

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

(1) **CRA-S-945-SB of 2005**
Date of decision:-3.8.2017

Jitender @ Jeetu

...Appellant

Versus

State of Haryana

...Respondent

(2) **CRA-S-755-SB of 2005**

Balwan

...Appellant

Versus

State of Haryana

...Respondent

(3) **CRA-S-779-SB of 2005**

Sandeep and another

...Appellants

Versus

State of Haryana

...Respondent

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

Present : Mr.Ashwani Bakshi, Advocate
for the appellant in **CRA-S-945-SB of 2005**.

Mr.M.S. Kathuria, Advocate
for the appellants in CRA-S-755-SB of 2005 and in
CRA-S-779-SB of 2005.

Ms.Safia Gupta, AAG, Haryana.

H.S. MADAAN, J.

Vide this judgment, I propose to dispose of three appeals i.e. **CRA-S-945-SB of 2005** filed by Jitender @ Jeetu, **CRA-S-755-SB of 2005** filed by Balwan and **CRA-S-779-SB of 2005** filed by Sandeep and Manoj, all of them being accused, who were tried and convicted by the Court of learned Additional Sessions Judge, Rohtak vide judgment dated 23.3.2005 and vide order of sentence dated 24.3.2005, they were sentenced as follows:

Name of convict(s)	Offence under Section	Sentence
Jitender @ Jeetu and Sandeep	225 IPC	Rigorous imprisonment for a period of 18 months and to pay a fine of Rs.2,000/- and in default thereof, to further undergo rigorous imprisonment for a period of four months.
-do-	324 IPC	Rigorous imprisonment for a period of 2 years and to pay a fine of Rs.2,500/- and in default thereof, to further undergo rigorous imprisonment for a period of six months.
-do-	332 IPC	Rigorous imprisonment for a period of two years and to pay a fine of Rs.2,500/- and in default thereof, to further undergo rigorous imprisonment for a period of six months.
-do-	353 IPC	Rigorous imprisonment for a period of 18 months and to pay a fine of Rs.2,000/- and in default thereof, to further undergo rigorous imprisonment for a period of four months.
Sandeep, Balwan and Manoj	25 Arms Act	Rigorous imprisonment for a period of three years and to

		pay a fine of Rs.3,000/- each and in default thereof, to further undergo rigorous imprisonment for a period of nine months.
--	--	---

All the sentences were ordered to run concurrently.

The accused-convicts, who are appellants before this Court pray that the appeals be accepted, the impugned judgment of their 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 FIR No.72 dated 3.3.2003 for offences under Sections 224, 225, 332, 353, 186 and 307 IPC and under Section 25 of the Arms Act was recorded at Police Station Meham on the statement Ex.PK of EHC Suresh Kumar, which he made before ASI Om Parkash on 3.3.2003 at 3:10 p.m. at CHC Meham.

Inter alia, in the statement, the complainant stated that on that very day, he along with EHC Dalbir Singh and EHC Om Parkash was deputed to bring under-trial accused Ramdhan from District Jail, Rohtak so as to produce him in Court at Hisar. They accordingly took Ramdhan from District Jail, Rohtak at about 11:00 a.m. and boarded Haryana Roadways bus No.HR46/9681 at 12:00 noon for going to Hisar. Ramdhan was in hand cuffs and hook of the chain was attached with belt of EHC Dalbir Singh. EHC Suresh Kumar and EHC Om Parkash were having rifles of .303 bore along with ammunition. They were sitting almost in the middle of the bus and when the bus had reached near canal of village Kharkhara, then a motorcycle with two

riders crossed the bus and motorcycle was brought in front of the bus, resultantly the bus came to a halt. 3-4 young boys from entrance gate of the bus went to bus driver asking him to stop it by pointing a pistol at him. Chilly powder was thrown in the eyes of policemen taking Ramdhan in custody in connection with hearing in the Court. 8 to 10 young boys armed with pistol and knives grappled with the policemen and they tried to get accused Ramdhan released. One of those boys gave a knife blow on the back of EHC Dalbir Singh with an intention to kill him. Thereafter, they succeed in getting Ramdhan released from the policemen. Two of the boys took away Ramdhan on a motorcycle which was without number plate. The policemen tried to apprehend the accused persons but were unable to do so. Complainant EHC Suresh Kumar in his statement narrated that the boys were in the age group of 20-25 years and of medium height and he could identify them if brought before him and that in the melee, one round of the rifle fell down in the bus which could not be traced. All the three policemen were brought to CHC Meham in the same bus where they were given first aid and then referred to Medical College and Hospital, Rohtak.

On that statement of complainant EHC Suresh Kumar Ex.PK, ASI Om Parkash appended his endorsement Ex.PK/1 sending ruqa to police station through Constable Tej Singh, on the basis of which formal FIR Ex.PK/2 was registered at Police Station Meham by MHC Shri Krishan for offences under Sections 224, 225, 353, 186, 332, 307 IPC and 25 of Arms Act. The matter was investigated. The Investigating Officer along with other police officials went to the spot and prepared rough site-plan of the place of incident as Ex.PS.

Statements of witnesses were recorded.

On 12.3.2003 on receipt of secret information, two police parties, one headed by Inspector Randhir Singh from CIA IInd Rohtak and the other by ASI Ishwer Singh, CIA Ist, Rohtak apprehended accused Jitender Singh @ Jeetu son of Karambir and Sandeep son of Sumer Singh. Both those accused were interrogated and they suffered confessional statements Ex.PY and Ex.PZ, respectively, admitting their involvement as well as of their co-accused in the incident stating that Jitender @ Jeetu son of Karambir was facing trial under Section 307 IPC and he met Sandeep son of Sumer in District Jail, Rohtak. When they came out on bail, Sandeep told them that accused Ramdhan was to be got released from police custody with the help of others and on 3.3.2003 at about 8:30 a.m. such the escape was planned. Balwan with one of them went on a motorcycle whereas others boarded the bus in which Ramdhan was being taken to Hisar by three police officials. All of them except one or two were armed with pistols. That Jitender @ Jeetu and Sandeep son of Surinder and one or two more were having chilly powder with them. When the bus reached near the canal of village Kharkhara, Balwan and his companions brought the motorcycle in front of the bus and got it stopped. Sandeep, Dinesh and Sandeep Punia immediately went near the bus driver and asked him to stop the bus at pistol point. The bus was accordingly got stopped. 2 or 3 of them put chilly powder in the eyes of the three police officials, one of them gave a knife blow to EHC Dalbir Singh and they got released Ramdhan from police custody. Such Ramdhan was taken away to Rohtak side by accused Balwan and Manoj on a motorcycle, whereas remaining persons

escaped via fields near the canal. Jitender had disclosed that the shirt which he was wearing at the time of occurrence having chilly powder in its pocket, was concealed by him under the mattress of his double bed and he could get the same recovered. Similarly, Sandeep in his statement Ex.PA disclosed that he could get a loaded pistol used in the crime recovered. Subsequently, such accused while in police custody, in pursuance of the disclosure statements made by them got the recoveries effected i.e. accused Jitender Singh, got recovered shirt from the disclosed place, some chilly powder was still there in the pocket. The Investigating Officer converted the shirt into a sealed parcel and it was taken into possession vide recovery memo Ex.PY/1. The site-plan of the recovery was prepared as Ex.PY/2. Accused Sandeep got recovered a loaded pistol Ex.P1 with a live cartridge Ex.P2. The Investigating Officer prepared rough sketch of the recovered pistol as Ex.PX and it was taken into possession vide recovery memo Ex.PX/1.

On the next day i.e. on 13.3.2003, accused persons with muffled faces were produced before Sub Divisional Judicial Magistrate, Meham and an application was submitted by the police for their test identification parade but both the accused vide statement Ex.PAA/1 refused to join test identification parade, as such the Magistrate declined the police application. During the course of investigation, pistol Ex.P1 and live cartridge Ex.P2 were got examined from Armourer Sat Narain who vide his report Ex.PL/1 intimated that pistol was fit to fire and cartridge Ex.P2 was a live one.

Further, accused Dinesh was arrested in this case on 20.3.2003 by ASI Banarsi Dass, who also suffered a confessional

statement Ex.PAB/1 regarding the occurrence involving himself as well as co-accused stating that pistol used by him in the crime had already been recovered by Delhi Police. He was produced in the Court of SDJM, Meham with police application for test identification parade but accused Dinesh vide his statement Ex.PAB/1 refused to join test identification parade, as such police application was dismissed.

Accused Sandeep Punia son of Rajinder was arrested on 28.3.2003 and he had got recorded his confessional statement Ex.PAJ offering to get the pistol used by him in the commission of crime recovered. However, on the next day i.e. 29.3.2003, he gave his other confessional statement Ex.PAK stating that he had thrown the revolver in Kharkhara canal, so he could not get it recovered.

Accused Balwan was arrested on 31.3.2003 and he suffered a disclosure statement Ex.PT regarding he being involved in the incident along with his co-accused and that he got the bus halted by bringing the motorcycle in front of it and that accused Manoj was with him on the motorcycle at that time. He stated that they had taken away accused Ramdhan towards village Lakhan Majra via Madina and Girawar and in the mustard fields, Ramdhan was got freed from his hand cuffs. He offered to get his pistol with a live cartridge in it as well as his new Honda motorcycle No.DL-35AA/6214 recovered. Then his confessional statement Ex.PT was recorded. He was produced in the Court on the next day with police application for test identification parade but accused refused to join such test identification parade, as such the police application was dismissed. However, on 2.4.2003, accused Balwan in pursuance of the disclosure statement made by him got recovered pistol

Ex.P3 with a live cartridge Ex.P4 in it. The Investigating Officer prepared rough sketch of pistol as Ex.PU and it was taken into possession vide recovery memo Ex.PU/1. The Armourer had tested the recovered pistol and cartridge on 7.4.2003, who prepared rough sketch of the pistol Ex.PH/2 and gave his report Ex.PM/1 reporting that pistol was fit to fire and cartridge was a live one.

Accused Ramdhan (since **proclaimed offender**) was arrested on 6.5.2003 by ASI Ishwer Singh (PW20) through production warrants since at that time he was in custody in an another case registered under Arms Act with Police Station, Hisar. He had suffered a disclosure statement Ex.PZ and in pursuance thereof got recovered hand cuffs Ex.P5 and *AARI* blade (saw blade) Ex.P6 which were taken into possession vide recovery memo Ex.PZ/1.

Further during the investigation, accused Rajiv son of Om Parkash and Manoj son of Nahar Singh, who were in custody in some other case registered against them at Police Station Moti Nagar, Delhi were joined in the investigation of this case. Both of them got recorded their disclosure statements Ex.PAD and Ex.PAE, respectively. Manoj on 4.6.2003 got his confessional statement Ex.PAF recorded involving himself as well as his other co-accused in the incident. He offered to get country-made pistol of .315 bore Ex.PC with one live cartridge in it, recovered from the bushes near Railway Station and subsequently in pursuance of that statement got recovered country-made pistol Ex.P6 along with cartridge Ex.P7 on 5.6.2003. The Investigating Officer prepared the rough sketch of the pistol as Ex.PAF/1 and it was taken into possession vide recovery memo Ex.PAF/2 and site-plan of the place

of recovery was prepared as Ex.PAF/3. Said pistol and cartridge were examined by Armourer ASI Sat Narain on 28.6.2003 and he found pistol fit to fire and cartridge to be a live one.

On 4.6.2003, accused Rajiv while being interrogated suffered a confessional statement Ex.PAH involving himself and other co-accused persons in the incident. He got the place of occurrence demarcated vide memo Ex.PAL. However, no recovery was got effected by him.

After completion of investigation and other formalities, challan against accused namely Jitender @ Jeetu, Sandeep son of Surinder, Dinesh son of Krishan, Sandeep son of Rajinder, Balwan son of Duli Chand and Ramdhan @ Lila (such accused having absconded and declared as proclaimed offender) was filed in the Court. Subsequently, supplementary challans against accused Rajiv and Manoj were also filed.

On presentation of challan and supplementary challans in the Court of Sub Divisional Judicial Magistrate, Meham, he supplied copies of documents relied upon in the challans to the accused free of costs as provided under Section 207 Cr.P.C. Then finding that offence under Section 307 IPC was exclusively triable by the Court of Sessions, learned Sub Divisional Judicial Magistrate, Meham vide orders of different dates committed the case to the Court of learned Sessions Judge, Rohtak from where it was entrusted to the Court of learned Additional Sessions Judge, Rohtak.

On receipt of case in the Court of learned Additional Sessions Judge, Rohtak, observing that charge for offences under

Sections 225, 353, 307 and 120-B IPC against all the accused and charge for the offence under Section 25 of the Arms Act was disclosed against accused Balwan son of Duli Chand, Sandeep son of Surinder and Manoj son of Nahar Singh, they were charge-sheeted accordingly, to which, they pleaded not guilty and claimed trial. The case was then fixed for evidence of the prosecution.

During the course of its evidence, which as a matter of fact was recorded thrice for the reason of filing of supplementary challans against the accused on different dates, the prosecution examined as many as twenty six witnesses, namely, Armourer HC Satpal as PW1, HC Karan Singh as PW2, Driver Shamsheer Singh as PW3, injured Dalbir Singh as PW4, injured EHC Om Parkash as PW5, HC Atam Parkash as PW6, ASI Har Narain as PW7, Inspector Inder Singh as PW8, Dr.R.P. Colonia as PW9, Dr. Surinder Rathi as PW10, ASI Om Parkash as PW11, Deputy Superintendent, District Jail Rohtak Sunil Sangwan as PW12, HC Hawa Singh as PW13, Constable Jai Bhagwan as PW14, Reader to District Magistrate Ram Bhagat Sharma as PW15, Revenue Patwari Bharat Singh as PW16, Constable Jagbir Singh as PW17, Armourer ASI Sat Narain as PW18, Constable Bijender as PW19, ASI Isher Singh as PW20, Inspector Chander Bhan as PW21, HC Ram Phal as PW22, ASI Banarasi Dass as PW23, Constable Jai Singh as PW24, ASI Randhir Singh as PW25 and injured EHC Suresh Kumar as PW26.

Statements of the accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against such accused were put to them but they denied the allegations

contending that they were innocent and had been falsely involved in this case.

Further, accused Jitender @ Jeetu took up a plea that he has has been falsely implicated in this case at the instance of Shri Mahinder Singh son of Shri Bhagwan Singh, resident of village Marrot, who is none but elder brother of his father and presently posted as SI in the office of SP, Hisar with whom relations of their family are strained since long; that the present incident also relates to the officials of District Police, Hisar; that his father was married on 1.7.1976 and was ousted from his house at the instance of his *TAU* Mahinder Singh on the next day of the marriage; that their common tubewell in the ancestral village was shut down, which remained out of order for five years; that he did participate in the marriage of his elder sister but created scene at the time of marriage in the presence of *BARAAT* and left the venue in between; that he dismantled the common wall of their plot and in the year 1992, he exchanged the agricultural land of his own and took possession of the partitioned land forcibly misusing his police official position; that he had a motive in his mind to harm them and got the opportunity for framing him in the present case; that his uncle appraised the relevant PWs of his physique and so he was identified for the first time by the PWs in the Court; that he was arrested on 7.3.2003 from village Silani, District Jhajjar, where he had gone to stay with his maternal uncle to prepare for examination of 10+2 of Board of Secondary Education, Bhiwani commencing from 7.3.2003 at Jhajjar and was shown to have been arrested on 12.3.2003 at Rohtak; that recovery of shirt has been planted upon him and that in fact recovered

shirt does not belong to him.

Further, accused Manoj and Sandeep son of Surinder took up a similar plea that they are innocent and have been falsely implicated in this case and they have no concern with the crime in question; that police had produced and fabricated and manipulated evidence against them and that they had not made disclosure statements and no recovery was effected from them.

Further, accused Balwan Singh took up a plea that he was innocent and had been falsely implicated in this case; that he had no concern with his co-accused; that he neither made any disclosure statement nor any recovery was effected from him; that recovery of alleged weapon has been planted upon him as he was elected unopposed Sarpanch of his village and that to low down his prestige in the eyes of public as he always fought with the police in village matters to avoid explosion of his co-villagers at the instance of the police.

During the course of defence evidence, the accused Dinesh examined Kailash as DW1, Nand Lal as DW2. Accused Jitender son of Karambir examined Ram Karan, Assistant as DW3 and Yoginder as DW4.

With that the defence evidence got concluded.

After hearing arguments, learned trial Court convicted and sentenced the accused as mentioned supra, which left them aggrieved and they have filed the present appeals.

I have heard learned counsel for the appellants-accused-convicts and learned Assistant Advocate General for the State of Haryana besides going through the record and I am of the considered

view that there is no merit in the appeals.

While deciding the present appeals involvement of Jitender, Balwan, Sandeep and Manoj in the incident is to be seen. After scanning the evidence adduced by the prosecution, their involvement in the incident clearly comes out to be there. PW12 Sunil Sangwan, DSP, District Jail, Rohtak, stated that custody of accused undertrial Ramdhan was given to EHC Dalbir Singh on 3.3.2003 at 10:30 a.m. for the purpose of producing him in the Court at Hisar. His testimony is supported by entry in register No.16 maintained at District Jail, Rohtak. Then there are statements of PW4 EHC Dalbir Singh, PW5 EHC Om Parkash and EHC Suresh Kumar who supported the prosecution story on material aspects as regards taking Ramdhan in custody to Hisar Court on 3.3.2003 in Haryana Roadways bus No.HR46/9681. 3-4 young boys from entrance gate of the bus went to bus driver asking him to stop it by pointing pistol at him. Chilly powder was thrown in the eyes of policemen. PW EHC Dalbir was given a knife blow and they got Ramdhan released. They stated that boys were in the age group of 25-26 years. PW26 EHC Suresh Kumar identified the accused present in the Court being involved in the incident stating that accused Jitender was sitting with his co-accused persons by his side in the bus and he had thrown chilly powder in his eyes and that he was talking with stammering voice. Furthermore, accused Jitender, Sandeep son of Surinder, Balwan, Dinesh had refused to join test identification parade after their arrest. Thus adverse inference can certainly be drawn against them. PW5 Om Parkash EHC had also identified accused Jitender as well as accused Sandeep son of Surinder.

Furthermore, Jiternder had suffered a disclosure statement during the course of investigation and in pursuance thereof had got a shirt recovered with some of the chilly powder still being there in the pocket that clearly shows his involvement in the incident. Similarly, during the course of investigation by making disclosure statement accused Sandeep and Manoj had got recovered loaded pistols whereas Balwan had got recovered motorcycle. The trial Court has reached the conclusion that prosecution had proved its case beyond shadow of reasonable doubt only against accused Jitender @ Jeetu and Sandeep son of Surinder for the offences under Sections 225, 324, 332 and 353 IPC and they were convicted accordingly. Whereas Sandeep son of Surinder, Balwan son of Duli Chand and Manoj were convicted under Sections 25 of the Arms Act and accused Dinesh son of Krishan, Sandeep son of Rajinder and Rajiv son of Om Parkash were acquitted giving them benefit of doubt. Such judgment does not appear to be suffering from any illegality or infirmity. Learned counsel for the appellant Jitender @ Jeetu argued that the story is untrue inasmuch as the incident is said to have taken place at 12:00 noon which lasted for 3-4 minutes. The police station was at a distance of 10 kms. and rather fell on way to CHC Meham but matter was not reported there which puts a question mark over the truthfulness of the prosecution story. I do not find any merit in this contention. The prosecution case stands duly proved by the oral as well as documentary evidence adduced by it. It was a dare devil act on the part of the assailants, who armed with deadly weapons had stopped the bus in which Ramdhan in police custody was travelling by pointing a pistol at the bus driver and bringing motorcycle

in front of that bus, throwing chilly powder in the eyes of the policemen and then successfully freeing Ramdhan from their custody. It being so, the natural reaction was to take the persons having chilly powder in their eyes to a hospital for their treatment instead of going to the police station first and lodging the report extending the agony the persons having chilly powder in their eyes by depriving them from medical aid at the earliest.

As regards the contention of learned counsel for the appellant that there are contradictions between statements of PWs which go to the root of the matter. But I find little force in those contentions. These type of small contradictions and variations in the statements of the witnesses, who creep in due to differences in power of observation and perception of various individuals and lapse of memory due to passage of time. Thus those cannot be given undue importance so as to view the prosecution story with suspicion. Thus, the accused were rightly convicted and sentenced by the trial Court keeping in view the gravity of the offence which they have committed. There is no scope for reduction in the sentence. The trial Court has already dealt with them in a lenient manner and reducing the sentence would rather send a wrong signal in the society that one can indulge in a heinous crime and then can get away with the same with a light punishment.

In view of the above discussion, the said judgment of conviction and sentence is upheld whereas appeals are found to be without any merit and the same are dismissed accordingly.

Appellant – accused Jitender @ Jetu is reported to have already undergone the sentence. Appellants – accused Balwan, Sandeep

CRA-S-945-SB of 2005;
CRA-S-755-SB of 2005; and
CRA-S-779-SB of 2005

16

and Manoj are stated to be on bail granted to them by this Court while suspending their sentence. Their bails are cancelled. Chief Judicial Magistrate, Rohtak is directed to issue arrest warrant to get them arrested so as to make them undergo the remaining sentence.

Necessary intimation be sent to the quarter concerned.

3.8.2017

Brij

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

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No