tried to run away proclaiming that there were police officials in the gypsy vehicle. Efforts were made to apprehend the accused. The police party could apprehend three assailants, namely, Sudeep, Bunty Sharma and Anil Kumar. Amit @ Mitta was successful in avoiding his arrest and ran away. On search of Sudeep a .315 bore country made pistol loaded with one live cartridge was recovered from his right hand and four live cartridges of .315 bore from the right side pocket of his pant. Anil Kumar accused was having a motorcycle CD 100 bearing registration NO.HR31C-8916 which was taken into possession. Torch held by Bunty Sharma in his right hand was also recovered. Accused Amit @ Mitta was arrested in the case on 5.4.2009 and a 5'-3" long iron rod recovered from his possession. Countrymade pistol, five live cartridges, motorcycle, torch and iron rod recovered in the case were deposited with the MHC. Countrymade pistol and live cartridges were got examined from the Armourer. On these allegations, FIR No.231 dated 5.4.2009 under Sections 398 and 401 IPC and Section 25 of the Arms Act was registered at Police Station, Jind.

During the investigation of the case, the Investigating

Officer recorded the statements of the witnesses and prepared site

plan. On completion of the investigation, the accused were challaned for the aforementioned offences. The case was, thereafter, committed to the Court of Sessions, where the appellants were charged for the aforementioned offences, to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined eight witnesses

PW1 Ishwar Singh, Reader to District Magistrate, Jind proved sanction order ExPA passed by District Magistrate, Jind for launching prosecution against Sudeep accused under Section 25 of the Arms Act.

PW2 SI Ram Chander deposed that he had registered FIR in the case.

PW3 Inspector Kulwant Singh deposed that he had prepared report under Section 173 Cr.P.C. after completion of the investigation.

PW4 HC Deva Nand stated that on 5.4.2009, parcels containing iron rod, torch, .315 bore countrymade pistol and five live cartridges were handed over to ASI Surjit Singh, who returned the countrymade pistol and the live cartridge on the same day after mechanical examination.

PW5 HC Dilbagh Singh proved the scaled site plan Ex.PD made by him on the demarcation of SI Ram Chander.

PW6 ASI Surjit Singh, Armourer deposed that on 9.4.2009 a parcel containing countrymade pistol .315 bore and five live cartridges

were produced before him and after mechanical test, he found the pistol to be in working order and he prepared report Ex.PE/1 in that regard.

PW7 SI Ram Chander deposed that on 4.4.2009, he reached Patiala Chowk, alongwith HC Krishan Kumar and Constable Sandeep Kumar for patrol duty and for detection of crime. At that place SI Dharam Singh with PCR No. HR-56-3131 was also present. A secret information was received that four boys armed with arms and ammunition were present near Hadwara on Hansi Road in order to rob the passengers travelling in the vehicles. Blue light atop the gypsy vehicle was removed and the words police, etc. mentioned hidden by mud. Thereafter, the police party raided the specified place. Accused Bunty Sharma gave a signal with torch light to stop the vehicle and accused Anil Kumar appeared there on a motorcycle and brought his motorcycle in front of the gypsy vehicle. The gypsy was stopped. Out of the remaining two boys, one asked at pistol point to the persons travelling in the gypsy vehicle to hand over whatever was with them. One of the accused went towards the driver's side and asked the driver to get down from the vehicle. Thereafter, both the accused tried to run away saying that police officials were sitting in the gypsy vehicle. The police apprehended Sudeep, Anil Kumar and Bunty Sharma. A .315 bore countrymade pistol and five live cartridges were recovered from accused Sudeep. A motorcycle bearing registration No.HR-31-C-8016 was recovered from the possession of accused Anil Kumar. Torch was recovered from the possession of accused Bunty Sharma. The accused

at that time told the name of the fourth assailant, who had escaped, as Amit @ Mitta. Accused Amit @ Mitta was produced before the police at Patiala Chowk, Jind during the same night by his father Balwan Singh and the iron rod recovered from his possession.

PW8 HC Krishan Kumar also deposed on the same and similar lines as was done by PW7 SI Ram Chander.

When examined under Section 313 Cr.P.C., the accused denied the allegations of the prosecution and pleaded innocence. Accused Bunt Sharma stated that he was a Pujari in a temple and picked up by the police from the temple. Accused Amit @ Mitta stated that he was produced by Shamsheer Singh, Sarpanch and his father and, thereafter, falsely involved in the case. The remaining accused also stated that they were arrested from their respective houses and falsely implicated in the case.

In their defence, the accused DW1 Dharminder, PW2 Smt. Meena, DW3 Sushil Kumar, DW4 Balwinder Singh, DW5 Shamsheer Singh son of Ramdhari and DW6 Shamsheer Singh son of Ram Sarup.

After hearing learned counsel for the parties and on going through the record, learned trial Court convicted and sentenced the appellants, as mentioned above.

Aggrieved of their conviction and sentence, Sudeep filed CRA-S-230-SB of 2010 while Anil Kumar and Amit @ Mitta filed CRA-S-3108-SB of 2009, whereas Bunt Sharma filed CRA-S-1913-SB of 2010. As the three appeals arise out of the same judgment of

conviction and sentence passed by the trial Court, they are being disposed of by a common judgment.

This Court has heard learned counsel for the appellants, learned State counsel and also gone through the evidence brought on the record.

Regarding the identity of the accused, it may be worthwhile to mention here that no test identification parade was held. However, fact remains that at the time of the occurrence, the police party had over-powered and apprehended three of the four appellants, i.e. Sudeep, Bunty Sharma and Anil Kumar. All those appellants also disclosed the name of their fourth companion as Amit @ Mitta, who had managed to avoid his arrest and run away. Once the accused were apprehended at the spot and their names appeared in the FIR, there was no necessity for holding any test identification parade.

According to the defence counsel, it was not believable that the accused would ask the persons travelling in the police gypsy vehicle to hand over whatever was with them, more so, when the Investigating Officer and other police officials were in their police uniform and travelling in the police gypsy. However, this Court finds that both PW7 SI Ram Chander and PW8 HC Krishan Kumar have deposed that mud was pasted on the gypsy vehicle where there were signs of police and blue light was also removed from atop the gypsy vehicle at the time of the police raid. One of the accused had also asked the police officials sitting in the gypsy vehicle to hand over whatever was with them and when the said accused saw that police officials were sitting in the gypsy

vehicle, he at once tried to run away. Out of the four assailants, the police managed to over-power three of them and, thereafter, effected various recoveries. Therefore, the version of the prosecution cannot be rejected, more so, when the police version appears to be believable.

According to the appellants, they were falsely implicated in the case. None of them was arrested from the spot. Instead, later on, all four of them were brought from their respective houses and falsely implicated in the case. In this regard they have examined various witnesses. However, merely alleging that the accused were implicated in the case after being summoned from their respective houses is not enough to reject the prosecution case. The defence could not bring any material on the record from which it could be indicated that the police had reasons to falsely implicate the appellants in the present case.

Certain discrepancies and contradictions have been pointed out by the learned defence counsel in the statements of PW7 SI Ram Chander and PW8 HC Krishan Kumar. Main discrepancy appears to be regarding the non-joining of independent witnesses. However, it may be noticed that the appellants were arrested on 4.4.2009 at 11.00 p.m., i.e. at the dead of night. At that point of time, people do not move here or there but are retired to their respective houses for having sleep. Only those, who are to pass that place on a vehicle would be available at the spot but they were not required to be associated for the sole purpose of joining the raiding party. The other discrepancies and contradictions are so trivial that the prosecution case is not liable to be rejected.

Out of the four appellants only Sudeep was found in possession of countrymade pistol and live cartridges, whereas Anil Kumar was having a motorcycle while Bunty Sharma had a torch. The fourth accused, namely, Amit @ Mitta was not apprehended at the spot. However, later on, he was arrested when he was produced by his father Balwan Singh. The recovery of iron rod having length of 5'-3" cannot connect him with the present crime. At the most, these three appellants, namely, i.e. Anil Kumar, Bunty Sharma and Amit @ Mitta were present at the time of the occurrence but were not armed with any weapon. As such, their conviction under Section 398 for attempting to commit robbery when armed with deadly weapon cannot be sustained. Instead, they are liable to be convicted only under Section 393 IPC, i.e. attempting to commit robbery. At the same time, no fault can be found with the impugned judgment passed by the learned trial Court to the extent of convicting Sudeep-appellant under Section 398 IPC as well as Section 25 of the Arms Act.

As per the custody certificates produced by the learned State counsel, Anil-appellant has undergone total sentence of two years, five months and seven days; Bunty Sharma has undergone two years, one month and two days; while Amit @ Mitta has undergone two years, one month and twenty four days. These three appellants have been facing the agony of criminal prosecution for the last about eight years. Taking into consideration the totality of the circumstances, this Court is of the view that for the offence under Section 393 IPC, these

three appellants are not required to be sent behind the bars once again as they have already undergone sufficient period of sentence.

Resultantly, the conviction and sentence of imprisonment of Sudeep-appellant under Section 398 IPC and also under Section 25 of the Arms Act, besides the sentence of fine alongwith its default clause, is maintained. Substantive sentences of imprisonment shall run concurrently. However, the conviction of Anil, Bunty Sharma and Amit @ Mitta-appellants under Sections 398 IPC is set aside. Instead they are convicted under Section 393 IPC and sentenced to the period already undergone by them. They shall also pay a fine of Rs.5,000/- each and in default thereof, they shall undergo simple imprisonment for six months.

CRA-S-230-SB of 2010, CRA-S-3108-SB of 2009 and CRA-S-1913-SB of 2010 are, accordingly, disposed of.

March 09, 2017
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**(T.P.S. MANN)
JUDGE**

Whether speaking/reasoned : YES / NO

Whether reportable : YES / NO