IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. **Crl. Appeal S-2349-SB of 2004**
Date of Decision : July 04, 2018

Anil

.....Appellant

VERSUS

State of Haryana

.....Respondent

2. **Crl. Appeal S-2494-SB of 2004**

Narsi @ Nar Singh

.....Appellant

VERSUS

State of Haryana

.....Respondent

3. **Crl. Appeal S-169-SB of 2005**

Paramjit @ Kala and another

.....Appellants

VERSUS

State of Haryana

.....Respondent

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

Present : Mr. Sunil Sihag, Advocate
for the appellant in Crl. Appeal S-2349-SB of 2004.

Mr. Manoj Chahal, Advocate
for the appellant in Crl. Appeal S-2494-SB of 2004.

Mr. Aman Chaudhary, Advocate
for the appellants in Crl. Appeal S-169-SB of 2005.

Mr. Praveen Bhadu, Asstt. A.G., Haryana.

T.P.S. MANN, J.

The five accused, namely, Anil, Narsi @ Nar Singh, Paramjit @ Kala, Ramesh @ Dhillu and Vijay @ Dhare were tried

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for committing the offences punishable under Sections 399 and 402 IPC. Paramjit @ Kala and Ramesh @ Dhillu were also charged under Section 25 of the Arms Act. Vide judgment and order dated 24/25.11.2004, learned Additional Sessions Judge (Fast Track Court), Bhiwani convicted all of them under Section 399 IPC and sentenced them to undergo rigorous imprisonment for a period of six years and to pay a fine of Rs.500/- each and in default of payment of fine, to further undergo simple imprisonment for a period of two months. They were further convicted under Section 402 IPC and sentenced to undergo rigorous imprisonment for a period of four years and to pay a fine of Rs.500/- each and in default of payment of fine, to further undergo simple imprisonment for a period of two months. Paramjit @ Kala and Ramesh @ Dhillu were also convicted under Section 25 of the Arms Act and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.500/- each and in default of payment of fine, to further undergo simple imprisonment for a period of two months. All the sentences were ordered to run concurrently. The period which they had already undergone in the case was ordered to be set off against the period awarded to them.

Aggrieved of their conviction and sentence, convict-Anil filed Crl. Appeal S-2349-SB of 2004, convict-Narsi @ Nar

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Singh filed Crl. Appeal S-2494-SB of 2004 and convicts Paramjit @ Kala and Ramesh @ Dhillu filed Crl. Appeal S-169-SB of 2005 which stand admitted.

As all the three appeals arise out of the same judgment of conviction and sentence, they are being disposed of by a common judgment.

According to the prosecution, on 16.12.2000 SI Ram Bilas alongwith other police officials reached Badhra turn, Jui where ASI Vijay Singh alongwith other police officials was already present. When both of them were talking with each other, a secret information was received that accused Paramjit @ Kala, Vijay @ Dhare, Ramesh @ Dhillu, Anil and Narsi @ Nar Singh were present in an abandoned factory near village Lohani in a car and were planning to commit dacoity in the night bus service or a petrol pump. On this information, SI Ram Bilas formed a raiding party and reached the place of occurrence. After hearing the conversation amongst the accused, they were apprehended. From the personal search of accused Paramjit @ Kala, a countrymade pistol of .315 bore alongwith two live cartridges were recovered. From the personal search of accused Ramesh @ Dhillu, a countrymade pistol of .315 bore alongwth one live cartridge were recovered. One iron rod each were recovered from accused Nar Singh and Vijay @ Dhare. All the weapons

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were taken into possession. The Maruti car bearing registration No. HR-16-0105 was also taken into possession from the spot. Ruqa was, thereafter, sent to the Police Station on the basis of which formal FIR was registered at Police Station Sadar, Bhiwani. All the accused were arrested. After completion of investigation, challan was put up in the Court of learned Ilaqa Magistrate. The case was, thereafter, committed to the Court of Sessions where the accused were charged, as mentioned above.

In support of its case, the prosecution examined ASI Maha Singh as PW1, ASI Vijay Singh as PW2, Bhisham Chander, Reader to District Magistrate, Bhiwani as PW3, Inspector Ram Bilas as PW4, Bhale Ram, Halqa Patwari as PW5, Inspector Partap Singh as PW6, Constable Ajmer Singh as PW7 and Constable Ram Singh as PW8 in oral evidence.

When examined under Section 313 Cr.P.C, all the accused denied the incriminating material/evidence put to them and claimed themselves to be innocent. However, they did not examine any evidence in their defence.

After hearing learned counsel for the parties and on going through the record, learned trial Court came to the conclusion that the prosecution was able to successful in proving the guilty of the accused and, accordingly, convicted and sentenced them, as mentioned above.

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This Court has heard learned counsel for the parties and scanned the evidence with their able assistance.

It is the prosecution case that the police had received secret information about the accused being present in an abandoned factory near village Lohani and were having a maruti car of white colour. All of them were planning to commit dacoity in the night bus service or a petrol pump. Believing the secret information to be reliable, SI Ram Bilas alongwith his fellow officials reached the place of occurrence. After hearing the conversation which was going on amongst the accused, all of them were arrested. The search of accused Paramjit @ Kala and Ramesh @ Dhillu led to recovery of countrymade pistols from them whereas iron rods were recovered from accused Narsi and Vijay.

PW2 ASI Vijay Singh, who was member of the police party headed by SI Ram Bilas, testified that the raiding party had reached the place of occurrence i.e. place where the accused were sitting and the police party was instructed to surround the accused. SI Ram Bilas alone went near the accused to hear their conversation whereas the remaining police party remained standing near the gate of the factory. After hearing the conversation of the accused, SI Ram Bilas gave a signal to the other members of the police party with the help of torch light

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whereupon all of them over powdered the accused inside the room of the factory. In his cross-examination, he testified that the distance between the place where secret information was received and the spot was about 15 kilometers. He also stated that he could not tell the details of the conversation of the accused.

PW4 SI Ram Bilas, who by then stood promoted as Inspector, testified that after reaching the spot, he alongwith the police party heard the conversation going on amongst the accused regarding looting of petrol pump. In his cross-examination, he deposed that there was no window in the room in which the accused were sitting. There was no article in that room. Rather, there was total darkness in the room. Only he could hear the talks whereas the other police officials remained at some distance from him. He heard the talks for three minutes.

From the above evidence, it is made out that the distance between the place where the police party headed by SI Ram Bilas received secret information and the place of occurrence was 15 kilometers. As such, it could have taken sufficiently long for the police party to reach the place of occurrence and possibility of the accused not being found at the spot could not be ruled out, more-so when they were alleged to be on a looting spree and could not have stayed at one place for

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a long time. Further, as there was total darkness in the room in which the accused were present and, thus, it could not be said that SI Ram Bilas would have been able to make out as to what was being said by the accused. PW2 ASI Vijay Singh testified that SI Ram Bilas heard the talks for about a minute whereas PW4 SI Ram Bilas stated that he heard the talks for three minutes. Even otherwise it would have been well nigh impossible for SI Ram Bilas to hear the conversation going on amongst the accused as the accused would not wait till the arrival of some one so as to be overheard about the plans being made by them for looting night bus service or a petrol pump. It appears that as the accused were found present in a room that SI Ram Bilas came to the conclusion that they were planning to commit dacoity.

Taking the prosecution case as such, there is no evidence to show that the accused had assembled for the purpose of committing a dacoity or they had made any preparation for committing the same. The evidence led by the prosecution merely suggests that five persons were found in an abandoned factory near village Lohani. Two of them were armed with countrymade pistols whereas two others were armed with iron rods. Merely because the accused were found during the night does not by itself prove that they had assembled for the purpose of committing dacoity or for making preparations to

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accomplish that object. In ***Chaturi Yadav and others*** **Vs**. ***State of Bihar***, *AIR 1979 SC 1412*, the Hon'ble Supreme Court while dealing with an almost identical case acquitted the accused therein of the charge under Sections 399 and 402 IPC as merely because the accused were caught hold at about midnight at a lonely place, it could not be concluded that they had assembled for the purpose of committing a dacoity or they had made any preparations for committing the same. The possibility of the accused having collected for the purpose of committing some other offence could not be eliminated. Similarly in ***Jasbir Sigh @ Javri @ Jabbar Singh*** **Vs**. ***State of Haryana***, *2015(5) SCC 762*, the Hon'ble Supreme Court held that it could not be believed that the police officials overheard the conversation of the accused planning to commit a dacoity was apparently exaggerated and padding on the part of the investigating officers, more-so when no public or other independent witness of the arrest of the accused was joined at the place of occurrence.

In the present case, PW2 ASI Vijay Singh testified that SI Ram Bilas asked one person, named Ram Bhagat to be the witness of the occurrence but he showed his inability on account of his poverty and, accordingly, did not join the police party. Similarly PW4 SI Ram Bilas admitted it to be correct that no witness was joined by him during the investigation though

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available. He went on to state that no effort was made in this regard and they all had caught hold of the accused. Thus, there is no independent corroboration to the case of the prosecution.

In view of the above, this Court finds it difficult to uphold the conviction of the appellants under Sections 399 and 402 IPC.

Coming to the charge under Section 25 of the Arms Act framed by the learned trial Court against Paramjit @ Kala and Ramsh @ Dhillu, no case is made out for any interference as countrymade pistols were recovered when both of them were searched after being arrested in the case. Out of the sentence of two years imposed upon them for the aforementioned offence, Paramjit @ Kala has undergone an actual period of one year, two months and ten days whereas Ramesh @ Dhillu has undergone eleven months and twenty three days. They have been facing the agony of criminal prosecution for the last about eighteen years. They are on bail pursuant to the order passed by this Court on 21.1.2005. No useful purpose will be served by sending them behind the bars, once again, for undergoing their remaining sentences of imprisonment. Ends of justice shall be suitably met, if their substantive sentences of imprisonment under Section 25 of the Arms Act is reduced to the one already undergone by them.

Resultantly, the conviction of the appellants, namely,

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Anil, Narsi @ Nar Singh, Paramjit @ Kala and Ramesh @ Dhillu under Sections 399 and 402 IPC is set-aside and they are acquitted of the said charge. The conviction of Paramjit @ Kala and Ramesh @ Dhillu under Section 25 of the Arms Act is upheld. However, their substantive sentence of imprisonment is reduced to the one already undergone by them.

Crl. Appeal S-2349-SB of 2004 titled as “Anil Vs. State of Haryana” and Crl. Appeal S-2494-SB of 2004 titled as “Narsi @ Nar Singh Vs. State of Haryana” are accepted and the appellants therein are acquitted of the charge against them. At the same time, Crl. Appeal S-169-SB of 2005 titled as “Paramjit @ Kala and another Vs. State of Haryana” is partly accepted by acquitting the said appellants of the charges under Sections 399 and 402 IPC. Their conviction under Section 25 of the Arms Act is, however, upheld but their substantive sentence of imprisonment on the said charge is reduced to the one already undergone by them.

July 04, 2018 **(T.P.S. MANN)**
ajay-1 **JUDGE**

Whether speaking/reasoned. : Yes/No

Whether Reportable. : Yes/No

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