

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

Date of decision: 18.03.2019

1. CRA-S-579-SB-2006 (O&M)

Rasid

....Appellant

Versus

State of Haryana

....Respondent

2. CRA-S-298-SB-2006 (O&M)

Sajid

....Appellant

Versus

State of Haryana

....Respondent

3. CRA-S-321-SB-2006 (O&M)

Nitin @ Neetu

....Appellant

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

**Present: Mr. Kamal Kumar Yogi, Advocate
for the appellant (in CRA-S-579 & 298-SB-2006).**

Mr. Rakesh Nehra, Advocate
for the appellant (in CRA-S-321-SB-2006).

Ms. Harpreet Kaur, AAG, Haryana.

ARVIND SINGH SANGWAN, J.

Vide this judgment, the aforesaid three appeals filed by appellants-accused Rasid, Sajid & Nitin @ Neetu are being disposed of.

Brief facts of the case are that FIR No.201 dated 29.10.2003 was registered under Sections 399 & 402 IPC and Section 25 of Arms Act, at Police Station Sadar Panipat with the allegations that on 29.10.2003, S.I. Shamsheer Singh along with other police officials was present near Bus Stand Chhajpur, while on patrolling duty. A secret information was received by him that Harshad son of Yasin, Sabir son of Basir, Rashid son of Sharif, Vikas son of Vikram, Major son of Asgar and Nitu son of Brij Pal, while armed with pistols, knife and a stolen motorcycle, were sitting in an abandoned Dharamshala on the Kurar turning point and were planning to commit dacoity in HUDA Colony, Panipat and if a raid is conducted, they could be caught red-handed. The Investigating Officer finding the information reliable, asked shopkeeper at the Bus Stand and Prem Singh, an ex-Sarpach to join the raiding party but they were reluctant. Then he formed three raiding parties, one headed by ASI Sultan Singh, another by ASI Ram Phal, the third one headed by ASI Jai Narain and the fourth by himself. ASI Ramphal, who was wearing usual clothes, was asked to hear the conversation being taking between the accused persons and then to give a signal with the help of torch. Thereafter, the police reached the informed

place and after parking the jeep at some distance, the said place was encircled. One of the said boys, whose name later on came to be known as Vikas and he said that he is having a loaded country made pistol of 315 bore and a motorcycle and that Nitu is having a loaded country made pistol and Harshad, Sajid, Major and Rasid are armed with knives and they will commit dacoity in the HUDA Colony, Panipat at midnight and also commit theft of a car and if anyone retaliate, he will be shot dead by him (Vikas) and Nitu. On the signal given by ASI Ram Phal, all the said boys were apprehended. On personal search of accused Vikas, a country made pistol and a motorcycle bearing registration No.UP-12-D-6673 was recovered. Rough sketch of the pistol was prepared and the same was taken into possession. From the possession of accused Nitu also, a country-made pistol was recovered, rough sketch of the same was also prepared and it was taken into possession vide a memo duly attested by the witnesses. From the possession of accused Harshad, a knife and a motorcycle was recovered and from accused Sajid and Major, knives and motorcycles were recovered, from accused Rashid, a knife was recovered. Rough sketches of the knives were prepared and were taken into possession. All the accused were formally arrested and on a ruqa sent to the police station, the aforesaid FIR was registered and investigation was conducted. Site plan of the place of occurrence was also prepared and on returning to the police station, the entire case property was deposited with MHC in the same condition, in which it was recovered.

After completion of the investigation, the report under Section

173 Cr.P.C. was presented in the Court. Copies of the challan were supplied to the accused and the case was committed to the Court of Sessions vide order dated 24.11.2003. Thereafter, all the accused persons were charge-sheeted for the offence punishable under Sections 399 & 402 IPC and Section 25 of Arms Act.

The prosecution, in its evidence, examined PW1 Constable Suresh Kumar, PW2 Sant Lal, Reader to District Magistrate, Panipat, PW3 ASI Rajbir, PW4 ASI Balwan Singh, PW5 MHC Ranbir Singh, PW6 Sub Inspector Shamsher Singh and PW7 ASI Ram Phal and thereafter, the prosecution evidence was closed.

The accused in their statement, recorded under Section 313 Cr.P.C., denied the allegations and pleaded innocence.

Thereafter, the trial Court, believing the version given by the defence, acquitted the accused persons of the charge under Sections 399 & 402 IPC, however, considering the fact that appellant-accused Nitin @ Neetu was found in possession of a country-made pistol and other accused were found in possession of knives, they were held guilty of offence punishable under Section 25 of Arms Act, vide judgment dated 24.01.2006. Thereafter, the trial Court, vide order of sentence of even date, convicted all the accused to undergo R.I. for a period of 01 year and except Nitin @ Neetu, all the remaining accused were directed to pay a fine of Rs.1,000/- and in default of payment of fine, to further undergo R.I. for a period of 15 days, whereas appellant Nitin @ Neetu was directed to pay a fine of Rs.2,000/- and in default of payment of fine, he was ordered to further

undergo R.I. for a period of two months.

It is worth noticing here that appellant Rasid has already undergone the sentence of one year and thereafter, he was released on 20.04.2006 by the jail authorities. Appellants Nitin @ Neetu and Sajid have undergone 04 months of actual sentence, as noticed in the order dated **06.03.2006**, vide which they were granted bail.

These appeals are pending since 2006 and when none appeared on 11.01.2019, Mr. Kamal Kumar Yogi, Advocate was appointed as legal aid counsel to assist the Court in all the appeals.

Learned counsel for the appellants have argued that the trial Court, while acquitting the appellants under Sections 399 & 402 IPC, had recorded a finding that from perusal of the prosecution evidence, it is clear that only accused Vikas has made the incriminating conversation with other accused persons but it is not proved that other accused have given their consent for the aforesaid unlawful act, as planned by accused Vikas and therefore, there is no meeting of mind between the accused persons. It is also held that there is no evidence on record to show that any of the accused has done any overact to give design of committing the offence of dacoity and only evidence, which has come on record, is that there was an assembly of some persons at a place, while being armed with weapons and it does not constitute the offence of preparation to commit dacoity and therefore, all the accused were acquitted of the charge under Sections 399 & 402 IPC.

Learned counsel for the appellants have relied upon a judgment of the Hon'ble Supreme Court in **Sumersinh Umedsinh Rajput @**

Sumersinh Vs. State of Gujarat, 2007 (13) SCC 83, wherein it is held that if the prosecution case fails to prove the attempt to murder by gun shot injury i.e. an offence under Section 307 IPC, resultantly, the prosecution of the accused under Section 25 of Arms Act would also fail. It is thus argued on behalf of the appellants that the appellants are liable to be acquitted qua this offence also.

Learned counsel for the appellants have further submitted that as per custody certificates of the appellants, Nitin @ Neetu is not involved in any other case; Sajid is involved in one more/FIR No.618 dated 30.10.2003 under Section 379 IPC, Police Station City Panipat, in which he already stands acquitted and appellant Rasid has already undergone the sentence of one year and he is also not involved in any other case. It is further argued that the FIR pertains to the year 2003 and subsequent to that, none of the appellants is involved in any other FIR of any nature, which shows that they are not criminals and they were involved in the FIR, only on the basis of some information received by the police, which could not be proved by leading the prosecution evidence.

Learned State counsel, on the basis of custody certificates of the appellants, has not disputed the factual position.

Considering the fact that the substantive charge under Sections 399 & 402 IPC could not be proved by the prosecution and all the accused were acquitted of the charge and the State has not filed any appeal challenging their acquittal under the aforesaid Sections, the appellants are entitled to acquittal of the charge under Section 25 of Arms Act.

Accordingly, all the aforesaid three appeals are allowed and the appellants are acquitted of the charge under Section 25 of Arms Act also.

Since appellants Nitin @ Neetu and Sajid are on bail, their bail/surety bonds shall stand discharged.

18.03.2019
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[ARVIND SINGH SANGWAN]
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No