

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CRA-S-1224-SB-2006
Date of Decision : 11.04.2019

Shiv Kumar and anotherAppellants

VERSUS

The State of Haryana Respondent

2. CRA-S-1344-SB-2006
Date of Decision : 11.04.2019

Kora Singh @ Koria and anotherAppellants

VERSUS

State of Haryana Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

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Present: Mr. J.P.Sharma, Advocate
for the appellants in CRA-S-1224-SB-2006.

Mr. Sunil Saharan, Advocate
for the appellants in CRA-S-1344-SB-2006.

Mr. Ayuwan Singh, AAG, Haryana.

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MANJARI NEHRU KAUL, J.

1. This order shall dispose of Criminal Appeals No. CRA-S-1224-SB-2006 and CRA-S-1344-SB-2006 as both these appeals arise out of the same FIR No. 42 dated 31.01.2004 under Sections 399/402 IPC and 25 of the Arms Act registered at Police Station City Hansi. For the facility of reference, facts have been taken from CRA-S-1224-SB-2006.

The instant appeals have been preferred against the impugned

judgment of conviction dated 02.06.2006 and order of sentence dated 05.06.2006 passed by the Addl. Sessions Judge, Hisar, vide which all the accused/appellants were convicted under Sections 399/402 IPC and accused/appellants Shiv Kumar and Kora Singh under Section 25 of Arms Act also and sentenced as under:-

<i>Under Section</i>	<i>Sentence</i>
399 IPC	Rigorous imprisonment for five years and fine ₹ 2,000/- each, in default of payment of fine, to further undergo simple imprisonment for two months each.
402 IPC	Rigorous imprisonment for five years and fine ₹ 2,000/- each, in default of payment of fine, to further undergo simple imprisonment for two months each.
25 of the Arms Act (sentence awarded to accused Shiv Kumar and Kora Singh)	Rigorous imprisonment for one year and fine ₹ 1000/- each, in default of payment of fine, to further undergo simple imprisonment for one month each.

All the sentences were ordered to run concurrently.

3. Prosecution case in a nutshell is that in pursuance to a secret information received by the police on 31.01.2004 at about 12 noon to the effect that the accused were planning to commit a dacoity while sitting in an abandoned kotha, a raid was conducted at the said place by a police party headed by PW6 ASI Rajkumar at about 12:30 P.M. On reaching the kotha, all the accused were found present in the room where they were drawing out a plan to commit dacoity at a petrol pump. The police party thereafter surrounded the kotha and apprehended all the accused from the spot. From the person of accused/appellants Shiv Kumar and Kora Singh a loaded .315 bore pistol each was recovered while from the other accused/appellants iron rods were recovered.
4. FIR No.42 dated 31.01.2004 was registered at Police Station City Hansi against the accused. Charges were framed under Sections 399 and 402 IPC and 25 of the Arms Act to which they pleaded not guilty and claimed trial.
5. Prosecution examined 7 witnesses and produced all relevant

documentary evidence.

6. All the accused when examined under Section 313 Cr.P.C. denied the charges against them and claimed innocence and false implication.

7. The accused examined DW1 Hans Raj Sarpanch in their defence.

8. The learned counsel for the appellants vehemently argued that the prosecution case on the face of it was highly incredible and improbable. The kotha from where the appellants were alleged to have been apprehended had no window except for one door. Hence, it was indeed very strange and unnatural as to how the police party which was standing at a considerable distance could have overheard the conversation of the appellants. The counsel further urged that not only did the police party not join any independent witness but the said secret information was also not reduced into writing which created a serious dent in the case of the prosecution. The counsel further urged that the learned trial court grossly erred in disbelieving defence witness Hansraj who is none other than the village Sarpanch and who had categorically deposed that the police party had in fact picked up appellants-Shiv Kumar and Shamsher from their houses. The learned counsel for the appellants submitted that though it was alleged that the appellants were armed with lethal weapons including loaded country made pistols yet none of them used the same at the time of their apprehension nor did they try to flee from the kotha which clearly indicated that it was a case of fabrication and concoction which makes the case of the prosecution highly doubtful.

9. The learned State counsel on the other hand submitted that the prosecution case stood fully proved as all the essential ingredients of the offence under Sections 399 and 402 IPC stood satisfied. He further submitted that not only was the link evidence complete but the oral evidence clinchingly proved the guilt of the appellants.

10. I have heard learned counsel for the appellants and the learned State

counsel and have scrutinized the evidence and other material on record.

11. At the very outset I must say that the prosecution case does not suffer from any infirmity much less legal and the reasonings given by the learned trial court are sound and convincing.

12. Merely non joining of independent witness by itself cannot be a ground to reject the prosecution case as false. In such like cases, it is very natural that the public is invariably reluctant to join the police investigation for obvious reasons.

13. The testimony of the prosecution witnesses is consistent on every material aspect of the case and the defence has miserably failed to create any dent in their testimony. It is not the case of the defence that the police party was known to the appellants a much less was inimical towards any of them. In such a situation, the contention of the learned counsel for the appellants that they had been framed falsely by the police falls flat in the face.

14. As far as the contention of the learned counsel for the appellants that secret information received by the police was not reduced into writing and the same was not sent to the nearest Police Station before proceeding to the abandoned kotha is concerned, in the circumstances in hand, it cannot be said to be fatal for the simple reason that information was received only around 12 noon and without any loss of time within about half an hour the raiding party had reached the kotha. The effort of the police in such like cases is to act promptly and apprehend the accused before they can execute their plan of committing the crime. Hence, the prosecution cannot be faulted on this score.

15. The prosecution witnesses have fully corroborated each other on all material facts of the case. The link evidence is also complete.

16. In view of the above, the judgment of conviction dated 02.06.2006

and order of sentence dated 05.06.2006 passed by the Addl. Sessions Judge, Hisar, is upheld and the appeals are dismissed.

17. The accused/appellants are on bail. Their bail bonds/surety bonds stand cancelled. Necessary steps be taken to secure their custody.

11.04.2019
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(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes / No
Yes / No