

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

CRA S-1536-SB of 2004
Date of Decision : July 2, 2018

Balwinder Singh @ Balbir Singh @ Pappi and another
.....Appellants

Versus

State of Punjab
.... Respondent

CRA S-1565-SB of 2004

Deepak Kumar @ Bittu and another
.... Appellants

Versus

State of Punjab
... Respondent

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

Present : Mr. Akashdeep Singh, Advocate
for the appellant No.1-Balwinder Singh @ Balbir Singh
@ Pappi and as amicus curiae for the appellants in
Criminal Appeal S-1565-SB of 2004.

Mr. R.K. Trikha, Advocate
for the appellant No.2-Kulwinder Kumar @ Ghoki
in Criminal Appeal S-1536-SB of 2004.

Mr. H.S. Sullar, Deputy Advocate General, Punjab.

T.P.S.MANN, J. (Oral)

The appellants, in both the appeals, namely, Balwinder
Singh @ Balbir Singh @ Pappi, Kulwinder Kumar @ Ghoki,

Deepak Kumar @ Bittu and Surinder Pal @ Pala were charged for committing offences punishable under Sections 411, 399 and 414 IPC and Section 25 of the Arms Act. Vide judgment and order dated 15.7.2004, learned Additional Sessions Judge (Adhoc) Fast Track Court, Hoshiarpur convicted them under Section 399 IPC and sentenced them to undergo rigorous imprisonment for three years and to pay a fine of Rs.1000/- each and in default of payment of fine, to further undergo rigorous imprisonment for two months. They were further convicted under Section 411 IPC and sentenced to undergo rigorous imprisonment for one year each. They were also convicted under Section 414 IPC and sentenced to undergo rigorous imprisonment one year each. Balwinder Singh @ Balbir Singh @ Pappi and Deepak Kumar @ Bittu were also convicted under Section 25 of Arms Act and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.500/- each and in default of payment of fine, to further undergo rigorous imprisonment for one month. All the sentences were ordered to run concurrently. The period of detention during investigation and trial was ordered to be set off against the sentence awarded to them.

According to the prosecution, on 11.10.1999 Kulwant Singh, Station House Officer, Police Station Sadar, Hoshiarpur alongwith other police officials was present on Hoshiarpur-Chandigarh road in connection with patrolling when he

received secret information that the accused were planning to commit dacoity while sitting on the bridge of Bajwara Khurd Choe. SHO Kulwant Singh and other police officials left for the said place. On the way, Tara Singh, Sarpanch was joined in the police. When the police party reached near the place, one of the accused slipped away while the others were apprehended. The accused, who had slipped away was Paramjit Singh. Search of the remaining accused was conducted. From the personal search of Deepak Kumar @ Bittu accused, a .32 bore revolver was recovered from the right dub of his pant and Rs.25,000/- recovered from the left pocket of his pant alongwith 6 live cartridges of .32 bore. The accused could not produce any licence for the firearm. From the personal search of Balwinder Singh @ Balbir Singh @ Pappi accused, a .12 bore double barrel gun was recovered which he was carrying in his hand and from the left pocket of his pant, 4 live cartridges of .12 bore were recovered whereas from right pocket of his pant, Rs.16,000/- were recovered. This accused also could not produce any licence for the gun. From the personal search of Surinder Pal accused, a khokhri was recovered from right dub of his pant and Rs. 6,000/- recovered from the back pocket of his pant. During personal search of Kulwinder Kumar @ Ghoki accused, a datar was recovered which he was carrying in his right hand whereas Rs.3,000/- recovered from back pocket of his pant. The police

also took into possession a Maruti car and gold ornaments from the dashboard of the said car. On the basis of ruqa Ex.PL sent by Kulwant Singh, Station House Officer, FIR Ex.PL/1 came to be registered at Police Station Sadar Hoshiarpur.

It is also the case of the prosecution that during the investigation, Balwinder Singh @ Balbir Singh @ Pappi accused pursuant to his disclosure statement got recovered gold ornaments.

After going through the evidence available on record and hearing learned counsel for the parties, learned trial Court believed the prosecution case and convicted and sentenced the appellants, as mentioned above.

Learned counsel for the appellants have submitted that they do not challenge the conviction of their clients. It is further submitted that the appellants are facing the agony of criminal prosecution for the last 19 years. They have already undergone sufficient period of sentence imposed upon them. Therefore, lenient view may be taken in the matter of sentence of imprisonment.

Learned State counsel has vehemently opposed the prayer by submitting that from the possession of the appellants, huge recovery of gold ornaments had been made. Further, two of the appellants were armed with firearms.

From the custody certificates already brought on

record by the learned State counsel, Kulwinder Kumar @ Ghoki has undergone an actual sentence of three months and three days, Deepak Kumar @ Bittu has undergone six months and fifteen days whereas Surinder Pal @ Pala has undergone three months and twelve days. None of them is either shown to be involved or convicted in any case apart from the present case.

It may be worthwhile to mention here that on 10.3.2017, when the appeals had come up for final hearing, learned State counsel produced the affidavit of Shri Sameer Verma, Deputy Superintendent of Police, Sub-Division, City Hoshiarpur, wherein, it stood mentioned that Balwinder Singh @ Balbir Singh @ Pappi was murdered on 25.9.2016 at the hands of unknown persons and in that regard FIR No. 99 dated 25.9.2016 was registered at Police Station Bullowal, District Hoshiarpur. As such, the appeal filed on behalf of Balwinder Singh @ Balbir Singh @ Pappi appellant is required to be disposed of as abated.

Taking into consideration the totality of the circumstances, this Court is of the view that the surviving appellants need not be sent behind the bars for undergoing their remaining sentences of imprisonment. Ends of justice shall be suitably met, if their substantive sentences of imprisonment are reduced to the one already undergone by them. However, the fine imposed upon them for the offence under Section 399 IPC can be suitably enhanced.

Resultantly, the appeal filed on behalf of Balwinder Singh @ Balbir Singh @ Pappi is disposed of as having abated. The conviction of appellants, namely, Kulwinder Kumar @ Ghoki, Deepak Kumar @ Bittu and Surinder Pal @ Pala is upheld but their substantive sentences of imprisonment on all counts are reduced to the one already undergone by them. The said appellants shall, however, pay a fine of Rs.10,000/- each for the offence under Section 399 IPC and in default thereof, they shall undergo rigorous imprisonment for six months. The sentence of fine imposed upon Deepak Kumar @ Bittu appellant under Section 25 of the Arms Act alongwith its default clause is maintained. The aforesaid appeals filed on behalf of Kulwinder Kumar @ Ghoki, Deepak Kumar @ Bittu and Surinder Pal @ Pala are disposed of, accordingly.

July 2, 2018
amit rana

(T.P.S. MANN)
JUDGE

Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No