

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH****CRA-D-847-DB-2017****Reserved on : 22.11.2018****Date of decision : 14.01.2019**

Amandeep alias Nanga

... Appellant

Versus

State of Haryana

... Respondent

***CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU***Present: Mr.Sanjeev Sharma, Advocate, Legal Aid Counsel
for the appellant.

Ms.Shubhra Singh, Addl.A.G. Haryana.

RAJIV SHARMA, J.

This appeal is instituted against the judgment and order dated 19.11.2015 and 23.11.2015 rendered by learned Additional Sessions Judge, Panipat, in Sessions Case No.11 of 2013, whereby the appellant was charged with and tried for offence punishable under Sections 120-B, 392, 397, 396, 302 read with Section 34 of the Indian Penal Code (in short "IPC") and under Section 25 of the Arms Act, 1959. The appellant was convicted and sentenced as under:-

Section	Sentence	Fine	Sentence, in default of payment of fine
120-B IPC	Rigorous Imprisonment for a period of two years	Rs.200/-	Simple imprisonment for a period of one month
302 IPC	Rigorous Imprisonment for life	Rs.2,000/-	Simple imprisonment for a period of one year
396 IPC	Rigorous Imprisonment for life	Rs.2,000/-	Simple imprisonment for a period of one year
25(1B)(a) of the Arms Act, 1959	Rigorous Imprisonment for a period of one year	Rs.300/-	Simple imprisonment for a period of two months

All the sentences were however ordered to run concurrently.

2. The case of the prosecution in a nutshell is that a complaint was lodged by Mukesh Kumar to the effect that he was working a Cashier in SGI Engineering College, Hathwala for the last five years. On 05.12.2012 an amount of Rs.11,28,000/- was deposited with him as fee of the students of B.Tech and MBA of SGI Engineering College. He could not deposit the said amount in the bank. At about 7.00 P.M., he along with his Assistant Arun Sharma son of Brij Bhushan resident of Model Town Samalkha left the college in car. The car was being driven by Megh Nath son of Satbir resident of Hathwala. He was sitting on the front seat of the car along with bag black in colour containing Rs.11,28,000/- in cash. When they reached near the college gate, two students of B-Tech namely Manjot Singh son of Charanjeet Singh and Digvijay Singh son of Kuldeep took lift from them as they were coming to Samalkha. At about 07.30 P.M. when the car reached near Government School village Pahawati, three young boys on a motor cycle make 'Pulsar' came from the side of village Hathwala. They overtook their car. As soon as the car slowed down near speed breaker, one of the boys, who was pillion rider came towards the driver side of the car with a pistol in his hand. He fired shot towards driver of the car. The bullet hit the driver of the car. The driver raised noise and lost control of the car. He somehow managed to control the car and stopped it at a distance of about 100 meters from the place of incident. All the three boys came towards them. He alongwith Assistant Arun Sharma got out of the car and tried to run away along with the bag containing cash. However one of the boys started chasing him with a pistol in his hand. He fell on the ground. He left the bag at the spot and ran towards village Pahawati. While running away he

heard the sound of another bullet. The boy lifted the bag and went towards the car. Number of persons gathered there. The FIR was registered. The matter was investigated and challan was put up after completing all the codal formalities.

3. Co-accused Sonu, Sunil, Azad, Afsar and Amit were also charged and tried for the same offences separately.

4. Prosecution examined a number of witnesses. The statement of appellant was also recorded under Section 313 Cr.P.C. He has denied the case of the prosecution. The appellant was convicted and sentenced as noticed hereinabove. Hence this appeal.

5. Learned counsel appearing for the appellant has vehemently argued that the prosecution has failed to prove the case against the appellants.

6. Learned counsel appearing on behalf of the State has supported the judgment and order dated 19.11.2015 and 23.11.2015.

7. We have heard learned counsel for the parties and have gone through the judgment and record very carefully.

8. PW-1 Manjot Singh deposed that on 05.12.2012 he was studying in SGI Engineering College, Samalkha. He took a lift in car No.DL-4CA-0864 outside the gate of the college. At about 8.00 P.M. when they reached near village Pahawati, three boys came chasing them on a motor cycle. One of the boys fired a shot from the pistol towards the driver of the car. He got terrified and ran away from the spot. After some time he came back at the spot and saw that driver of the car had died. Mukesh Kumar and Arun Sharma also ran away from the spot. Later on Mukesh

Kumar told him that the bag was containing Rs.11,28,000/-. The accused present in Court was not that person who fired a shot at Megh Nath and committed dacoity. He was declared hostile and was cross-examined by the learned Public Prosecutor.

9. Similarly PW-2 Digvijay deposed that he was student of SGI Engineering College, Samalkha. He took a lift in car No.DL-4CA-0864 outside the gate of the college. At about 8.00 P.M. when they reached near village Pahawati, three boys came there on a motor cycle. One of the boys fired a shot from the pistol towards the driver of the car. He got scared and ran away from the spot. Mukesh Kumar and Arun Sharma also ran away from the spot. He stated that the accused present in the Court was not that person who fired a shot at Megh Nath and committed dacoity. He was declared hostile and was cross-examined by the Public Prosecutor.

10. PW-3 SI Prem Singh stated that on 12.12.2012 he along with SI Bijender and HC Krishan Kumar was present on Railway Road, Samalkha. He received information that accused Amit, Sonu and Azad were sitting on platform No.1 of Railway Station Samalkha. They apprehended all the three accused at the spot. During personal search of accused Amit, a country made pistol .315 bore along with one live cartridge and currency notes of Rs.2 lacs were recovered. A country made pistol was recovered from accused Azad. Accused Amit suffered disclosure statement Ex.P11. Sonu suffered disclosure statement Ex.P12. Accused Azad suffered disclosure statement Ex.P13. Accused Amit got recovered two motor cycles. These were taken into possession. Amit disclosed the place of occurrence. Afsar, Parveen and Brij Pal were arrested from village Sanoli. A country made

pistol .32 bore along with two live cartridges and currency notes of Rs.3,50,000/- were recovered from Afsar. Accused Sunil was interrogated. He suffered disclosure statement Ex.P21. He identified the place of occurrence. Currency notes were recovered from him.

11. PW-5 Birbhan deposed that his nephew Megh Nath was working as driver. Sarpanch of their village had informed him about the incident.

12. PW-6 Mukesh deposed that it was admission day. Students had deposited fee to the tune of Rs.11,28,000/-. He could not deposit the same in the bank. At about 7.00 P.M. he along with Arun Sharma had proceeded in car which was driven by Megh Nath. They were carrying bag containing cash. Two students met them. They also accompanied them. At about 7.30 / 8.00 P.M. when they reached near Government School Village Pahawati, a motor cycle overtook them. One of the pillion riders fired a shot towards the driver. The driver raised noise. He sustained bullet injury. Car went out of control. Assistant Arun Sharma ran away from the spot. He also took cash bag. He lost balance. Bag fell down. Thereafter he heard the noise of bullet. He came back at the spot. The assailants in the meantime had already left the spot. As it was dark, he could notice the registration number of the motor cycle. He informed the police. He categorically deposed that the accused present in the Court was not the same person who had fired at Megh Nath and committed dacoity. He was declared hostile and was cross-examined by the Public Prosecutor.

13. PW-7 Arun Sharma deposed the manner in which the driver was shot at. However he could not notice registration number of the motor

cycle. He also deposed that the accused present in the Court was not that person who had fired at Megh Nath and committed dacoity. He was declared hostile and was cross examined by the learned Public Prosecutor.

14. PW-10 SI Bijender Singh had arrested Amit, Sonu and Azad. He arrested Amandeep appellant on 27.12.2014. One country made pistol of .32 bore along with three live bullets and one motor cycle were recovered. He suffered disclosure statement Ex.P41 on the basis of which place of occurrence was demarcated.

15. PW-11 SI Balwan Singh deposed that accused Amandeep was arrested in his presence.

16. PW-15 Dr.Mona Nagpal had conducted the post-mortem examination. According to her, the cause of death was due to hemorrhage and shock due to injury caused by fire arm which was ante-mortem in nature and sufficient to cause death.

17. The appellant had also examined DW-1 Rohit, DW-2 Sumit Kumar and DW-3 Balwinder Kumar.

18. There were four material witnesses in this matter namely PW-1 Manjot Singh, PW-2 Dig Vijay, PW-6 Mukesh and PW-7 Arun Sharma. According to them the accused present in Court was not that person who fired at the driver. They were declared hostile. Since all the material witnesses have turned hostile on all material facts, conviction could not be recorded in the present case. No doubt, the statement of hostile witnesses can be taken into consideration if it supports the case of prosecution on some vital issues but in the instant case there is wholesale retraction from the previous statements. The accused had not been identified by the material

witnesses. The prosecution has not proved the case against the appellant. The co-accused of the appellant namely Sonu, Sunil, Azad, Afsar and Amit were also convicted and sentenced by the learned trial Court. They have also filed appeals bearing Nos.CRA-D-45-DB-2015, CRA-D-165-DB-2015 and CRA-D-211-DB-2015. The appeals filed by them were allowed by this Court on 29.11.2018.

19. Accordingly this appeal is allowed, judgment and order dated 19.11.2015 and 23.11.2015 are set aside. The appellant is ordered to be released forthwith if not wanted in any other case. Release warrants be prepared.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

January 14, 2019.
Davinder Kumar

Whether speaking / reasoned

Yes/No

Whether reportable

Yes/No