

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

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CRA No. S-3448-SB of 2014

Date of Decision: December 16, 2017

Rajinder Singh

...Petitioner

Versus

State of Haryana

...Respondent

CORAM:- HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present:- Mr. Arvind Galav, Legal Aid Counsel,
for the appellant.

Mr. D.R. Singla, DAG, Haryana.

AVNEESH JHINGAN, J. (Oral)

The appellant has faced trial in FIR No. 160 dated 10.07.2012, registered at Police Station Kunjpura, District Karnal, under Sections 398 and 401 of the Indian Penal Code, 1860 (for short 'IPC') and Section 25 (1-B)(a) Arms Act, 1959.

Learned Additional Sessions Judge, Karnal, vide judgment dated 11.04.2014 and order dated 12.04.2014 convicted and sentenced the appellant for the commission of offences as under:-

Under Section 398 IPC	R.I. for 10 years and fine of Rs. 5,000/-. In default of payment of fine to further undergo S.I. for 3 months.
Under Section 401 IPC	R.I. for 3 years and fine of Rs. 1,000/-. In default of payment of fine to further undergo S.I. for 2 months.
Under Section 25 (1-B) (a) Arms Act	R.I. for 2 years and fine of Rs. 1,000/-. In default of payment of fine to further undergo S.I. for 2 months.

The facts of the prosecution case are that on 10.07.2012, SI Virender Singh received a secret information that Rajinder Singh, who was released on parole, was absconding along with his accomplice Kishan Lal and they were armed with deadly weapons and were present at Kunjpura road leading to Kalvehri in an attempt to loot the passers-by. Acting on the information, raiding party was formed and rapat was recorded in the daily diary. SI Virender Singh along with the members of the raiding party proceeded in TATA Sumo bearing registration No. HR45A-8000. On their way at Magalpur Chowk, Kunjpura Road, Vijender Singh son of Nathi Ram was coming on the motorcycle. He was told about the secret information and was joined in the raiding party. He was sent ahead with an instruction that when the accused would stop him, he would give signal to the police party by switching on the rear light of the motorcycle. When Vijender Singh turned his motorcycle towards Kalvehri one person gave him a signal showing torch. When Vijender Singh stopped, he was surrounded by the accused persons. He gave the signal to the police party, on reaching the spot both the accused were nabbed. On enquiry the accused disclosed their identity. On search, a country made pistol of 7.65 (32 bore) was recovered along with two live cartridges from Rajinder Singh. One wooden danda and torch containing two cells were recovered from Kishan Lal. Ruqa was sent to Police Station, Kunjpura, on the basis of which, formal FIR was lodged. During the investigation, both the accused were arrested. The pistol was checked by the Armourer and was found in the working condition. Sanction to prosecute Rajinder Singh for commission of offence under Arms Act was obtained. Report under Section 173 Cr. P.C. was submitted against the accused for offences under Section 398 and 401 of the IPC as well as

Section 25 of Arms Act, 1959.

On their appearance, the accused were supplied copies under Section 207 Cr.P.C. and were charge-sheeted under the above said Sections.

During the trial, Kishan Lal was declared proclaimed offender.

Prosecution in order to prove their case examined 8 witnesses and after bringing the evidence on file, the accused was examined under Section 313 Cr. P.C. in which he denied all the accusations and pleaded that he was falsely implicated as he had filed a criminal complaint against Rattan Singh, Assistant Sub Inspector of the police. He denied of any such incident occurred. No recovery was made from him. Accused opted for producing evidence but no evidence was led.

After going through the evidence on record the learned trial Court vide impugned judgment and order convicted and sentenced the accused-appellant for offences punishable under Sections 398 and 401 IPC and Section 25 (1-B)(a) Arms Act.

Aggrieved against the judgment and order, the present appeal has been filed.

Learned Legal Aid Counsel appearing for the appellant argued that the prosecution failed to prove its case against the appellant. He contended that there was only one independent witness namely Vijender Singh (PW-6), he was the stock witness used by the police. His case is that this is made up story by the police as they were carrying grudge against the appellant because he had filed a complaint against ASI Rattan Singh.

He argued that the prosecution proved its case by deposition of 8 witnesses beyond the doubt. He further relied upon the fact that the pistol along with two live cartridges were recovered from the appellant and PW6

specifically stated that it was the appellant who pointed a gun on his head.

Before dealing with the contention raised by learned counsel for the appellant, it would be important to go through the evidence adduced by the prosecution. PW1 to PW4 were formal witnesses who proved the signature of the Magistrate, recording of DDR, recording of FIR in receipt of ruqa and the fact that Special report was handed over by ASI Jagdish Kumar to Illaqa Magistrate and Higher Police Officer. The basic reliance is based on the deposition of PW5, PW6 and PW7. PW5-SI Virender Singh and PW7-ASI Randhir Singh, were members of the raiding party. They deposed as per the case of the prosecution that on secret information the accused persons were apprehended. They further proved their investigation and recovery of the pistol and two live cartridges from the appellant. They further proved various documents prepared during the investigation.

The most important witness is PW6-Vijender Singh, who was a private independent witness. He supported not only the story of the prosecution but also the recovery of the pistol and cartridges from the appellant.

Further the report of Armourer proved that the pistol recovered was in working condition.

As against the witnesses and evidence of the prosecution, no evidence was led by the appellant. He himself denied the recovery as well as all the accusations of the prosecution. Apart from denial he was not even in a position to create a doubt in the prosecution story.

In this background, the contentions raised by learned counsel for the appellant are to be dealt with. The contention that PW-6-Vijender Singh was a stock witness was a mere bald statement as no evidence was

produced, substantiating the said allegation. In order to attribute motive to the raiding party allegation was made that the appellant was implicated for the reason that he had made complaint against ASI Rattan Singh. Neither any copy of the complaint nor any document or witness in support of the said allegation was produced.

There cannot be any quarrel with the legal proposition that in criminal trial the decree of proof is strict as compared to civil proceedings. In the present case the prosecution has duly proved its case beyond doubt. There is enough evidence against the appellant to uphold the conviction.

The ingredients of Section 398 IPC that while attempting to commit robbery or dacoity the accused should be armed with a deadly weapon are fully established in the present case.

There was an attempt to rob Vijender Singh and the appellant was armed with a pistol. The requirements of Section 401 IPC that the accused should be associated with other persons for the purpose of habitually committing theft or robbery is duly proved as per the custody certificate produced. Even the appellant admitted during the trial that he had committed offences while he was on parole.

The ingredients of provisions under Section 25 of the Arms Act have been established in the present case as it has been proved on record and due sanction was obtained for prosecution under the Arms Act. As per the report of the Armourer the pistol was in working condition.

Learned State Counsel produced the custody certificate issued by Ashok Kumar, Deputy Superintendent of District Prison, Karnal dated 15.12.2017.

From the certificate, it is evident that the appellant is an

habitual offender and is involved in six FIR's and one complaint, which are for the period from 31.05.2003 to 21.04.2016. He further contended that the appellant had committed the present offence when he was on parole in another case.

The contention raised by learned State counsel further fortifies the story of the prosecution that accused is habitual offender, who has committed atleast four offences when he was on parole. The last offence committed was in 2016.

The prosecution has succeeded in proving their case and appellant has failed to substantiate the illwill alleged against the police and to prove that independent witness was a stock witness. The police had no animosity against the appellant. They arrested the accused in discharge of their duties, they should not be ordinarily disbelieved. There is no reason or ground to interfere in the judgment and order of conviction and punishment.

In view of the above discussion, the appellant has rightly been convicted by the trial Court for offences punishable under Section 398 and 401 IPC and Section 25 of the Arms Act.

Accordingly, the appeal is dismissed.

December 16, 2017
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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No