

223 (2 Cases)

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of Decision : 17.10.2019

1) CRA-D-359-DB-2013 (O&M)

Maman Singh Appellant

Versus

State of Haryana Respondent

2) CRA-D-870-DB-2013 (O&M)

Hoshiyar Singh Appellant

Versus

State of Haryana Respondent

**CORAM : HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

Present : Mr. Vinod Ghai, Sr. Advocate
with Ms. Kanika Gupta, Advocate
for the appellant (in CRA-D-359-DB-2013).

Mr. Abhaysher Singh, Advocate
for the appellant (in CRA-D-870-DB-2013)

Ms. Palika Monga, D.A.G., Haryana.

AJAY TEWARI, J. (ORAL)

1. Since both these appeals have arisen out of the common judgment dated 19.03.2013 and order dated 22.03.2013 passed by the Ld. Additional Sessions Judge, Narnaul, the same are being decided by the common order.

2. These appeals are directed against the judgment dated 19.03.2013 and order dated 22.03.2013 passed by learned Additional Sessions Judge, Narnaul in Sessions Case No.13/2010 by which the accused-appellants- Maman Singh and Hoshiyar Singh had been convicted under Sections 302, 392 IPC read with Section 397 & 34 IPC and the accused-appellant-Maman Singh had also been convicted under Sections 25 of the Arms Act and both the appellants had been sentenced to undergo rigorous imprisonment for life.

3. As per the FIR which was got recorded by the complainant- Bir Singh, who was working as Clerk-cum-Cashier at Gurgaon Gramin Bank Branch Balaha Kalan, on 13.08.2009 at about 9.30 AM, he had gone to the Bank for his duty. At that time, Ranbir Singh, Manager, Babu Lal, Field Officer and Amar Singh Saini, Peon had also come on duty for performing their routine jobs. Ranbir Singh, Manager had taken out an amount of Rs.1,65,000/- from his safe custody and handed over it to the complainant. At about 10.30 AM, the complainant heard the sound of bullet fire and when he turned he saw that a young man aged about 25/26 years and about 5'10" tall with the 'middle size body' was coming towards the cash cabin after having fired upon Ranbir Singh, Manager. He entered the cash cabin and brandished the pistol and directed the complainant to hand him over the cash. The complainant saw that there was another companion who was present at the entrance of the bank alongwith pistol in his hand. Due to fear, the complainant handed over the cash bag, whereupon two assailants went out and escaped on a black colour Pulsar motorcycle. The Manager succumbed to his injuries on his way to hospital. The complainant stated that he could recognize them

when they would be brought before him. Thereafter, it transpire that the appellant-Maman Singh was arrested in another case and during investigation of that case had confessed to the investigating officer (DSP Lal Singh PW21) about his involvement alongwith Hoshiyar Singh in the present case and also got recovered a weapon with the aid of which he had perpetrated both the crimes and also got recovered currency notes amounting to Rs.7,50,000/-. Likewise, the appellant -Hoshiyar Singh was arrested in another case and during investigation he confessed to the investigating officer about his involvement in the present case alongwith his co-accused and also got recovered one bank seal.

4. In the course of the trial, as many as 21 prosecution witnesses were examined. The accused-appellants were examined under Section 313 Cr.P.C. in the course of which they took the plea of being falsely implicated in the offence alleged and made a statement that they were innocent. No defence evidence was led. Thereafter, at the conclusion of the trial the learned trial Court, on consideration of the evidence and material on record, passed the impugned judgment and order convicting and sentencing the appellants as mentioned above.

5. We have gone through and considered the judgment and order under challenge and the evidence of the prosecution witnesses apart from hearing the learned senior counsel and other counsel for the appellants and learned Deputy Advocate General, Punjab. The important witnesses being PW1, PW2, PW5, PW10, PW11, PW14 & PW21, their testimony would require a close scrutiny.

6. PW1 Babu Lal, who was posted as FO in the bank in his deposition had given details about the whole incident. However,

regarding identification of the appellants he deposed that he could not recognize both the accused since he had been very much perturbed.

7. PW2 Bir Singh in his deposition had given details about the whole occurrence. However, regarding identification of the appellants he deposed that he could not positively identify the assailants as at the time of committing the crime, they had muffled faces.

8. PW5 Amar Singh in his deposition had also given details about the whole occurrence. However, regarding identification of the appellants he deposed that the appellants physically resembled with the assailants but their faces had been muffled so he could not identify them.

9. PW10 HC Jitender Singh in his deposition deposed that the appellant-Maman Singh had been interrogated by Kartar Singh ASI in his presence and in his interrogation he had suffered a disclosure statement to the effect that on 13.08.2009 he alongwith Hoshiyar Singh had committed dacoity at GGB, Balaha Kalan, shot the Manager by Pistol and taken away the cash and that he had kept concealed the pistol in question his unit at Faridkot, Punjab. However, when they were going to Faridkot, Punjab for the purpose of recovery on the way at Hisar Bus Stand the appellant-Maman Singh made a disclosure statement that his previous statement was false and in fact the pistol had already been recovered by the Rewari police in another case. He also disclosed that he had kept concealed one chit of currency bundle in his residential house. In his cross-examination, PW10 deposed that no currency note had been recovered from the appellant-Maman Singh at any point of time in his presence. Further he deposed that he could not say whether the wrapper slip had been delivered to all the customers in the bank with the currency

bundle. Further he deposed that the numbers of currency note were not mentioned on the wrapper slip nor any name of the customers was mentioned on it.

10. PW11 Constable Rohtash in his deposition deposed that the appellant – Hoshiyar Singh had been interrogated by S.I. Kartar Singh in his presence. On his interrogation he suffered a disclosure statement to the effect that on 13.08.2009 he alongwith his co-accused looted the cash from Gurgaon Gramin Bank, Gaud Balaha alongwith one bank seal which had come with the cash and he had kept concealed the bank seal in his old house and he could get it recovered. PW11 further deposed that thereafter one bank seal had been recovered from the house of the appellant-Hoshiyar Singh and converted into seal parcel duly sealed with the seal of KS and taken in police possession. In his cross-examination PW11 deposed that no currency note had been recovered from the appellant-Hoshiyar Singh at any point of time in his presence. Further they did not join any independent witness from the village including the Panch, Sarpanch, Lumberdar, at the time of recovery.

11. PW14 Kartar Singh, SI in his deposition deposed that on 15.02.2010 he had been assigned with the investigation of this case. On that day he arrested the appellant-Hoshiyar Singh from the Court of Rewari. In custody, the appellant-Hoshiyar Singh suffered a disclosure statement and confessed to his guilt in this case but no recovery was effected. On 17.02.2010 on interrogation, the appellant-Hoshiyar Singh disclosed that he had kept concealed one seal of Manager Gurgaon Gramin Bank Balaha Kalan in his house and he could get it recovered.

Thereafter, the seal of the Manager was recovered and converted into a

sealed parcel and taken into police possession. On 19.02.2010 the appellant-Maman Singh was arrested from the Rewari Court. In custody, he made a disclosure statement to the effect that he alongwith Hoshiyar Singh had committed robbery at GGB, Balaha Kalan on 13.08.2009 and fired a shot at the Manager. Further PW14 deposed that the pistol used in the crime had already been recovered by the Rewari police in some other case and the appellant-Maman Singh had disclosed that he had kept concealed the bundle wrapper in his house and he could get it recovered and thereafter the same was recovered. In his cross-examination, PW14 deposed that no recovery had been effected in pursuance of the disclosure statements. No currency note were recovered from any of the accused at any point of time. At the time of recovery of wrapper slip, no person of village was joined. Further he deposed that he had not conducted any identification parade of the accused. Further no weapon of offence had been recovered from the accused in his presence. Further, most importantly, he deposed that the wrapper was not sealed at the time of recovery. The wrapper remained with him till the wrapper and seal of the bank had not been sent to the FSL. The seal had not been got compared with the bank documents.

12. PW21 Lal Singh, DSP in his deposition deposed that the appellant-Hoshiyar Singh had been arrested in another case and during investigation of that case he had suffered a disclosure statement to the effect that he and his co-accused had committed murder and dacoity in this case. Further he deposed that on 12.02.2010 the appellant-Maman Singh had also been arrested in another case and he suffered a disclosure statement to the effect that he had committed an offence of murder and

dacoity pertaining to this case and disclosed that he had kept concealed the weapon used in both the crimes. Further he deposed that pursuant to that disclosure statement he had got recovered currency notes amounting to Rs.7,50,000/- from the house of the appellant-Maman Singh and also got recovered a country made pistol and other weapons and ammunition. In his cross-examination, PW21 further deposed that he had not investigated this case and that no weapon of offence had been recovered in this case by him. He further deposed that he had not recorded any statement of witnesses in this case and had not prepared any disclosure statement in this case and that he had not seen the case property i.e. Rs.7,50,000/- and the pistol in question.

13. Thereafter, at the conclusion of the trial, the learned trial Court, on due consideration of the evidence and material on record, has passed the impugned judgment and order which has been assailed in the present appeal.

14. Learned Senior Counsel for the appellant in CRA-D-359-DB-2013 as well as counsel for the appellant in CRA-D-870-DB-2013 have argued that the trial Court had acted entirely on conjectures in accepting various pieces of evidence which otherwise were not admissible. For instance, two empty cartridges and two bullets, one recovered from the spot and another from the body of Ranbir Singh deceased, were supposedly sent to the FSL for matching with the weapon which was allegedly got recovered from the appellant-Maman Singh in the other case and even though the FSL had reported that these bullets were fired from the same weapon, yet this entire evidence is inadmissible because that weapon was never brought in the Court. They have further

argued that even if it was a case property in another case, it could have been easily brought by the prosecution. In this connection they have referred to the state of PW21 DSP Lal Singh who deposed as follows:-

“I had not investigated this case. No weapon offence was recovered in this case by me. I had not recorded any statement of witnesses in this case. I had not prepared any disclosure statement in this case. I had not seen the case property i.e. Rs.7,50,000/- and the pistol in question.....”

15. The second limb of the argument is that three bank employees, who were present at the time of incident, did not identify the two assailants. Two of them went so far as to say that there was physical resemblance between the appellants and the assailants while they could not make the positive identification as the assailants had muffled their faces, while the third one washed his hands of the entire affairs by refusing to recognize them at all. In these circumstances, as per them, the conviction of the appellants was clearly illegal.

16. Learned Deputy Advocate General has pointed out two other pieces of evidence. As per her, a wrapper in which the currency notes were bundled (Ex.PW2/D) was recovered from appellant-Maman Singh and a seal of the bank (Ex.PW6/B) was recovered from appellant – Hoshiyar Singh. The bank employee had identified the wrapper and the seal because his signatures appeared on the wrapper. In response thereto, learned senior counsel and other counsel for the appellants have argued that these alleged recoveries were made 7 months after the incident and, in any case, they were not such unique objects as to be positively identified. To elaborate, it is asserted that every customer, who withdraws a bundle of 100 currency notes, would have them covered in

the same wrapper with the signatures of the same person and, therefore, what the witness could at best identify was that it was a wrapper which he had signed, but he could not say with certainty that the wrapper contained one of those bundles of notes which had been robbed in the incident. Likewise, as regards the seal also, it is the contention of the arguing counsel that the seal was an ordinary stamp out of many more available in the bank and, in any case, the same could have been prepared at any time from anywhere and there was no way of positively identifying the recovered seal as the same one which was lying in the cash bag at the time of robbery.

17. In our opinion, the Appeals must succeed. Even the trial Court had noticed the shortcomings in the investigation where even the weapon of offence was not exhibited before the Court. Once that weapon was not exhibited before the Court, the bald testimony of PW21 about the recovery of the weapon and its use in the two crimes, cannot be taken to be admissible. From the FSL report, it has come out that the bullets which were found at the spot were fired from a weapon which was in the possession of the police. Unless PW21 had seen that weapon and positively identified it and then been cross-examined on that identification, it would be illegal to accept the testimony to the effect that the weapon was used in this crime. The other direct evidence could have been of the eye witnesses but, as mentioned above, they could not/did not identify the appellants and therefore what is left is merely circumstantial evidence. In case of circumstantial evidence, each circumstance must be proved beyond reasonable doubt by independent evidence, and the circumstances so proved must form a complete chain without giving any

chance of surmise or conjecture and must also be consisted with the guilt. In the present case, none of the circumstances relied upon by the prosecution can be said to be the probability of the appellants guilt or then involvement in the commission of the crime.

18. In the facts of the present case, the circumstances of the alleged recovery of a wrapper and a seal (after 7 months) coupled with the infirmities pointed out above can not lead to the conviction of the appellants. We are, therefore, of the view that the conviction of the accused-appellants as recorded by the learned trial Court and the sentence imposed is not legally tenable. We, therefore, set aside the same, acquit the accused-appellants and allow the appeals.

19. The appellants are in custody. They be released forthwith, if not required in any other case.

20. Since the main case has been dismissed, the pending criminal miscellaneous application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

October 17, 2019
ashish

(HARNARESH SINGH GILL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable :

Yes/No