

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

(1)

CRR-80-2017
Date of decision:-29.9.2017

Anup

...Petitioner

Versus

State of Haryana

...Respondent

(2)

CRR-4531-2016

Rajender Kumar

...Petitioner

Versus

State of Haryana

...Respondent

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

Present : Mr.Shaukeen Singh Verma, Advocate
for the petitioner in CRR-80-2017.

None for the petitioner in CRR-4531-2016.

Mr.Neeraj Poswal, AAG, Haryana.

H.S. MADAAN, J.

Vide this judgment, I propose to dispose of two criminal
revisions i.e. **CRR-80-2017** filed by Anup and **CRR-4531-2016** filed by
Rajender Kumar.

These revision petitions are directed against the judgment
dated 10.11.2016 passed by learned Additional Sessions Judge,

Fatehabad vide which the judgment dated 25.3.2013 passed by learned Additional Chief Judicial Magistrate, Fatehabad convicting accused for offences under Section 392 read with Section 34 IPC and order dated 26.3.2013 sentencing them for that offence were upheld, whereas the appeals filed by accused-convicts were dismissed.

Learned Additional Chief Judicial Magistrate, Fatehabad had convicted all the accused under Section 392 read with Section 34 IPC and sentenced them to undergo rigorous imprisonment for a period of 3 years and to pay a fine of Rs.5,000/- each and in default thereof, to further undergo simple imprisonment for one month.

The accused-convicts, who are petitioners before this Court pray that the revision petitions be accepted, the impugned judgments of their conviction and order of sentence by Additional Chief Judicial Magistrate, Fatehabad and judgment in appeals by Additional Sessions Judge, Fatehabad be set aside and they be acquitted of the charge framed against them.

It may be mentioned here that there was another accused by the name of Pawan Kumar, who had since died and proceedings against him stood abated.

Briefly stated, the prosecution story is that on 15.2.2007, SI Hanuman Singh, SHO of Police Station Bhattu Kalan heading a police party was on patrol duty; that the said police party was present at Hisar Road, Bhattu near Radha Swami Satsang Bhawan; that in the meanwhile complainant Mani Ram son of Laxmi Narayan came there and submitted a written application, *inter alia*, stating that he is resident of village Arniya Wali, District Sirsa; that on that day at about 5:00 p.m., he along

with his uncle was present at his home where he received a telephonic message from Mange Ram Swami son of Om Parkash, resident of village Madho Sidhana informing him that his Bolero vehicle was required for going to village Oddha in connection with a marriage function; that marriage party was to proceed from village Chabberwal; that he was also asked to arrange a photographer, that accordingly he went to Ambedkar Chowk, Sirsa in his bolero vehicle bearing registration No.HR57/2187; that he came across Mange Ram and two other persons; that bargain was struck at Rs.2,500/-; that Mange Ram and two other persons accompanied him in his vehicle, however, at Gol Diggi, Mange Ram alighted therefrom; that he along with two other persons went to Bhattu; that on their way to Bhattu, they filled diesel in the Bolero vehicle near Dera Sacha Sauda; that in Bhattu those persons purchased clothes and they borrowed the mobile of complainant make Nokia with SIM No.94160-73436; that when they reached near Banawali, the accused got the vehicle stopped on the pretext to urinate; that when complainant was out of the vehicle, then those boys started it and took it away towards Adampur; that the incident had taken place at about 9:00/9:30 p.m. The complainant had prayed for search of his vehicle and to take appropriate action against the accused. On the basis of said complaint, formal FIR was lodged. Accused were arrested. Robbed vehicle and mobile were recovered and taken into police possession. After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court.

On presentation of challan in the Court of Judicial Magistrate, Fatehabad he supplied copies of documents relied upon in

the challan to the accused free of costs as provided under Section 207 Cr.P.C.

Learned Judicial Magistrate Ist Class, Fatehabad finding that charge for offence under Sections 392 read with Section 34 IPC was disclosed against the accused, charge-sheeted them for the said offence, to which, they pleaded not guilty and claimed trial. The case was then fixed for evidence of the prosecution.

During the course of evidence of prosecution, it examined as many as eleven witnesses as per details below:

PW1 Mani Ram deposed that on 14.2.2007 on receipt of telephonic message from Mange Ram son of Om Parkash, resident of Madho Sidhana, he had gone towards Ambedkar Chowk, Sirsa in his bolero vehicle bearing registration No.HR57/2187 since it was required for marriage purpose; that at Ambedkar Chowk, Sirsa, Rajender and Pawan besides Mange Ram were present there; that they occupied his car; that Mange Ram alighted near Gol diggi, Begu Road.

PW2 Bhoop Singh stated that he had a bolero vehicle on which his nephew Mani Ram was driver, who used to take the vehicle at taxi stand. According to this witness, his nephew has told him that the taxi booked for village Chabberwal. At about 8/9:00 p.m. at night, his nephew Mani Ram telephoned him informing that accused had snatched the vehicle. His nephew then moved a complaint to the police against the accused, who had also robbed of his mobile phone.

PW3 ASI Sadhu Ram deposed that on 14.3.2007 while he was posted at CIA Staff, Hisar, he along with other police officials was present at Mangali bus stand in connection with patrolling when a

person was seen coming from Singhran village side; that he was apprehended on the basis of suspicion and on being inquired, he disclosed his name as Pawan and on being checked a 12 bore pistol along with a live cartridge was recovered from his possession for which he failed to produce any licence for keeping in his possession 12 bore pistol and live cartridge; that during interrogation Pawan Kumar had made a disclosure statement that about 1 ½ months earlier to 14.3.2007, he and Rajender Dhanak had hired a bolero taxi from Sirsa taxi stand and near Fatehabad they robbed the taxi on gun point handing over the same to Anup son of Krishan.

PW4 Balwan Singh, Retd. Sub-Inspector stated that on 20.2.2007, he was posted as Incharge, CIA Staff, Fatehabad when investigation of this case was handed over to him; that on 22.2.2007, the complainant was joined in investigation and his statement was recorded; that on 26.2.2007, accused Rajender was arrested, who on 27.2.2007 made a disclosure statement Ex.PW3/A alleging that he and Pawan Kumar had robbed the Bolero vehicle bearing registration No.HR57/2187 on gun point; that thereafter, they gave vehicle to Anup Singh for sale purpose; that they had also snatched mobile phone of driver which had been given to his brother-in-law in Punjab. Then during the course of investigation, accused Anup was interrogated at village Devavas. He suffered a disclosure statement Ex.PW3/B stating that accused had given him Bolero vehicle for sale purpose which he had parked in the fields of Raghbir son of Chandgri near tubewell and he could get the same recovered and in pursuance of that disclosure statement, accused Anup got Bolero vehicle recovered, which was taken

into possession vide recovery memo Ex.PW3/C, which bears the signatures of the accused, witnesses and of the complainant and the complainant had identified such vehicle. During the course of investigation, site-plan of the place of recovery was prepared, statements of the witnesses were recorded. Accused Anup also got recovered registration certificate and photocopy of insurance of vehicle bearing registration No.HR57/2187 from village Sorakhi, which were taken in police possession vide recovery memo Ex.PW3/E.

PW5 Rajbir Singh had recorded formal FIR Ex.PW5/C on receipt of ruqa Ex.PW5/A sent by SI/SHO Hanuman through Constable Bhim Singh on 15.2.2009. In that way, he is more or less a formal witness.

PW6 ASI Gulab Singh, who on 16.3.2007, while posted as Head Constable in CIA Staff was member of the police party investigating this case. He deposed regarding accused Pawan Kumar in police custody making disclosure statement Ex.PW3/H to the effect that he and Rajender had robbed the vehicle and he could get the stepeny, mat and Sim etc. recovered from his possession after demarcation. On 18.3.2007, accused Pawan Kumar on being interrogated by ASI Balwan Singh in his presence had suffered a disclosure statement that he had made a wrong statement on 16.3.2007, whereas on 27.2.2007 accused Anup had got recovered registration certificate and photocopy of insurance, which were taken in police custody by the Investigating Officer.

PW7 EHC Ramesh Kumar had deposed that on 28.2.2007, he was member of the police party headed by ASI Balwan Singh and the

accused present in the Court in pursuance of his disclosure statement had taken the police party to the house of his father-in-law and got mobile phone Nokia 1110 recovered, which was taken into police custody.

PW8 Hanuman did not support the prosecution story and was declared a hostile witness.

PW9 ASI Dharam Pal deposed that on 26.2.2007 while he was posted as EHC in CIA Staff, Fatehabad, accused Rajender was arrested by Investigating Officer ASI Balwan Singh. On 27.2.2007, ASI Balwan Singh had interrogated accused Rajender, who had suffered disclosure statement and in pursuance of that disclosure statement, they had gone to village Devavas and arrested accused Anup on demarcation of accused Rajender. He otherwise lent support to the prosecution story as regards disclosure statement made by accused Anup, recovery of Bolero vehicle etc..

PW10 SI Ram Singh and PW11 Hanuman, Retd. Inspector also corroborated the prosecution version.

Statements of the 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 defence evidence.

After hearing arguments, learned Additional Chief Judicial Magistrate, Fatehabad convicted and sentenced the accused as mentioned supra, the appeal preferred against the judgment of

conviction and order of sentence passed by the Additional Chief Judicial Magistrate, Fatehabad were also decided against the accused by learned Additional Sessions Judge, Fatehabad, which left petitioners – accused aggrieved and they have filed the present revision petitions.

I have heard learned counsel for the petitioners-accused-convicts and learned Assistant Advocate General for the State of Haryana besides going through the record.

From the evidence adduced by the prosecution, the prosecution has successfully proved its charge against the accused. From such evidence produced especially testimony of PW4 ASI Balwan Singh it comes out that on 26.2.2007, accused Rajender had made a disclosure statement Ex.PW3/A alleging that he and Pawan Kumar had robbed a Bolero vehicle bearing registration No.HR57/2187 on gun point at the instance of accused Anup, thereafter, they gave vehicle to Anup for sale. They also robbed mobile phone which he gave to his brother-in-law at Punjab.

Now what is the evidentiary value of this statement. According to learned counsel for the appellants, statement of an accused cannot be read against a co-accused, whereas this fact is controverted by learned State counsel contending that Section 30 of the Indian Evidence Act provides that when more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession. I find that the contention of learned State counsel has merit. The trial Court has also

discussed this aspect in detail in para No.37 of the judgment. The disclosure statement made by Rajender involving himself and Anup is admissible under Section 30 of the Indian Evidence act and furthermore Rajender in the disclosure statement had stated that they had committed robbery of bolero vehicle at gun point at the instance of accused Anup and had given vehicle to Anup for sale. It was on his demarcation that Anup was arrested, who had made disclosure statement Ex.PW3/B, in pursuance of which, he got recovered Bolero vehicle besides registration certificate and photocopy of the insurance of that vehicle which had been taken into police possession. Therefore, Rajender and Anup are clearly connected with the incident. The trial Court vide a detailed well reasoned judgment, which does not come out to be suffering from any illegality or infirmity has convicted and sentenced the accused. There is no illegality or infirmity in the judgment, rather it is found to be based upon proper appraisal and appreciation of evidence and correct interpretation of law. Keeping in view the nature of offence in which the appellants/accused indulged, there is no scope for reduction in sentence. The trial Court has already taken a lenient view in that regard. The judgment passed by the Court of learned Additional Sessions Judge, Fatehabad successfully passed the judicial scrutiny.

In view of the above, I find no illegality or infirmity in the judgments passed by the Courts below, as regards the conviction and sentence part, those are upheld and appeals are found to be without any merit and are dismissed accordingly.

Rajender Kumar petitioner – accused in CRR-4531-2016 is stated to be on bail granted to him by this Court while suspending his

sentence. His bail is cancelled. Chief Judicial Magistrate, Fatehabad is directed to issue arrest warrant to get him arrested so as to make him undergo the remaining sentence, whereas petitioner – accused Anup is reported to be already in custody.

29.9.2017
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No