

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

I. CRA-S-1713-SB of 2003
Date of Decision : March 07, 2017

Sunil KumarAppellant
Versus
State of HaryanaRespondent

II. CRA-S-1946-SB of 2003

Ved Parkash @ BeduAppellant
Versus
State of HaryanaRespondent

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

Present : Mr. R.N. Lohan, Advocate for the appellant
(in CRA-S-1713-SB of 2003).

Mr. C.B. Goel, Advocate with
Mr. Deepak Goel, Advocate for the appellant
(in CRA-S-1946-SB of 2003).

Mr. Praveen Bhadu, Assistant Advocate General, Haryana.

T.P.S. MANN, J.

The appellants, namely, Sunil Kumar and Ved Parkash @
Bedu, alongwith Sombir and Pushpender Singh were tried for
committing offences punishable under Sections 392 and 397 IPC read
with Section 25 of the Arms Act.

Vide impugned judgment and order dated 10.7.2003, learned Additional Sessions Judge, Panipat convicted all of them under Section 392 read with Section 397 IPC and sentenced them to undergo rigorous imprisonment for seven years and to pay a fine of Rs.500/- each and in default of payment of fine, to undergo simple imprisonment for six months. Pushpender Singh was also convicted under Section 25 of the Arms Act and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.500/- and in default of payment of fine, to undergo simple imprisonment for three months. All the substantive sentences were ordered to run concurrently. However, the sentence awarded in default of payment of fine, was ordered to be in addition to the substantive sentence. The period of detention already undergone during trial and investigation was to be set off from the period of sentence awarded to them.

Aggrieved of their conviction and sentence, accused Sunil Kumar preferred CRA-S-1713-SB of 2003 whereas accused Ved Parkash @ Bedu filed CRA-S-1946-SB of 2003. As both the appeals arise out of the same judgment of conviction and sentence, they are being disposed of together.

It may be mentioned here that Pushpender Singh and Sombir, co-convicts of the appellants also filed separate appeals against their conviction and sentence. Those appeals have already been

disposed of as infructuous as they had completed the sentence of imprisonment imposed upon them.

According to the prosecution, on 5.5.2000 SI Dhoop Singh alongwith other police officials was investigating case bearing FIR No.179 dated 5.5.2000 under Section 379 IPC and was present near Bus Stand, Sonapat where Surinder Kumar complainant lodged a report that he was resident of Basant Vihar, village Faridapur and residing in a rented room. He was running a clinic where he used to be present from 9.00 a.m. to 12.00 noon. He had another clinic near Ritu Factory, G.T. Road, Panipat, which he used to attend from 12.00 noon to 3.30 p.m. On that very day, the complainant after locking his clinic near Ritu factory was going to village Faridpur via kaccha rasta when at about 4.00 p.m., he reached near railway crossing where four young men met him. While he was passing from under the bridge those persons started chasing him. One of them addressed their colleague by his name Pushpender Singh to catch hold of the complainant. Pushpender Singh caught hold of him and took out a knife. Pushpender Singh called another accused by his name Sombir to take out his pistol. Accordingly, Sombir took out a pistol and pointed the same at his forehead. Sombir asked Ved Parkash accused to search the complainant. Ved Parkash took out purse from the back pocket of his pant. Fourth boy, who was aged 20-21 years and was about 5'-6" tall took out money from the pocket of his shirt. When he resisted, Pushpender Singh gave him a knife blow. However, he saved himself. Sombir accused fired from his

pistol. Since he had fallen, he was not hit by the bullet. On hearing of gun shot some persons who were working in the nearby fields came there. On seeing them, the accused ran away. The accused took Rs.10,000-12,000/- from his pocket. The complainant went to the village and narrated the occurrence to the villagers. He was going to lodge the report when he met the police party.

On the basis of the report lodged by the complainant, FIR No.180 dated 5.5.2000 under Sections 392/397 IPC and Section 25 of the Arms Act was registered. During the investigation, the accused were apprehended and upon completion of investigation, challan was presented in the Court of Ilqa Magistrate. The case was, thereafter, committed to the Court of Sessions where the accused were charged for the aforementioned offences, to which they pleaded not guilty and claimed trial.

In support of its case the prosecution examined as many as twelve witnesses.

PW1 Prem Chand testified that he had given one room on rent to Mahipal, brother of accused Sunil. However, Sunil was not living in that room.

PW2 Constable Jasmer Singh proved on record his affidavit Ex.PA wherein he stated about sending of parcels to the Forensic Science Laboratory.

PW3 Constable Azad Singh placed on record his affidavit Ex.PB wherein he stated that he had delivered the special report of the case to the Ilaqa Magistrate.

PW4 HC Naresh Kumar placed on record his affidavit Ex.PC regarding depositing of the case property.

PW5 Surinder Kumar, who is the complainant in the case reiterated the facts as was stated by him in the statement Ex.PD made to SI Dhoop Singh. He also deposed that Sombir and Pushpender Singh were arrested by SI Dhoop Singh and search of accused Sombir, a sum of Rs.218/- was recovered, whereas on search of accused Pushpender Singh, a sum of Rs. 235/- was recovered.

PW6 SI Chamela Ram testified that on receipt of ruqa Ex.PD alongwith endorsement of SI Dhoop Singh, he had recorded formal FIR Ex.PF.

PW7 ASI Pirthi Singh deposed that on 2.7.2000, he alongwith SI Zile Singh and other police officials was present near Hali Park, Panipat when in the meanwhile accused Ved Parkash @ Bedu came there. On his search, a purse of black colour containing Rs.100/- was recovered. He made disclosure statement about his involvement in the crime and that he had got a sum of Rs.350/- as his share of the loot. Pursuant to the same, he took the police party to the place of occurrence and got it demarcated.

PW8 SI Zile Singh testified about the arrest of accused Ved Parkash @ Bedu and suffered disclosure statement, which led to demarcation of the place of occurrence.

PW9 SI Dhoop Singh deposed about recording statement Ex.PD of complaint Surinder Kumar and after making endorsement Ex.PD/1 forwarded the same to Police Station, on the basis of which FIR Ex.PF was recorded. He further deposed that he had prepared site plan Ex.PH of the place of occurrence. Further, on 10.5.2000 when he was present alongwith the police officials at Bus Stand, Panipat he received information that two of the accused were present near Qilla Park. Accordingly, the police party reached Qilla Park and apprehended accused Sombir and Pushpender Singh and a sum of Rs.218/- was recovered from the pocket of accused Sombir while a sum of Rs.235/- from the pocket of accused Pushpender Singh. He also recorded disclosure statement of accused Pushpender Singh and Sombir and went to Saffidon Bus Stand where the accused again made disclosure statements. Pursuant to the same, accused Sombir got recorded a country made pistol alongwith six live cartridges and one empty whereas Pushpender Singh got recovered knife. Accused Sunil also suffered disclosure statement and got recovered Rs.45/- which were taken into possession.

PW10 Inspector Raghbir Singh deposed that he had prepared the challan in the present case.

PW11 Constable Satbir deposed about making of disclosure statement by accused Sunil leading to recovery of Rs.45/- from his residence.

PW12 HC Ramesh Kumar deposed about being member of the police party which had arrested the accused and recovered various articles besides recovery of cash from accused Pushpender Singh. He further deposed about the recovery of knife at the instance of accused Pushpender Singh and Country made pistol alongwith six live cartridges and one empty at the instance of accused Sombir.

When examined under Section 313 Cr.P.C., all the accused denied the allegations against them. However, in their defence, they did not examine any evidence.

After hearing learned counsel for the parties and going through the evidence, learned trial Court convicted and sentenced the accused, as mentioned above.

This Court has heard learned counsel for the appellants, learned State counsel and perused the record with their able assistance.

From the prosecution case it is made out that on 5.5.2000 at about 4.00 p.m. the complainant was on his way to village Faridpur from his clinic situated near Ritu Factory, GT Road, Panipat and when he was passing the railway crossing, he was accosted by four young men who started chasing him. One of them directed Pushpender Singh to catch hold of him, who took out his pistol and aimed the same towards

the complainant. Accused Sombir also asked Ved Parkash @ Bedu to carry out the search of the complainant. Ved Parkash @ Bedu searched the complainant. The fourth boy had also taken out money from the person of the complainant. The complainant had tried to save himself from the attack. The two accused, namely, Pushpender Singh and Sombir launched an attack upon him with a knife and countrymade pistol but to his good luck, he escaped being hit.

The details of the accused, including their names was mentioned in the statement Ex.PD which complainant-Surinder Kumar had made before SI Dhoop Singh, on the basis of which the FIR was registered. Even in the Court, PW5 Surinder Kumar had identified the accused. Though the evidence of identification of the accused in the Court is weak type of evidence but in the present case, the names of the accused were mentioned in the FIR itself. Even otherwise nothing has come on record that complainant Surinder Kumar was inimical towards the accused and for that reason he had falsely implicated them.

Subsequent to their arrest in the case, Pushpender Singh accused had got recovered a knife, whereas Sombir had got recovered a countrymade pistol alongwith six live cartridges. This further proves the prosecution case regarding the involvement of the appellants and their co-accused in the commission of the crime.

In the present case, though, according to the prosecution, Pushpender Singh had assaulted the complainant with knife but the

complainant saved himself from the attack and, accordingly, remained unharmed. Similarly, Sombir accused had fired from a countrymade pistol but even said fire did not hit the complainant. Under these circumstances, possibility cannot be ruled out that the accused were not liable for committing the offence punishable under Section 397 IPC. At the most, the prosecution case makes out commission of offence under Section 392 IPC.

As per the custody certificate produced by the learned State counsel which is already on the record, Sunil Kumar-appellant has already undergone actual sentence of two years and one month, whereas Ved Parkash @ Bedu-appellant has undergone actual sentence of three years, ten months and twenty two days.

It may also be mentioned here that alongwith his appeal Sunil Kumar appellant had attached copy of certificate issued by the Punjab School Education Board for passing middle standard examination held in March, 1998 and in the said certificate, his date of birth was mentioned as 13.5.1988 and it was pleaded by him that he was less than eighteen years of age on the date of commission of the crime. Accordingly, he was a juvenile and could not have been sentenced. In view of the said stand taken by Sunil Kumar-appellant, this Court referred the matter to the Juvenile Justice Board, Panipat with a direction to conduct an enquiry so as to determine the age of the said appellant on the date of the occurrence. Pursuant to the same, learned

Principal Magistrate, Juvenile Justice Board conducted an enquiry and submitted his report dated 16.1.2015 holding therein that on 5.5.2000, i.e. the date of commission of crime, Sunil Kumar-appellant was seventeen years, eleven months and twenty two days old and, thus, a juvenile.

Taking into consideration the totality of the circumstances, this Court is of the view that both the appellants namely, Sunil Kumar and Ved Parkash @ Bedu need not be sent behind the bars once again, for undergoing further sentence of imprisonment. Ends of justice, shall be suitably met if their substantive sentence of imprisonment is reduced to the one already undergone by them.

Resultantly, the conviction of Sunil Kumar and Ved Parkash @ Bedu appellants under Section 397 IPC is set aside. They are, however, convicted under Section 392 IPC and sentenced to the period already undergone by them. The sentence of fine imposed, alongwith its default clause, is maintained.

Criminal Appeal S-1713-SB of 2003 filed by Sunil Kumar-appellant and CRA-S-1946-SB of 2003 filed by Ved Parkash @ Bedu appellant are, accordingly, disposed of.

March 07, 2017
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(T.P.S. MANN)
JUDGE

Whether speaking/reasoned : YES / NO
Whether reportable : YES / NO