

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

Date of decision : 07.02.2020

(I) CRA-S-2120-SB-2014 (O&M)

Shejad and others

...Appellants

Versus

State of Haryana

...Respondent

(II) CRA-S-1311-SB-2014 (O&M)

Mehfuj and another

...Appellants

Versus

State of Haryana

...Respondents

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

Present: None for the appellant(s) in CRA-S-2120-SB-2014.

**Ms. Shalini Attri and Ms. Apporva, Advocate,
for the appellant(s) in CRA-S-1311-SB-2014.**

Mr. Vikrant Pamboo, DAG, Haryana.

JITENDRA CHAUHAN, J.

The captioned two appeals are being disposed of by this single judgment, having arisen out of the common impugned judgment and order dated 21/24.01.2014 passed by learned Additional Sessions Judge, Panipat

(hereinafter referred to as 'the trial Court') whereby, the accused-appellants stand convicted under Sections 395 of the Indian Penal Code (in short, 'the IPC'), and sentenced to undergo imprisonment for ten years along with fine of ₹10,000/- 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:-

“In brief, the prosecution case is that on 26.1.2012, Hanif son of Gafur, along with Ram Kumar son of Mai Ram, came to Police Station and moved complaint to the effect that he was contractor of garden of Pawan Garg at Kachrauli and had been residing in said garden for about 25 years along with his family. On 26.1.2012, at about 1.00 am, six persons came to his homestead in garden and got up his family one by one. They tied the hands of his sons Irshad and Sehjad as well as his hands on back. Those boys were aged between 20 to 28 years, having muffled their faces and were talking in Haryanavi dialect. One of them was tall, having country-made pistol and remaining were of medium height, out of whom two were having country-made pistols, one was having lathi, one was having knife while the other was having jelli. All of them, while threatening them on pistol point, took ear rings and gold Tawiji from his wife Khatoon and daughter-in-law Akbari and Asi. They also took away cash Rs.9,500/- from box and two pairs of anklets. Thereafter, those persons confined all of them in the room and bolted the room from outside. They somehow managed to come

out and went to the room of Ram Kumar son of Mai Ram, who was residing in the same garden, about two killas away. They opened the latch of his room and took out Ram Kumar, his wife and daughter, who disclosed that same six persons had also taken away ear rings of Nirmala, wife of Ram Kumar and Seema, daughter of Ram Kumar, cash Rs.6,000/-, one gold Om, one silver anklet, some documents and one gold ring, along with two mobile phones bearing SIM No.9812080286 and 9050633275. He prayed for legal action.”

After completion of investigation and upon presentation of *challan*, all the accused were charge-sheeted for the offence punishable under Section 395 IPC, whereas, accused-appellants Kaum, Yusaf and Mehfooj under Section 25 of the Arms Act as well, to which all the accused pleaded not guilty and claimed trial.

In support of its case, the prosecution has examined Hanif son of Gafur as PW-1; Sehjad son of Hanif as PW-2; Sunil Kumar Patwari as PW-3; Ram Kumar son of Mai Ram as PW-4; HC Randeep as PW-5; ASI Jai Bhagwan as PW-6; SI Virender Singh as PW-7; Retired ASI Satbir Singh as PW-8; HC Vinod Kumar as PW-9; and SI Krishan Kumar as PW-10. PWs Irshad, Khatoon, Anwari, Aasi, Seema, Nirmala, HC Angrej Singh, ASI Surinder Singh, Ahlmad to the Court of learned ACJM, Panipat, HC Dharambir, Constable Balinder and EASI Ramesh Kumar 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 certified copy of judgment dated 11.11.2013, passed in case FIR No.145 dated 2.2.2012, registered under Sections 399 and 402 IPC and Section 25 of the Arms Act, P.S. City Panipat, Ex.D1; and certified copy of judgment dated 12.12.2013, passed in case FIR No.123 dated 30.1.2012 under Sections 392 & 395 IPC and Section 25 of the Arms Ac, P.S. City Panipat, Ex.D2.

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.

There is no assistance on behalf of the appellants in CRA-S-2120-SB-2014, however, Ms. Shalini Attri, learned counsel for the appellants in the connected appeal, has been requested to assist this Court on their behalf.

Learned counsel contends that the accused-appellants have been falsely implicated in this case only on the basis of alleged disclosure statements suffered by them in some other FIR, wherein, all of them stand acquitted. No independent witness was joined at the time of recording of the alleged disclosure statements in the present case. Further, the identity of the accused-appellants has not been proved in this case. The appellants already

stand acquitted under Section 25 of the Arms Act.

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.

It is the case of the prosecution that the accused persons had barged into the house of the complainant and committed dacoity. All the accused were having muffled faces. Therefore, neither the complainant nor any member of his family could identify them at the time of the alleged occurrence. Only tentative details of their physique viz. built and height were provided. While stepping into the witness-box, complainant Hanif, PW1, has stated that the assailants were muffled faced. He has made a tentative identification of only one accused, while deposing that *“he identifies the tall boy who snatched his ring and pointed gun to him”*. This witness, however, could not name the said tall boy. Similar is the statement of PW-2 Sehjad who also identified the tall boy only in the court but did not name him. Thus, it would be safe to conclude that the identification of the accused has not been sufficiently proved in this case.

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). No independent witness was joined in

the recovery proceedings. 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 21.01.2014 and order of sentence dated 24.01.2014 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.

A photocopy of this judgment be placed on the connected file.

(JITENDRA CHAUHAN)
JUDGE

(ARCHANA PURI)
JUDGE

07.02.2020

atulsethi

Whether Speaking/reasoned
Whether Reportable

Yes/No
Yes/No