

CRA-S-1805-SB-2004 and other connected appeals

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

Date of decision: 18.04.2018

1. CRA-S-1805-SB-2004 (O & M)

Kuldeep @ Beecha

.....Appellant

Versus

State of Haryana

....Respondent

2. CRA-S-2193-SB-2004 (O & M)

Surinder @ Sheru

.....Appellant

Versus

State of Haryana

....Respondent

3. CRA-S-2550-SB-2004 (O & M)

Sudhir

.....Appellant

Versus

State of Haryana

....Respondent

4. CRA-S-72-SB-2005(O & M)

Parveen

.....Appellant

Versus

State of Haryana

....Respondent

5. CRA-S-170-SB-2005 (O & M)

Vikram alias Vicky

.....Appellant

Versus

State of Haryana

....Respondent

CRA-S-1805-SB-2004 and other connected appeals

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr. Sanjiv Kumar Yadav, Advocate for
Mr. Vikram Singh, Advocate,
for appellants, Kuldeep @ Beecha, Surinder @ Sheru and
Parveen and *Amicus Curie* for appellants Sudhir and
Vikram alias Vicky.

Mr. Arjun Yadav, AAG, Haryana.

INDERJIT SINGH, J

All appeals are taken up together for disposal being arisen from same judgment. The same have been filed challenging the judgment of conviction and order of sentence dated 29.07.2004 passed by learned Additional Sessions Judge, Panipat whereby they were convicted and sentenced as under:

<i>Under Section</i>	<i>Sentence</i>	<i>In default of payment of Fine</i>
399 IPC	To undergo rigorous imprisonment for 05 years and to pay a fine of ₹1,000/- each.	To further undergo rigorous imprisonment for 01 month each.
402 IPC	To undergo rigorous imprisonment for 03 years and to pay a fine of ₹500/- each.	To further undergo rigorous imprisonment for 15 days each.

In addition to it, appellant-Surinder was also convicted and sentenced as under:

<i>Under Section</i>	<i>Sentence</i>	<i>In default of payment of Fine</i>
25 of the Arms Act	To undergo rigorous imprisonment for 01 year and to pay a fine of ₹1,000/-.	To further undergo rigorous imprisonment for 01 month.

All the aforesaid substantive sentences have been ordered to run concurrently.

CRA-S-1805-SB-2004 and other connected appeals

Challan was presented against appellants/accused, Surinder alias Sheru, Kuldeep alias Beecha, Sudhir, Parveen and Vikram alias Vicky by the police of Police Station Model Town, Panipat in FIR No.83 dated 05.03.2004, registered at Police Station Model Town, Panipat, under Sections 399 and 402 of IPC and 25 of the Arms Act. The facts of the case, as noted down in the impugned judgment dated 29.07.2004 passed by learned trial Court are as under:

“2. As per the allegations of prosecution, on 5.3.2004, Sub Inspector Hukam Singh alongwith other police employees was present at Bus Stand, Sodhapur in connection with patrolling and checking of crime. He received a secret information that Surinder alias Sheru son of Wazir Chand, Kuldeep son of Buta Singh, Vikram son of Ram Sharan, Sudhir son of Ram Pal and Naveen son of Naresh, who all are armed with deadly weapons are sitting in the verandah of a kotha belonging to Gopi Jhinwar and are planning to commit robbery upon Sodhapur Petrol Pump and if an instant raid is conducted they could be apprehended. Finding the information reliable, the investigating officer formed two raiding parties one headed by himself, consisting of ASI Ishwar Singh, ASI Sultan Singh, Head Constable Om Parkash and Constable Jaibir Singh and other headed by ASI Ram Phal, consisting of ASI Bhagat

CRA-S-1805-SB-2004 and other connected appeals

Singh, Head Constable Ram Kumar, Constable Inder Singh and Constable Antrej Singh. The investigating officer planned to raid the informed place from the Northern side and other party headed by ASI Ram Phal was directed to conduct raid from the Western side. Thereafter, the police party started in a jeep towards the informed place. The jeep alongwith its driver was left at Nohra T-Point. The police parties raided the informed place and the investigating officer by concealing himself heard the conversation being taking place between the accused persons. They were found planning to commit robbery upon the petrol pump. One of them was saying that "You Kuldeep should broke open the drawer with the help of Khurpala, You, Vikram will remove the cash therefrom and the remaining will keep themselves armed with their respective arms for their defence, and if anyone from the petrol pump tried to retaliate, he would be fired upon. Thereafter, the kotha was gheroed and the investigating officer asked all the accused to surrender before the police. All the accused were thus apprehended. From the possession of accused, Surinder a country made pistol of .315 bore duly loaded was recovered, which was unloaded, its rough sketch was prepared. Accused Kuldip was having

CRA-S-1805-SB-2004 and other connected appeals

a Khurpala in his right hand, its rough sketch was also prepared. Parveen was having a gupti, its rough sketch was also prepared. The remaining three accused were having three motor cycles. Weapons of offence and the motor cycles were taken into possession vide a memo. Accused were arrested in this case and on return to the police station, the entire case property was deposited with the Moharir Head Constable. After completion of the investigation, the challan was presented in the Court.”

On presentation of challan against accused-appellant, copies of challan and other documents were supplied to them under Section 207 Cr.P.C. Finding *prima facie* case, the accused-appellants were charge-sheeted under Sections 399 and 402 of IPC and besides this, accused-appellant Surinder was also charge-sheeted under Section 25 of the Arms Act, to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined as many as 05 witnesses. PW 1 Head Constable Surinder singh mainly deposed that he tested pistol (Ex.P-1) of .315 bore and found it in a working condition. However, during his cross-examination, he stated that the pistol was not in a sealed condition. PW 2 ASI Jai Bhagwan mainly deposed in respect of recording formal FIR (Ex.PC) on the receipt of *ruqa* (Ex.PB/1). PW 3 ASI Ishwar Singh and PW 4 Sub Inspector Hukam Chand, Investigating Officer mainly deposed the same facts as

CRA-S-1805-SB-2004 and other connected appeals

narrated above while giving the facts of the case. PW 5 Sant Lal, Reader to District Magistrate, Panipat mainly proved the sanction order (Ex.PM) passed by the District Magistrate, Panipat.

At the close of prosecution evidence, the accused-appellants were examined under Section 313 Cr.P.C. and were confronted with the evidence of the prosecution. They denied the correctness of the evidence and pleaded themselves as innocent. They also pleaded that the police took them from their respective houses and falsely implicated in the present case. Nothing was recovered from their possession. However, the accused-appellant denied to lead evidence in their defence.

Learned trial Court, after appreciation of the evidence, convicted and sentenced the accused-appellants as stated above.

Aggrieved from the abovesaid judgment of conviction and order of sentence, the present appeals have been filed.

I have heard learned counsel for the appellants as well as learned State counsel and have gone through the record.

Learned counsel for the appellants argued that first of all, in the present case, the investigating officer received secret information, but he has not made an honest attempt to join the independent witness. There is no independent corroboration to the prosecution version. He further argued that when the Investigating Officer received the secret information by name against the accused at 06.45 P.M., then why the *ruqa* was not sent to the police station immediately. As per the evidence, SHO went to another village to get joined the independent witness as

CRA-S-1805-SB-2004 and other connected appeals

deposed by him, but he had not sent *ruqa* to the police station, though they had spent time for about 45 minutes for reaching the spot. He further argued that it is the case of the prosecution that there were 11 police officials, but they were in a single jeep which looks improbable. He further argued that case of the prosecution is unnatural and improbable that so many police officials surrounded the place where the accused were alleged to have been planning to commit dacoity, but the accused did not notice them. Learned counsel further argued that as per the prosecution version, the police remained at the spot for 04 hours and personal search of the accused was conducted and recovery of weapons, motor-cycles etc. were effected, but they could not recover gold chains from accused-Surender and Kuldeep each and as per the prosecution version, the same were recovered from them in the police station. He further argued that the pistol which is stated to be recovered from one of the accused, was taken into police possession, but without preparing its sealed parcel and, therefore, it could be tampered or changed at any time which is also fatal to the case of the prosecution. He further contended that the prosecution has failed to prove guilt of the accused and, therefore, these appeals should be accepted.

On the other hand, learned State counsel argued that case of the prosecution has been duly proved by the prosecution witnesses. There are no material contradictions in their statements. There is no improbability in the prosecution version and the accused have been rightly convicted and sentenced by the trial Court. He further contends

CRA-S-1805-SB-2004 and other connected appeals

that there being no merits in appeals, the same should be dismissed.

After hearing learned counsel for the appellants as well as learned State counsel and going through the record minutely and carefully, I find that first of all, PW 1 Head Constable Surinder Singh who tested the countrymade pistol .315 bore and found it in a working condition, has specifically stated in the cross-examination that the pistol was not in a sealed condition. There is no explanation of any type as to why the pistol was taken into police possession without preparing its sealed parcel. Non-preparing of sealed parcel creates a reasonable doubt in the prosecution version as to whether the same pistol was got tested from the mechanic which was recovered from the accused. PW 3 ASI Ishwar Singh mainly stated in chief-examination that when they reached near *kotha*, they heard the conversation between the accused persons. Thereafter, Sub Inspector Hukam Singh gave warning to the accused to surrender themselves before the police as they were surrounded by the police. All the five persons were apprehended at the spot. However, during his examination-in-chief, he nowhere stated as to what was the conversation going on between the accused. The mere apprehension of the police and recovery of one pistol from accused Surinder and *kupala* from accused-Kuldeep, *gupti* from accused Parveen and *khukhri* from accused-Sudhir will not prove the case of the prosecution beyond doubt that the accused were planning to commit dacoity. PW 3 ASI Ishwar Singh in his chief-examination stated that on the same day, when they reached in the police station alongwith accused, one gold chain weighing

CRA-S-1805-SB-2004 and other connected appeals

21.900 grams was recovered from the possession of accused-Kuldeep and one gold chain was also recovered from accused-Surinder. This version of the prosecution that gold chains were recovered in the police station creates a reasonable doubt in the prosecution version, when the police party raided the place and got recovered weapons from the accused and arrested them on the spot, their personal search was conducted on the spot and it is specifically written in the personal search memo that no cash was recovered and one wrist watch each from the possession of accused-Sudhir and Parveen were shown to have been recovered etc., it means that either the personal search memo is not correct or proceedings conducted in the police station are doubtful. Further, PW 3 ASI Ishwar Singh during his cross-examination admitted that they received secret information at 6.45 P.M. and ruqa was not sent after receiving the secret information, but was sent after effecting the recovery etc. He also stated in his cross-examination that there were 11 police officials including the driver. The police had only one jeep. This fact also creates a doubt. It looks unnatural that 11 police officials had gone in one jeep to the place of occurrence. No independent witness was joined by the police party though they had sufficient time. PW 4 Sub Inspector Hukam Singh stated in his chief-examination that he heard the conversation being taken place between the accused. One of the accused was saying that Kuldip should break open the drawer of cash box, Vikram will remove the cash from the drawer and the remaining persons would keep watch and if anybody retaliated, he would be fired upon.

CRA-S-1805-SB-2004 and other connected appeals

This conversation as stated by PW 4 Sub Inspector Hukam Singh is not corroborated by PW 3 ASI Ishwar Singh or any other witness. Moreover, it also looks doubtful that such type of conversation will take place that one person will break open the drawer of cash box and another will remove the cash from the drawer. The same person can collect cash also. There was no reason for making such type of planning. At the most, they can say that two persons will go inside to break open the drawer and bring the cash and the remaining will stay outside. So the said version of conversation also looks unnatural. The Investigating Officer has stated that he tried to join some persons from village Sodhapur, but none was ready and he could not tell the name of any such person. Further, from the evidence on record, I find that it looks improbable and unnatural that 10 or 11 persons surrounded the area where the accused were sitting and the accused could not come to know about their presence at about 7.15 P.M. in the month of March.

From the evidence on record, I find that a reasonable doubt exists in the prosecution version. There is only statement of one witness i.e. Investigating Officer showing the conversation between the accused which is not corroborated by any other witness and further the conversation as deposed by PW 4 Sub Inspector Hukam Singh, Investigating Officer looks unnatural also.

From the above discussion, I find that the prosecution has failed to prove the guilt of the accused beyond reasonable doubt. The benefit of doubt always goes to the accused. Resultantly, all the appeals

CRA-S-1805-SB-2004 and other connected appeals

filed by the appellants are accepted; the impugned judgment of conviction and order of sentence dated 29.07.2004 passed against them are set aside and they are acquitted of the charges framed against them by giving the benefit of doubt. Their bail/surety bonds also stand discharged.

18.04.2018

parveen kumar

**(INDERJIT SINGH)
JUDGE**

Note:	Whether speaking/reasoned	:	Yes
	Whether reportable	:	No