

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: 07.12.2018

CRA-S-2065-SB-2004 (O&M)

Dani ... Appellant

versus

State of Haryana ... Respondent

CRA-S-2161-SB-2004 (O&M)

Rakesh & anr. ... Appellants

versus

State of Haryana ... Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Kulvir Narwal, Advocate for
Mr. Vivek Goyal, Advocate
for the appellant in CRA-S-2065-SB-2004.

Mr. Anil Shukla, Advocate
for the appellants in CRA-S-2161-SB-2004.

Mr. Ayuwan Singh, AAG, Haryana.

Manjari Nehru Kaul, J.

This order of mine will dispose of two criminal appeals i.e. CRA-S No.2065-SB of 2004 and CRA-S No.2161-SB of 2004 as both of them have arisen out of common judgment dated 02/04.09.2004. Brief facts of the case are taken from CRA-S-2065-SB-2004.

1. The instant appeal is directed against the judgment of conviction dated 02.09.2004 and order of sentence dated 04.09.2004 passed by learned Addl. Sessions Judge (ad hoc)-cum-Presiding Officer, Fast Track Court, Faridabad wherein the accused-appellants have been convicted and

sentenced as under:

<i>Name of Convict</i>	<i>Offence</i>	<i>Period of sentence</i>	<i>Fine imposed</i>	<i>Period of sentence in default of payment of fine</i>
Rakesh Rahul Dani	393 Indian Penal Code (IPC)	Rigorous imprisonment (RI) for 05 years	₹ 1,000/-	RI for 03 months
Rakesh Rahul Dani	307 IPC	RI for 05 years	₹ 1,000/-	RI for 03 months
Rakesh	25 of the Arms Act	RI for 06 months	Nil	Nil

All the sentences were ordered to be run concurrently.

2. Prosecution case as it emerges from the evidence during trial is summed up as thus:

On 24.05.1999 at about 7.15 pm, complainant Bhagat Singh (PW-4) made a statement before Inspector Ram Chander (PW-10) that he had purchased one Tata Sumo bearing registration No.HR-51-B-9158 and had given the same on contract basis to Anil Kumar (PW-7) for plying as a taxi. On the fateful day of 24.05.1999 at about 6.15 pm, he went to Pyali Chowk Taxi Stand where PW-7 Anil Kumar informed him that the said Tata Sumo had been booked for Gomat ki Pyau (UP). While he was standing at the said taxi stand with Anil Kumar, two boys namely Dani and Rakesh (appellants) wearing white kurta pajama turned up. PW-7 Anil Kumar informed the complainant that it was those two boys, who had booked the Tata Sumo. The complainant asked PW-7 Anil Kumar to drop

him at Palwal on way Gomat Ki Pyau. The complainant along with PW-7 Anil Kumar and two boys proceeded towards Banke Bihari Temple as the PW-7 was told by the two boys that some more passengers were to join them. When complainant and PW-7 Anil Kumar reached the said temple, two more persons (i.e. Vikash (since declared proclaimed offender) and Rahul) joined them. Both the complainant and PW-7 Anil Kumar got a little suspicious about the boys and made enquiries from them about their houses. The boys told them that they were residents of Dabua Colony. The boys kept roaming around in the vehicle of PW-7 Anil Kumar at Dabua Colony but were unable to show their houses. Finally, they told the complainant that they would introduce someone from Old Faridabad, who would stand as their guarantor. While they were still in the Tata Sumo, one of the boys (Vikash), who was wearing a blue dress pointed a country made pistol of .12 bore and fired on the neck of Anil Kumar (PW-7). The vehicle thereafter came to a halt. The assailants tried to flee from the spot after injuring PW-7 Anil Kumar. On an alarm being raised, the villagers, who were nearby, caught hold of two of those boys. One of the boys namely Vikash was apprehended by the complainant Bhagat Singh himself from the spot. However, fourth boy (appellant Dani) managed to run away. Injured (PW-7) Anil Kumar was taken to Escorts Hospital from where he was referred to AIIMS, Delhi. Accordingly, a formal FIR No.173 dated 24.05.1999 for the offences under Sections 393/307 IPC at

Police Station Saran, District Faridabad was registered at the instance of Bhagat Singh (PW-4), complainant. During the investigation, site plan Ex.PN of place of occurrence was prepared. Statements of witnesses were recorded. Weapons of offence i.e knife and firearm and a brief case containing make up material etc. were taken into possession vide recovery memos Ex.P1 to P-17.

3. All the accused were charge-sheeted by the trial Court for offences under Sections 393 and 307 IPC. Accused-appellant Rakesh was also charge-sheeted under Section 25 of the Arms Act. All the accused-appellants pleaded not guilty to the charges framed against them and claimed trial.

4. During the course of trial, prosecution examined PW-1- Constable Kuldeep Singh, PW-2 - MHC Nand Kishore, PW-3- Constable Manoj Kumar, PW-4- Complainant Bhagat Singh, PW-5- Dr. Rakesh Singh, Sr. Medical Officer, PW-6 Constable Suresh Kumar, PW-7 Anil Kumar, Taxi Driver, PW-8 Constable Sunil Kumar, PW-9- S.I. Surjit Kumar, PW-10 Inspector Ram Chander. One witness namely Ravinder Singh was given up as having been won over while two other prosecution witnesses were given up as being unnecessary.

5. On conclusion of the prosecution evidence, statement of all the accused under Section 313 Cr.PC were recorded wherein they denied all the incriminating circumstances appearing against them in the prosecution evidence. They pleaded innocence and false implication.

6. During the trial, one of the accused namely Vikash absented on 25.07.2003 and vide order dated 24.05.2004 by the trial Court, he was

declared a proclaimed offender. The accused did not lead any defence evidence

7. The learned trial Court vide impugned judgment dated 02.09.2004 found accused-appellants guilty for the offence under Sections 393 and 307 IPC. Accused-appellant Rakesh was also found guilty for the offence under Section 25 of Arms Act. All the accused were sentenced to undergo the rigorous imprisonment as already detailed above.

8. The impugned judgment has primarily been challenged on the following grounds:

(i) No test identification parade of the accused-appellants was conducted. So much so, no person from the public was examined to support the prosecution case.

(ii) Ingredients of Section 393 IPC were not made out since no attempt was made by the appellants to snatch the vehicle

(iii) There was no document on record to show that complainant was the owner of the vehicle i.e. Tata Sumo. Even the said vehicle was taken into possession by the police after 14 days of the occurrence i.e. on 07.06.1999.

(iv) Since the appellant -Dani was not arrested at the spot and was not even previously known to the complainant – Bhagat Singh or Anil Kumar, Taxi Driver, therefore, test identification parade qua Dani was incumbent upon the prosecution.

(v) No recovery whatsoever of any incriminating article was effected from the appellant Dani and there was no attribution to appellant – Dani qua any injury or instigation.

(vi) Recovery of weapon is doubtful and the country made pistol, which was recovered from the accused Rakesh was not in a working condition.

9. Learned State counsel, on the other hand, has vehemently opposed the submissions made by learned counsel for the appellants by contending that there is sufficient evidence to hold the accused-appellants guilty and fully liable for offence under Sections 393 and 307 IPC and 25 of the Arms Act and prayed for dismissal of the instant appeal.

10. I have heard Mr. Narwal and Mr. Shukla appearing for the appellants as well as Mr. Ayuwan Singh, State counsel and perused the evidence and other material available on record.

11. Learned counsel for the appellants have submitted that the evidence adduced by the prosecution during the course of trial was insufficient to fasten the guilt on them for the offences punishable under Sections 393 and 307 IPC and particularly so in the absence of non-conducting of test identification parade.

12. As far as non-conducting of test identification parade is concerned, it would be relevant to minutely peruse and appreciate the testimony of both the prosecution witnesses i.e. PW-4 complainant Bhagat Singh and PW-7 Anil Kumar. PW-7 Anil Kumar, who is a stamped witness, having suffered a fire arm injury on his neck at the hands of one of the accused, has given a detailed narration of the sequence of events, beginning with appellants Dani and accused Vikash (since declared Proclaimed Offender) approaching him prior to the occurrence in the afternoon of 24.05.1999 for hiring the Tata Sumo and even giving him advance booking amount. Later on, appellants Dani and Rakesh again came to PW-7 Anil

Kumar at 6.15 pm at the taxi stand and thereafter were joined by the two other accused at Banke Bihari Temple. PW-7 Anil Kumar has further given a vivid and detailed account of how thereafter he along with the appellants and the complainant-Bhagat Singh as well as one Ravi travelled to Dabua Colony for the verification of the addresses of the appellants. PW-4 complainant Bhagat Singh has also deposed on similar lines as PW-7 Anil Kumar. The only difference being that the complainant Bhagat Singh came on the scene at 6.15 pm when he had gone to the taxi stand to meet PW-7 Anil Kumar and it was then that he came into contact with the appellants, who were already engaged in talks with PW-7 Anil Kumar for the purposes of hiring his Tata Sumo. It would be worthwhile to note that both the complainant (PW-4) and Anil Kumar (PW-7) were thereafter continuously in the company of the appellants till the shooting took place. It was complainant Bhagat Singh, who chased and apprehended accused Vikash after the shooting took place. Both of these prosecution witnesses not only corroborated each other on all material facts but identified the appellants in the Court as well.

14. It would therefore, be relevant to appreciate and take into consideration that both these prosecution witnesses had ample opportunity to interact with the appellants/accused as well as to notice and remember their facial features. There could not have been thus, any chance of a mistaken identity in identifying the appellants. Once the appellants had been arrested at the scene of occurrence itself and produced before the police, the omission to hold test identification parade or produce someone from the public in support thereof, would not adversely effect the case of the prosecution. Therefore, failure to hold identification parade would not

make evidence of identification before the Court inadmissible.

15. Learned counsel for the appellant-Dani has vehemently contended that Dani was not apprehended at the spot and was not even previously known to the complainant (PW-4) or Anil Kumar (PW-7). He has placed reliance upon the judgment of Hon'ble Supreme Court in ***Matru @ Girish Chandra vs. The State of UP, AIR 1971 Supreme Court, 1050.***

16. I have given my anxious consideration to this submission but the same deserves to be rejected. The judgment cited by the learned counsel for the appellant does not help the cause of the appellant in the facts and circumstances of the case.

Even though appellant – Dani was not apprehended at the spot but the fact remains as would be evident from the unimpeachable testimony of PW-7 Anil Kumar that a few hours prior to the occurrence it was appellant Dani, who had come along with accused Vikash to hire the Tata Sumo, had given advance booking amount and also undertaken to introduce PW-7 Anil Kumar to some responsible person, who could stand as guarantor for the appellants.

Moreover, Appellant-Dani too accompanied both complainant and PW-7 Anil Kumar and the appellants in the Tata Sumo for a considerable period of time. Thus, it leaves no manner of doubt that appellant Dani was an active participant in the entire occurrence. The prosecution witnesses specially PW-7 Anil Kumar had ample opportunity to interact with appellant Dani as well and notice his distinct features. Since prosecution witnesses identified appellant Dani as well in the

Court, it definitely lends assurance to their testimony in the Court and absence of corroborative evidence by way of test identification parade would not be thus, material.

There is nothing to suggest on record as to why PW-4 complainant Bhagat Singh and PW-7 Anil Kumar would falsely identify the accused or inculcate them in a false case and exculpate the actual culprits.

17. The next argument raised by the appellants that the ingredients of Section 393 IPC are not made out and hence, the learned trial Court erred in convicting the accused-appellants under Section 393 IPC is totally devoid of merit.

Firstly, there is enough cogent evidence on record to suggest that all the appellants were jointly concerned in the commission of crime. Even though each of them individually may not have been concerned in causing of injury on PW-7 Anil Kumar but the recoveries, which were effected from the appellants at the time of apprehension and arrest, which was soon after the occurrence, would make them liable independently of the knowledge of its likelihood and reasonable belief in its probability.

The appellants were apprehended with .12 bore country made pistol, 5 live cartridges, a knife and one brief case containing air pistol, two fake beards, two fake mustache, one fixer, one paint box of black colour and one rope white colour of plastic, which goes a long way to clinchingly establish that they all were sharing a common intention and also knowledge

to commit the robbery. One of the essential ingredients of robbery is that the accused voluntarily caused or attempted to cause to some person:

- i) death, hurt or wrongful restraint
- ii) fear of instant death, or of instant hurt or of instant wrongful restraint

Thus, all these circumstances when seen in totality lead to a clear-cut inference that the intention was very much there on the part of the appellants to commit the offence under Section 393 IPC.

18. The submission qua the Tata Sumo not being in the name of the complainant and the same having been taken in possession much later by the investigating agency is of no consequence at all since it is a case of ocular testimony and well supported by all other corroborative evidence.

19. In the light of the aforementioned discussion, I do not find any legal infirmity and lacuna in the prosecution case from which it can be said that the guilt of the appellants has not been proved beyond the reasonable doubt. The same is accordingly dismissed. The impugned judgment of conviction and order of sentence dated 02/04.09.2004 is accordingly upheld. A copy of this order be sent to the Chief Judicial Magistrate, Faridabad, who shall issue warrants of arrest against the appellants to undergo the remaining part of the sentence.

07.12.2018
sonia

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/non-speaking?
Whether reportable?

Yes
Yes