

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CRA-S-909-SB-2005
Date of Decision : 05.04.2019

Joginder @ JogaAppellant

VERSUS

The State of Haryana Respondent

2. CRA-S-778-SB-2005

Mohinder and othersAppellants

VERSUS

State of HaryanaRespondent

3. CRA-S-942-SB-2005

Manoj @ NadtorAppellant

VERSUS

State of HaryanaRespondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

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Present: Mr. Ajit Sihag, Advocate and
Mr. Ravinder Phogat, Advocate
for the appellant in CRA-S-909-SB-2005.

Mr. Bijender Dhankar, Advocate
for the appellants in CRA-S-778-SB-2005.

Mr. Dinesh Kumar Jangra, Advocate
for the appellant in CRA-S-942-SB-2005.

Mr. Ayuwan Singh, AAG, Haryana.

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MANJARI NEHRU KAUL, J.

1. This order shall dispose of criminal appeals No. CRA-S-909-SB-

out of the same FIR No. 399 dated 26.11.2000 under Sections 395/397/342/458/506 IPC & 25-54-59 of the Arms Act registered at Police Station City Bhiwani. For the sake of convenience, facts have been extracted from CRA-S-909-SB-2005.

2. The present appeals have been filed against the judgment of conviction dated 4.4.2005 and order of sentence dated 6.4.2005 passed by the Additional Sessions Judge (Fast Track Court), Bhiwani, whereby the appellants were convicted under Sections 395/397/458/342/506 IPC and sentenced as under:-

<i>Under Section</i>	<i>Sentence</i>
395 read with Section 397 IPC	Rigorous imprisonment for ten years and fine ₹ 2,000/- each, in default of payment of fine, to further undergo simple imprisonment for six months each.
458 IPC	Rigorous imprisonment for seven years and fine ₹ 1,000/- each, in default of payment of fine, to further undergo simple imprisonment for four months each.
342 IPC	Rigorous imprisonment for six months and fine ₹ 400/- each, in default of payment of fine, to further undergo simple imprisonment for two months each.
506 IPC	Rigorous imprisonment for two years and fine ₹ 600/- each, in default of payment of fine, to further undergo simple imprisonment for three months each.

All the sentences were ordered to run concurrently.

3. Complainant PW9 Mohinder Singh approached the police on 26.11.2000 at about 8 A.M. by moving a written complaint Ex.PF that on the preceding night when he along with his wife PW8 Dayawanti and sister-in-law PW7 Nisha were sleeping in their house then at about 1:30 A.M. someone knocked on the door of his house and called out to him by name. On opening the door a young man after introducing himself as Mohinder told him that his scooter had run into trouble and soon thereafter inflicted a blow on the neck of the complainant as a result of which he fell on the floor. Simultaneously five young men with muffled faces, armed with swords and pistols entered the house and after locking up his children in a room starting giving them beatings. One of the

assailants after pointing a sword towards PW7 Nisha ordered her to hand him all her valuables. The assailants then after taking the keys of an almirah from his wife PW8 Dayawanti took out Rs.30,000/- from the almirah and another Rs.50,000/- which were lying in the bed. The complainant also alleged that gold jewellery was taken away by the assailants during the dacoity. The complainant stated that the assailants were calling each other by the name of Manoj, Sanju, Sunil and Davinder. Before decamping with the loot, the assailants bolted the door of the house from outside. When the complainant and his family members raised hue and cry, the neighbours were attracted to the spot and they unbolted the door. It was on the basis of this statement that formal FIR No.399 dated 26.11.2000 (Ex.PF1) under Sections 395/397/342/458/506 IPC & 25-54-59 of the Arms Act was registered at Police Station City Bhiwani against unknown persons. While the investigations were on, on 29.04.2001 vide Ex.PS, a supplementary statement was made by the complainant before PW14 Inspector Subhash Chander to the effect that Rs.50,000/- which had been looted by the assailants on the day of occurrence bore his signatures and had been wrapped in a handkerchief. On 15.05.2001 when during the investigation of one case FIR No. 166/2001 under Sections 399/402 IPC registered at Police Station Bhiwani, the present appellants were being interrogated, their involvement in the instant case came to light. The accused were then arrested and on their interrogation, the appellants Manoj, Mohinder, Mahabir, Davender and Joginder suffered disclosure statements Ex. PG, PH, PJ, PK and PL respectively in pursuance to which recovery of Rs.7300/- and a gold ring was effected from the house of appellant Manoj vide recovery memo Ex.PN, recovery of Rs.6700/- was effected from appellant Mohinder vide recovery memo Ex.PM, recovery of a sword was effected from appellant Manoj vide recovery Memo Ex.PN. Another recovery of Rs.6000/- along with a gold ring vide recovery memo Ex.PP was effected from appellant Manoj, appellant

Joginder got recovered Rs.8,000/- along with two gold bangles and two rings vide recovery memo Ex.PQ. Appellant Davender got recovered a sum of Rs.7000/- along with one gold ring from his house vide Recovery Memo Ex.PR. Appellant Manoj @ Vinod @ Chhanga, who died during the pendency of the appeal, got recovered one loaded pistol and Rs.1,000/- from his house vide Ex.PW and PY.

4. On completion of the investigation, the appellants were charged for the offences punishable under sections 395/397/458/342/506 IPC and accused Manoj @ Nador (appellant in CRA-S-942-SB-2005) was also charge-sheeted under Section 25 of the Arms Act and as they pleaded not guilty, were brought to trial.

5. In support of their case, the prosecution examined as many as 14 witnesses and tendered all the relevant documentary evidence.

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

7. The accused/appellants did not lead any defence evidence.

8. The learned trial Court found them guilty under Sections 395/397/458/342/506 IPC and sentenced them as detailed above.

9. The learned counsel for the appellants vehemently argued that it was a case of no evidence and in fact it was beyond comprehension as to on what basis much less legal and admissible evidence, the appellants had been convicted and sentenced by the learned trial Court. The learned counsel argued that the FIR had been registered against unknown persons and as per the complainant himself, the assailants at the time of occurrence were with muffled faces. They argued the learned trial court failed to appreciate that all the three material witnesses including the complainant had failed to identify the appellants as being the authors of the crime. Moreover, the trial court erred in not appreciating the sequence of

occurrence and that too on the basis of confession made by them before the police in another FIR registered in the same police station as the present one which left no manner of doubt that in fact it was a clear case of manipulations and fabrications to solve a crime and for the investigating officer to take credit for the same. The counsel urged that even the supplementary statement Ex.PS under Section 161 Cr.P.C., alleged to have been made by the complainant as late as 29.04.2001 created a doubt on the authenticity of the case of the prosecution since the complainant while stepping into the witness box had denied making the same. Learned counsel also drew my attention to the Finger Print Expert's Report (Ex.PZ) which gave a categoric finding that none of the finger prints which were lifted from the glass bottle and tumbler from the place of occurrence matched/tallied with finger prints of any of the appellants. Somuch so the complainant party failed to identify the jewellery which was recovered from the appellants in pursuance to their disclosure statement. Hence, the *mala fides* were writ large in the instant case on the part of the investigating agency and the trial court failed to take note of the same while convicting the appellants.

10. The learned State counsel on the other hand prayed for dismissal of the instant appeal by submitting that no doubt the prosecution witnesses including the complainant failed to identify the appellants but the fact remained that recovery of stolen articles was effected in pursuance to the disclosure statement of the appellants which clinchingly nailed the appellants in the commission of the crime.

11. Heard learned counsel for the appellants, the learned State counsel and perused the evidence as well as other material on record.

12. In the case in hand, the FIR was registered against unknown persons.

A perusal of the statement of the complainant Ex.PB/1 reveals that at that point of

assailants but when the complainant as well as the other two star witnesses PW7 Nisha and PW8 Dayawanti stepped into the witness box they were unable to identify any of the appellants. Their failure to identify the appellants rather comes across as quite convincing because it was the case of the prosecution from the very beginning that the assailants at the time of the occurrence had entered the house and all along had muffled their faces.

13. Moreover, it is indeed very strange and highly unnatural that after an abnormal delay of five months the complainant made a supplementary statement Ex.PS under Section 161 Cr.P.C., after waking up from his slumber to remember that the money which had been looted by the assailants on 26.11.2000 had been signed by him and wrapped in a handkerchief. It would be pertinent to mention that while stepping into the witness box the complainant denied making any such statement. Not only this, the money so recovered from the appellants as also the gold ornaments recovered in pursuance to the disclosure statements were not even identified by any of the star witnesses. It would be relevant to mention that the identification of articles in a dacoity or robbery would involve a certain degree of uncertainty in the absence of any distinct appearance or identification mark which may have been given or revealed by the complainant/victims at the time of reporting the dacoity/robbery to the police. The mere fact, of the appellants producing the ornaments and the cash in pursuance to their alleged disclosure statements would thus not be enough to sustain their conviction under Section 395 IPC specially when the recoveries were effected after almost 06 months of the occurrence of dacoity and more importantly when there was lack of evidence to connect the appellants with the commission of the dacoity in the light of all the three eye witnesses failing to identify the appellants.

14. In fact, the sequence of events which led to the arrest of the appellants casts a shadow of doubt on the prosecution case. It is pertinent to notice

that the appellants were arrested after they allegedly made a confession to the police qua their involvement in the present case, while they were being interrogated in some other case. It need not be over emphasized that any confession made before a police official is inadmissible in law and hit by Section 25 of the Evidence Act. Hence, it seriously casts a shadow of doubt on the case of the prosecution.

15. As a sequel to the above discussion, the benefit of doubt has to go to the appellants as there are gaping holes in the entire length and breadth of the prosecution case. Evidence on the face of it is of doubtful character. The consistent case of the prosecution from day one was that the accused had come with muffled faces and were unknown persons. Even when the prosecution witnesses appeared in Court they categorically failed to identify the accused as being the same assailants who had attacked them. Rather had the complainant and PW7 and PW8 identified the accused in the Court that would have reflected adversely on the veracity of their truthfulness.

16. In view of the above, all the three appeals are allowed. The judgment of conviction dated 4.4.2005 and order of sentence dated 6.4.2005 passed by the Additional Sessions Judge (Fast Track Court), Bhiwani, is set aside and the appellants are acquitted of the charges framed against them.

(MANJARI NEHRU KAUL)
JUDGE

05.04.2019
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Note: Whether speaking/reasoned
Whether Reportable:

Yes / No
Yes / No