

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

(1)

Crl. A. No. S-5254-SB of 2015

Aman Kumar alias Nikka and others

.... APPELLANTS

Versus

State of Punjab

.... RESPONDENT

(2)

Crl. A. No. S-1649-SB of 2017

Raju Mulla

.... APPELLANT

Versus

State of Punjab

.... RESPONDENT

**DATE OF DECISION : 24.03.2018**

**CORAM :- HON'BLE MR. JUSTICE AVNEESH JHINGAN**

Present : Mr. Arvind Galav, Legal Aid Counsel,  
for the appellants (in Crl. A. No. S-5254-SB of 2015)

Mr. Shobit Phutela, Legal Aid Counsel,  
for the appellant (in Crl. A. No. S-1649-SB of 2017)

Mr. K.S. Aulakh, DAG, Punjab.

\* \* \*

**AVNEESH JHINGAN, J.** ( Oral )

These two appeals have been filed by five accused, who had  
faced trial in FIR No. 69 dated 28.02.2013 under Sections 399, 402, 411

IPC and Section 25 of the Arms Act, registered at Police Station Tripuri, Patiala.

2. Learned Additional Sessions Judge, Patiala, vide judgment dated 29.10.2015 convicted appellants Aman Kumar @ Nikka; Ravi Walia @ Kalu; and Sandeep Singh @ Soni under Sections 399 and 402 IPC. Pardeep Singh @ Lucky was convicted under Sections 399 & 402 IPC and Section 25 of the Arms Act. Vide order of even date, they were sentenced as under :-

| Name of the convict   | Offence under Section | Sentence to undergo imprisonment | Fine      | In default of payment of fine to undergo imprisonment |
|-----------------------|-----------------------|----------------------------------|-----------|-------------------------------------------------------|
| Aman Kumar @ Nikka    | 399 IPC               | RI 4 years                       | ₹ 2,000/- | 15 days                                               |
|                       | 402 IPC               | RI 4 years                       | ₹ 2,000/- | 15 days                                               |
| Ravi Walia @ Kalu     | 399 IPC               | RI 4 years                       | ₹ 2,000/- | 15 days                                               |
|                       | 402 IPC               | RI 4 years                       | ₹ 2,000/- | 15 days                                               |
| Sandeep Singh @ Sonu  | 399 IPC               | RI 4 years                       | ₹ 2,000/- | 15 days                                               |
|                       | 402 IPC               | RI 4 years                       | ₹ 2,000/- | 15 days                                               |
| Pardeep Singh @ Lucky | 399 IPC               | RI 4 years                       | ₹ 2,000/- | 15 days                                               |
|                       | 402 IPC               | RI 4 years                       | ₹ 2,000/- | 15 days                                               |
|                       | 25 of Arms Act        | RI 2 years                       | ₹ 1,000/- | 7 days                                                |

The substantive sentences on all the counts were ordered to run concurrently.

3. Raju Mulla was declared proclaimed offender. Thereafter, learned Additional Sessions Judge, Patiala, vide judgment dated 16.02.2017 convicted appellant Raju Mulla under Sections 399 and 402 IPC and

sentenced vide order dated 20.02.2017 to undergo rigorous imprisonment for 4 years and to pay fine of ₹ 2,000/-, in default of payment of fine to undergo simple imprisonment for 15 days, under Section 399 IPC; and to undergo rigorous imprisonment for 4 years and to pay fine of ₹ 2,000/-, in default of payment of fine to undergo simple imprisonment for 15 days, under Section 402 IPC. The substantive sentences on all the counts were ordered to run concurrently.

4. Brief facts of the prosecution are that on 28.02.2013, ASI Amarjit Singh (PW.1) along with CIA Staff was patrolling in a Government vehicle bearing registration No. PB-11Y-8104. ASI received secret information that the accused persons armed with deadly weapons were sitting near village Jhill and were planning to commit dacoity in a big show room. Finding the secret information to be reliable, ruqa was sent to police station through HC Madan Gopal for registration of the case. Raid was conducted, accused were arrested. Their names and addresses were inquired. On search, a *kirch* from Sandeep Singh alias Sony; an iron rod from Raju Mulla; one *Chhura* from Ravi Walia; one *Kirch* from Aman Kumar alias Nikka; and one .315 bore pistol along with two live cartridges from Pardeep Singh alias Lucky were recovered.

5. On completion of investigation, challan against the accused was presented before the Ilaqa Magistrate. Copies of documents and the challan were supplied to the accused. The case was committed to Sessions Judge, Patiala. During the proceedings, Raju Mulla was declared proclaimed offender.

6. The accused were charge-sheeted under Sections 399, 402 and

411 IPC and Section 25 of the Arms Act. They pleaded not guilty and claimed trial.

7. The prosecution in order to prove its case examined as many as 13 witnesses.

8. In their statements under Section 313 Cr.P.C, the accused pleaded false implication. But no evidence was led in defence to prove their innocence.

9. Learned trial court, after appreciating the facts and the evidence, convicted and sentenced the appellants under Sections 399 and 402 IPC. Appellant Pardeep Singh alias Lucky was convicted and sentenced under Sections 399 & 402 IPC and under Section 25 of the Arms Act. Appellants Aman Kumar, Sandeep Singh, Pardeep Singh and Ravi Walia were acquitted of the charges framed against them under Section 411 IPC.

10. Aggrieved of the impugned judgments and orders, the present appeals have been filed.

11. Learned legal aid counsel, appearing on behalf of the appellants, argued that the prosecution failed to prove its case against the appellants beyond reasonable doubt. It was further contended that as per the prosecution story, the incident is alleged to have occurred on 28.02.2013 i.e. Thursday at about 6.30 PM, and the accused had assembled in a room in front of closed shop of Baljit Sweets and Karyana. The contention is that on a working day at about 6.30 PM, it is not acceptable that the shop could be closed. It was argued that no independent witness was produced to prove the prosecution case. All the witnesses were police personnel. It was also contended that the accused were five in number and they were having

weapons, inspite of that, neither any resistance was shown by them, nor it was established that they tried to run away. Learned counsel argued that no detail of secret informer has been mentioned and there are only bald allegations.

12. On the other hand, learned State counsel argued that the prosecution had duly proved its case beyond reasonable doubt and produced thirteen witnesses. Recoveries were duly effected from the accused. It was further contended that the appellants were habitual offenders and other FIRs have also been registered against them. Learned State counsel has filed custody certificates of the accused persons issued by Deputy Superintendent, Central Jail, Patiala. Details of sentences already undergone and details of other FIRs registered against the appellants are mentioned in the table given below :-

| Name of appellant  | Period of sentence already undergone including remission | Other FIRs registered with status thereof                                                                                                                                                                                                                                                                                                                                 |
|--------------------|----------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Aman Kumar @ Nikka | 01 year 08 months 06 days                                | (i) FIR No. 65 of 2013 U/s 457, 380 IPC, PS Tripuri, Patiala<br>Convicted and sentenced to period already undergone<br>(ii) FIR No. 64 of 2013 U/s 457, 380, 411 IPC, PS Tripuri, Patiala<br>Convicted and sentenced to period already undergone<br>(iii) FIR No. 63 of 2013 U/s 457, 380 IPC, PS Tripuri, Patiala<br>Convicted and sentenced to period already undergone |
| Ravi Walia         | 04 year 25 days (released on completion of sentence)     | (i) Nil                                                                                                                                                                                                                                                                                                                                                                   |

| Name of appellant     | Period of sentence already undergone including remission                                                                             | Other FIRs registered with status thereof                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Pardeep Singh @ Lucky | 04 months 10 days<br>(sentence to start after completion of sentence in FIR No. 173 dated 27.05.2014 U/s 460 IPC PS Tripuri Patiala) | <p>(i) FIR No. 308 dated 28.12.2012 U/s 457, 380 IPC, PS Kotwali Patiala<br/>Convicted and sentenced to undergo RI for 1 ½ years with fine of ₹ 500/-, in default RI for 10 days U/s 457 IPC and RI for 1 ½ years with fine of ₹ 500/-, in default RI for 10 days U/s 380 IPC (Both sentences to run concurrently)</p> <p>(ii) FIR No. 173 dated 27.05.2014 U/s 460 IPC, PS Tripuri, Patiala<br/>Convicted and sentenced to undergo RI for 10 years with fine of ₹ 10,000/-, in default RI for 01 year</p> <p>(iii) FIR No. 63 dated 25.02. 2013 U/s 457, 380 IPC, PS Tripuri, Patiala<br/>Convicted and sentenced to period already undergone</p> <p>(iv) FIR No. 64 dated 25.02.2013 U/s 457, 380, 411 IPC, PS Tripuri, Patiala<br/>Convicted and sentenced to period already undergone</p> |
| Sandeep Singh @ Sony  | 01 year 06 months 08 days                                                                                                            | <p>(i) FIR No. 65 of 2013 U/s 457, 380 IPC, PS Tripuri, Patiala<br/>Convicted and sentenced to period already undergone</p> <p>(ii) FIR No. 64 of 2013 U/s 457, 380, 411 IPC, PS Tripuri, Patiala<br/>Convicted and sentenced to period already undergone</p> <p>(iii) FIR No. 63 of 2013 U/s 457, 380 IPC, PS Tripuri, Patiala<br/>Convicted and sentenced to period already undergone</p>                                                                                                                                                                                                                                                                                                                                                                                                   |

| Name of appellant | Period of sentence already undergone including remission | Other FIRs registered with status thereof                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|-------------------|----------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Raju Mulla        | 02 years 04 months 21 days                               | <p>(i) FIR No. 65 of 2013 U/s 457, 380 IPC, PS Tripuri, Patiala<br/>Convicted and sentenced to period already undergone</p> <p>(ii) FIR No. 63 of 2013 U/s 457, 380 IPC, PS Tripuri, Patiala<br/>Convicted and sentenced to period already undergone</p> <p>(iii) FIR No. 64 of 2013 U/s 457, 380, 411 IPC, PS Tripuri, Patiala<br/>Convicted and sentenced to period already undergone</p> <p>(iv) FIR No. 67 of 2013 U/s 380, 411 IPC, PS Tripuri, Patiala<br/>Convicted and sentenced to period already undergone</p> |

13. After hearing learned counsel for the parties and going through the record, the contentions raised by learned counsel for the appellants cannot be accepted as the same are without any basis.

14. The prosecution has proved its case by examining 13 witnesses and producing evidence. The Investigating Officer, ASI Amarjit Singh (PW.1) deposed that on 28.02.2013, he along with CIA Staff, ASI Lakhwinder Singh and other police officials was present at bus stand village Jhill. They were patrolling and in search of bad elements. He received a secret information that the appellants have assembled in a room in front of closed shop of Baljit Sweets and Karyana and preparing to commit dacoity. The informer had seen and heard their conversation to commit dacoity in a General Store. Ruqa (Ex.PA) was duly proved and the same was sent through Head Constable Madan Gopal, on the basis of which ASI Jagdish

Kumar registered formal FIR Ex.PA/1. He further deposed that in the raid conducted, five persons, i.e. appellants, were arrested. Recoveries of *Kirch*, iron rod, *Chhura*, *Kirch* and country made pistol along with two live cartridges were made from appellants Sandeep Singh, Raju Mulla, Ravi Walia, Aman Kumar and Pardeep Singh, respectively. Recovery memos were proved as Ex.PC, Ex.PE, Ex.PG, Ex.PI and Ex.PK, respectively.

15. During interrogation in presence of HC Bahadur Singh and HC Tejinder Singh, recoveries of jeans, shirts, lowers etc. were made on the disclosure statement made by appellant Sandeep Singh. As per the statement, he along with Raju Mulla and Aman Kumar committed theft in the intervening night of 11/12.02.2013 in Preet Garments Shop, situated at Bhadson-Seona Road. A plastic bag was recovered from the house of appellant Sandeep Singh, containing 9 lowers, 32 trousers, 15 shirts and 13 T-shirts of different companies.

16. During interrogation, appellant Pardeep Singh alias Lucky made a disclosure statement resulting in recovery of a plastic bag containing two tullu pumps, 18 pieces of ball, 7 pieces of ball cock copper, 10 pieces of big cock lock nose and 10 pieces of big cock and these recoveries were made from his residence. He stated that he along with Raju Mulla, Aman Kumar and Sandeep Singh committed theft in the intervening night of 21/22.02.2013 in Misra Sanitary Store, situated at the back side of Central Jail, Patiala.

17. Appellant Ravi Walia made a disclosure statement which resulted into recovery of currency notes of ₹ 20,000/- from his residential house. The cash was kept in an iron trunk underneath the clothes. In his

statement, he stated that he along with Pardeep Singh committed theft in the intervening night of 22/23.12.2012 at Sehgal Karyana Store. Ravi Walia also got recovered two gas cylinders from his residence which he along with Pardeep Singh had stolen on 20.02.2013 from a house in Katra Sahib Singh, Patiala.

18. PW.1 ASI Amarjit Singh further testified that during interrogation, Aman Kumar made a disclosure statement which led to recovery of a plastic bag containing 7 pieces of divider water taps, 3 pieces pillar cock of Parharia company, 11 pieces big cock of Parharia company, 17 pieces of disc copper, 1 piece concide of allied company. This material was stolen by Aman Kumar along with Raju Mulla, Sandeep Singh and Pardeep Singh from a sanitary shop situated as Dashmesh Nagar.

19. PW.1 ASI Amarjit Singh identified the case property of pistol and two live cartridges. He identified two *Kirches*, *Chhura* and one iron rod.

20. ASI Lakhwinder Singh who accompanied the police party appeared as PW.4 and testified on similar lines as PW.1. He further supported the case of the prosecution that at the time of arrest, the accused were armed with weapons, as mentioned in the above para. The other witnesses HC Jaspal Singh and HC Harwinder Singh through their testimony duly proved the case of the prosecution.

21. The witnesses and disclosure statements of the appellants resulting in recovery completes the chain of events. There is no reason for not relying on or rejecting the evidence and material produced by the prosecution merely on the ground that no independent witness was examined. The witnesses cannot be discarded merely on the ground that

they happened to be police officials and they were discharging their official duties in regular course. There is no allegation much less proof of any animosity of the police personnel or the prosecution witnesses with the accused persons.

22. The contention raised that how the sweet shop was closed on a working day at 6.30 PM does not help the case of the appellants. The shop can be closed for various reasons. The person running the shop for some personal reasons or for some family engagement can also close the shop even on a working day. There could have been an early closure of the shop also. There may be a case that the shop may not be running during the relevant period. This in no way proves fatal to the case of the prosecution.

23. The argument raised that no detail of secret informer was mentioned by the prosecution and it was only a bald statement is belied from the record. There is no requirement of giving details and to reveal the identity of the informer. The detail has been mentioned that a secret information was received that the appellants who were habitual offenders had assembled in a room in front of Baljit Sweets and Karyana and they were preparing for committing a dacoity. The informer had seen them and also heard their conversation. The fact is fortified as the accused were arrested with the weapons, when the police conducted raid acting upon the said secret information.

24. Learned counsel for the appellants argued that the accused were five in number and they were armed, still there was no retaliation or attempt to escape. This argument is also without any substance. The accused, may be five in number, but were apprehended by a police party who raided the

place fully prepared acting upon a secret information received. There might not be an opportunity with the appellants to retaliate or to escape.

25. The recovery of .315 bore country made pistol with two live cartridges from Pardeep Singh was duly proved by the testimony of PW.1 ASI Amarjit Singh and PW.4 ASI Lakhwinder Singh. In the Forensic Science Laboratory report Ex.PW2/A, it was opined that the pistol was in working condition, meaning thereby that it was fit to fire. Weapon was prohibited to be carried. Hence, the offence under Section 25 of the Arms Act against appellant Pardeep Singh alias Lucky stands duly proved.

26. As per the custody certificates, the appellants have been involved in other FIRs also of the similar nature as discussed in para 12. Accordingly, the conviction and sentence of the appellants are upheld. As per the custody certificate of appellant Ravi Walia, he has already undergone his punishment in this case and was released on 03.11.2016.

27. The sentences of appellants No.1 and 4 in Criminal Appeal No. S-5254-SB of 2015, namely Aman Kumar alias Nikka and Sandeep Singh alias Soni, respectively, were suspended by this Court vide order dated 03.10.2016 and they were released on bail during the pendency of the appeal. The sentence of appellant Raju Mulla in Criminal Appeal No. S-1649-SB of 2017 was suspended by this Court vide order dated 13.07.2017 and he was released on bail during the pendency of the appeal. As appellants Aman Kumar alias Nikka, Sandeep Singh alias Soni and Raju Mulla are on bail, their bail/surety bonds stand cancelled. They are directed to surrender themselves before the jail authorities immediately for completing of remaining sentence, failing which the concerned authority

shall proceed against them in accordance with law.

27. Appeals are dismissed.

**March 24, 2018**  
ndj

**( AVNEESH JHINGAN )**  
**JUDGE**

|                           |     |
|---------------------------|-----|
| Whether speaking/reasoned | Yes |
| Whether Reportable        | Yes |