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

1. **CRA-S-759-SB of 2012**
Date of decision : April 06, 2017

Sher Singh and othersAppellants.

Versus

State of Haryana ...Respondent._

2. **CRA-S-694-SB of 2012**

Rohit alias Lala and another Appellants.

Versus

State of Haryana ... Respondent.

CORAM: HON'BLE MR. JUSTICE (DR.) SHEKHER DHAWAN

Present Mr. Jitender Nara, Advocate,
for appellants No. 1 to 3 in [CRA-S-759-SB-2012]

Mr. Sanjeev Kodan, Advocate,
for appellant No. 4
Mr. Vikas Lochab, Advocate,
Legal Aid counsel for appellants No. 5 & 6
in CRA-S-759-SB-2012.

Mr. B.S.Saroha, Advocate,
for the appellants in [CRA-S-694-SB-2012]

Ms. Kirti Singh, DAG, Haryana,
for the respondent-State.

SHEKHER DHAWAN, J.

The above mentioned two appeals are directed against the common judgment of conviction dated 28.1.2012 and order of sentence dated 2.2.2012 passed by learned Additional Sessions Judge, Jhajjar, whereby all the accused-appellants were convicted and sentenced as under :-

Under Section	Sentence	In default
Appellants - Sher Singh, Rohit alias Lala, Parveen alias Sharma, Kuldeep, Bablu and Ramu		
Section 399 of Indian Penal Code (for short, "I.P.C.")	to undergo Rigorous Imprisonment for a period of Ten years and to pay of fine of ₹1,000/- each.	To further undergo rigorous imprisonment for six months each.
Section 402 of I.P.C.	to undergo Rigorous Imprisonment for a period of Seven years and to pay of fine of ₹1,000/- each.	To further undergo rigorous imprisonment for six months each.
Appellants - Ajay alias Jabbar and Dhirender alias Dharmo		
Section 399 of I.P.C.	to undergo Rigorous Imprisonment for a period of Ten years and to pay of fine of ₹1,000/- each.	To further undergo Rigorous Imprisonment for six months each.
Section 402 of I.P.C.	to undergo Rigorous Imprisonment for a period of Seven years and to pay of fine of ₹1,000/- each.	To further undergo Rigorous Imprisonment for six months each.
Section 25 of Arms Act	to undergo Rigorous Imprisonment for a period of Two years and to pay of fine of ₹1,000/- each.	To further undergo Rigorous Imprisonment for six months each.

The sentence was ordered to run concurrently.

2. Facts relevant for the purpose of decision of these appeals; that on 24.1.2010, a police party headed by Inspector Baljit Singh, CIA Jhajjar was present near Greed Field School, Jhajjar in connection with crime detection and patrolling duty. Meanwhile, another police party headed by ASI Balwan Singh reached there and both the parties started checking the

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passersby. Meanwhile, a secret information was received to the effect that nine persons duly armed with deadly weapons were sitting at a '*kotha*' situated in the fields of Sham Singh and Tarif Singh near Navodya School, Gurgaon road, Jhajjar and were making preparation to commit dacoity on the trucks passing on that road and if a raid is conducted, they could be apprehended from the spot. Accordingly, a raid was conducted on the kotha of tubewell and Inspector Baljit Singh heard the conversation amongst the accused persons. One of them was saying that Parveen accused would keep the vehicle start and ready for escaping the members of their party after committing dacoity and Ajay alias Jabbar Singh and Dhirender alias Dharmo, who were armed with pistols, would brandish the pistols towards the drivers of the trucks and would get stop the trucks and the remaining accused persons would commit the dacoity of the occupants of the trucks.

3. On this, Inspector Baljit Singh asked the accused persons that they have been encircled by the police party and they should surrender. The accused persons tried to run away, but they were apprehended by the police. Their vehicles and weapons were taken into possession and then ruka was sent for registration of a case. On this, FIR [Ex. P-19/A] was registered and after completion of investigation proceedings, challan was presented in the Court for trial.

4. During trial, learned Court below completed various proceedings of trial including framing of charge against the accused, recording of evidence of the eight prosecution witnesses and examination of accused under Section 313 Cr.P.C. After considering the prosecution

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evidence and the defence version on record, learned trial Judge held the appellants guilty and convicted and sentenced them on 2.2.2012.

5. Aggrieved of passing of judgment of conviction and order of sentence, the appellant are before this Court by way of present appeals.

6. At the time of arguments, learned counsel for the appellants contended that the prosecution case is not believable at all. No incident had taken place in the presence of police party, rather, the prosecution case is that the accused-appellants were making preparation to commit dacoity. If the prosecution case is taken to be correct that they were duly armed and tried to make escape, but still they had not opened fire or attacked the police party in any way and they had just surrendered before the police party. Moreover, the prosecution case is based upon statements of official witnesses alone, which are full of contradictions on the material points regarding identity of the accused.

7. Learned counsel for the appellants mainly contended that the accused-appellants are innocent and they have been falsely implicated in this case, whereas they had not committed nay offence. As per the prosecution case, two country-made pistols of .315 bore were recovered from the possession of Dhirender alias Dharmo and Ajay alias Jabbar and recovery was effected by the Investigating Officer. Learned counsel for the appellants further submitted that as the appellants have already undergone substantial period of sentence while remaining in custody, they be released from custody.

8. While arguing on these points, learned State counsel contended

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that the accused were planning and making preparation to commit dacoity while they were armed with deadly weapons, i.e., two country-made pistols .315 bore; one khokri, sword, iron pipe, wooden danda and if the police party had not apprehended the accused-appellants, they could play havoc with the life and property of one and all. More so, they were involved in different cases of similar nature and there are no grounds for acceptance of the appeals or reduction of sentence and both the appeals be dismissed.

9. Having considered the submissions made by learned counsel for the parties and appraisal of record, this Court is of the considered view that the accused-appellants were apprehended by the police party from the spot while they were planning and making preparation to commit dacoity. They were armed with deadly weapons, like, two country-made pistols .315 bore; one *khokri*, sword, iron pipe, iron rod, wooden *danda*. The prosecution case is based upon the testimony of PW-1, Jai Singh, PW-2 ASI Niranjan Singh, PW-5 ASI Balwan Singh, PW-8, Inspector Baljeet Singh and they were consistent on the point that all the accused-appellants were apprehended on the spot while they were making attempt to commit dacoity. It is settled proposition of law that the police officials are as good witnesses as from general public if their testimony is quite consistent and in this case, the prosecution has been able to establish that the accused-appellants were making preparation to commit dacoity.

10. As regards to offence punishable under Section 25 of the Arms Act, 1959, two country-made pistols of .315 bore were recovered on the

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spot from Dhirender alias Dharmo and Ajay alias Jabbar vide recovery memos Ex. P1/A and Ex. P2/A respectively and the weapons were found to be in working condition.

11. As such, the offences alleged against all the accused-appellants under Sections 399 and 402 IPC and under Section 25 of the Arms Act qua Ajay alias Jabbar and Dhirender alias Dharmo stand fully proved on the file and the trial Judge has rightly held all the accused-appellants guilty and convicted and sentenced them vide impugned judgment dated 28.1.2012. Both the appeals against judgment of conviction dated 28.1.2012 stand dismissed.

12. As regards to appeals against order of sentence dated 2.2.2012, certainly a leniency on the point of sentence can be taken. Accused-appellants were at the stage of making preparation to commit dacoity. Their act may or may not have resulted into actual incident, but as per the prosecution case itself, they were apprehended. They had not caused any damage to any property nor have they caused any injury to any person at any stage. Taking into consideration the aforesaid facts, this Court is of the considered view that the substantive sentence awarded to all the accused-persons is reduced from 10 years to 3 years each under Section 399 IPC and from 7 years to 3 years under Section 402 IPC. The order of sentence dated 2.2.2012 passed by learned Additional Sessions Judge under Section 25 of Arms Act qua accused-appellants, Ajay alias Jabbar Singh and Dhirender alias Dharmo shall remain intact. The sentences, as ordered by learned trial Judge, shall run concurrently.

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13. Resultantly, both the appeals qua judgment of conviction stand dismissed and the order of sentence is modified as indicated above. Learned trial Judge is directed to comply with this order forthwith under intimation to this Court.

(SHEKHER DHAWAN)
JUDGE

April 06 , 2017
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Whether speaking/reasoned	:	Yes
Whether Reportable	:	Yes