

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Appeal No.S-955-SB of 2001

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Date of decision:17.4.2018

Ajay Kumar and another

...Appellants

v.

State of Haryana

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Sherry K. Singla, Advocate for appellant No.1-Ajay Kumar.

Mr. Suresh Kumar Kaushik, Advocate for Mr. Rahul Rathore,
Advocate for appellant No.2-Narinder.

Mr. Arjun Singh Yadav, Assistant Advocate General, Haryana
for the respondent-State.

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Inderjit Singh, J.

Ajay Kumar and Narinder-appellants have filed this appeal challenging the impugned judgment of conviction and order of sentence dated 21.8.2001/22.8.2001 passed by learned Additional Sessions Judge, Karnal, whereby they have been held guilty and convicted for the offences punishable under Section 399 and 402 IPC. They have been sentenced to undergo rigorous imprisonment for four years and to pay a fine of ₹500/- each for the offence under Section 399 IPC. They have also been sentenced to undergo rigorous imprisonment for four years and to pay a fine of ₹500/- each for the offence under Section 402 IPC. Both the sentences awarded have been ordered to run concurrently.

The brief facts of the prosecution case as noted down by the learned trial Court in its judgment dated 21.8.2011 are as under:-

“Briefly stated, the facts of the prosecution case are that on 14.4.1998 Sub Inspector Sajjan Kumar along with ASI Ishwar Singh, H.C. Hargian Singh, Constable Churia Ram was present in the area of Phurlak Railway Crossing Gharaunda in connection with the patrolling duty on the government vehicle bearing registration No.HR-05E-1891 which was being driven by Constable Baljit Singh. A secret information was received that five persons armed with lathies and iron rods are present in a deserted kotha situated at Phurlak Road Tiraha and are planning to loot the trucks, in case the raid is conducted they can be captured red handed. On this secret information, the investigating officer tried to associate the passers-by, but they showed their inability. Thereafter, the police party was organised, which started for the stated place. The police party parked the jeep near Malikpur Minor and reached near the kotha with soft steps and cardoned the kotha. They saw five persons sitting inside the kotha who were talking with each other. One of the accused namely Baljit Singh was saying that there are chances of apprehension while committing theft and so therefore, they will loot the trucks travelling on the Assandh-Kohand road and will collect sufficient amount. All the other four accused agreed to the proposal of the accused Baljit and

asked to go after sometime. Thereafter, the police party gave a lalkara to capture them. Accused Mohan @ Monu, Baldev @ Bagga, Ajay @ Vicky were captured at the site whereas accused Baljit and Narinder managed to escape under the cover of darkness. Accused were searched individually and a spring actuated knife was recovered from the right pocket of the pant of accused Mohan. The rough sketch of the recovered knife was prepared and the same was taken into possession vide separate recovery memo Ex.PK. Sub Inspector Sajjan Kumar, the investigating officer prepared the rough site plan of the place of recovery Ex.PL. The iron rod recovered from the possession of the accused Baldev and Ajay were also taken into possession vide recovery memo Ex.PB. Thereafter, ruqa Ex.PA was sent to the police station whereupon formal FIR Ex.PA/1 was recorded at the police station. The investigating officer recorded the statements of the witnesses and did other usual acts of investigation. Accused Baljit Singh and Narinder who had absconded from the place of occurrence were searched in village Gharaunda, Barsat and Pundri etc. Thereafter, the police party reached in the police station along with the case property which was deposited with the MHC and the accused were put in the police lock up. The case was handed over to the ASI Ishwar Singh for further investigations and on 15.4.1998 accused Mohan, Baldev, Baljit, Narinder and Ajay made their

disclosure statements Ex.PE to Ex.PJ relating to the another incident. Accused Narinder was arrested on 30.1.1998, whereas accused Baljit was arrested on 1.6.1998. Their disclosure statements were recorded and they were connected with the case. After completion of all the formalities, the accused were challaned by Sajjan Kumar Sub Inspector then Station House Officer, Police Station, Gharaunda vide his report under Section 173 of the Code of Criminal Procedure, 1973.”

On presentation of challan, the trial Court finding prima facie case against the accused for the offences under Sections 399 and 402 IPC framed charges accordingly, to which they pleaded not guilty and claimed trial.

During the trial of the case, accused-Baljit expired, whereas accused Mohan was declared proclaimed offender on 13.1.2000 by the trial Court.

In support of its case, the prosecution examined PW-1 ASI Ranjit Kumar, who recorded the formal FIR Ex.PA/1 after the receipt of Ruqa. PW-2 ASI Hargian Singh, who was with the police party on that day, deposed about the prosecution case. PW-3 ASI Ishwar Singh, who was in the Police party of PW-4 Inspector Sajjan Kumar, mainly deposed the same facts as narrated above while giving brief facts of the prosecution case. PW-4 Inspector Sajjan Kumar, who is the Investigating Officer has deposed about the investigation conducted by him in this case.

At the close of prosecution evidence, the accused were

examined under Section 313 Cr.P.C. and were confronted with the evidence of the prosecution but they denied the correctness of the evidence and pleaded themselves as innocent. Narinder and Ajay raised the plea that other accused, namely, Baljit, Baldev and Mohan were arrested in some theft cases which were pending in the Courts and the record of these persons was not good. They being the friends and known to them have been falsely implicated in the case. Accused Baldev mainly pleaded that the police officials have falsely implicated him in the case. No defence evidence was produced.

After going through the evidence and material placed on record, the learned trial Court vide impugned judgment and order convicted and sentenced the accused-appellants Ajay Kumar and Narinder along with co-accused Baldev as stated above. Aggrieved from this judgment, the appellants Ajay Kumar and Narinder have filed this appeal.

At the time of arguments, learned counsel for the appellants argued that the case of the prosecution is false. The appellants have been apprehended on suspicion. Nothing has been recovered from them. False recoveries have been shown. The version of the prosecution is also improbable that they were talking with each other regarding committing dacoity and the Police party, which was outside the 'Kotha' had heard the conversation. Learned counsel for the appellants further argued that the prosecution has failed to prove the guilt of the accused beyond doubt and the appeal of the appellants should be allowed. Learned counsel for the appellants further argued that as per the order passed by this Court Ajay

Kumar-appellant No.1 at the time of commission of the offences was a juvenile. At the time of hearing of this appeal as he had been treated as juvenile vide order dated 27.1.2016 by this Court, therefore, he could not have been tried by the Additional Sessions Judge and could not have been sentenced to undergo rigorous imprisonment for four years etc.

On the other hand, learned State counsel appearing for the respondent-State argued that the case of the prosecution has been duly proved by the PWs beyond any reasonable doubt. PWs have consistently deposed regarding the prosecution version. There are no material contradictions and improvements in the statements of PWs. The learned counsel for the appellants further argued that the appellants have been correctly convicted and sentenced and their appeal should be dismissed.

After hearing learned counsel for the appellants and learned Assistant Advocate General, Haryana appearing for the respondent-State and after going through the evidence on record minutely and carefully, I find that the prosecution has failed to prove the guilt of the appellants beyond a reasonable doubt.

A perusal of the evidence shows that PW-1 is formal witness who has simply recorded the FIR. PW-2 ASI Hargian Singh, who was with the Police party, has stated in his examination-in-chief that SHO Sajjan Kumar received a secret information to the effect that near the deserted Kotha/house on the Phurlak Road near Malikpur Minor five persons were planning to rob. The Police party went to the spot near that deserted Kotha on Phurlak Road. The police party left the jeep near the Malikpur Minor

and surrounded the Kotha. While reaching near the Kotha, the Police party heard from the persons sitting inside the Kotha that there was no use/benefit in committing theft. They would rob trucks and could earn a lot by committing robbery of the trucks passing near Munak road. Therefore, SHO Sajjan Kumar gave a lalkara that the accused had been surrounded and two persons ran away whereas three persons, namely, Ajay, Baldev and Mohan were caught by them at the spot. A perusal of the statements of the PWs nowhere shows that any of the members of the Police party had identified those two persons who ran away from the spot or whether any attempt was made to catch hold of them or not and this fact that two persons ran away from the Kotha also looks improbable in view of the fact that if the Police party had already surrounded the Kotha after receiving the secret information that five persons were inside the Kotha and were making preparation to rob then how those two persons managed to run away from the Kotha.

Next, I find that it also looks improbable that when the persons were talking inside the kotha how the Police party heard it outside. It looks also unnatural that they were talking in such a loud voice that the Police party or any other person could hear their preparation for committing dacoity etc. Further more, PW-2 ASI Hargian Singh has stated that they were talking to commit robbery of the trucks passing near Munak road whereas PW-3 ASI Ishwar Singh in examination-in-chief stated that five accused were sitting inside the Kotha and were talking with each other and were planning to loot the passers-by. They were talking to each other that

there is apprehension of arrest in theft cases and let they should loot the passers-by on the Assandh-Kohand road. PW-2 stated that they were talking that they should rob the trucks passing near Munak road whereas PW-3 stated that they were talking that they should loot the passersby on Assandh-Kohand road which is a material contradiction in the statements of the PWs. Further more, both the PWs have deposed that they were talking with each other regarding looting the trucks etc. PW-4 Inspector SI Sajjan Kumar, SHO, who was the In-charge of the Police party and Investigating Officer of this case stated that they listened the voices of the accused. One of the accused, namely, Baljit was saying that there was no profit in committing theft business and there are chances of apprehension, therefore, they should loot the trucks travelling on the Assandh-Kohand road. All the accused agreed to the proposal of accused Baljit. Thereafter, they gave a lalkara to capture them. Even if this version is taken as it is, it was impossible for PW-4 to know as to who had stated inside the Kotha that there is no profit in committing theft business and there are chances of apprehension. He stated that he was known to Baljit that is why he recognised his voice. Similarly, this version also looks improbable that how the SHO and the Police party came to know that remaining accused also agreed to the proposal.

Therefore, from the above discussion, I find that the version of the prosecution looks improbable. Further more, from the place of secret information the place of occurrence is at a distance of about more than one and half kilometres. But no attempt had been made to join any independent witness etc. As per prosecution version, it was night time after 10.00 p.m.

and dark as there was no light near the Kotha. Therefore, it is clear that the Police party could not identify Baljit and Narinder who ran away from the spot and there is nothing on record as to how the Police party connected them with the crime as already discussed. Otherwise also, it is improbable that when the Police party had surrounded the Kotha then how the two persons can abscond.

Therefore, from the above discussion, I find that a reasonable doubt exists in the prosecution version and benefit of doubt always goes to the accused.

Hence, by giving benefit of doubt to the accused-appellants this criminal appeal is allowed, the impugned judgment of conviction and order of sentence dated 21.8.2001/22.8.2001 passed by learned Additional Sessions Judge, Karnal are set aside qua them and the appellants are acquitted of the charges as framed against them.

The sentence of imprisonment of the appellants was suspended vide order dated 11.10.2001 passed by this Court and they were released on bail. As they are on bail, therefore, their bail bonds and surety bonds shall stand discharged.

April 17, 2018.

(Inderjit Singh)
Judge

hsp

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