

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

CRA-S-2452-SB of 2009
DATE OF DECISION :- July 06, 2022

Pankaj and another

...Appellants

Versus

State of Haryana

...Respondent

CRA-S-2-SB of 2010

Bhuria @ Rajesh Kumar and another

...Appellants

Versus

State of Haryana

...Respondent

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

Present:- Mr. Atul Prataap Dhankar, Advocate
for Mr. Brijender Dhankar, Advocate for the appellants
in CRA-S-2452-SB of 2009.

Mr. Ravi Malik, Advocate
for appellant No. 2 in CRA-S-2-SB of 2010.

Mr. S.S. Pannu, DAG, Haryana.

My this order shall dispose of two Criminal Appeals bearing
CRA-S-2452-SB of 2009 filed by Pankaj son of Shri Raj Singh, resident of
House No. 314/44, Panjabi Chowk, Narwana, District Jind and Jagroop son of
Shri Amar Singh, resident of village Palawa, Police station Uchana, District
Jind and CRA-S-2-SB of 2010 filed by Bhuria @ Rajesh Kumar son of Shri
Sher Singh, resident of village Dudheri, Police Station Sadar Kaithal, District
Kaithal and Sanjay @ Kala son of Hoshiar Singh, resident of Railway Colony,
Narwana, District Jind, all of them being accused in F.I.R. No. 156 dated
5.7.2007 under Sections 399 and 402 IPC read with Section 25 of the Arms

Act registered with Police Station Kurukshetra University, Kurukshetra.

Briefly stated the facts of the case as per prosecution story are that on 5.7.2007 at about 10.15 P.M in the area of village Mirjapur within jurisdiction of Police Station Kurukshetra University, Kurukshetra, accused Pankaj, Bhuria @ Rajesh Kumar, Jagroop, Sanjay alias Kala and Sandeep alias Bachi (since declared juvenile and sent to Juvenile Justice Board for facing trial) were making preparations for committing dacoity in a Kothi situated near Gurukul, Kurukshetra and a police party led by Sh. Desh Raj in pursuance of secret information had gone there, overheard all such accused making preparations in that regard and then apprehended them. Accused Pankaj was found in possession of .315 bore pistol along with a live cartridge of same bore. Bhuria @ Rajesh Kumar was found in possession of an iron pipe. Sanjay alias Kala having an iron rod, Jagroop having a danda whereas Sandeep alias Bachi was empty handed. All the accused were arrested and weapons carried by them were taken into police possession. Ruqa was sent to police station for registration of F.I.R. Site plan of place of incident was prepared. Further investigation in the case was carried out. On completion of investigation challan against all the four accused namely Pankaj, Bhuria @ Rajesh Kumar, Jagroop and Sanjay alias Kala was filed in the Court whereas Sandeep alias Bachi found to be juvenile was forwarded to Juvenile Justice Board for trial.

After presentation of challan in the Court of JMIC, Kurukshetra he supplied the copies of documents relied upon in the challan to the accused free of costs and finding that offences were triable by the Court of Sessions committed the case to the Court of learned Sessions Judge, Kurukshetra who in turn assigned it to Additional Sessions Judge, Kurukshetra.

After receipt of the case by way of assignment, learned Additional Sessions Judge, Kurukshetra framed formal charge for offences under Sections

399 and 402 of the Indian Penal Code against all the four accused and in addition charge for an offence under Section 25 of the Arms Act was framed against accused Pankaj. The accused pleaded not guilty to the charge and claimed trial.

During the course of its evidence the prosecution examined ASI Bhopal Singh as PW1, Constable Malkiyat Singh as PW2, HC Hans Raj as PW3, HC Mukesh Kumar as PW4, Inspector Aman Kumar as PW5, Constable Baldev Singh as PW6, Shri Jai Parkash as PW7, ASI Jagdish Chander as PW8 and Inspector Des Raj as PW9.

PW1 ASI Bhopal Singh deposed that on 5.7.2007 while posted at Police Station Kurukshetra University, Kurukshetra on receipt of Ruqa Ex.P1, he had recorded formal F.I.R Ex.P2 making endorsement Ex.P3 on the Ruqa and then sent special report to Ilaqa Magistrate, S.P. And DSPO (HQ), Kurukshetra.

PW2 Constable Malkiyat Singh who had delivered the special reports handed over to him by ASI Bhopal Singh to learned Ilaqa Magistrate and S.P. And DSPO (HQ), Kurukshetra deposed in that regard.

PW3 HC Hans Raj testified that on 13.7.2007 while posted as Armourer at Police lines, Kurukshetra he had tested country made pistol, which was in a sealed envelope handed over to him by SI Desh Raj. He had opened the envelope and after checking he found the country made pistol contained therein to be fit to fire. Thereafter, submitted his report Ex.P4.

PW4 HC Mukesh Kumar stated that he had prepared scaled site plan of place of occurrence Ex. P6 on 14.7.2007.

PW5 Inspector Aman Kumar then posted as SHO Police Station, Kurukshetra University, Kurukshetra deposed that on 26.7.2007 while posted as such, on completion of investigation he had prepared challan in this case

which was filed in the Court.

PW6 constable Baldev Singh deposed that on 6.7.2007 he was member of a police party headed by SI Desh Raj of CIA staff, Kurukshetra. SI Desh Raj had interrogated accused Pankaj, Bhuria @ Rajesh Kumar, Sandeep alias Bachi who had suffered disclosure statements with regard to having committed thefts along with their co-accused and concealment of stolen property which was within their exclusive possession.

PW7 Jai Parkash, Reader to District Magistrate, Kurukshetra proved the sanction accorded by District Magistrate, Kurukshetra for prosecution of accused Pankaj alias Montu for offence under Section 25 of the Arms Act as Ex.P12.

PW9 ASI Jagdish Chander, who was member of the raiding party headed by then SI Desh Raj and SI Desh Raj, promoted as Inspector, fully supported the prosecution story with regard to the accused having assembled to make preparations for committing dacoity and being found in possession of weapons and further they being involved in several other cases of robberies.

During the course of prosecution evidence, it relied upon several documents also.

Statements of accused were recorded under Section 313 Cr.P.C in which all the incriminating evidence was put to them but they denied the allegations contending that they were innocent and had not committed any offence; no weapon had been recovered from them and false recovery has been planted upon them by the police.

The accused did not lead any evidence in defence.

After hearing arguments and going through the record, learned Additional Sessions Judge came to the conclusion that prosecution has successfully proved its charge against the accused and convicted all the four

accused for offences under Sections 399 and 402 IPC and in addition accused Pankaj was convicted for offence under Section 25 of the Arms Act vide judgment dated 18.8.2009. The case was adjourned for hearing the accused on the point of quantum of sentence and in terms of order dated 3.9.2009 all four accused namely Pankaj, Bhuria @ Rajesh Kumar, Jagroop and Sanjay alias Kala were sentenced as follows :-

<i>Section</i>	<i>Sentence</i>
399 IPC	to undergo rigorous imprisonment for 7 years and to pay fine of Rs.10,000/- and in default of payment of fine to undergo simple imprisonment for 1 year
402 IPC	to undergo rigorous imprisonment for 5 years and to pay fine of Rs.10,000/- and in default of payment of fine to undergo further simple imprisonment for 1 year

Accused Pankaj alias Montu was sentenced to undergo 3 years rigorous imprisonment under Section 25 of the Arms Act and to pay fine of Rs.5,000/- and in default of payment of fine to further undergo simple imprisonment for six months.

All the sentences were ordered to run concurrently.

Feeling aggrieved by the judgment of their conviction and order of sentence, the four accused convicts have preferred appeals before this Court. The appeals were admitted for regular hearing and on applications having been filed by the appellants/accused for suspension of their sentence of imprisonment during the pendency of the appeal, the remaining sentence of appellants was suspended during the pendency of the appeals.

Now the appeals have come up for final hearing.

I have heard learned counsel for the appellants and learned State counsel besides going through the record.

At the very outset, learned counsel appearing on behalf of appellant Sanjay alias Kala alias Langda has stated that he has already completed the sentence and has been released from custody on 16.3.2017. This fact is fortified by the custody certificate placed on record today by the State counsel. Therefore, the appeal qua Sanjay alias Kala alias Langda is taken to have become infructuous.

With regard to the remaining appellants accused learned counsel representing them have stated that they do not challenge the judgment on the point of conviction but they pray for grant of a lenient view as regards the sentence. It is contended that appellant accused Pankaj was aged about 22 years, Bhuria @ Rajesh Kumar was aged about 38 years whereas Jagroop was aged about 24 years at the time of conviction and they have undergone substantial period of imprisonment before being granted concession of suspension of sentence and released on bail; they are poor persons; they be given liberty to reform themselves and lead peaceful life along with their families.

A perusal of the custody certificate placed on record by the State counsel goes to show that Pankaj has undergone 2 years 2 months and 23 days of imprisonment. He is not shown to be involved in any other criminal case whereas Bhuria @ Rajesh Kumar has undergone 5 years 6 months and 15 days and Jagroop has undergone 5 years 11 months and 20 days.

It is to be taken note of that the incident in this case has taken place on 5.7.2007 i.e. about 15 years back. The accused convicts have already undergone the substantial part of sentence. They want to spend rest of their life by remaining on right side of law and not taking part in any criminal activity.

Therefore, in my considered view ends of justice can be adequately met if accused convicts appellants are sentenced to imprisonment already

undergone by them in this case. Therefore, the judgment of conviction is upheld against the appellants whereas order of sentence qua Pankaj, Bhuria @ Rajesh Kumar and Jagroop is modified and they are sentenced to imprisonment already undergone by them in this case, whereas, the fine part is kept as intact. The appellant/accused are directed to deposit the amount of fine in the Court of Chief Judicial Magistrate, Kurukshetra within one month from today, failing which Chief Judicial Magistrate, Kurukshetra shall issue warrants of arrest against the appellants accused to make them undergo imprisonment in default of payment of fine as awarded by the trial Court.

As such the appeals are disposed of accordingly.

Necessary intimation be sent to Chief Judicial Magistrate, Kurukshetra for necessary compliance.

(H.S. MADAAN)
JUDGE

July 06, 2022
p.singh

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