

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

1. CRA-S No.1701-SB of 2004 (O&M)

Kailash & others

... Appellants

Versus

State of Haryana

... Respondent

2. CRA-S No.2372-SB of 2004 (O&M)

Gulab Singh

... Appellant

Versus

State of Haryana

... Respondent

3. CRA-S No.2393-SB of 2004 (O&M)

Rajesh

... Appellants

Versus

State of Haryana

... Respondent

Date of decision: 6th October, 2018

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. B.S. Saroha, Advocate
for the appellants (in CRA-S-1701-SB-2004);
(as Amicus Curiae for the appellants
in CRA-S-2372-SB-2004 & CRA-S-2393-SB-2004)

Mr. Praveen Bhadu, Asstt. Advocate General, Haryana
for the respondent/State.

FATEH DEEP SINGH, J.

Since all these three criminal appeals, one filed by convicts

Kailash, Rambir and Pitamber; second by Gulab Singh and the third by

Rajesh, having arisen out of the common judgment of conviction and order of sentence dated 24.08.2004/26.08.2004 passed by the Court of learned Additional Sessions Judge, Fast Track Court, Bhiwani in FIR No.168 dated 05.09.2002 under Sections 399 and 402 IPC and Section 25 of the Arms Act pertaining to Police Station Civil Lines Bhiwani; deserves to be taken up together on account of factual and legal consanguinity and therefore, are being disposed off together for the sake of brevity.

Heard Mr. B.S. Saroha, Advocate for the appellants in CRA-S-1701-SB-2004 and appearing as Amicus Curiae on behalf of the appellants in remaining two appeals i.e. CRA-S-2372-SB-2004 & CRA-S-2393-SB-2004; Mr. Praveen Bhadu, Assistant Advocate General, Haryana for the respondent/State and perused the records of the case.

The brief facts of the case that emanates from the submissions of the two sides and are well established from the records, are that Inspector Ram Avtar along with other police officials were present at new bus stand, Bhiwani on 05.09.2002, when a secret information was received that five young boys, accused in these matters, armed with deadly weapons were present at bus stop towards the northern side of the bus stand Bhiwani and were planning to commit

dacoity at Sanjeet Filling Station, Rohtak Road, Bhiwani and they could be arrested if raid is conducted.

Acting on this information, Inspector Ram Avtar formed four raiding parties, one headed by SI Ram Kumar, second by SI Chand Ram, third by ASI Om Parkash and the fourth was headed by Inspector Ram Avtar himself. When the police party approached the place, they heard the accused talking to each other and one of them was addressing that they would commit dacoity at Sanjeet Petrol Pump, Rohtak Road, Bhiwani where he would lead them and they will act as per his directions. Since they were armed with deadly weapons, the leader of the gang took the duty of confining the employees of petrol pump at pistol point with the help of accused Pitamber, whereas Rajesh would loot the cash, Gulab and Kailash would guard outside and if anybody tried to obstruct, both of them would shoot him. Upon his conversation, the investigating officer gave a call to the accused persons that they have been surrounded, upon which all the accused tried to run away. Accused Rambir is alleged to have been apprehended by Inspector Ram Avtar and from his personal search a loaded country-made .315 bore pistol was recovered. On apprehension of Kailash by SI Ram Kumar, from his personal search a loaded country-made pistol of .32 bore was recovered. From the personal

search of Pitamber, who was apprehended by SI Chand Singh, a .12 bore loaded pistol was recovered. The remaining two persons Gulab Singh and Rajesh alias Sarkari managed to escape from the place of occurrence. The accused could not produce any license or authorization for these weapons. Upon necessary formalities, ruqa Ex.PH was sent to the Police Station leading to registration of the FIR. On completion of the investigation, challan against the accused was presented in the Court. The accused denied the charges and claimed trial.

The prosecution, to prove its case, examined PW1 Inspector Dharampal, PW2 Kanwarpal Draftsman, PW3 SI Ram Kumar, PW4 ASI Laxman, PW5 Bhisham Chander, Reader to District Magistrate, PW6 Inspector Ram Avtar, PW7 ASI Ram Chander, PW8 EHC Ravinder, PW9 Jaipal Armourer, PW10 Inspector Sher Singh, PW11 EHC Bishamber Dayal, PW12 HC Dalip Singh, PW13 SI Udmi Ram, PW14 Satish Kumar Ahlmad, PW15 Constable Raj Kumar and PW16 HC Lal Singh. In the process, prosecution proved the arrest memo Ex.PA; sanction order Ex.PA; disclosure statement of accused Gulab Ex.PB; copy of the formal FIR Ex.PB; scaled site plan Ex.PC; sketch of pistol recovered from accused Kailash Ex.PD; recovery memo Ex.PE; sketch of pistol recovered from accused Rambir Ex.PF; sketch of pistol recovered

from accused Pitamber Ex.PG; rukka Ex.PH; rough site plan Ex.PH/1; application for testing arms Ex.PJ; report of Armourer Ex.PJ/1; fard nishan dehi Ex.PK; disclosure statement of accused Rajesh Ex.PL; disclosure statement of accused Rajesh Ex.PL/1; copy of recovery memo Ex.PM and copy of khakha of knife Ex.PM/1.

Besides this, the prosecution proved one country-made revolver Ex.P1 with cartridges Ex.P2 recovered from Kailash; country-made pistol Ex.P3 with cartridges Ex.P4 recovered from Rambir; country-made pistol Ex.P5 with cartridges Ex.P6 and Ex.P7 recovered from Pitamber.

Upon completion of prosecution evidence, the accused were called upon to explain the incriminating evidence against them to which they denied and set up the plea of false implication. However, the accused did not lead any evidence in their defence.

Consequent upon hearing arguments, the accused were found guilty and sentenced to undergo rigorous imprisonment for a period of six years each and to pay a fine of Rs.800/- each for commission of offence punishable under Section 399 IPC and in default of payment of fine to further undergo simple imprisonment for four months. They were further sentenced to undergo rigorous imprisonment for five years each and to

pay a fine of Rs.800/- each under Section 402 IPC and in default of payment of fine to further undergo simple imprisonment for four months. Convicts Kailash, Rambir, Pitamber and Rajesh were further sentenced to undergo rigorous imprisonment for two years each and to pay a fine of Rs.400/- each for offence under Section 25 of the Arms Act and in default of payment of fine to further undergo simple imprisonment for two months. All the sentences were ordered to run concurrently. The same is subject matter of challenge in these appeals.

Appreciating the submissions of learned counsel for the appellants as well as the defence counsel. It is the case of the prosecution that it was on the basis of secret information, the police parties had conducted raid leading to apprehension of some of the accused and recoveries from them. The police, at the relevant time, happened to be present near bus stand Bhiwani thus, a public place and could have easily associated an independent witness but none has been joined and thus, the submissions of the appellants' counsel that the evidence of the prosecution needs to be scrutinized with more care and caution, is certainly not out of place, especially in the light of the fact that the police as per the deposition of the investigating officer Inspector Ram Avtar accepts that he received secret information at 7:00 p.m. and thus, is not a

case where it was pitch dark or public place like a bus stand could be desolate, together with the fact that the FIR in this case has come about at 9:50 p.m., after almost two hours and fifty minutes. It is there in the cross-examination of police officials, who have apprehended different accused, that people were available at that time. Though on behalf of the State, the same is sought to be controverted with much elance on the strength of submissions that it has come that the police tried to associate independent witness but none was willing, certainly puts a heavy onus on the prosecution to establish its case to the hilt beyond shadow of reasonable doubt.

As has been argued and could not be controverted by the learned State counsel that there is a very strong suspicious circumstance, whereby the prosecution has failed to prove the recovery of weapons alleged to have been recovered from accused Kailash, which is proved by PW Inspector Ram Avtar, who in his examination in-chief while stating that SI Ram Kumar recovered a .32 bore revolver with one cartridge from accused Kailash, and the rough sketch of which has been proved as Ex.PG. A close look at Ex.PG shows that the weapon depicted on this document is a pistol and is shown to have been recovered from accused Pitamber, and which weapon Ex.P3 and its cartridges Ex.P4 were taken

into police possession vide memo Ex.PE, and by virtue of which recoveries are shown jointly from Rambir, Kailash and Pitamber; when it is the own stand of the prosecution that four sets of raiding parties have apprehended each of the accused separately and two of them managed to escape and this joint recovery memo rather reflects that the case of the prosecution hinges upon a serious lapse and is shown to have been recovered by Inspector Ram Avtar and therefore, another distressing feature that how the official, who has apprehended and got recovered the weapon, did not scribe the memo of recovery, is a serious lacuna in the prosecution story to which the learned State counsel could not controvert.

Strange enough, as has come in the cross-examination of PW SI Ram Kumar whereby he accepts that the FIR number or name of the accused from whose possession the weapons were recovered, are not mentioned on the case property produced in the Court, i.e. the weapons, or on the parcels containing these weapons; certainly this serious remiss goes to the roots of the prosecution story. PW Bisham Chander Reader to the District Magistrate, has proved the due according of sanction from the office of District Magistrate, Bhiwani under the Indian Arms Act by way of Ex.PA, which shows that there is total non-application of mind by the sanctioning authority as it is clearly reflected from this document that a

joint sanction has been accorded for prosecution of the accused from whom illegal fire-arms were alleged to have been recovered. As has been sought to be contended by the appellants side, without examining the weapons or their parcels, sanction has been given and how or on what grounds the sanctioning authority had drawn the conclusion that there was prima-facie legal necessity of according sanction, is certainly missing in this document Ex.PA. The police officials, who were alleged to be part of the raiding parties comprising of SI Ram Kumar, Inspector Ram Avtar and SI Chand Ram have neither conducted any writing work nor used their respective seals while preparing parcels of the recovered weapons, which is also there in the cross-examination of Inspector Ram Avtar, who states that the case property is produced by way of parcels.

The most glaring lacuna that has cropped up in the prosecution story is revealed from the cross-examination of PW Jai Pal Singh Armourer, who in his cross-examination submits that he had not re-sealed the parcels of the aforesaid fire-arms. How or by what means, as has been remarked in the cross-examination of SI Ram Kumar, that no particulars of the accused were written on the parcels produced in the Court which contained the weapons, rather speaks ill of the prosecution credibility and under what circumstances the alleged recoveries are

connected with the one produced before the Court, leaves much to guess. Furthermore, during the course of submissions, as has been vehemently argued by the learned counsel for the appellants, PW Jai Pal Singh, the Armourer admits in his cross-examination that he has seen Ex.P1, one of the weapons which is not in working condition and he further accepts that live cartridge Ex.P4 cannot be fired from the revolver in question and further that live cartridge Ex.P5 cannot be fired from the two pistols aforesaid and above all, when he accepts that one of the pistols Ex.P2 is rusted and he accepts in his cross-examination that he did not test-fire the weapons; certainly is a serious drawback to the case of the prosecution, which certainly shakes the conscience of the Court as to the very truthfulness of the prosecution story. As has been the case of the prosecution brought out from the mouth of its eye-witness, the accused were alleged to be present inside the boosting station and which is reflected from the scaled site plan Ex.PC at point 'A' and rough site plan Ex.PH/1 also at point 'A'; rather improbabilizes the prosecution story as it could not be accepted that at such an odd hour, the boosting station room was kept open and had that been open, certainly there would have been an attendant and who needs to have joined the investigation, but none has come forward to testify or be a part of the investigations. Even these site

plans do not depict anywhere the point from where the police claims to have heard the accused talking. None of the witnesses, who are supposed to be responsible police officials, have detailed which of the accused was talking what and has not reproduced in their evidence and testimony the exact words so spoken by any of the accused, and therefore, in the light of the proposition of law laid down in '**Chaturi Yadav and others vs. State of Bihar**' 1979 AIR (SC) 1412, it is necessary and essential to prove each and every ingredient of offences under Section 399 and 402 IPC by reproducing the exact words spoken by each of the accused, to bring home the commission of offence by the accused and which is totally amiss in the present case.

It is the case of the prosecution reflected from the testimony of the witnesses that the revolver alleged to have been recovered from the possession of accused Kailash was fully loaded and in the recovery memo Ex.PE, is shown to have contained six cartridges, however, it is a sad state of affairs when the main witness SI Ram Kumar who proved the recovery, had proved the revolver as Ex.P1 and cartridge as Ex.P2, is in itself suggestive that all is not well with the prosecution story and nothing could be explained by the learned State counsel as to where the remaining five cartridges have disappeared. Rather it shows that the case

property was tampered with. Furthermore, the main investigating officer Inspector Ram Avtar in his examination in-chief solely contradicts this aspect by stating that from Kailash, SI Ram Kumar recovered .32 bore revolver with one cartridge, and has proved the same as Ex.P4; are matters of serious repercussion on the wellness of the prosecution story.

The learned trial Court has failed to take a legal approach into the matter in respect of accused Gulab Singh when SI Dharampal was examined (who has not been assigned any serial number in the evidence) that he had arrested accused Gulab Singh in another FIR bearing No.310 dated 18.09.2002 under Sections 379, 411, 420 IPC pertaining to Police Station Meham and therefore, apparently no recovery has been effected from him in the present case and the document Ex.PB by way of disclosure statement either could have been proved through secondary means or by examining the investigating officer who prepared the said document, however, this witness is alien to this document. Even Ram Chander ASI (not assigned any serial number in the evidence) could not legally prove the disclosure statement of this accused and therefore, such a document cannot be legally and legitimately taken to be a piece of evidence. Similarly PW Inspector Ram Avtar in his cross-examination

accepts the fact that the weapons and their parcels do not bear the FIR number of this case to connect them with this case.

Not much relevance can be attached to the evidence of EHC Bishamber Dayal PW12, as not much substantial has come about in his testimony and even the testimony of PW13 HC Dalip Singh is in itself highly unreliable and the alleged khukhri has neither been produced before the Court nor exhibited, much less its sketch and due recovery of the weapon from the conscious possession of the accused and in the absence of which, no value can be attached to the disclosure statement. Even the recovery shown from accused Rajesh is in another case bearing FIR No.140/2002 under Sections 399, 402 IPC and a mere photostat copy of the recovery memo and non-production of the alleged weapon cannot be taken to be a legitimate evidence and could stand against the accused and therefore, not much relevance can be attached to this testimony. So is the deposition of PW17 constable Lal Singh, who claimed to have prepared the rough site plan of khukhri, as no original record of the said case was brought before the Court to establish the veracity of the documents and the articles so that the same could be read into evidence, especially in the light of the fact that this witness is not the investigating officer of this case.

The learned lower Court has failed to take notice of such serious lacunas in the prosecution story and has totally failed to appreciate the evidence brought on the record in the right perspective. In the light of shortcomings so detailed and discussed above, the veracity of these prosecution witnesses certainly is highly doubtful and which has its repercussions on the story of the prosecution. In view of the cumulative effect of what has been detailed and discussed above, casts a serious doubt on the prosecution story and the impugned judgment certainly is bereft of any legal appreciation and needs to be set aside by way of acceptance of these appeals and thereby acquitting all the accused of all charges framed against them. Ordered accordingly.

(FATEH DEEP SINGH)
JUDGE

October 6, 2018

rps

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