

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

(1) CRA-S-344-SB-2015

Rajan @ Dabbu and another

...Appellants

Versus

State of U.T., Chandigarh

...Respondent

(2) CRA-S-366-SB-2015

Dharampal @ Gail

...Appellant

Versus

U.T., Chandigarh

...Respondent

(3) CRA-S-2318-SB of 2015

Sonu @ Bakriwala

...Appellant

Versus

State of U.T., Chandigarh

...Respondent

Date of decision:6.3.2018

CORAM : HON' BLE MR. JUSTICE H.S. MADAAN

Present: Mr.Sudesh Kumar, Advocate
for the appellants in CRA-S-344-SB-2015 and
for the appellant in CRA-S-2318-SB-2015.

Ms.Meenakshi Lohia, Advocate
for the appellant in CRA-S-366-SB-2015.

Ms.Ashima Mor, APP, U.T. Chandigarh.

Mr.R.S. Saini, Advocate
for respondent No.2.

H.S. MADAAN, J.

Vide this judgment, I propose to dispose of three appeals i.e. **CRA-S-344-SB-2015** filed by appellants – Rajan @ Dabbu and Arjun @ Mulia, **CRA-S-366-SB-2015** filed by appellant – Dharampal @ Gail and **CRA-S-2318-SB of 2015** filed by appellant Sonu @ Bakriwala, all of them being accused in FIR No.642 dated 25.11.2013, under Section 395 IPC, registered with Police Station Manimajra, Chandigarh, who were tried by learned Additional Sessions Judge, Chandigarh and vide order dated 9.10.2014, they were convicted for the offence under Section 392 read with Section 397 IPC and vide order dated 10.10.2014 sentenced to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs.5,000/- each and in default thereof, to further undergo rigorous imprisonment for a period of six months each.

The accused-convicts, who are appellants before this Court prayed that the appeals be accepted, the impugned judgment of their conviction and order of sentence be set aside and they be acquitted of the charge framed against them.

Briefly stated, facts of the case as per prosecution story are that on 25.11.2013, a police party headed by SI Dharampal from Police Station Manimajra, Chandigarh travelling in a official vehicle was on patrol duty when an information was received from the control room regarding happening of an incident and causing injuries to a person with

a knife near Fauji Dhaba; that accordingly the police party went to the spot; that Rajender @ Raju had suffered knife stab injury and had been taken to Civil Hospital by PCR vehicle; that statement of complainant Paramjit Singh was recorded on the spot, in which he stated that he was running a confectionary shop near Fauji Dhaba, Manimajra Town; that on the said day at about 12:05 a.m. after the shops were closed and they were standing outside, then six young persons armed with knives came there. According to the complainant, he along with Pankaj, Sawan Verma and Rajender @ Raju were there at the spot; that the youths threatened him and asked him to open the shop, as such, he handed over the keys of the shop to Pankaj, who opened it, then six young boys entered the shop while Sawan Verma climbed the stairs; that those boys forcibly snatched his silver bracelet, Rs.700-800/-, purse of Sawan Verma containing Rs.1,200/-, gold ear-rings of Pankaj besides Rs.2,000/-; that while fleeing, when they were snatching the mobile phone of Rajender @ Raju, he protested and was given knife injury; that when they were leaving, they had stated that "Gail run fast"; that Gail was having black complexion and as stated by complainant, he could identify those culprits.

On the basis of that statement, ruqa was sent to the police station and formal FIR for the offence under Section 395 IPC was registered against Gail and others. The case was investigated. Accused Sonu @ Bakriwala son of Om Parkash, Dharampal @ Gail were arrested. Accused Arjun @ Mulia and Rajan @ Dabbu were also arrested. On 26.11.2013, the knife used in the incident was recovered from accused Arjun @ Mulia, a knife from accused Sonu @ Bakriwala,

a sword from accused Dharampal @ Gail and a knife from accused Rajan @ Dabbu besides a motorcycle were recovered.

After completion of investigation and other formalities, challan against accused was filed in the Court.

On presentation of challan in the Court of Judicial Magistrate Ist Class, Chandigarh, copies of documents relied upon in the challan were supplied to all the accused free of costs as provided under Section 207 Cr.P.C. Then finding that offence under Sections 395 IPC is exclusively triable by the Court of Sessions, learned Judicial Magistrate Ist Class, Chandigarh committed the case to the Court of learned Sessions Judge, Chandigarh from where it was entrusted to the Court of learned Additional Sessions Judge, Chandigarh.

On receipt of case in the Court of learned Additional Sessions Judge, Chandigarh, observing that charge for offences under Sections 395 and 392 read with Section 397 IPC was disclosed against the accused charge-sheeted them accordingly, to which, they pleaded not guilty and claimed trial. The case was then fixed for evidence of the prosecution.

During the course of its evidence, the prosecution has examined as many as six witnesses.

PW1 Rajinder Kumar and PW2 Paramjit Singh provided the eye-witness account of the incident deposing in consonance with the prosecution story.

PW3 HC Shri Om deposed regarding depositing of case property with him by SI Dharampal on 28.11.2013 and entry being made by him in register No.19 in that regard.

PW4 SI Dharampal, the Investigating Officer of this case testified regarding the investigation conducted by him proving various documents.

PW6 (wrongly numbered, should be PW5) Dr.Vijay Jha, Sr.Resident, Department of Surgery, PGI, Chandigarh, who had medico legally examined injured Rajinder Kumar on 25.11.2013 in Department of Surgery, PGI provided the medical evidence stating that the injuries found on the person of injured were dangerous to life. He proved the medico legal case summary and discharge summary.

PW7 (wrongly numbered, should be PW6) Constable Sikander Kumar, who was associated in the investigation of the case deposed regarding his part.

With that the prosecution evidence stood closed.

Statements of the accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against such accused were put to them but they denied the allegations contending that they are innocent and have been falsely involved in this case. They stated that they were not present at the time of alleged incident, rather they were present in their homes at that time; that nothing was recovered from them and the alleged recoveries of weapons were planted upon them just to strengthen a false case; that as a matter of fact they were picked up from their houses and then involved in this case due to their previous antecedents.

In defence evidence accused examined Pankaj Vij @ Bobby as DW1.

After hearing arguments, learned trial Court convicted and

sentenced the accused as mentioned supra, which left them aggrieved and they have filed the present appeals.

I have heard learned counsel for the parties besides going through the record.

In the instant case, the most important witnesses for the prosecution happened to be PW1 Rajinder Kumar – injured and Paramjit Singh, both of whom provided the eye-witness account of the incident. Although both these PWs were cross-examined at length on behalf of the accused but they stuck to their guns and could not be shattered on any material point. A few minor contradictions and variations in their statements do not go to the root of matter since those are bound to occur due to difference in power of perception, observation and retention of events in various persons and so also due to lapse of memory due to passage of time etc. The fact cannot be lost sight of that different persons have got variable memorization of the events. Merely because a witness slipped at a few places regarding the minute details does not go to put a question mark over his credibility and truthfulness. These minor variations and contradictions rather go to show that the witnesses have deposed in a natural and truthful manner unlike tutored witnesses who testify in a parrot like manner. Rajinder Kumar – injured is a stamped witness. His presence at the spot cannot be doubted. Similarly it was Paramjit Singh, who set the criminal machinery into motion by reporting the matter to the police soon after the incident. His shop is also located at the spot. I find presence at the spot of both the witnesses to be likely and probable and account given by both of them to be worthy of reliance.

PW1 Rajinder Kumar - injured would have been the last person to try to screen the actual culprit and involve the accused in this case falsely since it is always the earnest endeavour to ensure that the person responsible is brought to book and is punished suitably rather than attempting to shield the actual culprit and involve some innocent person in his place without any rhyme or reason.

Similarly no previous enmity between the complainant and other accused has been alleged or proved prompted by which he might have embarked upon treading the danger path of false implication to wreak vengeance.

The medical evidence corroborates the ocular evidence. The investigation in this case has been conducted in a fair and impartial manner. The Investigating Officer had no reason to involve the accused in this case wrongly, challan them falsely or to depose against them to secure their conviction. Remaining evidence also supports the prosecution story.

Though in the FIR, the accused are not named but that does not result in giving any advantage to them because the only purpose of registration of FIR is to set the criminal machinery into motion and it may not contain all the necessary details since most of times, it is lodged in hurry. It is only during the investigation that one can come to know about the exact details of the incident, the persons who had participated therein and role played by each one of them. In the instant case, according to prosecution story on 25.11.2013, the police had apprehended Dharampal and at that time, Paramjit Singh was accompanying the said police party and he had identified Dharampal @

Gail, therefore, Dharampal was arrested and memo Ex.P2 was prepared. On that very day, accused Sonu @ Bakriwala was arrested on identification of complainant from the area of Jungle, near Railway Track, Mauli Jagran vide memo Ex.P3. On 26.11.2013, accused Rajan @ Dabbu and Arjun @ Mulia were arrested from near Railway crossing, Mauli Jagran on identification of complainant Paramjit Singh vide memos Ex.P4 and Ex.P5. The incident in this case had taken place on 25.11.2013. Two of the accused, namely Dharampal @ Gail and Sonu @ Bakriwala had been arrested on that very day on identification of complainant, whereas two remaining accused Rajan @ Dabbu and Arjun @ Mulia were arrested on the next day of the incident, that too on identification of the complainant, therefore, no doubt is left in the mind regarding participation of these accused in the crime. This fact is further strengthened when we see that accused Dharampal @ Gail on being interrogated by the police on 28.11.2013 had suffered a disclosure statement regarding his involvement in the case stating that he had kept the sword used by him in the incident concealed in the area of drain, Indira Colony, Manimajra and he could get the same recovered and thereafter in pursuance of the disclosure statement had got recovered the sword. Accused Sonu @ Bakriwala had also suffered a disclosure statement with regard to his concealing knife used in the incident in the area of bushes near Railway track, Mauli Jagran and thereafter in pursuance of the disclosure statement getting that knife recovered. Accused Rajan @ Dabbu had also suffered a disclosure statement with regard to the knife which according to him had been concealed near outer wall of CRP Village Hallo Majra as well as the motorcycle used in

the commission of crime and accused Arjun @ Mulia had also suffered a disclosure statement that he had kept concealed a knife used by him in the incident in the area of Mosque, Mauli Jagran, which he could get recovered and then those accused in pursuance of their disclosure statements had got the recoveries effected, which also strengthen the case of the prosecution regarding their participation in the crime. Both the eye-witnesses had identified the accused in the Court also.

I do not find any illegality or infirmity with the impugned judgment passed by the trial Court. Rather it is based upon proper appraisal and appreciation of evidence and correct interpretation of law.

However, it may be pointed out that one of the appellant - accused, namely, Rajan @ Dabbu of CRA-S-344-SB of 2015 had moved an application before this Court claiming himself to be juvenile on the date of incident. The matter was referred to Juvenile Justice Board, Chandigarh for consideration and submission of report. As per report received therefrom, his claim has been found to be correct observing that he was aged less than 18 years on the date of the incident, therefore, he is required to be treated as juvenile – in – conflict with law. However, a perusal of the lower Court record goes to show that this plea was not raised and this aspect was not inquired into there. As per the custody certificate, Rajan @ Dabbu has already undergone three years, six months and six days in custody in this case. The FIR was registered on 25.11.2013. The trial was concluded and case was decided on 9/10.10.2014, therefore, it is not found desirable to forward him to Principal Magistrate, Juvenile Justice Board, Chandigarh for holding inquiry into the matter again. Accused/appellant Rajan @ Dabbu is

already on bail when order regarding suspension of his sentence of imprisonment was passed. Now, he is admittedly aged more than 18 years and no longer a juvenile. In terms of Section 15 of Juvenile Justice (Care and Protection of Children) Act, 2000, he could be sent to Special home for a period of three years or in the alternative he could be released on probation of good conduct and placed under the care of any fit institution for the good behaviour and well-being of the juvenile for any period not exceeding three years.

But then as mentioned earlier, accused Rajan @ Dabbu has already undergone sentence of more than three years, therefore, his sentence can be reduced to one already undergone. In terms of ratio of the judgment by the Apex Court in Darga Ram @ Gunga Versus State of Rajasthan, 2015(1) Recent Apex Judgments (R.A.J.) 612 which was a case where the accused had been convicted and sentenced to life imprisonment. However, he had raised a plea of juvenility for the first time in Hon'ble Supreme Court and he was found to be juvenile when he had committed the offence observing that accused had been in jail for 14 years, his conviction was upheld but he was set free from prison.

Therefore, appellant – accused No.1, namely, Rajan @ Dabbu of CRA-S-344-SB of 2015 is sentenced to the imprisonment already undergone by him, while in custody in the present case, whereas the part of conviction relating to payment of fine is kept as intact.

Whereas regarding remaining appellants/accused in all three appeals, keeping in view the seriousness of allegations against them, their conviction is maintained. Accused Arjun @ Mulia is shown to be involved in 10 more criminal cases although earning acquittal in

some of the cases, accused Dharam Pal @ Gail is also shown to be involved in four more criminal cases and accused Sonu @ Bakriwala shown to be involved in numerous criminal cases showing that they have got criminal bent of mind. As such, they are not entitled to any reduction in sentence.

Therefore, CRA-S-344-SB of 2015 regarding appellant – accused No.1, namely, Rajan @ Dabbu of CRA-S-344-SB of 2015 is upheld as regards conviction part whereas the sentence part is modified. Whereas CRA-S-344-SB of 2015 regarding appellant No.2 Arjun @ Mulia and other two appeals i.e. **CRA-S-366-SB-2015** filed by appellant – Dharampal @ Gail and **CRA-S-2318-SB of 2015** filed by appellant Sonu @ Bakriwala stand dismissed.

Appellants - Arjun @ Mulia and Dharampal @ Gail are stated to be on bail granted to them by this Court while suspending their sentence. Their bails are cancelled. Chief Judicial Magistrate, Chandigarh is directed to issue arrest warrant to get them arrested so as to make them undergo the remaining sentence. If the third appellant Sonu @ Bakriwala has been released on bail, he be also taken into custody.

6.3.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No