

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

Date of decision : 07.02.2020

(I) CRA-S-1603-SB-2015 (O&M)

Sehjad and others

...Appellants

Versus

State of Haryana

...Respondent

(II) CRA-S-1120-SB-2015 (O&M)

Javed and another

...Appellants

Versus

State of Haryana

...Respondent

(III) CRA-S-5184-SB-2014 (O&M)

Yusuf

...Appellant

Versus

State of Haryana

...Respondent

**CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN
HON'BLE MRS. JUSTICE ARCHANA PURI**

**Present: Mr. S.S. Kharb, Advocate,
for the appellant(s) in CRA-S-1603-SB-2015.**

**Ms. Shalini Attri and Ms. Apporva, Advocate,
for the appellant(s) in CRA-S-1120-SB-2015.**

Ms. Shaheen Khan, Advocate,
for Mr. Manvinder Singh Sidhu, Advocate,
for the appellant(s) in CRA-S-5184-2014.

Mr. Vikrant Pamboo, DAG, Haryana.

JITENDRA CHAUHAN, J.

The captioned three appeals are being disposed of by this single judgment, having arisen out of the common impugned judgment and order dated 17/18.11.2014 passed by learned Additional Sessions Judge, Panipat (hereinafter referred to as 'the trial Court') whereby, the accused-appellants stand convicted under Section 395 of the Indian Penal Code (in short, 'the IPC'), and sentenced to undergo imprisonment for 10 years along with fine of ₹1,00,000/- each with default stipulation.

Brief facts of the present case as noticed in para No.2 of the judgment passed by the trial Court are as under:-

“2. In brief, the prosecution case is that on 30.12.2011, ASI Dilbagh Singh was present at Police Post, when complainant Balwan Singh moved application to the effect that on that day at about 1.30 am, he, along with his children and wife, was sleeping inside his house, while his mother was sleeping in veranda, when three young persons, aged about 20-25 years came and got up his mother. They got opened the door of the house from his mother and six-seven boys entered the house, who were armed with double barrel gun, country-made pistol, sword and dau. The boy,

armed with gun, pointed gun upon him (Balwan) and asked him not to move. Other boys surrounded his family on weapon points. Two boys started conducting search of his room. After checking the room for about 45 minutes, they took cash Rs.1 lakh as well as gold ear rings and Om of his wife and mother and left while locking the door of his house from outside. He telephonically informed Ankur son of Ramesh, who further informed the police. The boy, who pointed gun upon him, was having white mark in his eye, while the remaining boys had muffled their faces. He prayed for legal action. This deserves to be mentioned that the information regarding this very incident was received through control room during night, when ASI Dilbagh Singh had visited the spot. However, complainant Balwan Singh was asked to move complaint in the morning.”

After completion of investigation and upon presentation of *challan*, all the accused were charge-sheeted for the offences punishable under Sections 395 and 397 IPC and Section 25 of the Arms Act, to which all the accused pleaded not guilty and claimed trial.

In support of its case, the prosecution has examined Balwan as PW-1; SI Bijender Singh as PW-2; ASI Jai Bhagwan as PW-3; HC Subhash Chander as PW-4; Dano as PW-5; Ankur as PW-6; Madan Lal, Patwari (Retd.) as PW-7; EHC Ishwar Singh as PW-8; ASI Balraj Singh as PW-9; Inspector Vikas Kumar as PW-10; and ASI Dilbagh Singh as PW-11. PW

Geeta was given up having been won over by the accused, while PWs HC Kaptan Singh and HC Angrej Singh were given up being unnecessary.

Thereafter, statements of the accused under Section 313 Cr.P.C were recorded and entire incriminating circumstances appearing in the prosecution evidence were put to the accused to which they denied and pleaded false implication. In defence, they relied upon the statement of Dano wife of Ram Kishan, Ex.DA.

After considering the entire facts and circumstances of the case and appreciating the evidence brought on record, learned trial Court convicted and sentenced all the accused-appellants as narrated at the outset of this judgment.

Hence, the instant appeals.

Learned counsel contends that the identity of the accused has not been proved in this case. The appellants were arrayed as accused on the basis of the alleged disclosure statements suffered by them in FIR No.145 dated 02.02.2012 registered under Sections 399 and 402 IPC and Section 25 of the Arms Act, at P.S. City Panipat, which were exhibited as Ex.P14 to Ex.P19, with the record of the said case. No independent witness was joined at the time of recording of the alleged disclosure statements in the present case. The offence under the Arms Act also could not be proved against the appellants.

Learned State counsel while opposing the instant appeals has

submitted that the prosecution has been successful in bringing home guilt of the accused-appellants.

Heard.

While appearing as PW-1, complainant Balwan has stated that all the accused had muffled their faces except one, who had white mark in his eye. However, such an evidence is not sufficient to prove the identity of the accused. There is absolutely nothing on record to prove the identity of the remaining accused.

Further, the prosecution story suffers from various infirmities which casts serious doubts about its genuineness. It has come in the prosecution version that mother of the complainant, Dano, PW5, aged 65 years, was sleeping at night time in the veranda during the peak of winter season. Further it is also highly improbable that the complainant chose to make telephonic call to his friend Ankur, who further informed the police. No reason has been cited as to what prevented him to call the police by himself.

The only evidence which has come against the appellants is the alleged disclosure statements suffered by them in some other case i.e. FIR No.145 (ibid). The original record of the said case was never summoned to prove the said disclosure statements. Even otherwise, all the appellants stood acquitted in FIR No.145 (ibid). Similarly, there is no independent witness of the recovery memos Exs.P32, P32/A, Ex.P32/B, Ex.P32/I,

Ex.P32/J and Ex.P32/K. No other cogent evidence has come on record against the accused/appellants to fasten them with criminal liability. Moreover, charge under Section 25 of the Arms Act has also not been proved before the trial Court.

In view of the above, this Court feels that the prosecution has failed to establish guilt of the accused beyond a shadow of reasonable doubt. Accordingly, the instant appeals are accepted; the impugned judgment of conviction dated 17.11.2014 and order of sentence dated 18.11.2014 passed by the trial Court are set aside; and the appellants are acquitted of the charges framed against them by extending benefit of doubt. The appellants are stated to be in custody. They be released forthwith, if not required in any other case.

Appeals allowed.

Photocopy of this judgment be placed on the connected files.

(JITENDRA CHAUHAN)
JUDGE

(ARCHANA PURI)
JUDGE

07.02.2020

atulsethi

Whether Speaking/reasoned
Whether Reportable

Yes/No
Yes/No