

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

CRA-S-1997-SB-2007(O&M)

Date of decision:-13.9.2022

Virender alias Kala and others

....Appellants

Versus

State of Haryana

....Respondent

CORAM : HON' BLE MR. JUSTICE H.S. MADAAN

Argued by :Mr.Krishan Sharma, Advocate
for the appellant.

Mr.Vijesh Sharma, Addl.A.G., Haryana.

H.S. MADAAN, J.

1. Accused Virender alias Kala, Ramesh Kumar, Satbir Singh, Azad and Jug Lal alias Jugla had faced trial by Additional Sessions Judge (II), Jind in case FIR No.42 dated 24.1.2006, under Sections 399/402 IPC and 25 of Arms Act, registered with Police Station Safidon and vide judgment dated 31.8.2007, accused Virender, Ramesh and Satbir were convicted for the offences punishable under Sections 399/402 IPC and in addition accused Virender was convicted for an offence under Section 25 of the Arms Act, whereas accused Jug Lal and Azad were acquitted of the charge framed against them and in terms of order dated 1.9.2007, accused/convicts Virender, Rakesh and Satbir were sentenced to undergo rigorous imprisonment for a period of 7 years each and to pay a fine of Rs.7,000/- each and in default of payment of fine to undergo further rigorous imprisonment for a period of 2 months each as regard offence under Section 399 IPC and for offence under Section 402 IPC, they were sentenced to undergo rigorous imprisonment

for a period of 5 years each and to pay a fine of Rs.5,000/- each and in default of payment of fine to undergo further rigorous imprisonment for a period of 1 ½ months each and in addition accused Virender was sentenced to undergo rigorous imprisonment for a period of 2 years and to pay a fine of Rs.2,000/- and in default of payment of fine to undergo further rigorous imprisonment for a period of one month.

2. Feeling aggrieved by the judgment of their conviction and order of sentence, appellants/accused have approached this Court by way of filing the present appeal. Vide order dated 5.10.2007, such appeal filed by the appellants/accused was admitted for regular hearing and on applications filed on behalf of the appellants/accused, their remaining sentence of imprisonment was suspended during the pendency of the appeal.

3. Now the appeal has come up for final hearing.

4. Briefly stated, facts of the case as per the prosecution story are that, on 24.1.2006 ASI Veer Bhan (hereinafter referred to as the Investigating Officer/IO) along with other police officials from Police Station Safidon, District Jind was present on Sangeeta Petrol Pump, Jind Road, Safidon, where the IO received secret information that Virender Singh son of Ram Rattan resident of village Binjhol, Ajad son of Tek Chand, Satbir son of Ruldu Ram, Jugla son of Surta and Ramesh son of Hawa Singh armed with pistol and SARIA (iron rod) were present in an abandoned *KOTHA* of brick-kiln belonging to Ram Niwas, Ex-Sarpanch, resident of Bahadurgarh near village Seela Kheri and they were planning to loot the passersby; that such persons were having a motorcycle and if a raid was conducted, they could be caught red

handed.

5. On receipt of this information, raiding parties were prepared and they reached near the place of occurrence after leaving the government vehicle 3 kms. away from the place of occurrence. The IO peeped into the hole of the *KOTHA* and found five persons sitting there in the light of candle. The IO heard conversation of the accused persons and out of them one was saying that Azad was their leader and on instructions of Azad, they would loot the passersby; Satbir and Jugla after parking the motorcycle in the middle of the road pretending the motorcycle had gone out of order would seek help and Virender would put the pistol on the temple of the persons, who would come there, whereas accused Azad and Ramesh would loot the passersby.

The IO gave signal of torch to other police officials and challenged the accused telling them that they had been surrounded by the police from all the sides and they should surrender before the police. However, all the accused tried to run away from the spot. The IO with the help of other police officials managed to apprehend one such miscreant, who was starting the motorcycle; the other accused managed to escape under cover of darkness. On inquiry, the person, who had been apprehended by the police party disclosed his name as Virender; his personal search was conducted and a country-made pistol along with a cartridge was recovered from his possession. The sketch of the recovered pistol was prepared. The pistol and the cartridge were converted into a parcel, which was sealed with the seal of IO having seal impressions LN and then the parcel was taken into police possession vide recovery memo. On inquiry accused Virender told the name of the

persons, who were sitting with him as Satbir, Jug Lal, Azad and Ramesh.

6. The IO sent ruqa to the police station, on the basis of which formal FIR was registered. Accused Virender was arrested in this case. Accused Satbir and Ramesh were arrested on 27.1.2006. After completion of investigation and other formalities, challan against the accused Virender, Satbir and Ramesh were prepared and filed in the Court. Since accused Jug Lal and Azad could not be arrested by the police during investigation of the case, they were declared proclaimed offenders. Subsequently, when accused Jug Lal and Azad were arrested, a supplementary challan was prepared and filed against them in the Court.

7. On presentation of challan in the Court of learned Sub Divisional Judicial Magistrate, Safidon, he supplied copies of documents relied upon therein to the accused free of costs as provided under Section 207 Cr.P.C. Then finding that the offences under Sections 399/402 IPC are exclusively triable by the Court of Sessions, learned Sub Divisional Judicial Magistrate, Safidon committed the case to the Court of learned Sessions Judge, Jind from where it was entrusted to the Court of learned Additional Sessions Judge, Jind.

8. On receipt of case in the Court, learned Additional Sessions Judge, Jind, observing that prima facie charge for offences under Sections 399/402 IPC was disclosed against all the accused and an offence under Section 25 of Arms Act was disclosed against accused Virender; they were charge-sheeted accordingly, to which, they pleaded not guilty and claimed trial.

9. During the course of its evidence, the prosecution examined PW1 SI Mahabir Singh, PW2 HC Dharambir, Armourer, PW3 HC Gopal Ram, PW4 Vinod Kumat, Patwari, PW5 Ram Niwas, PW6 Ms.Rupa Chauhan, Addl. Ahlmad to SDJM, Safidon, PW7 HC Ramesh Chahal, PW8 ASI Birbhan and PW9 HC Karan Singh.

10. With that the prosecution evidence got concluded.

11. Statements of the accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing in prosecution evidence were put to them but they denied the allegations contending that they were innocent and had been falsely involved in this case.

12. Accused did not lead any evidence in defence.

13. After hearing arguments, learned trial Court convicted and sentenced the accused as mentioned above, which left them aggrieved and they have filed the present appeal.

14. I have heard learned counsel for the appellant – accused - convict, learned Addl. Advocate General for the State of Haryana besides going through the record.

15. In this case the appellants/accused, namely, Virender, Ramesh and Satbir had been convicted for the offences under Section 399 and 402 IPC and in addition to that accused Virender had been convicted for the offence under Section 25 of the Arms Act also.

For ready reference, these provisions are reproduced as under:

Section 399 of The Indian Penal Code

399. Making preparation to commit dacoity.—Whoever makes, any preparation for committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Section 402 of The Indian Penal Code

402. Assembling for purpose of committing dacoity.—Whoever, at any time after the passing of this Act, shall be one of five or more persons assembled for the purpose of committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Section 25 of the Arms Act

25. Punishment for certain offences

[\(1\)](#) Whoever—

[\(a\)](#) manufactures, sells, transfers, converts, repairs, tests or proves, or exposes or offers for sale or transfer, or has in his possession for sale, transfer, conversion, repair, test or proof, any arms or ammunition in contravention of section 5; or

[\(b\)](#) shortens the barrel of a firearm or converts an imitation firearm into a firearm in contravention of section 6; or ²¹ [***]

[\(d\)](#) bring into, or takes out of, India, any arms or ammunition of any class or description in contravention of section 11, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

16. A close perusal of the provisions under Section 399/402 ICP goes to show that these offences are not made out against the appellants/accused.

Section 399 IPC deals with making preparation to commit

dacoity, whereas Section 402 IPC deals with assembling for purpose of committing dacoity.

Section 391 IPC deals with offence of dacoity providing that when five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit “dacoity”.

17. A perusal of this provision goes to show that to constitute an offence of dacoity presence of five or more persons is required.

18. Here from the record, the presence of five persons is not established. The trial Court vide the impugned judgment had acquitted two of the accused, namely, Azad and Jug Lal alias Jugla stating that their presence at the spot along with their co-accused was not established. If it was not so, then according to the prosecution case, the presence of only three persons, namely, Virender alias Kala, Ramesh Kumar and Satbir Singh, present appellants come out to be there but three persons having assembled do not constitute offence under Sections 399 and 402 IPC. The trial Court by misappraisal of evidence and wrong interpretation of law has erroneously concluded that such offences are established against the appellants/accused propounding a hypothesis that two more persons were there whose identity could not be known. In that way, the trial Court has tried to substitute the accused Azad and Jug Lal alias Jugla with two unknown persons, which is totally contrary to the prosecution case and the same is not permissible under the law. The conviction and sentence of appellants for the offences under Section 399

and 402 IPC is not sustainable. Even otherwise, only accused Virender alias Kala had been apprehended by the police party at the spot. Ramesh Kumar and Satbir Singh had not been nabbed by the police at the spot. Although according to the prosecution story on being inquired, Virender alias Kala had told the names of his companions as Satbir Singh, Jug Lal alias Jugla, Azad and Ramesh Kumar but then much reliance cannot be placed upon that statement so as to slap criminal liability upon Ramesh Kumar and Satbir Singh. Two of the persons equally placed i.e. Azad and Jug Lal alias Jugla have since been granted acquittal by the trial Court. Such benefit could not have been denied to Ramesh Kumar and Satbir Singh especially when it is not the case of the prosecution that they were earlier acquainted with the Investigating Officer or any other member of the police party, who had recognized them while they were running away. No test identification parade had been arranged so as to get them identified from the eye-witnesses. Satbir Singh and Ramesh Kumar were arrested in this case on 27.1.2006, whereas the incident is dated 24.1.2006.

19. That leaves us with appellant Virender alias Kala, who had been arrested by the police party and found in possession of country-made pistol Ex.P1 and live cartridge Ex.P2. The conviction of Virender alias Kala for offence under Section 25 of the Arms Act is however justified since recovery of .315 bore pistol and a live cartridge stands adequately proved from the statement of PW7 HC Ramesh Chahal and PW8 ASI Birbhan. From the statement of PW2 HC Dharambir, it comes out that the recovered pistol was found to be in working condition and the cartridge to be live one. The sanction for prosecution of Virender

alias Kala has also been duly proved on record. Therefore, the necessary ingredients of offence under Section 25 of the Arms Act against accused Virender alias Kala for keeping in his possession country-made pistol of .315 bore along with live cartridge without any licence or permit is adequately established.

20. Therefore, the present appeal is partly allowed inasmuch as all the appellants/accused are acquitted of the charge for the offences under Section 399 and 402 IPC. Whereas the conviction and sentence of accused Virender alias Kala for the offence under Section 25 of the Arms Act is upheld. Appellant Virender alias Kala was sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.2,000/- and in default of payment of fine to undergo further rigorous imprisonment for a period of one month. As per his custody certificate, he has already undergone imprisonment of 2 years and 24 days. As such no useful purpose is going to be served by putting him behind bars for a period of 6-7 days more. As such , the period of imprisonment in default of payment of fine is reduced to 24 days. The sentence order is modified accordingly.

Since the main appeal stands partly allowed, the miscellaneous application, if any, stands disposed of accordingly.

Necessary intimation be sent to the quarter concerned.

13.9.2022
Brij

(H.S.MADAAN)
JUDGE

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