

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

Criminal Appeal No.S-1358-SB of 2004 (O&M)
Date of Decision: October 16, 2018

Bhoop Singh and another
.....APPELLANT(s).

VERSUS

State of Haryana
.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Argued by : Mr. Abhishek Sanghi, Advocate
for the appellant (s).

Mr. Amrik Narnwal DAG Haryana.

SURINDER GUPTA, J.

This is appeal against the judgment of conviction dated 30.04.2004 and order of sentence dated 03.05.2004, whereby appellants Bhoop Singh and Kundan Singh were convicted for the offence punishable under Sections 398, 401 of Indian Penal Code (for short-IPC), 25 of Arms Act and sentenced them as follows:-

Sr. No.	Under Section	Sentence.
1	398 IPC	Rigorous imprisonment for a period of Seven years each.
2	401 IPC	Rigorous imprisonment for a period of Four years and to pay fine of Rs.1000/- each and in default of payment of fine, to further undergo simple imprisonment for a period of one month each.
3	25 Arms Act	Rigorous imprisonment for a period of Three years and to pay fine of Rs.1000/- each and in default of payment of fine, to further undergo simple imprisonment for a period of one month each.

The case of the prosecution, in brief, is that on 30.05.2003,

SI/SHO Ami Lal along with his police party was present at Police Station Jatusana, Rewari during night hours, when a secret information was received that two persons were placing stones and wood near the culvert of canal on Jatusana-Gudiana road with intention to commit robbery from the passing vehicles. He along with his police party in plain clothes reached the spot in a private jeep and found that road had been blocked by placing stones and wood. Driver Karan Singh stopped the jeep. In the meanwhile, two persons armed with pistols came from the road side and asked the police party to hand over their belongings to them. Both were apprehended and on inquiry, they disclosed their names as Kundan son of Jagmal Singh and Bhoop Singh son of Jagmal Singh (appellants). The pistols in their hands were taken into possession and on checking one live cartridge each was found loaded in the pistols of both the appellants, which were unloaded. On search, five live cartridges were also recovered from both the accused separately. The pistols and live cartridges were taken into possession. Rough sketch of the pistols were prepared and the appellants were formally arrested. Ruqa Ex.PB was sent to the police station, whereupon formal FIR Ex.PB/1 was registered and endorsement to this effect Ex.PB/2 was made on the ruqa. Site plan of the place of apprehension of the appellants was prepared and after completion of investigation, challan was presented in the court.

On finding a prima facie case for the offence punishable under Section 398, 401 IPC and 25 Arms Act, the appellants were charge-sheeted to which they pleaded not guilty and claimed trial.

In support of its case, prosecution examined Dharampal

Draftsman as PW1, Head Constable Surjeet Singh as PW2, Constable Jai Bhagwal as PW3, Lakhmir Singh Ahlmad as PW4, Head Constable Mahavir Parshad as PW5, ASI Prithvi Singh as PW6 and SI Ami Lal, the Investigating Officer of the case as PW7 and thereafter, learned Public Prosecutor closed prosecution evidence.

Statements of appellants under Section 313 Cr.P.C. were recorded, wherein they denied the allegations against them and pleaded their false implication. They examined DW1 Raja Ram, Accountant, office of Fisheries Development Officer, Rewari as DW1, who deposed that appellant Kundan Singh was authorised to catch fishes in the area of Rewari and Mohindergarh from the notified water channels, canals and drains vide permit Ex.DA and Ex.DA/1.

Relying on the testimony of prosecution witnesses, the appellants were convicted and sentenced by the trial Court as detailed in opening para of this judgment.

Learned counsel for the appellants while assailing the judgment of the Court below, has argued that the testimony of prosecution witnesses find no independent corroboration. The police party had allegedly gone to the spot in a private jeep but it was not disclosed as to who was owner of that jeep. As per ASI Prithvi Singh PW6, who was in the police party, secret information was received at mid-night (12.00 O'clock) and the police party reached the spot at 12.15 a.m. It is quite strange that police party had changed the clothes and had reached the spot, which was about one and half kilometer from the place of information within a short period of 15 minutes.

The version of the prosecution, as such, is not probable. The police party

comprised of 8 persons while the prosecution has examined only PW6 ASI Prithvi Singh and PW7 SI Ami Lal, Investigating Officer. The other members of the police party were not examined. It is also not probable that 8 persons could board a jeep which does not have the capacity to take this much number of the persons. DW1 Raja Ram, Accountant, Fisheries Department had proved that appellant Kundan Singh was having licence to catch fishes in that area. The implication of the appellants was due to enmity with the other persons in this trade. The pistols allegedly recovered from the appellants were not sent to Forensic Science Laboratory to find as to whether these were in working condition. The wood and stones used to block the road, were also not taken into possession or produced in Court.

Learned State counsel has argued that the information was received against the appellants around mid-night. Thereafter, attempt was made to join the independent witness but no one was willing to join the police party at that odd hours. The testimony of official witnesses is reliable and could not be shattered during their cross-examination. The plea that appellants were falsely implicated due to their rivalry with co-traders, was neither suggested to the prosecution witnesses nor any evidence was produced in this regard. Even in their statements recorded under Section 313 Cr.P.C., the appellants have not stated this fact. It was proved on record that the appellants had blocked the passage and had attempted to rob the occupants of the vehicles passing from there at pistol point. The Armourer had checked those pistols and found the same in working condition. The fact that wood and stones lying on the road were not taken into possession, is not material as those heavy articles were not required to

be either taken into possession or produced in Court. The testimony of prosecution witnesses is sufficient to prove that the road had been blocked as a result of which they had to stop their jeep. The prosecution witnesses have stated about the time of receipt of secret information and their reaching the spot by approximation and this argument is not available that it was not possible to reach the spot, which was about one and half kilometer from the place of information, within a period of 15 minutes. The appellants have not alleged any reason or enmity with prosecution witnesses, as such, their testimony without any independent corroboration is reliable and has been rightly relied upon by the trial Court while convicting the appellants.

The appellants have been convicted for the offences punishable under Section 398, 401 IPC and 25 of Arms Act. Though the learned counsel for the appellant has not specifically challenged the conviction of the appellants for the offence punishable under Section 401 IPC but before proceeding further, it will be relevant to have a look as to whether the offence under Section 401 IPC is made out against the appellants.

Section 401 IPC reads as follows:-

“401. Punishment for belonging to gang of thieves.—
Whoever, at any time after the passing of this Act, shall belong to any wandering or other gang of persons associated for the purpose of habitually committing theft or robbery, and not being a gang of thugs or dacoits, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.”

In order to prove the offence under Section 401 IPC, the prosecution must prove:-

- (i) That there existed a gang of persons;

- (ii) that those persons were associated for the purpose of committing theft or robbery;
- (iii) that the theft or robbery has to be committed habitually; and
- (iv) that the accused were members of such gang.

Prosecution witnesses PW6 ASI Prithvi Singh and PW7 SI Ami Lal have not stated anything to draw the inference about the above ingredients to prove the offence punishable under Section 401 IPC. There is no evidence that appellants belonged to association or gang of persons habitual of committing theft or robbery. In the absence of any specific evidence, the conviction of the appellants recorded by the trial Court for the offence punishable under Section 401 IPC is not sustainable in the eyes of law.

Appellants have also been convicted under Section 25 of Arms Act. As per the statement of ASI Prithvi Singh and SI Ami Lal live cartridges and pistols were recovered from the possession of appellants. Prosecution has examined Constable Jai Bhagwan Armorer, who had tested the pistols recovered from the appellants and found the same in working condition. This witness had passed the Armorer Course and had expertise of 10 years in this job. After checking the pistols and cartridges, he gave the report Ex.PD . Though he has not tested the pistol by firing but being a skilled person, he could depose by testing the pistols as to whether these were in working condition or not. Even otherwise, it was not a case of appellants that the pistols recovered from them were toy pistols. Offence punishable under Section 25 of Arms Act is duly proved against the appellants.

PW7 SI Ami Lal on receiving secret information at about mid

night, had formed a police party in civil dress and proceeded to the spot where the passage for vehicles had been blocked by placing wood and stones. It was because of mid night hours, none from public was ready to join the police party as independent witness. He has deposed that one vehicle came across them and he tried to join the occupants of that vehicle in police party but they refused. It is generally found that people avoid joining the police party and particularly at odd hours for the obvious reasons. Nobody wants to put himself in discomfort by joining the police party during odd hours of night and then going to police station and thereafter to Court to depose.

The question which arise for consideration is as to whether the testimony of prosecution witnesses is reliable in the absence of independent corroboration. No suggestion has been given to PW6 ASI Prithvi Singh or PW7 SI Ami Lal that they had got any reason or enmity to falsely implicate the appellants. The suggestion has been given that appellants were fish contractors. However, the mere fact that appellants are Fish Contractors, is not a reason for their false implication in this case. They were apprehended around midnight from the side of canal and it was not a time to catch the fish. The mere fact that owner of the private jeep was not disclosed, the stones and wood placed on the road were not produced in Court, are no reason to discard the testimony of the prosecution witnesses. It was not required by the police party to take in possession all the stones and woods placed by the accused to block the passage and stop the vehicle. It has been specifically stated that on seeing the blockade on the road when vehicle carrying police officials in plain dress was stopped, both the accused came

to the vehicle with pistols in their hands and asked the occupants to hand over their belongings. The testimony of ASI Prithvi Singh PW6 and SI Ami Lal PW7 duly prove that appellants had attempted to commit robbery during night hours and at that time, they were armed with pistols, a deadly weapon. The fact as to whether the vehicle i.e. jeep in which police party reached the spot, could carry 8 persons or not, could be inquired from the Investigating Officer but no suggestion was given to him in this regard.

DW1 Raja Ram had deposed about Fisheries' licence with appellant Kundan Singh, which allowed him to catch fish from government water channels in the area of Rewari and Mohindergarh. However, his statement, in no manner, help the appellants. It was neither suggested to the prosecution witnesses nor defence of appellants is that at the time of their apprehension, they were either catching the fish or supervising the persons deputed by them for this purpose. No articles required to catch the fish were recovered from their possession. Learned trial Court has rightly relied on the testimony of prosecution witnesses while convicting the appellants for the offence punishable under Section 398 IPC and 25 of Arms Act and I find no reason to interfere with the observations of learned trial Court on this score. Testimony of the prosecution witnesses is reliable and prove the commission of offence punishable under Section 398 IPC and 25 Arms Act, by the appellants.

The appeal is partly accepted. Conviction of the appellants under Section 401 IPC is set aside, however, their conviction and sentence for offence punishable under Sections 398 IPC and 25 of Arms Act as awarded by the trial Court is maintained.

Appellants be taken in custody and sent to jail to undergo remaining part of sentence awarded to them.

Copy of this judgment be sent to Chief Judicial Magistrate, Rewari for compliance.

October 16, 2018
Sachin M.

(SURINDER GUPTA)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>