

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

1. CRA-S-1750-SB-2003(O&M)

Suresh

..... Appellant

Versus

State of Haryana

..... Respondent

2. CRA-S-1797-SB-2003(O&M)

Mehmood and others

.....Appellants

Versus

State of Haryana

.....Respondent

Date of decision :-10.11.2017

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

Present : Mr. L.M. Gulati, Advocate
for the appellant in **CRA-S-1750-SB-2003**.

Mr.Kunal Dawar, Advocate
for the appellants in **CRA-S-1797-SB-2003**.

Mr.Neeraj Poswal, AAG, Haryana.

H.S. MADAAN, J.

Vide this judgment I propose to dispose of two appeals i.e. **CRA-S-1750-SB-2003** filed by Suresh and **CRA-S-1797-SB-2003** filed by Mehmood, Rakmudin @ Rukman and Hakimudin @ Hukman, all of them being accused in FIR No.592 dated 16.9.2000, under Sections 395/365/342/412/414 IPC and 25

of Arms Act, Police Station City, Ballabgarh, who were tried by learned Additional Sessions Judge (Ad hoc), Fast Track Court No.-II, Faridabad and in terms of the impugned judgment of conviction and order of sentence dated 2.9.2003, they were convicted and sentenced as under:

Name of convict(s)	Offence under Section	Sentence
Mehmood, Rakmudin @ Rukman and Hakimudin @ Hukman	395 IPC	Rigorous imprisonment for a period of 5 years and to pay a fine of Rs.1,000/- each and in default thereof, to further undergo imprisonment for a period of three months each.
Rakmudin @ Rukman and Hakimudin @ Hukman	342 IPC	To pay a fine of Rs.1,000/- each and in default thereof, to further undergo imprisonment for a period of three months each.
Suresh	412 IPC	Rigorous imprisonment for a period of 3 years and to pay a fine of Rs.1,000/- and in default thereof, to further undergo imprisonment for a period of three months.

The accused-convicts, who were appellants before this Court prayed that the appeals be accepted and the impugned judgment of their conviction be set aside and they be acquitted of the charges framed against them.

Briefly stated facts of the case as per prosecution story are that criminal machinery in this case was set into motion by complainant Baldev Dass son of Sukh Dev, who reported to the police that on 15.9.2000 at about 10:00 p.m., he had left with his truck trailer having registration No.HR26A-

7909 belonging to Harvinder Singh son of Kartar Singh, resident of D-71, Fateh Nagar, Police Station Tilak Nagar, New Delhi; that the vehicle was laden with a container from Tuglakabad (Delhi) for Mathura; that when the said vehicle had reached near Elson Cotton Mill and time was about 12:30 midnight, then two persons on a scooter came there stopping the scooter in front of the truck trailer bringing it to a halt; then one of the scooterist came near it and caught hold of complainant Baldev Dass from his collar; that in the meanwhile another scooter having three young boys as riders reached there; that those three young boys got into the truck trailer; that two of them took out country-made pistols placing the same at the neck of the driver and on the neck of the cleaner namely Shambhu Dayal warning them that in case they raised alarm, they would be killed; that thereafter one of them started driving the truck trailer and after having covered a distance of 2-3 kms. towards Mathura side, they stopped the truck trailer on the road side and two such boys having 12 bore country-made pistols made the driver and the cleaner to alight therefrom; that then they took the driver and cleaner near *BAAJRA* fields, whereas their third accomplice went away taking along with him the truck trailer; that in the *BAAJRA* fields, two of the accused tied the hands and feet of the driver and cleaner of the truck with a rope and sat with them as their guards till 5:00 a.m. of the next morning; that during the said period Rakmudin @ Rukman and Hakimudin @ Hukman had been establishing contacts with their co-accused on mobile phone to know whether the looted truck trailer had reached or not at the place settled by them; that after Rakmudin @ Rukman and Hakimudin @ Hukman had left, the driver and cleaner went to the owner of the truck trailer in Delhi and narrated the entire incident to him; thereafter accompanied by owner of the truck trailer complainant Badev Dass reached police station and got his statement recorded. He had informed the police that he and Shambhu Dayal could identify the accused, if they were brought before them. Accordingly, formal FIR for the

offences under Sections 395/365/342/412/414 IPC and 25 of Arms Act was registered. Since other accused, namely, Rakmudin @ Rukman and Hakimudin @ Hukman, Sampat and Mehmood son of Mohd. Ali could not be arrested, challan against accused Mehmood @ Kirori @ Rahul and Suresh only was filed in the Court. Subsequently, Hakimudin @ Hukman was arrested on 31.7.2002 and Rakmudin @ Rukman was arrested on 1.8.2002.

On presentation of challan, copies of documents relied upon therein were supplied to the accused free of cost as envisaged under Section 207 Cr.P.C.

On receipt of case in the Court of learned Additional Sessions Judge (Ad hoc), Fast Track Court No.-II, Faridabad, observing that charge for offences under Section 395 IPC against all the accused, under Section 342 IPC against Rakmudin @ Rukman and Hakimudin @ Hukman and under Section 412 IPC against Suresh was disclosed, they were charge-sheeted accordingly, to which, they pleaded not guilty and claimed trial. The case was then fixed for prosecution evidence.

To bring home guilt to the accused, the prosecution examined as many as eleven witnesses, namely, PW1 HC Jawahar Lal, PW2 Harvinder Singh, PW3 MHC Manbir Singh, PW4 HC Karam Chand, PW5 SI Satender Sangwan, PW6 Constable Rambir Singh, PW7 Constable Sube Singh, PW8 Inspector Balbir Singh, PW9 ASI Kartar Singh, PW10 Inspector Joginder Singh and PW11 DSP Dharampal.

With that the prosecution evidence got concluded.

Statements of 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.

Accused did not lead any evidence in their defence.

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

I have heard learned counsel for the appellants – accused – convicts, learned Assistant Advocate General for the State of Haryana besides going through the record.

Two very important witnesses for the prosecution namely complainant Baldev Dass and his helper/cleaner Shambhu Dayal have not been examined by the prosecution and the reason given that both of them had left service of PW2 Harvinder Singh and gone to their native places in Bihar without intimating their addresses does not help the prosecution case. Both of them were crucial witnesses to prove the incident that on 15.9.2000 at about 10:00 p.m., when the truck trailer had been snatched from them on gun point, they were made to alight from the truck trailer and then their hands and feet were tied in the *BAAJRA* fields and accused Rakmudin @ Rukman and Hakimudin @ Hukman were trying to establish contact with their co-accused on mobile phone and then both of them had left. Therefore, there is no evidence worth the name as regards the incident.

As regards the statement made by complainant to the police, which formed basis for registration of formal FIR, the FIR is not a substantive piece of evidence, the allegations therein do not get proved *ipso facto* and are required to be established by leading evidence. Therefore, charge for the offence under Section 395 IPC, which provides punishment for dacoity does not get proved against accused Mehmood @ Kirori @ Rahul, Rakmudin @ Rukman and Hakimudin @ Hukman. Similarly charge for offence under Section 342 IPC against them does not get proved.

If we scan the evidence led by the prosecution, PW1 HC Jawahar Lal, also known as Jawahar Singh from Police Station Mahrauli had deposed that on getting information, he along with Constable Rajesh had gone to the disclosed place i.e. *Kacha* passage on the back of village Raipur Khurd, where a PCR was also present there and he noticed that a tempo and driver were in custody of the police personnel manning the PCR; that the man in custody was Suresh since the trailer could not enter the farm house and was stuck up in the mud there; that the trailer was loaded with scrap of zinc while a portion thereof was lying on the ground; that some of the scrap had been seen by him and Constable Rajesh as having been loaded in the tempo; that later on a police party from Police Station IGNU arrived there and taken into possession tempo, trailer and scrap.

PW2 Harvinder Singh, owner of the truck trailer had deposed regarding his driver Baldev Dass informing him on 16.9.2000 at about 5:00 p.m. that two persons on scooter had looted the truck trailer near Elson Cotton Mill turning ahead of Ballabgarh on road going to Palwal and those were joined by three more persons. He otherwise deposed regarding the incident as told to him by driver Baldev Dass stating that the driver had also told him names of those persons who had looted the trailer i.e. Rakmudin @ Rukman, Hakimudin @ Hukman and Mehmood.

Now the question arises as to how much weightage is to be given to his statement. He is certainly not an eye-witness of the incident, therefore whatever he is deposing is hearsay, which is not admissible in evidence and cannot be taken as incriminating qua the accused.

As regards accused Suresh during the course of his interrogation disclosing that he used to ply a tempo in village Satpuri and Rakimudin and Hakimudin had come to his house telling him that they had looted a truck

loaded with zinc scrap and that the goods were to be transported from farmhouse of Gurgaon; that they had also told him that he would be paid fare as also the share of the loot; that he had accepted their proposal and when the goods were being loaded, a PCR reached there; that on seeing it, they ran away from there; that their names were Mehmood, Hakimudin, Rakimudin and 2-3 more, who were all on scooter and motorcycle but he was caught hold by the police along with the tempo and he had made statement to the police.

Such statement is hit by Section 25 and is not admissible in evidence. This statement does not carry much weightage as regards incriminating role attributed to the co-accused, therefore, on the basis of this statement alone, conviction of remaining accused cannot be sustained.

PW3 MHC Manbir Singh had simply brought the summoned case file of case FIR No.560/2K dated 16.9.2000.

PW4 HC Karam Chand also deposed regarding Suresh Kumar being apprehended while shifting zinc material from the truck trailer to the tempo.

PW5 SI Satender Sangwan had deposed regarding recovery of zinc, which was being shifted from the truck trailer to the tempo and arrest of accused Suresh therefrom, Suresh suffering a disclosure statement and tempo TATA-407 with zinc, scrap, trailer and pieces of zinc scrap being seized therefrom.

PW6 Constable Rambir Singh deposed regarding accused Mehmood leading the police party to the place of occurrence and making *nishandehi* thereof.

PW7 Constable Sube Singh deposed regarding arrest of Hakimudin and his being brought to police station Ballabgarh, he being interrogated and his suffering of disclosure statement that on intervening night of 15/16.9.2000, he

and his co-accused had looted a container from a place in front of JCB Factory on Mathura road and he could point out of the place of occurrence and on the same day in pursuance of disclosure statement Ex.PC pointing out of the place of occurrence and on 1.8.2002 Rakimudin being arrested making disclosure statement about the occurrence of the case and then making *nishandehi* (pointing out) of the place of occurrence.

The disclosure statements of the accused containing confessions of their guilt cannot form basis for their conviction in absence of clear, cogent and reliable eye-witness on account of the incident or other admissible evidence coming on record inculcating the accused.

PW8 Inspector Balbir Singh had just filed the challan after completion of investigation.

PW9 ASI Katar Singh deposed regarding his arresting accused Hakimudin on 31.7.2002 and of his suffering disclosure statement regarding the incident. He further deposed regarding suffering of disclosure statement of Rakimudin on 1.8.2002 and pointing the place rough site plan of which was prepared.

PW10 Inspector Joginder Nath (Retd.) deposed regarding formal arrest of accused Suresh Kumar in this case on 1.10.2000.

PW11 DSP Dharampal had deposed regarding complainant Baldev Dass coming to him on 16.9.2000 and getting formal FIR recorded, thereafter his going to the place of incident accompanied by complainant carrying out the spot inspection etc.

I find that the prosecution has led sufficient evidence on record to nail accused Suresh Kumar, who had allegedly retained in his possession stolen property i.e. 52 pieces of zinc scrap belonging to Harvinder Singh knowing or

having the reason the same to be a stolen property having a knowledge of the same having been transferred as a result of commission of dacoity.

Therefore, charge for the offence under Sections 395 and 342 IPC does not get established against accused Mehmood, Rakmudin @ Rukman and Hakimudin @ Hukman. Although the incident of dacoity of truck trailer, which was loaded with zinc comes out to be there but it is not established conclusively and affirmatively that it were accused Mehmood, Rakmudin @ Rukman and Hakimudin @ Hukman, who had committed the same and had illegally detained driver and cleaner of the truck trailer.

Coming to offence under Section 412 IPC committed by accused Suresh, Suresh had been caught red handed by the police, transferring zinc from the looted truck trailer loaded with zinc to the tempo being driven by him. All the ingredients of Section 412 IPC stands proved i.e. Suresh receiving and retaining the stolen property. The theft of such property stands proved from FIR lodged on the basis of statement of complainant Baldev Dass and testimony of PW2 Harvinder Singh. His dishonest intention also comes out to be there since he did so with an intention to cause wrongful gain to himself and wrongful loss to the complainant/owner of the material.

Therefore, the trial Court was not justified in convicting accused Mehmood, Rakmudin @ Rukman and Hakimudin @ Hukman. They are acquitted of the charge framed against them by way of acceptance of the appeal.

Whereas conviction of accused Suresh for offence under Section 412 IPC is confirmed.

As regards sentence part, appellant – accused – convict Suresh had been sentenced to undergo rigorous imprisonment for a period of 3 years and to pay a fine of Rs.1,000/- and in default thereof, to further undergo imprisonment for a period of three months. He is shown to have undergone just one month and

19 days. He has been taken into custody as per order dated 30.8.2017 passed by this Court for the reason that order regarding suspension of sentence had been recalled since there was no representation on his behalf when the case had been posted for arguments earlier. His custody certificate goes to show that he is not involved in any other criminal case. It is contended by learned counsel for the appellant/accused/convict Suresh that he is a first offender and only earning member in the family, therefore, leniency be shown to him.

Considering the fact that the incident relates to the year 2000; that appellant – accused – convict Suresh is not shown to have indulged in any criminal act after being convicted by the trial Court and he is also not shown to have any past criminal record, I am of the view that ends of justice would be squarely met if the sentence of appellant – accused – convict Suresh is reduced to one year, whereas the part of conviction relating to payment of fine is kept as intact.

With such modification in sentence part, the impugned judgment is upheld as against Suresh and his appeal i.e. **CRA-S-1750-SB-2003** is disposed of accordingly, whereas **CRA-S-1797-SB-2003** filed by **appellants/accused/convicts Mehmood, Rakmudin @ Rukman and Hakimudin @ Hukman** is accepted and they are acquitted of the charge framed against them. They are stated to be in custody. Therefore, they are ordered to be released immediately, if not required in any other case.

Necessary intimation be sent to the quarter concerned.

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

10.11.2017

Brij

1. Whether reportable? **No / Yes**

2. Whether speaking / reasoned? **No / Yes**