

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

1. **CRA-S-2104-SB-2007**
Reserved on:06.12.2022
Date of Decision : 23.12.2022
- Abhinav @ Sunny ...Appellant
Vs.
State of Haryana ...Respondent
2. **CRA-S-2178-SB-2007**
- Rohit ...Appellant
Vs.
State of Haryana ...Respondent
3. **CRA-S-23-SB-2009**
- Hari Parkash @ Ballu ...Appellant
Vs.
State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Abhishek Sharma, Advocate
for the appellant in CRA-S-2178-SB-2007.

Mr. Vipin Pal Yadav, Advocate as Amicus Curiae
for the appellant in CRA-S-2104-SB-2007.

Mr. P.R. Yadav, Advocate
for the appellant in CRA-S-23-SB-2009.

Ms. Sheenu Sura, DAG, Haryana.

N.S.SHEKHAWAT, J

This judgment shall dispose of the above mentioned three appeals, as the same involve the common facts and question of law and also arise out of the same FIR, i.e., FIR No. 27 dated 14.02.2006 under Sections 307, 392, 332, 353, 186, 223, 148 and 149 IPC, Police

Station Model Town, Rewari. The appellants in these three appeals are aggrieved of the judgment of conviction and order of sentence dated 06.10.2007, whereby, the appellants had been convicted for the offence punishable under Sections 186, 332, 353, 392, 148 and 223 read with Section 149 of IPC and were sentenced to undergo rigorous imprisonment for a period of three months under Section 186 IPC, three years under Section 332 IPC, two years under Section 353 IPC, two years under Section 148 IPC and two years under Section 223 IPC. They were further sentenced to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs. 1,000/- each under Section 392 IPC read with Section 149 IPC and in default of payment of fine, to undergo simple imprisonment for a period of another one month. The sentences were ordered to run concurrently.

The brief facts of the prosecution are that the VT message was received in the control room in Police Station City Rewari that the six accused, who were in custody of the police had fled away near Rajesh Pilot Chowk. On getting this information, the Station House Officer along with other police officials reached at Rajesh Pilot Chowk and Constable Digambar appeared before him and lodged a formal complaint with him. He stated that he was posted in Escort Guard, Rewari. On that day, he along with EHC Subhash Chand, LHC Kaulshya Devi was going on a Government vehicle bearing registration No. HR-47-9423 driven by EHC Mahender Parkash and were taking the 14 accused, out of which,

one was a lady accused. In the morning, they had started from Gurugram jail as the accused were to be produced before different Courts at Rewari. After producing them before different Courts, at about 5 O' clock in the evening, they had started back in the same vehicle to drop them at Gurugram jail. The complainant and EC Subhash Chand were sitting on the back side of the vehicle. Lady Head Constable Kaushalaya Devi along with a lady accused was sitting near the driver seat. When the vehicle crossed Rajesh Pilot Chowk and was proceeding towards Rao Abhey Singh Chowk at about 05:15 p.m., and had just crossed half a kilometer, the accused started fighting in the vehicle and started beating each other and raised noise. The complainant asked the driver to stop the vehicle and after opening the door of the vehicle, the complainant, EHC Subhash Chand and Mahender Parkash tried to make them understand and in the meanwhile accused Jeeta @ Jeeta Ram who was in the shackles, had removed the same and gave a blow with rod to him with an intention to kill him. He gave two blows on the head of the complainant. In the meantime, Neetu Sharma, Hari Parkash @ Ballu, Abhinav @ Sunny, Rohit, Mahabir and Satish pushed EHC Subhash Chand away and fled from the vehicle. Mahender Parkash who was driving the vehicle immediately made a telephonic call to the control room. The complainant along with Subhash chased Jeeta @ Jeeta Ram, Hari Parkash etc. The accused snatched away a Hero Honda motor-cycle bearing registration No.HR-36-D-5739 and

accused Rohit and Satish fled away in different directions. The complainant further stated that all the accused gave injuries on his person with an intention to kill him and they have fled away after snatching the motorcycle of a passer-by. After recording the complaint, a *ruqa* was sent to the police station, where the formal FIR was registered and the investigation commenced against the accused.

Accused Jeet Ram @ Jeeta, Hari Parkash @ Ballu, Abhinav @ Sunny, Neetu Sharma were arrested on 14.02.2006 and the motorcycle in question was recovered from Neetu Sharma. A *danda* was recovered from Hari Parkash accused whereas empty cartridge of 9 mm was found from Jeeta@ Jeet Ram. Accused Satish was later on declared to be *proclaimed offender*.

During the course of investigation, the injured Digambar, Subhash, Parmod and Om Parkash were medico-legally examined and after the necessary investigation the report under Section-173 Cr.PC was presented in the Court of competent jurisdiction.

After hearing both the sides, the learned trial Court held that *prima facie* an offence punishable under Sections 186, 332, 353, 307, 392, 148, 223 read with Section 149 IPC is made out and the accused/appellants were accordingly charge-sheeted, to which, the accused pleaded not guilty and claimed trial.

During the course of trial, 11 witnesses were examined by the prosecution to support the charge.

The prosecution examined PW1 Constable Digambar Kumar, who had supported the case of the prosecution in totality. Only on one issue, i.e., the vehicle used in running away from the spot, the witness was declared hostile and was cross-examined. However, he had given complete account of the occurrence and supported the allegations levelled by him in the FIR. He admitted that the statement Ex.PA was bearing his signatures, which was the basis of the FIR in the instant case. LHC Kaushlaya was examined as PW2, who was also travelling in the same vehicle alongwith other escort guard staff, who had brought 14 prisoners from Gurugram Jail. The said witness again supported the case of the prosecution and clearly explained the manner, in which, six accused had escaped from the police vehicle. Still further, PW3 ASI Kailash Chand was associated by the police during the investigation and was a witness to the recovery of various incriminating evidence. PW4 Constable Parmod Singh also had reached the spot after the police got the information regarding the escape of prisoners from prison van. He stated that while the accused were being apprehended, Neetu and Hari Parkash gave him *danda* blows and he received injuries on his left hand palm, chin, chest and on his back. He clearly stated that accused also tried to run away and escape from the police picket and they fell in the ditch nearby the road and they also received injuries

by falling. Prosecution further examined PW5 Constable Satish Kumar, who had also tried to search the accused and at the time of arresting the accused, Hari Pal accused gave a *danda* blow on his right thigh and gave him a kick blow on his back. Constable Om Parkash also received injuries at the hands of the accused as per the said witness. PW6 Constable Om Parkash also reached at the spot and helped the police in apprehending the accused. Neetu, accused gave a *danda* blow on his left thigh and gave another *danda* blow on his back. He further stated that Hari Parkash also caused injuries to constable Satish. EHC Subhash Chand, who was travelled in the police vehicle was examined as PW7. He was the eye witness to the entire occurrence. He stated that the accused also gave him a thrash and after that all the six accused succeeded in escaping from the prison van. The accused fled from the prison van after causing them injuries. He had fully supported the case of the prosecution. Randhir Singh SI/SHO was examined as PW8, who had gone at the spot on getting a V.T., message from the police control room that accused Jeeta @ Jeet Ram and five other accused had escaped from the custody from a prison van near Rajesh Pilot Chowk. On getting the information, he reached there and also with the help of other police officials chased the accused and nabbed them. He had mentioned in detail the manner, in which, the investigation was conducted by the police. Sheoraj Singh retired Inspector was examined as PW9. He had also reached at the spot and recorded the statement of constable

Digambar. He had seen the accused Rohit running from the place and also investigated the case partly. He also completed the investigation and other formalities and challan was filed in the Court. HC Jagdish Chander was examined as PW10 who had recorded the formal FIR Ex.PW10/A and the endorsement was recorded as Ex.PW10/B. Dr. Suresh Chauhan, Medical Officer, General Hospital, Rewari was examined as PW11, who medico legally examined Subhash and found the following injuries:-

- 1. Complaining of pain right side of the back. On examination, tenderness was seen.*
- 2. 1.5 x 1 cm bruise below the left eye is in reddiness colour.*
- 3. Complaining of pain over chest towards left side.*

On the same day, he also examined Parmod and found the following injuries:-

- 1. Complaining of pain over left hand. On examination, no mark of injury was seen. He was advised x-ray.*
- 2. Complaint of pain over right mellious. On examination, tenderness was present and for the same he was advised x-ray.*

3. *Complaining of pain over chest. On examination, no mark of injury was found and for the same he was advised x-ray.*

He also examined Om Parkash and found the following injuries.

1. *4 x 2 cm. on right thigh which is reddish in colour.*
2. *Complaining of pain over back. On examination, no mark of injury was seen.*

On the same day, he also examined Satish and found the following injuries

1. *Complaining of pain over the above right knee. On examination, no mark of injury was found. Patient was advised for x-ray.*
2. *Compliant of pain over back. On examination, no mark of injury was seen. He was advised for x-ray of the same injury.*

After the prosecution evidence was closed, the entire incriminating material was put to the accused in the shape of the statement under Section 313 Cr.P.C., and all the accused pleaded false implication in the instant case.

Even, the appellants in the instant case opted not to lead any defence evidence.

I have heard learned counsel for the parties and perused the trial Court record carefully.

Learned counsel for the appellants vehemently argued that the entire case is based on the testimonies of the official witnesses and the occurrence had taken place at a busy road and no independent witness was admittedly joined. Thus, the entire prosecution case is liable to be disbelieved by this Court.

On the other hand, learned State counsel submitted that in the instant case, all the six accused, who had escaped from the police custody had several cases against them and were known criminals in the area. In such an eventuality, it was impossible for a private individual to come forward and to depose against them.

I have heard learned counsel for the parties and find no substance in the arguments raised by the learned counsel for the appellants. The testimonies of the official witnesses have to be scrutinized carefully and with circumspection but cannot be brushed aside only on the ground of their official status. In the instant case, the testimonies of PW1 Digambar Kumar had been duly corroborated by PW2 L/C Kaushlya and EHC Subhash Chand PW7, who were travelling in the prison van and had clearly explained the manner, in which, the offence was committed. All the three witnesses had no reason to depose against the present appellants and no such suggestion had even put to them. Even otherwise, all the witnesses were subjected to detailed cross-examination and their testimonies

could not be shaken in any manner. The learned trial Court has recorded good and valid reasons for believing the testimonies of such official witnesses and the findings in this regard are upheld.

The learned counsel for the appellants further submitted that the entire prosecution version was highly improbable and unbelievable. In fact, the police, in relation with certain persons had coined a false story and it has been shown that the accused were arrested immediately after their escape. In fact, this Court finds no substance in the said argument as the police acted swiftly after the accused escaped from the police custody and after causing injuries to them. The accused were again re-arrested and were prosecuted. Still further, even four police officials had injuries on their person and the said injuries could not be self inflicted. Thus, the argument raised by the learned counsel for the appellants is devoid of any merit.

Further, the testimonies of all the official witnesses have been duly corroborated by PW11 Dr. Suresh Chauhan, who medico-legally examined all the four injured and found injuries on the person of four police officials. The allegations levelled by the complainant PW1 Constable Digambar Kumar were also found to be correct during the course of the investigation and were rightly believed by the learned trial Court. Even, the detailed finding have been recorded by the learned trial Court in this regard and the impugned judgment is liable to be upheld. The impugned judgment and order passed by the learned trial Court suffer no illegality or

perversity and did not warrant any interference by this Court and the same are accordingly ordered to be upheld.

As a consequence, all the above mentioned three appeals are ordered to be dismissed.

The accused are ordered to be taken into custody forthwith, if not on bail, to serve their remaining sentence of imprisonment.

All pending applications, if any, are disposed off, accordingly.

The case property, if any, may be dealt with as per the rules after expiry of period of limitation for filing the appeal.

Records of the Court below be sent back.

In the end, I record my appreciation for Mr. Vipin Pal Yadav, learned Amicus Curiae, who had rendered able assistance to this Court.

23.12.2022
amit rana

(N.S.SHEKHAWAT)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No