

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: May 16, 2018
CRA-D-1182-DB of 2014 (O&M)

Imtiyaj @ MullaAppellant

Versus

State of HaryanaRespondent

CRA-D-1437-DB of 2014 (O&M)

Ahmad Sahid and anotherAppellants

Versus

State of HaryanaRespondent

CRA-D-1183-DB of 2014 (O&M)

RahishAppellant

Versus

State of HaryanaRespondent

CRA-D-1247-DB of 2014 (O&M)

SarfuAppellant

Versus

State of HaryanaRespondent

CRA-D-1182-DB of 2015 (O&M)

Banti @ SurajAppellant

Versus

State of HaryanaRespondent

CRA-S-3254-SB of 2016 (O&M)

Nikka @ IsmileAppellant

Versus

State of HaryanaRespondent

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI
HON'BLE MR. JUSTICE B.S. WALIA

Present: Mr. Baljeet Beniwal, Advocate
for the appellants (in CRA-D-1182-DB of 2014 and
CRA-D-1182-DB of 2015).

Mr. M.D. Khan, Advocate
for the appellant (in CRA-D-1183-DB of 2014).

Mr. Mohammad Arshad, Advocate
for the appellants (in CRA-D-1247-DB of 2014 and
CRA-D-1437-DB of 2014).

Mr. Gagandeep Singh Chinna, Legal Aid Counsel
for the appellant (in CRA-S-3254-SB of 2016).

Mr. Siddharth Sanwaria, DAG Haryana.

A.B. CHAUDHARI, J

By this common order, above said all the six appeals are being
disposed of.

Being aggrieved by the judgment/order dated
20.05.2014/21.05.2014 passed by the learned Additional Sessions Judge,
Palwal, in Sessions Case No.RBT-108 of 2012, by which the appellants,
namely Sarfu, Rahish, Imtiyaj @ Mulla, Ahmad Sahid, Sorab and Banti @
Suraj, were convicted for commission of offence punishable under Sections
397, 222, 223, 224 read with Section 34 of Indian Penal Code, 1860 (for
short 'IPC'), appellant-Sarfu also convicted for offence under Section 25 of
Arms Act, 1959 (for short 'Arms Act') and were sentenced to undergo
Rigorous Imprisonment for 7 years, with fine; in default of payment of fine,
to further undergo rigorous Imprisonment for two years, and judgment/order
dated 22.07.2016/29.07.2016 passed by the learned Additional Sessions
Judge (1), Palwal, in Sessions Case No.65 of 2014, by which the appellant,
namely Nikka @ Ismile was convicted for commission of offence punishable

under Section 397, 224 IPC and was sentenced to undergo Rigorous Imprisonment for 7 years, with fine; in default of payment of fine, to further undergo rigorous Imprisonment for three months, the present appeals have been filed by the appellants in this Court.

FACTS

Briefly stated, the prosecution case is that on 13.06.2012 at about 8:30 A.M., Vasudev Singh HCP 30AP, Reserve Police Line, Mathura, along with constable Vikas Tiwari no.288, constable Satender No.2610 and constable Satya Narayan No.44 AP, left the police station with accused Sahid Ahmed son of Hasamal, resident of Neemka, Police Station Punhana, to produce him in the Court at Hodal, in a case, against him arising out of FIR No.162/1992, under Arms Act with Police Station Hodal. At about 12:30 P.M., they produced the accused Sahid Ahmed in the Court of Shri Anubhav Sharma, the then JMIC, Hodal who adjourned the case for 27.06.2012 and 11.07.2012. Therefore, the police party along with accused started returning to Mathura. When they reached near Punhana turn Hodal, at around 1:00 P.M., 18/20 assailants, in a vehicle, stopped them, attacked the police party, opened fire from country-made pistols and also assaulted the police personnel by means of *lathi*, *danda* etc. They looted away the rifles from constable Vikas Tiwari No.288 and constable Satender No.2610, loaded with five rounds each and rescued the accused Sahid Ahmed by taking him away in their Scorpio vehicle No.HR-51X-0275. The police personnel chased them but for no use. They threw away one rifle and took one rifle with them. The assailants were calling the names as Sorab and Sarfu and accordingly, the control zone was immediately informed and the FIR was

registered. The investigation was launched and thereafter, arrests were made. The challan was filed against these accused persons. The trial Court ultimately, convicted the appellants. Hence, these appeals by them in this Court.

ARGUMENTS

In support of the appeals, learned counsel for the appellants contended that none of the appellants were identified at the time of incident as there was crowd at the spot. The prosecution case itself is that 18 to 20 persons had made attack and none of them were known. The prosecution did not conduct Test Identification Parade and therefore, in the absence of identification, the appellants could not have been convicted. The conviction based on disclosure statement is not legal and valid and therefore, the appellants are entitled to be acquitted. The alleged recoveries made from the accused persons is also fake and cannot be relied upon.

Per contra, learned State counsel opposed all the six appeals and submitted that the incident that occurred was very serious and by no stretch of imagination, the appellants could claim acquittal when the police party itself was attacked and injured. There was reliable evidence of constable Vikas Tiwari No.288 and Vasudev Singh HCP 30AP, apart from the independent witness Devender Singh, on record, which was not challenged in the cross-examination. The State counsel, therefore, prayed for dismissal of the appeals.

CONSIDERATION

We have heard learned counsel for the rival parties at length and we have perused the entire evidence. We have also seen the reasons recorded

by the trial Court for convicting the appellants. Having heard the learned counsel for the appellants and the respondent-State, at the outset, we find that *ruqa* on first statement made by the informant clearly indicates the name of Sorab and Sarfu, the appellants in CRA-D-1437-DB of 2014 and CRA-D-1247-DB of 2014, respectively. That is a most important circumstance that the control room was informed and the *ruqa* was recorded accordingly, in which the names of Sorab and Sarfu were specifically mentioned. Not only that Sorab and Sarfu were identified by constable Vikas Tiwari No.288 and Vasudev Singh HCP 30AP. Recovery was also made by the police persons pursuant to the discovery under Section 27 of the Evidence Act, 1872. Both Sorab and Sarfu were identified in the Court by constable Vikas Tiwari No.288 and Vasudev Singh HCP 30AP and that is why we have no hesitation in holding, in so far as Sorab and Sarfu are concerned, their names were immediately taken in the first statement regarding *ruqa* and there is no reason to even have any doubt about their presence on the spot and the commission of crime. We are therefore, fully satisfied that the trial Court made no mistake in convicting Sorab and Sarfu. Their appeals will have to be dismissed.

In so far as other accused persons, namely Banti @ Suraj (in CRA-D-1182-DB of 2015), Imtiyaj @ Mulla (in CRA-D-1182-DB of 2014), Rahish (in CRA-D-1183-DB of 2014), Nikka @ Ismile (in CRA-S-3254-SB of 2016), we find that only evidence against them is their disclosure statement, which according to us could not have been utilised solely to convict them for serious offence. The names of all these appellants were not at all disclosed obviously, because they were not known to the informants

nor in their case, any identification parade was held to identify them. It was, therefore, risky to convict these appellants merely on the basis of disclosure statement and their arrests. Upon careful perusal of the entire evidence, we find that there is absolutely no evidence against these appellants, but the reliance was placed by the trial Court only on disclosure statements of these appellants. We are, therefore, of firm opinion that the benefit of doubt must go to these appellants. In the result, we make the following order:-

ORDER

- (i) **CRA-D-1437-DB of 2014** filed by the appellants, namely Ahmad Sahid son of Hasmal and Sorab son of Ahmad Sahid, is dismissed;
- (ii) **CRA-D-1247-DB of 2014** filed by the appellant, namely Sarfu son of Ahmad Sahid, is dismissed;
- (iii) **CRA-D-1182-DB of 2015**, filed by the appellant, namely Banti alias Suraj son of Devender Singh, is allowed. Impugned judgment/order dated 20.05.2014/21.05.2014 of conviction/sentence, passed by the learned Additional Sessions Judge, Palwal, is set aside qua him and he is acquitted of the charge framed against him. Fine, if any paid, be refunded to him;
- (iv) **CRA-D-1182-DB of 2014**, filed by the appellant, namely Intiyaj alias Mulla son of Rashid, is allowed. Impugned judgment/order dated 20.05.2014/21.05.2014 of conviction/sentence, passed by the learned Additional Sessions Judge, Palwal, is set aside qua him and he is acquitted of the charge framed against him. Fine, if any paid, be refunded to him;
- (v) **CRA-D-1183-DB of 2014**, filed by the appellant, namely Rahish son of Ramjan, is allowed. Impugned judgment/order dated 20.05.2014/21.05.2014 of conviction/sentence, passed by the learned Additional Sessions Judge, Palwal, is set aside qua him and he is acquitted of the charge framed against him. Fine,

if any paid, be refunded to him;

- (vi) **CRA-S-3254-SB of 2016**, filed by the appellant, namely Nikka alias Ismile, is allowed. Impugned judgment/order dated 20.05.2014/21.05.2014 of conviction/sentence, passed by the learned Additional Sessions Judge, Palwal, is set aside qua him and he is acquitted of the charge framed against him. Fine, if any paid, be refunded to him.

(A.B. CHAUDHARI)
JUDGE

(B.S. WALIA)
JUDGE

May 16, 2018

mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No