

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

1. CRR No.2663 of 2017

Sahil

...Petitioner

VERSUS

State of U.T., Chandigarh

....Respondent

2. CRR No.2647 of 2017

Manish

...Petitioner

VERSUS

State of U.T., Chandigarh

....Respondent

Date of Decision : 02.11.2017

CORAM : HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present:- Ms. Veena Kumari, Advocate for
Mr. Jatinder Kumar, Advocate for the Petitioners.

Ms. Ashima Mor, APP for the State of UT Chandigarh.

SUDIP AHLUWALIA, J.

Petitioners in these two Revisional Applications are the Juveniles in conflict with law, who were convicted by the Juvenile Justice Board of the offence under Section 392 of the IPC in connection with FIR No.302 dated 3.8.2015, Police Station Sector 26, Chandigarh. They were thereafter directed to be sentenced to be sent to the Special Home for a period of one year and the sentence already undergone by them was directed to be set off by the Ld. Principal Magistrate, Juvenile Justice Board,

Chandigarh vide the impugned Judgment of conviction and order of sentence dated 4.5.2016. The appeals preferred against such judgment of conviction were dismissed by the Ld. Sessions Judge, Chandigarh vide his judgment dated 7.6.2017. Thereafter the juveniles in conflict with law namely, Sahil and Manish have filed these Revisional Applications challenging the decisions of both the Ld. Courts below.

2. A summary of the facts leading to drawing up of the FIR following by investigation in the same which is also narrated in the Revisional Applications is set out as under -

“That the brief facts as set up by the prosecution is that on 28.7.2015 the complainant went to Dehradun for office work. On 3.8.2015, he returned back from Dehradun and got down from the bus at Transport round about Chandigarh. He was waiting for an auto to go to his home. After sometime, one auto came from the side of Tribune Chowk which was bearing registration no. PB-65-W-4532. In this Auto four boys were already sitting. Two of them were sitting on rear seat and one was sitting with driver and all were aged about 18/19 years. He got inside the auto and asked the driver to take home to Sector 7, Chandigarh. When auto reached near Grain Market Chowk, then the boy sitting with driver also came at the back seat. All three boys sitting with driver also came at the back seat. All three boys sitting at the back seat caught hold of complainant. When he tried to raise noise then one of the offenders took out the knife and asked him to be silent. Offenders snatched mobile phone and purse of complainant which was containing money, Adhar card and PAN card. When auto reached near police station East Chowk, then PCR was standing there. On watching police van, offenders left out the complainant from the auto and fled away from the spot. Complainant raised noise upon which police personnel's in PCR apprehended the offenders. On the basis of his statement FIR has been recorded. Investigation proceedings were carried out.”

3. After completion of investigation, the Juveniles/Petitioners were sent up to face trial before the Juvenile Justice Board. On the basis of the available material gathered during the investigation, accusations in the nature of charges were made out against both the Petitioners under sections 397/411 of the IPC. Thereafter, witnesses from the prosecution side deposed before the Board including the complainant namely, Vinod Bisht (PW-3). On the basis of the evidence recorded, the Board came to the conclusion that the offence under section 392 of the IPC was well established against the Petitioners on account of which, they were convicted and awarded the sentence mentioned earlier.

4. In assailing the impugned judgment, the contention raised on behalf of the Petitioners is that both the Ld. Courts below have failed to appreciate the evidence led in its proper perspective and have ignored the material contradictions/inconsistencies in the same on account of which, their conviction is unsustainable. This Court now proceeds on to consider the various arguments raised on behalf of the Petitioners in assailing the impugned judgments in the following paragraphs.

5. One of the contentions raised on behalf of the Petitioners pertains to the contradictions concerning the weapons allegedly used in the occurrence. It has been submitted that while one *Danda* (stick) was recovered from the culprits involved, there was no recovery of the knife which was allegedly brandished at the victim at the relevant time, and that the victim had not stated anywhere in his original complaint regarding possession of the *Danda* by the concerned culprit. In the opinion of this Court however, these submissions do not affect the overall credibility of the prosecution case. This is so because as noted in the original FIR the total

number of persons/culprits involved in the occurrence were four apart from the Driver of the Auto. According to the complainant, when he was to board the Auto, a total of three persons including the Driver were on the front seat, but after he boarded one of those sitting in front seat came to the back seat, after which the complainant was allegedly robbed by way of putting a knife on his person. As the occurrence had taken place at about 11.45 PM in the night obviously it would have been quite dark all around, and so it cannot be expected that the unsuspecting complainant could not say if any of the five persons present in the Auto was possessing a stick or not. Again, considering that the culprits were apprehended very shortly after the occurrence by the Personnel of the PCR from the road side on the alarm being raised by the complainant, and his Mobile Phone plus documents apart from some money were recovered from the Petitioners, after which all of them were obviously taken to the Police Station, it would not be natural to expect recovery of the knife which could have been thrown by any of the five culprits somewhere around at that dark time when obviously the own priority of the complainant would have been recovery of his own robbed items and money, apart from apprehension of the culprits.

6. Another submission raised on behalf of the Petitioners is that the complainant did not give any statement regarding specific role of the present two Petitioners in the alleged occurrence, and that none of the co-passengers in the concerned Auto have been examined to support the complainant's case, and that the complainant even did not produce his journey ticket to show that he had arrived by Bus from Dehradun on the relevant night, which omission makes his deposition doubtful. These contentions again do not help the Petitioners much. This is so because it is

the own case of the prosecution that there were a total of five persons in the Auto including the Driver who was already sitting therein before the complainant boarded it, and that one of them came to the back seat thereafter. This description of the occurrence makes it clear that at the relevant time all the five persons who were in the Auto, were involved in the occurrence with a common intention and motive to rob persons/passengers who might board the vehicle at that time of night. Consequently, the contention that no sitting passenger of the Auto has been examined to support the complainant's version becomes preposterous as according to the situation, all the persons present in the vehicle at the relevant time apart from the complainant himself were part of the criminal conspiracy, and so none of them could have been competent to give evidence as a prosecution witness. The other contention regarding lack of any statement coming forth to specify the individual role of the present Petitioners in the occurrence is also not convincing. As already noted, the occurrence had taken place in the dead of the night. The complainant was flanked by the persons on his side on the back seat of the Auto when the knife was brandished and he was forced to part with money and belongings. Since the petitioners were apprehended on the road itself very shortly after the occurrence and identified by the complainant as being among the persons involved in the occurrence, there was little need to specify minutely of the act each one of them had committed after the robbed articles had already been recovered.

7. Similarly, the complainant's failure or inability to produce the Bus Ticket to show that he had reached Chandgiarh on the relevant night from Dehradun is also inconsequential. After having completed his journey

and de-boarding from the bus at the Bus Terminus, he can be reasonably expected to discard the Ticket which he was under no obligation to retain unless of course it was required by him for any financial purpose such as disbursal of Travelling Allowance etc. But that situation is not shown to be attracted in the present case. In fine therefore, it may be held that the alleged contradictions/inconsistencies pointed out in the prosecution evidence cited by the Petitioner's counsel are all minor/insignificant in nature, and do not at all create any meaningful doubt on the credibility of the prosecution case.

8. It has also been contended that the alleged recovery of money from the Petitioners is unconvincing since such money could have also belonged to them as well. Here again, since not only money but also the Mobile Phone and documents of the complainant were recovered from the Petitioners, so their involvement in the alleged occurrence does not become doubtful.

9. Ld. Counsel for the Petitioners has raised another argument aimed at detracting from credibility of the prosecution case. It has been contended that it is unbelievable that after committing the alleged crime, the culprits would proceed in the Auto towards the direction in which the PCR was already parked. This again is an unconvincing argument. It cannot be the case of the defence side that the culprits involved would have previously known the spot on the road where the PCR was parked at the relevant time. In the absence of such knowledge, there is nothing unnatural in their proceeding in the Auto towards that direction, and then trying to flee away after the PCR became visible to them.

10. In case of Petitioner in CRR No.2663 of 2017 namely Sahil, another specific argument has been raised by the Ld. Counsel. It has been

contended that according to the complainant, this particular petitioner was aged about 18/19 years at the relevant time whereas according to the available material concerning him, only he was much younger at the relevant time. On account of such age gap, the whole statement of the complainant becomes suspect. In this regard, it is observed that in view of this contention being raised on behalf of the Petitioners, this Bench on 12.10.2017 had directed production the said Petitioner before the Court for a first in assessment of his physical appearance in order to determine how old he might have looked at the relevant time which was about 2 years and 2 months prior to the date of Order for determining where the complainant's statement regarding his apparent age at the relevant time was far fetched. The said Petitioner was thereafter produced before this Court alongwith a copy of his Photograph taken shortly after his apprehension following the occurrence. From the said photograph, he did appear to be a young teenager, but certainly not of an inordinately tender age at the relevant time. It is further to be remembered that the complainant's statement was in relation to all the young persons as having been in the age group of 18 to 19 years at the relevant time. He could not have been expected to minutely stare at each of the young culprits at the relevant time when it was admittedly very dark in the dead of night, on account of which, the apparent discrepancy regarding the Petitioner's actual age and that assessed by the complainant cannot be considered as very material.

11. Lastly, it has been argued on behalf of the Petitioners that the proceedings even from the legal stand point are untenable because the inquiry against the juvenile/Petitioners was in respect of accusations u/ss 397 and 411 of the IPC, while they have been convicted of the offence u/s

392 of the IPC, which is an altogether different offence for which they were not tried in the first place. This argument however, appears to be fallacious in view of Section 222 (1) of the Cr.PC according to which a person charged for any particular offence can be convicted for a lesser offence even if he had not been charged for the same. Undoubtedly, the offence u/s 392 of the IPC i.e. robbery in comparison to that offence u/s 397 IPC namely 'dacoity', for which the prescribed punishment under the IPC is much more stringent. As such there is no irregularity in the decision determining the Petitioners of having been involved in the offence u/s 392 of the IPC when actually they have been tried for a much stringent offence u/s 397 of the IPC.

12. For the aforesaid reasons, this Court finds no substantive merit in either of these Revisional Applications, which are therefore, dismissed after affirming the judgments of both the Ld. Courts below.

(Sudip Ahluwalia)
Judge

02.11.2017
AS

Whether speaking/reasoned : ***Yes/No***

Whether Reportable : ***Yes/No***