

**IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH**

**1. CRA-D-45-DB-2015**  
**Reserved on: 21.11.2018**  
**Date of decision : 29.11.2018**

Sonu

... Appellant

Versus

State of Haryana

... Respondent

**2. CRA-D-165-DB-2015**

Sunil alias Billu and others

... Appellants

Versus

State of Haryana

... Respondent

**3. CRA-D-211-DB-2015**

Amit

... Appellant

Versus

State of Haryana

... Respondent

***CORAM: HON'BLE MR. JUSTICE RAJEEV SHARMA***  
***HON'BLE MR.JUSTICE HARINDER SINGH SIDHU***

Present: Mr.Jagjot Singh Lalli, Advocate  
for the appellants in CRA-D-45-DB-2015  
& CRA-D-211-DB-2015.

Mr.J.S.Dahiya, Advocate  
for the appellants in CRA-D-165-DB-2015.

Ms.Shubhra Singh, Addl.A.G. Haryana.

**RAJEEV SHARMA, J.**

Since common questions of law and facts are involved in the aforesaid appeals, therefore these are taken up together and disposed off by a common judgment.

2. These three appeals are instituted against the judgment and order dated 12.12.2014 and 15.12.2014 rendered by the Additional Sessions Judge, Panipat in Sessions case no.11 of 2013 whereby the appellants were charged with and tried for offences punishable under Sections 392, 397, 302, 120-B, 420 read with Section 34 of the Indian Penal Code (in short 'IPC') and under Section 25 of the Arms Act.

3. The appellants Sonu and Sunil @ Billu were convicted and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.200/- each and in default of payment of fine, to further undergo rigorous imprisonment for a period of one month for offence under Section 120-B IPC. They were also convicted and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.2000/- each and in default of payment of fine, to further undergo rigorous imprisonment for a period of one year for offence under Section 302 IPC. They were also convicted and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.2000/- each and in default of payment of fine, to further undergo rigorous imprisonment for a period of one year for offence under Section 396 IPC. All the sentences were ordered to run concurrently.

The appellants Amit, Azad and Afsar were convicted and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.200/- each and in default of payment of fine, to further undergo rigorous imprisonment for a period of one month for offence under

Section 120-B IPC. They were also convicted and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.2000/- each and in default of payment of fine, to further undergo rigorous imprisonment for a period of one year for offence under Section 302 IPC. They were also convicted and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.2000/- each and in default of payment of fine, to further undergo rigorous imprisonment for a period of one year for offence under Section 396 IPC. They were also convicted and sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.300/- each and in default of payment of fine, to further undergo rigorous imprisonment for a period of two months for offence under Section 25 (1B) (a) of the Arms Act, 1959. All the sentences were ordered to run concurrently.

4. The case of the prosecution in a nutshell is that PW-1 Mukesh Kumar had lodged the report to the effect that he was working as a cashier in SGI Engineering College, Hathwala. On 05.12.2012, an amount of Rs.11,28,000/- was deposited with him as fee. He could not deposit the amount in the bank. He along with Arun Sharma (PW-3) left the college in a car. The car was driven by Meghnath. He was sitting on the front seat of the car along with bag containing the cash. When they reached near the college gate, two students Manjot Singh and Digvijay Singh took lift from them. At about 7.30 p.m. when the car reached near Government School Village Pahawati, three young boys came on a motor cycle. They crossed their car. When the car slowed down on the speed breaker, one boy sitting on the back seat of the motor cycle came towards the driver side of the car. He was carrying a pistol in his hand. He fired shot at the driver of the car. The driver

lost control of the vehicle. All the three boys came towards them. He and Arun Sharma got out of the car and tried to run away along with the bag. One of the boys started chasing him. He fell down on the ground. The boy lifted the bag. While running away he heard the sound of another bullet shot. Digvijay Singh informed him that accused had taken away the bag containing cash. The driver of the car had already succumbed to the bullet shot injury. The boys were in the age group of 20-25 years. The FIR was registered. The investigation was carried out. The accused were arrested. Three pistols were recovered from Amit, Azad and Afsar on 12.12.2012 and 16.12.2012. These were sent for FSL examination. The challan was put up after completing all the codal formalities.

5. Prosecution examined number of witnesses. The statement of appellants were also recorded under Section 313 Cr.P.C. They have denied the case of the prosecution. The appellants were convicted and sentenced as noticed hereinabove. Hence these appeals.

6. Learned counsel appearing for the appellants have vehemently argued that the prosecution has failed to prove the case against the appellants.

7. Learned counsel appearing on behalf of the State has supported the judgment dated 12.12.2014.

8. We have heard learned counsel for the parties and have gone through the judgment and record very carefully.

9. PW-1 Birbhan testified that his nephew Meghnath was working as a driver. He was informed by the Sarpanch telephonically that Meghnath had met with an accident. Thereafter he reached the Civil Hospital, Panipat.

He came to know that some unknown persons had fired at Meghnath. He

identified the dead body of his nephew.

10. PW-2 Mukesh Kumar is a material witness. He testified that on 05.12.2012 he was posted as Cashier in SGI Engineering College in village Hathwala. Admission fee of Rs.11,28,000/- was collected. He could not deposit the same with the bank. He along with Arun Sharma (PW-3) left the college in the car driven by Meghnath. They were carrying cash with them. Two students met them. They also accompanied them. At about 7.30/8.00 p.m. when they reached near government school of village Pavati, a motor cycle came from behind. Three boys were riding the said motorcycle. They came near the driver side. One of the boys fired a shot on the driver. The driver raised alarm. He received a bullet injury. He along with his assistant Arun Sharma tried to escape. He took the cash bag. He lost balance and fell down along with the bag containing cash. Thereafter he heard the noise of another bullet. He came back to the spot. The assailants had already left the spot. The driver had succumbed to the injuries. He categorically deposed in his examination-in-chief that the accused present in the Court are not those persons who had fired shots at Meghnath and committed dacoity. He was declared hostile. He was cross-examined by the learned Public Prosecutor. He denied his statement Ex.P2. He denied the suggestion that on 05.12.2012 at about 10.00 am in the morning he had seen Azad and Amit along with Sonu roaming in front of his office. He also denied the suggestion that he had seen Sonu, Amit and Azad at about 6.00 pm. He also denied the suggestion that two boys namely Manjeet and Digvijay met him. He did not state to the police that one of the assailants had fired a shot at Meghnath. He denied the suggestion that the accused had committed a dacoity and murder of Meghnath. He did not recollect the features of accused persons. He was

cross-examined by the learned defence counsel. He testified that he had not seen any of accused roaming outside his office. He had not seen any assailants lifting the bag from the spot. The police never joined him in the investigation.

11. Similarly PW-3 Arun Sharma was declared hostile. According to him also, the accused present in the Court were not those persons who shot at Meghnath and committed dacoity. He was cross-examined at length by the Public Prosecutor. He denied the statement Ex.P3. He also denied the suggestion that at about 10.00 am he had seen Azad, Amit and Sonu roaming in front of his office. He did not state before the police that on the same date at 6.00 p.m. he and Mukesh were managing cash and Sonu, Amit and Azad were roaming in front of his office. He did not state to the police that two students Manjot and Digvijay met them and they gave lift to them. He could not narrate the features of the accused persons. He was also cross-examined by the defence counsel. According to him, he had not seen accused roaming outside his office. He came to know that police had found some weapon and cash lying near the place of occurrence on the day of occurrence or next day.

12. PW-4 Manjot Singh deposed that he took lift from Mukesh Kumar in Indica car outside the gate of college. When they reached near village Pavti, three persons came on a motor cycle and fired a shot at driver of the car. He was terrified. Mukesh Kumar and Arun Sharma ran away from the spot. The accused present in the Court were not those persons who had fired shots at Meghnath and committed dacoity. He was declared hostile and cross-examined by the Public Prosecutor. He could not narrate the features of the accused persons. He denied the suggestion that he had

compromised the matter.

13. PW-6 Digvijay also did not support the case of the prosecution. He also testified that persons present in the Court were not those persons who fired shot at Meghnath and committed dacoity.

14. PW-7 ASI Rattan Singh deposed that the investigating officer lifted the blood from the driver's seat, one pellet from the boot of the car and one empty cartridge lying five paces away from the car. These were taken into possession. Recovery memos were prepared.

15. PW-8 SI Prem Singh deposed that he received a secret information that Amit, Sonu and Azad were sitting on platform no.1 at Samalkha Railway Station. He went to the spot. Accused disclosed their identity. Pistol was recovered from Amit. Rs.2 lacs were also recovered from his custody. Sonu was also arrested. A sum of Rs.25,000/- was also recovered from his possession. He also arrested Azad. One country made pistol was recovered from his possession. He also arrested accused Afsar, Parveen and Brijpal on 16.12.2012. One country made pistol along with Rs.3,50,000/- was recovered from accused Afsar. He interrogated Parveen and Brijpal. Rs.1,65,000/- was recovered from Sunil. In his cross-examination he admitted that no independent witness was associated at the time of arrest of the accused though they were arrested from thickly populated area.

16. PW-11 SI Bijender Singh deposed that Amit, Sonu and Azad were sitting on platform no.1 at Samalkha Railway Station. They were apprehended by the investigating officer. Recoveries were effected from them. On 16.12.2012, accused Afsar, Parveen and Brijpal were also arrested. Recoveries were effected from them. No independent witness was

associated at the them when the accused were arrested and recoveries were made. The accused were arrested from the State Highway Bus Stand Sanoli Khurd. There was big market at Bus Stand Sanoli Khurd. Several persons were present but none of them was associated as witness. Accused Amandeep was arrested in the evening.

17. PW-13 Dr.Mona Nagpal has tendered her evidence vide affidavit Ex.P50. The cause of death was due to haemorrhage and shock due to injury caused by fire arm which was ante mortem in nature and sufficient to cause death. The pistols were also sent for FSL examination. The report is Ex.PX/2. According to report, the country made pistols marked as W/1, W/2 & W/4 had been fired through. However, scientifically the time of its last firing could not be given.

18. Their Lordships of the Hon'ble Supreme Court in ***“Balu Sonba Shinde vs. The State of Maharashtra”, (2002)7 SCC, 543***, have held that portion of evidence being advantageous to the parties may be taken advantage of, but the Court before whom such a reliance is placed shall have to be extremely cautious and circumspect in such acceptance. Their Lordships have held as under:-

*“It is at this juncture the prosecutor declared her a hostile witness and prayed for permission to cross-examine the witness upon however, the leave being granted, PW 5 totally decried the factual aspect as contained in the complaint lodged, though however, the thumb impression was admitted while it is true declaration of a witness to be hostile does not ipso facto reject the evidence and it is now well-settled that the portion of evidence being advantageous to the parties may be taken advantage of but the Court before whom such a reliance is placed shall have to be extremely*

*cautious and circumspect in such acceptance. Reference in this context may be made to the decision of this Court in State of U.P. v. Ramesh Prasad Misra & Anr. 1997(1) RCR (CrL.) 55 (SC): [(1996) 10 SCC 260] wherein this Court stated:*

*“It is equally settled law that the evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused, but it can be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence may be accepted.”*

19. Their Lordships of the Hon'ble Supreme Court in ***“Paramjeet Singh @ Pamma vs. State of Uttarakhand”***, (2010)10 SCC 439 have held that evidence of a person does not become effaced from the record merely because he has turned hostile and his deposition must be examined more cautiously to find out as to what extent he has supported the case of the prosecution. Their Lordships have held as under:-

*“17. The fact that the witness was declared hostile at the instance of the public prosecutor and he was allowed to cross examine the witness furnishes no justification for rejecting en bloc the evidence of the witness. However, the court has to be very careful, as prima facie, a witness who makes different statements at different times, has no regard for the truth. His evidence has to be read and considered as a whole with a view to find out whether any weight should be attached to it. The court should be slow to act on the testimony of such a witness; normally, it should look for corroboration to his testimony.*

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20. In *Rajendra & Anr. v. State of Uttar Pradesh*, (2009) 13 SCC 480, this Court observed that merely because a witness deviates from his statement made in

*the FIR, his evidence cannot be held to be totally unreliable.*

21. *This Court reiterated a similar view in Govindappa & Ors. v. State of Karnataka, (2010) 6 SCC 533, observing that the deposition of a hostile witness can be relied upon at least upto the extent he supported the case of the prosecution.*

22. *In view of the above, it is evident that the evidence of a person does not become effaced from the record merely because he has turned hostile and his deposition must be examined more cautiously to find out as to what extent he has supported the case of the prosecution.”*

20. A Division Bench of Madras High Court in “**Sait alias Mubarak Sait vs. State**”, 1989 Crl.L.J., 2050 have held that when witness completely turned hostile, evidence cannot at all be relied upon for any purpose. They have held as under:-

*“9. The prosecution, in proof of its case, relied upon the testimony of the ocular witnesses, P.Ws. 1 to 3, besides the lending assurance factors provided by the medical testimony. Of the three eye-witnesses examined, excepting P.Ws. 1 and 2, P.W. 3 turned hostile wholesale to the prosecution. The net result is the evidence of P.W.3 cannot at all be relied upon for any purpose whatever and the same has to be eschewed out of consideration. There remains the testimony of P.Ws. 1 and 2 alone.”*

21. The case of the prosecution has not been supported at all by the alleged eye witnesses. PW-2 Mukesh Kumar, PW-3 Arun Sharma, PW-4 Manjot Singh and PW-6 Digvijay were declared hostile. According to them, accused present in the Court did not fire at Meghnath. The accused

were arrested from the thickly populated areas. No independent witness was associated. The weapon of offence were sent for FSL examination. According to FSL report, the time of last firing could not be given scientifically. The learned trial Court has erred by convicting the appellants on the basis of sketchy evidence. The prosecution has failed to prove the case against the accused. Accordingly appeals are allowed and judgment and order dated 12.12.2014 and 15.12.2014 are set aside. The appellants are ordered to be released forthwith if not wanted in any other case. Release warrants be prepared.

**(RAJEEV SHARMA)**  
**JUDGE**

**(HARINDER SINGH SIDHU)**  
**JUDGE**

**November 29, 2018.**

*Davinder Kumar*

Whether speaking / reasoned

Yes/No

Whether reportable

Yes/No