

CRA-S-2062-SB-2016 (O&M),
CRA-S-2930-SB-2017 (O&M) &
CRA-S-3456-SB-2017 (O&M)

-1-

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

1. CRA-S-2062-SB-2016 (O&M)
Date of decision : 26.06.2018

Ranjit Kumar

...Appellant

Versus

State of Punjab

...Respondent

2. CRA-S-2930-SB-2017 (O&M)
Date of decision : 26.06.2018

Ajay Kumar alias Guhu

...Appellant

Versus

State of Punjab

...Respondent

3. CRA-S-3456-SB-2017 (O&M)
Date of decision : 26.06.2018

Heera Lal @ Laddi

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Jasdev Singh Mehndiratta, Advocate for the appellant
(In CRA-S-2062-SB-2016 & CRA-S-2930-SB-2017)

Mr. Gaurav Sharma, Advocate for the appellant
(In CRA-S-3456-SB-2017)

Mr. V.G. Jauhar, Sr. DAG, Punjab.

ANIL KSHETARPAL, J.

Arguments were heard. Judgment was reserved. The judgment is being released.

By this judgment, three appeals bearing CRA-S-2062-SB-2016, CRA-S-2930-SB-2017 and CRA-S-3456-SB-2017 shall stand disposed of. The appeals are being decided together as all the appeals are arising from one police raid, wherein the prosecution registered as many as 8 FIRs.

Vide a detailed judgment dated 06.04.2018 passed in CRA-S-3195-SB-2016 and four other connected appeals. This Court has found that the prosecution has failed to prove the case against the appellants beyond reasonable doubt. The aforesaid judgment deals with the First Information Report registered under Sections 399, 402 of Indian Penal Code. All the three appellants in the present appeals were also appellants in the aforesaid appeals. For facility of reference, the facts which are common are being noticed from CRA-S-2062-SB-2016. The facts as noticed by the trial Court are as under:-

“Prosecution story: On 19.01.2015 Inspector Sukhjinder Singh (2nd) of PS Division No.3 Pathankot joined the other police officials at various police stations headed by Inspector/SHO Sukhjinder Singh (Ist) of PS Division No.1 Pathankot, on receipt of directions from DSP Manoj Kumar, at Khaddi Bridge, Pathankot. All the police officials were

told to search one compound surrounded by a boundary wall. The police party headed by Inspector Sukhjinder Singh (2nd) of PS Division No.2 Pathankot cordoned the said compound by stationing themselves on the western side. After sometime accused Ranjit Kumar aforesaid jumped out of the said compound by scaling the wall and fell down on a big stone injuring his right arm and left leg. He tried to flee but was nabbed by SHO Sukhjinder Singh (2nd) with the help of his companions and interrogated him about his profile.

SHO Sukhjinder Singh (2nd) told the accused that he suspected some intoxicant material with him and thus his search was to be conducted. He apprised the accused of his legal right to opt his search from him, some gazetted officer or Magistrate. The accused opted his search from gazetted police officer regarding which non consent memo Ex.PW6/A was prepared. DSP Manoj Kumar, who had already reached at the spot, was apprised of the facts by Inspector Sukhjinder Singh (2nd). DSP Manoj Kumar also apprised the accused of his legal right to opt his search from him, some gazetted or Magistrate. The accused reposed confidence in DSP Manoj Kumar and opted his search as such by executing consent memo Ex.PW4/A.

On the directions of DSP Manoj Kumar and in his presence Inspector Sukhjinder Singh (2nd) conducted search of the accused which led to recovery of 320 grams of intoxicant powder wrapped in a glazed paper from the pocket of the jacket of the accused out of which two samples each of 10 grams were separated into two separate parcels and the residue was put into the third parcel. All the parcels were sealed by SHO Sukhjinder Singh (2nd) with his two seals of mark SS. The DSP also sealed the parcels with his seal of mark MK. They prepared samples Ex.P1 to Ex.P3 of

their seals on form Ex.PX. Inspector Sukhjinder Singh (2nd) handed over his seal to SI Kuldeep Kumar whereas the DSP retained his seal with him. Seizure memo Ex.PW4/B was prepared.

On further search of the accused one country made pistol of 303 bore loaded with one live cartridge was recovered from the dub of his pants. Two more live cartridges of same bore was recovered from the right pocket of his pants. Sketch Ex.PW4/D of the pistol was prepared. Pistol and cartridge were also taken into possession by preparing recovery memo Ex.PW4/C. Ruka Ex.PW10/B was sent to the police station on which basis FIR Ex.PW10/C u/s 21/22 of the Narcotic Drugs and Psychotropic Substance Act (for short the Act) and 25 Arms Act was registered against the accused. Arrest-cum-intimation memo Ex.PW6/B, personal search memo Ex.PW6/C and site plan Ex.PW10/A were also prepared at the spot. Rs.50/- was the outcome of the personal search of the accused.

Inspector Sukhjinder Singh (2nd) produced the accused and the case property before Inspector Sukhjinder Singh (1st) at the spot, as he was already present there to cordon the compound. SHO Sukhwinder Pal Singh (1st) also sealed the parcels with his seal mark SS. He too prepared sample Ex.P4 of his seal on CFSL form Ex.PX. Handing over memo Ex.PW5/A was also prepared. Inspector Sukhjinder Singh (1st) took the case property to the police station and kept the same in the double lock under his supervision.

On the next day, case property was produced before the Magistrate by SHO Sukhjinder Singh (1st) by submitting inventory report Ex.PW5/B and application Ex.PW5/C. Magistrate passed authentication order Ex.PW5/D. Then SHO Sukhjinder Singh (1st) brought back the case property

to the police station and kept the same in the double lock under his supervision and later he sent sample parcel and samples of seals to the office of Chemical Examiner through PHC Pawan Kumar. Report Ex.PZ was received from the Chemical Examiner reflecting Diphenoxylate Psychotropic Substance in the recovered contraband. Report Ex.PW7/A regarding fitness of the pistol to fire shot was obtained from Darbari Lal Head Armour. Sanction of prosecution of the accused under Arm Act was given by the District Magistrate Pathankot vide sanction order Ex.PW1/A. After completion of entire investigation, accused was challaned to face trial u/s 21/22 of the Act and 25 of Arms Act.”

Some finding in the detailed judgment passed by this Court on 06.04.2018, which is relevant for the purpose of the decision of the present case, is extracted as under:-

“Further, on close scrutiny of the oral evidence produced by the prosecution, brings out certain unusual features. ASI Jagdish Kumar, who has been examined as PW2 has stated that “Station House Officer was present at Khadi bridge Pathankot and he received the information in my presence.” The informer came on the spot and he told the name, address of the accused to Station House Officer. Jagdish further stated that lock of the gate was opened. He further stated that height of the boundary walls was about 10 feet and no one can jump the said walls. In the same breath, Jagdish Kumar further states that Surjit Singh, Ajay Kumar, Ranjit Kumar tried to run away. He states that Surjit Singh was apprehended by him, whereas Ajay Kumar and Rajnit Kumar ran away from the spot and jumped up the wall from inside the building. He further states that there was darkness on the spot and there was electricity bulb inside the

building.

Medical officer Dr. Lashkar was examined as PW3, who had examined two of the appellants, namely Ajay Kumar and Ranjit Kumar. He states that the possibility of sustaining the injury on the leg of Rajnit Kumar and injuries on Ajay Kumar by police beating cannot be ruled out. Ranjit Kumar suffered fracture on the leg, whereas Ajay Kumar suffered multiple injuries including fracture of the right foot and injury on the right forearm and wrist apart from abrasion on the abdomen.

Sukhjinder Pal Singh, Investigating Officer, has appeared as PW4. He states that he followed Ajay, the appellant and he fell down while running and sustained injuries. He states that there was no arrangement of electricity but they had torches in their possession. He further states that walls of the premises were about 10 feet high and the gate was locked.

Amrik Singh, Sub Inspector has been examined as PW5. He also states that the gate of the building was locked and police party entered the building after jumping over the boundary walls. He further states that all paper work was carried out in the said building.

Inspector Sukhjinder Singh has been examined as PW7. He states that height of the boundary walls was 7-8 feet and he apprehended Ranjit Kumar, outside the building and all paper work was done with the help of torches and light of the vehicles.

Ashwani Kumar, Sub Inspector has been examined as PW8. He states that 3 appellants tried to run after seeing the police party and one of the accused i.e., Vikas was apprehended by him with the help of police officials. He states that gate of the building was opened and there was

light on the spot.

It is clear from the analysis of the evidence produced by the prosecution establishes that there are material contradictions in the evidence of prosecution witnesses who are all official witnesses.

SI Ashwani Kumar, who was member of the raiding party states that gate of the building was opened and there was light on the spot, whereas other witnesses as noticed above, does not support the statement of the Ashwani Kumar.

SI Amrik Singh, who has been examined as PW5 not only says that the gate of the building was locked and they entered the building after jumping up the boundary wall.

On the other hand, Jagdish Kumar himself contradicts as in one part he states that no one can jump the said wall, whereas in second part he states that Ajay Kumar and Ranjit Kumar tried to run away from the spot and jumped up the wall from inside the building.

As per the prosecution evidence, the height of the boundary walls was 10 feet. No evidence has been produced as to how Ajay Kumar and Rajnit Kumar jumped up the wall. No evidence has been lead that there was any stairs or there was some other platform which allowed the appellants Ajay Kumar and Ranjit Kumar to jump over the wall.

Amrik Singh, PW5 states that the policy party entered the building after jumping up the boundary walls. No evidence has been lead as to how the police party jumped up the boundary wall, which was 10 feet height.

As per the prosecution case, appellants were armed with fire arms, knife etc. However, except the allegations that 3 out of 5 accused made an attempt to run away, no resistance on the part of the appellants has been shown.

Even with regard to availability of the electricity, the evidence of the prosecution is contradictory. Further the medical evidence produced, creates a doubt in the whole prosecution story. Dr. Lashkar, who has been examined as PW3, has stated that the possibility of the evidence having been suffered by the appellants Rajnit Kumar and Ajay Kumar due to police beating can not been ruled out.

A reading of the statement of Jagdish Kumar, ASI who has been examined as PW2, proves that the secret informer who had come on the spot had disclosed the names and addresses of the accused to the Station House Officer, so police party in advance knew the names of the accused appellants and their addresses.

Still further prosecution has tried to show recovery of stolen copper wire from Surjit, Vikas, Ajay Kumar, whereas from Surjit Singh stolen motorcycle has also been recovered, whereas from Vikas and Surjit two empty LPG gas cylinders were also shown to be recovered.

In the present case, prosecution has not joined any independent witnesses. Although, it is correct that failure to join independent public witness is not always fatal to the case of the prosecution. However, in the cases where the case set up by the prosecution has several loop-holes, the evidence of the independent public witnesses is necessary in order to convicted the accused.”

Apart from the above, this Court has also carefully examined the evidence led by the prosecution in these cases. The lay out plan produced by the prosecution in all these three cases is different although the place from where all the appellants-accused persons have been apprehended in the same premises. In the appeals of Ranjit Kumar and Ajay Kumar, the

lay out plans are Ex.P10/A and Ex.P12, respectively. In the case of Ranjit Kumar, the building is depicted to be constructed on north western corner of the bounded plot in question, whereas in the lay out plan produced in the case of Ajay Kumar, the building is shown to have been constructed along side the western wall on a totally different location. Still further, in the third case i.e. in the case of Heera Lal, the shape of the plot is entirely different and building is shown to exist at the spot on western side of the plot in question.

Still further, from all the three appellants, almost equivalent quantity of intoxicant powder is said to have been recovered. In the case of Ranjit Kumar, it is 320 grams of Diphenoxylate Hydrochloride whereas in the case of Heera Lal and Ajay Kumar, it is 310 grams each of Alprazolam.

Further in the appeal arising from the case against Ajay Kumar, on Form M-29, sample seals have been pasted. Sample seals were in fact put on a separate paper and the portion covering the seal has been torn from there and pasted on Form M-29. Similar is the position in the case of Ranjit Kumar. However, in the case of Heera Lal, sample seals have been put on Form M-29 and there is no pasting. Further in the case of Ajay Kumar, Sub Inspector Balwinder Kumar has been examined as PW2 who has stated that height of the boundary wall was 6 feet and the main gate was lying open. Whereas in the same case, Sukhjinder Pal Singh who has been examined as PW4 has stated that the height of the boundary wall was 10 to 12 feet and entry gate was locked. In the case of Ajay Kumar, when Manoj Kumar, Deputy Superintendent of Police was examined, he stated that height of the

boundary wall was 5 to 6 feet and they entered the place after scaling over the boundary wall. Further evidence regarding the presence of Manoj Kumar, Deputy Superintendent of Police (Gazetted Officer) is also at variance. In the case of Ranjit Kumar, Sukhjinder Singh (2nd), the Investigating Officer has submitted that Manoj Kumar, Deputy Superintendent of Police was available at the site whereas when Manoj Kumar was examined as PW4 in the case of Ranjit Kumar, he has stated that he received a message from Sukhjinder Singh, SHO at 08:00 PM and he reached at the spot at 08:10 PM. PW10 Inspector Sukhjinder Singh has stated while appearing in the case of Ranjit Kumar that Manoj Kumar, Deputy Superintendent of Police, City, had called him at 07:50 PM and directed him to go and meet SHO Sukhwinder Pal Singh. He further states that when they cordoned said plot from the western side, Deputy Superintendent of Police, Manoj Kumar also arrived there. His statement during cross-examination reads as under:-

“I did not mention the fact of intimation given to me by the DSP about secret information at the time of drafting ruka. I also did not mention in ruka about disclosure made to me by SHO Sukhwinder Pal about presence of some anti social elements armed with weapon in the said plot. I did not mention in ruka that the DSP also arrived at the spot before nabbing the accused. I mentioned in ruka that the other police parties entered into the plot. Witness is confronted with the contents of Ex.PW10/B which is silent about it. I recorded in the ruka that the accused opted his search from some gazetted officer. I incorporated in ruka that the DSP asked the accused that he could opt his search from some

other gazetted officer. Witness is confronted with the contents of Ex.PW10/B which is silent about it. I incorporated in ruka that CFSL form was prepared at the spot. Witness is confronted with the contents of Ex.PW10/B which is silent about it. I incorporated in ruka that the arm and ammunition were put into the sealed parcel bearing my seal mark SS. Witness is confronted with the contents of Ex.PW10/B which is silent about it. I incorporated in ruka that the DSP was called at the spot. Witness is confronted with the contents of Ex.PW10/B which is silent about it.”

Still further, when Ranjit Kumar was examined under Section 313 Cr.P.C., he had stated as under:-

“I am innocent and has been falsely implicated in this case. No recovery has been effected from me. On 17.01.2015, I was lifted from the Court premises and tortured in police Station Division No.1 Pathankot and during torture I suffered fracture in my leg and in order to save their skin, the police planted the present false case upon me.”

This statement of the appellant is corroborated by the medical evidence as Ranjit Kumar was found to have suffered fracture on leg and injury on the right arm. If one falls after jumping over the wall, injury is likely to be on one side and not on left leg and right arm. Further, it is the case of the prosecution that after jumping over the wall, Ranjit Kumar-appellant tried to escape. Once he had suffered fracture of left leg, effort to escape does not appear to be plausible. Further, as per the facts given in the appeal arising from the case of Heera Lal, it has been alleged that there were five accused person and all of them headed towards different direction once the police parties raided and three persons out of total five went to the roof

top through staircase. However, in none of the layout plan, the staircase has been shown. Further, it is the case of the prosecution that secret information was received and name and the address of the accused was already available with the police before the raid was conducted.

On reading of the judgment passed by the trial Court, it is apparent that the learned Courts below did not appreciate the evidence while critically analyzing the same, which is necessary before somebody is convicted and sentenced. The prosecution is bound to prove its case beyond any reasonable doubt. In the present case, in view of the aforesaid discussion, it is established that the prosecution has failed to prove its case beyond reasonable doubt.

In view thereof, all the three appeals are allowed and judgment of conviction and order of sentence are hereby set aside. The appellants be discharged from the custody, if not required in any other case.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

26.06.2018

Pawan

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**