

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

1. CRA-S-3066-SB of 2010 (O&M)
Date of Decision : January 21,2019

Kuldeep Appellant

VERSUS

State of Haryana. Respondent

2. CRA-S-126-SB of 2011 (O&M)

Sandeep Kumar and another Appellants

VERSUS

State of Haryana Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

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Present: Mr. S.S.Gill, Advocate
for the appellant in CRA-S-3066-SB-2010.

Mr. Atul Kaushik, Advocate
Legal aid counsel for the appellants in
CRA-S-126-SB-2011.

Mr. Ayuwan Singh, AAG, Haryana.

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MANJARI NEHRU KAUL, J.

Custody Certificates of appellants Kuldeep, Sandeep Kumar
and Sunil @ Mida filed today in Court by the learned counsel for the State
are taken on record.

This order shall dispose of CRA-S-3066-SB-2010 and CRA-S-
126-SB-2011 as common question of law and fact arises in both these
appeals. For the sake of convenience, facts have been taken from CRA-S-

3066-SB-2010.

The instant appeals have been filed against the order dated 13.11.2010 passed by the Additional Sessions Judge, Kaithal, vide which all the accused/appellants were convicted and sentenced as under:-

<i>Under Section</i>	<i>Sentence</i>
392 IPC	Rigorous imprisonment for five years and fine ₹ 2,000/-, in default of payment of fine, to further undergo rigorous imprisonment for one year.

The prosecution case in brief is that electricity meter readers complainant-Balwan Singh was pillion riding behind Balraj on a motorcycle after collecting cash of electricity bills. They had just covered a distance of about 2 kms. from village Mator at about 1:20 P.M. on 07.09.2009, when a Maruti car bearing registration No. HR01-4582 overtook them. The complainant noticed that there were four young boys inside the car and one of them who was sitting on the rear side was brandishing a revolver in his hands. After stopping the Maruti car ahead of the motorcycle of the complainant, three of the occupants of the car alighted and after a struggle snatched the cash bag containing ₹72,000/- from the complainant. The assailants after snatching the cash bag boarded the Maruti car and turned back towards village Mator. The complainant-Balwan Singh got recorded his statement Ex.PA on the same day soon after the occurrence at about 02:00 P.M. before PW6 Inspector Karta Ram. In his said statement the complainant besides narrating the aforementioned facts also gave a brief description about the physical features of one of the assailants and stated that he could identify them if they were brought before him. Subsequently, the investigation of this case was transferred to CIA staff, Kaithal, under the supervision of PW12 SI Satyawan. On 23.09.2009 one

600 dated 21.09.2009, P.S. City Kaithal, registered under Sections 398, 401 IPC read with Section 25 of the Arms Act, 1959 was interrogating accused Sunil Kumar @ Mida and during the said interrogation it came to light that the said Sunil Kumar @ Mida happened to be involved in a couple of criminal cases including the present case along with accused Sandeep Kumar. Thereafter, the custody of both Sunil Kumar @ Mida son of Om Parkash and Sandeep Kumar was obtained by PW12 ASI Satywan on 23.09.2009 and these two accused were then formally arrested in the instant case. During the interrogation of these two, it further came to light that two other accused namely Kuldeep and Sunil son of Harikesh were also involved in the present crime. Subsequent to their arrest, during their interrogation, accused Sandeep Kumar suffered a disclosure statement Ex.PD in pursuance to which ₹16,000/- which had been concealed by him in his residential house in an almirah were recovered. It was disclosed by accused Sandeep Kumar that out of the looted amount of ₹72,000/-, ₹18,000/- had fallen to his share out of which ₹2,000/- had already been spent by him. Accused Sunil Kumar @ Mida son of Om Parkash too suffered a disclosure statement Ex.PE in pursuance to which ₹14,000/- out of his share of ₹18,000/- were recovered from him which he had kept concealed in a rented room. Soon thereafter, accused Kuldeep too was arrested and during interrogation he too suffered a disclosure statement Ex.PF in pursuance to which ₹18,000/- which had fallen to his share were recovered from his residential house. The fourth accused-Sunil son of Harikesh, too suffered a disclosure statement Ex.PJ in pursuance to which ₹10,000/- were recovered from a grain container in his residential house.

After completion of all the requisite formalities and filing of

report under Section 173 Cr.P.C., the accused were sent up for trial in the court of Sessions where they were charged for the offence punishable under Sections 392, 397 IPC and Section 25 of the Arms Act, 1959 to which they pleaded not guilty and claimed trial.

The prosecution in support of its case examined as many as twelve prosecution witnesses and tendered all the relevant documents.

All the incriminating circumstances appearing against the accused in the prosecution evidence were put to them under Section 313 Cr.P.C. which were denied by all the accused and they pleaded innocence and false implication.

The learned trial Court convicted all of them under Section 392 IPC and sentenced them as detailed above but acquitted them under Section 397 IPC and 25 of Arms Act, 1959.

Learned counsel for the appellants vehemently argued that the two material witnesses i.e. PW1 Balwan Singh and PW2 Balraj did not support the case of the prosecution and were declared hostile. It was further argued that since the appellants had been involved in the instant case only on the basis of the statement of the aforesaid two witnesses hence the prosecution had miserably failed to link the appellants with the occurrence that had taken place on 07.09.2009. The learned counsel for the appellants further urged that the learned trial Court was in error by placing blind reliance upon the testimony of the police officials only as there was no other corroboration from any other independent source.

Learned counsel for the appellant finally prayed that in the event of the impugned judgment being upheld, the sentence imposed by the learned trial Court be reduced to already undergone as the appellants have

faced the agony of trial for almost 10 years.

The learned State counsel, on the other hand, argued that admittedly the complainant PW1 Balwan Singh and PW2 Balraj were declared hostile but the heavy recoveries of the looted money which were effected from each of the appellants in pursuance to their disclosure statement was sufficient to establish and link the involvement of the accused/appellants with the occurrence in hand. The learned State counsel further argued that there was nothing forthcoming on behalf of any of the appellants as to how and under what circumstances they came to be in possession of the heavy cash amount recovered from them. The learned State counsel prayed for dismissal of the instant appeals by arguing that the role of the appellants came to the fore during their interrogation in another case i.e. FIR No. 600 dated 21.09.2009, P.S. City Kaithal, registered under Sections 398, 401 IPC read with Section 25 of the Arms Act, 1959 which clearly reflected that they are hardened criminals. In fact, besides the instant case, they had a number of other criminal cases pending against them.

I have heard the learned counsel for the parties and also gone through the evidence as well as other material on record.

It is not disputed even by the two material witnesses i.e. complainant-Balwan Singh PW1 and Balraj PW2 that the incident of robbery had indeed taken place on 07.09.2009 in the area of village Mator when the two of them were returning after collecting cash qua the electricity bills. The two material witnesses admittedly did not identify the appellants and were thus declared hostile. In such like cases of robbery and dacoity, it is more often than not seen that the material witnesses, especially eye witnesses, do turn hostile specially when it comes to their knowledge

that the accused have criminal antecedents. Hence, in this background the complainant-Balwan Singh PW1 as well as PW2 Rajbir turning turtle could be for reasons but obvious.

In the instant case, the learned trial Court has rightly recorded a finding of conviction on the basis of the disclosure statements and the subsequent recovery of a huge amount of money qua which nothing on record has come as to how these appellants came to be in possession of the same. It would therefore be safe to draw an inference under Section 114-A of the Indian Evidence Act, 1872 that a presumption shall have to be drawn against these appellants as they failed to account for the money which was recovered from their possession. Moreover, there was no occasion for the investigating agency to falsely implicate the appellants by planting huge recovery of cash on them specially when there is nothing on record to suggest any animosity or enmity between them and the police and so why would the police go to involve them falsely. One fact which further nails the appellants is that they all were signatories to their respective disclosure statements in pursuance to which the alleged recoveries were effected.

As a sequel to the aforementioned, I do not find any infirmity in the impugned order dated 13.11.2018 passed by the Additional Sessions Judge, Kaithal, and the same is upheld.

As already mentioned above, the learned counsel for the appellants has prayed for reduction of sentence to already undergone.

I have given my anxious consideration to the same. I would have favourably considered the prayer of the learned counsel for reduction of sentence of the appellants but for the fact as revealed in their Custody Certificates placed on record by the State counsel, their criminal

antecedents are such for which they do not deserve any leniency in the matter of sentence.

Accordingly both the appeals are dismissed.

21.01.2019
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(MANJARI NEHRU KAUL)
JUDGE

Note: Whether speaking/reasoned	Yes / No
Whether Reportable:	Yes / No