

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-3195-SB-2016 and
other connected Crl. appeals
Date of Order:06th April, 2018

Ranjit Singh @ Raju ..Appellant

Versus

State of Punjab ..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Arun Kumar Bakshi, Advocate, with
Ms. Kiran Verma, Advocate,
for the appellant.

Mr. Sidakmeet Sandhu, AAG, Punjab.

ANIL KSHETARPAL, J.

By this judgment, CRA-S-3195-SB of 2016, CRA-S-1633-SB of 2016, CRA-S-1649-SB of 2016, CRA-S-2455-SB of 2016 and CRA-S-2667-SB of 2016 shall stand decided as all the appeals are arising out of FIR No.11, dated 19.01.2015, registered under Sections 399, 402 IPC, at Police Station Division No.1, Pathankot. There are total 5 accused and all of them have filed separate appeals.

Learned trial court has convicted all the 5 accused-appellants and passed an order of sentence, dated 03.02.2016, which reads as under:-

<i>Name of Convict</i>	<i>Offence under Section</i>	<i>Sentence</i>
Vikas @ Tall	399 IPC	To undergo rigorous imprisonment for a period of 5 years and further to pay a fine of . 10,000/- and in default of payment of fine to further undergo rigorous imprisonment for further period of 30 days.

<i>Name of Convict</i>	<i>Offence under Section</i>	<i>Sentence</i>
Vikas @ Tall	402 IPC	To undergo rigorous imprisonment for a period of 3 years and further to pay a fine of . 5000/- and in default of payment of fine to further undergo rigorous imprisonment for further period of 30 days.
Ajay Kumar @ Guhu	399 IPC	To undergo rigorous imprisonment for a period of 5 years and further to pay a fine of . 10,000/- and in default of payment of fine to further undergo rigorous imprisonment for further period of 30 days.
Ajay Kumar @ Guhu	402 IPC	To undergo rigorous imprisonment for a period of 3 years and further to pay a fine of . 5000/- and in default of payment of fine to further undergo rigorous imprisonment for further period of 30 days.
Ranjit Singh @ Raju	399 IPC	To undergo rigorous imprisonment for a period of 5 years and further to pay a fine of . 10,000/- and in default of payment of fine to further undergo rigorous imprisonment for further period of 30 days.

<i>Name of Convict</i>	<i>Offence under Section</i>	<i>Sentence</i>
Ranjit Singh @ Raju	402 IPC	To undergo rigorous imprisonment for a period of 3 years and further to pay a fine of . 5000/- and in default of payment of fine to further undergo rigorous imprisonment for further period of 30 days.
Surjit @ Sarabjit	399 IPC	To undergo rigorous imprisonment for a period of 5 years and further to pay a fine of . 10,000/- and in default of payment of fine to further undergo rigorous imprisonment for further period of 30 days.
Surjit @ Sarabjit	402 IPC	To undergo rigorous imprisonment for a period of 3 years and further to pay a fine of . 5000/- and in default of payment of fine to further undergo rigorous imprisonment for further period of 30 days.
Heera Lal @ Ladi	399 IPC	To undergo rigorous imprisonment for a period of 5 years and further to pay a fine of . 10,000/- and in default of payment of fine to further undergo rigorous imprisonment for further period of 30 days.

<i>Name of Convict</i>	<i>Offence under Section</i>	<i>Sentence</i>
Heera Lal @Laddi	402 IPC	To undergo rigorous imprisonment for a period of 3 years and further to pay a fine of . 5000/- and in default of payment of fine to further undergo rigorous imprisonment for further period of 30 days.

Facts of the case as noticed by the learned trial court are extracted as under:-

“3. The brief facts of the prosecution case are that on 19.01.2015 , SHO Sukhjinder Pal Singh along with ASI Jagdish Kumar, HC Arjun Kumar, C.Lavpreet Singh and PHC Satpal was present at Khaddi bridge in the official car driven by driver HC Raj Kumar No.213 in connection with patrolling duty, where secret informer gave information that Ajay Kumar alias Guh, Ranjit @ Raju Nandpuria, Vikas alias Tall, Laddi autowala and Sabi Sarnawala, who are in the habit of committing dacoity and theft were sitting in plot on the left hand side of khaddi bridge to Abrol Nagar road near Gaushala, bounded with high walls, having popular trees and rooms. It was also informed that they had gathered in the said place and were conspiring for preparation to commit dacoity and snatching. It was also informed that they were armed with deadly weapons. In case the raid is conducted, they can be apprehended alongwith weapons. The information

being credible, offences under Section 399, 402 IPC were found and ruqa was sent through PHG Sat Pal to the police station. On the basis of the secret information, case under Sections 399,402 IPC was registered against the accused. Inspector Sukhjinder Pal Singh alongwith SI Balwinder Kumar. C Lavpreet Singh No.601/Ptathankot, pHG Sat Pal No.12821, Inspector Sukhjinder Singh, SHO Police Station Division no.2, Pathankot, ASI Jagdish Kumar No.576/GSP along with police party, SI Ashwani Kumar, Incharge CIA Staff Pathankot, ASI Amrik Singh, Incharge Anti Gunda Staff Pathankot rounded up the boundary wall of the plot. Inspector Sukhjinder Pal Singh alongwith police official reached near the gate of the plot then a person jumped over the wall of the plot, who was apprehended by Inspector Sukhjinder Pal Singh. On inquiry, he disclosed his name as Ajay Kumar alias Guh, from whom 310 gms Intoxicated powder and one knife were recovered. FIR No.12 dated 19.01.2015 under Sections 21-22-61-85 , NDPS Act was registered at Police Station Division no.1, Pathankot, Inspector Sukhjinder Singh, SHO Division no.2, Pathankot also apprehended Ranjit @ Raju, who fell down while jumping over the wall From his possession 320 gms intoxicated powder and country made pistol and two live cartridges were recovered. FIR

no.13/15 under Section 21-22-61-85 NDPS Act and 25-54-59 Arms Act, police station Division no.1 Pathankot was registered separately. ASI Jagdish Kumar apprehended accused Surjit alias Sarabjit Singh from whose possession 250 gms intoxicated powder and one knife were recovered. Separate FIR No.14 of 19.01.2015 under Sections 21-22-61-85 NDPS Act, police Station Division no.1, Pathankot was registered. SI Ashwani Kumar, Incharge, CIA Staff, Patrhankot apprehended accused Vikas alias Tall, from whose possession 32 bore revolver alongwith five live cartridges and 270 gms intoxicated powder was recovered . Separate FIR No.15 of 20.01.2015 under Sections 21-22-61-85 NDPS Act and 25-54-59 Arms Act, Police Station Division no.1, Pathankot was registered. ASI Amrik Singh Incharge Anti Gunda Staff, Pathankot apprehended accused Heera Lal alias Ladi, from whose possession one Khokhri along 310 grams intoxicated powder was recovered and separate FIR No.16 dated 20.01.2015 under Section 21-22-61-85 NDPS Act and 25-54-59 Arms Act was registered at Police Station Division no.1, Pathankot.

4. On the basis of aforesaid information, case under Sections 399, 402 IPC was registered against the accused. In addition to aforesaid articles two stolen gas cylinders in case FIR no.6 dated 09.01.2015 under

Section 457, 380 IPC, police station Division no.1 Pathankot was also recovered from accused Vikas alias Tall and Sarabjit alias Sabi. Two stolen motor-cycle in case FIR no.8 dated 15.01.2015 under Sections 379,411 IPC, police station Division no.1, Pathankot were recovered from accused Vikas alias Tall, Ajay Kumar alias Guh, Surjit alias Sarabjit Singh. Investigation of the case was completed and statement of witnesses were recorded. After completion of necessary formalities, challan against the accused was prepared and presented in the court.”

The prosecution in order to prove its case, examined the following witnesses:-

- (1) PHC Mohan Singh as PW1
- (2) ASI Jagdish Kumar as PW2
- (3) Dr. Lashkar medical officer as PW3
- (4) SI Sukhjinder Pl Singh as PW4
- (5) SI Amrik Singh as PW5
- (6)PHC John Kumar as PW6
- (7) Inspector Sukhjinder Singh as PW7
- (8) SI Ashwani Kumar as PW8.

No defence evidence was led by the accused.

On appreciation of evidence, learned trial court convicted all the accused and sentenced them as noticed above. Hence the appeals.

This court has carefully heard learned counsel for the appellants as well as the State and with their able assistance gone through

the record and the judgment passed by the learned Additional Sessions Judge, Pathankot.

Learned counsel for the appellants has submitted that there is no evidence to prove the offences under Sections 399 and 402 of the Indian Penal Code. He further submitted that there are material contradictions in the oral evidence led by the prosecution and it has failed to clear the doubts. He has further submitted that as per the prosecution case, a secret informer had informed the police but he has not been examined.

On the other hand, learned counsel for the State defended the judgments convicting the accused-appellants.

In this case, first of all, it would be relevant to note that none of the witnesses examined by the prosecution has stated that he had heard the conversation of the accused-appellants and they were preparing for committing dacoity. Mere presence of 5 accused or more along with the arms would not be sufficient to bring forth the ingredients of offence under Sections 399 and 402 IPC. In order to establish an offence punishable under Section 399 IPC, some act amounting to preparation must be proved by the prosecution. Merely because the accused persons were found in a lonely place at night, in a bounded plot having some construction, carrying arms would not be sufficient to bring home the offence under Section 399 and 402 IPC.

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 up 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 police 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 has 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.

On over all analysis of the evidence produced by the prosecution, this court is of the opinion that the prosecution has failed to bring home its case beyond reasonable doubt. Prosecution is required to prove the case set up by it beyond reasonable doubts.

In view of the discussion made above, all the appeals are allowed and judgment of conviction and order of sentence are set aside.

**06th April, 2018
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**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No