

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

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**1. CRA-S-790-SB-2005
Reserved on 18.11.2022
Date of Decision:30.11.2022**

Mohan Singh and another	Versus	...Appellants
State of Punjab		... Respondent

2. CRA-S-1418-SB-2006

Kuldeep Singh	Versus	...Appellant
The State of Punjab		... Respondent

3. CRA-S-1723-SB-2005

Boota Singh	Versus	...Appellant
State of Punjab		... Respondent

4. CRA-S-1945-SB-2009

Baljit Singh	Versus	...Appellant
State of Punjab		... Respondent

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

Present : Mr. Ankur Mittal and Mr. Arnav Sood, Advocates
as Amicus Curiae for the appellants.

Mr. Vipin Pal Yadav, Addl. A.G. Punjab.

N.S.SHEKHAWAT, J.

By way of this judgment, I shall dispose of four appeals,
i.e., CRA-S-790-SB of 2005 titled as 'Mohan Singh and another Vs.
State of Punjab', CRA-S-1418-SB of 2006 titled as 'Kuldeep Singh

Vs. The State of Punjab', CRA-S-1945-SB of 2009 titled as 'Baljit Singh Vs. State of Punjab' and CRA-S-1723-SB of 2005 titled as 'Boota Singh Vs. State of Punjab', which have been preferred by the appellants against the common judgment of conviction dated 06.04.2005 and order of conviction dated 07.04.2005, passed by the learned Additional Sessions Judge, Moga, whereby, the appellant/accused in the aforesaid appeals have been convicted for the offences under Sections 399 and 402 IPC and were sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs. 5000/- and rigorous imprisonment for four years and to pay a fine of Rs. 3000/-, alongwith default stipulation, respectively. All these appeals arise out of the FIR No. 72 dated 15.04.2002 under Sections 399/402 IPC, Police Station Baghapurana, which was registered on the basis of statement made by SI Jugraj Singh, SHO, Police Station, Smalsar. As per the complainant on 15.04.2002, he alongwith SI Sucha Singh, ASI Surjit Singh No. 1246/FDK, ASI Surjit Singh 1066/FDK, HC Gurcharan Singh No. 80, HC Kishan Kumar No. 683 and HC Amrik Singh 272 and other police officials under instructions of the Senior Superintendent of Police, Moga, was present at G.T. Road, Moga to Kotkapura near Gaushala Smalsar on a private gypsy which was being driven by C. Jasbir Singh No. 335 and private vehicle, where Inspector Ram Parkash S.H.O. P.S. City Moga alongwith ASI Jaswant Singh, ASI Manjit Singh, C. Ranbir Singh h836, CI Swaran Singh 168, HC Bhupinder Singh 844, SPO

Jaswinder Singh 17/LO met them on government vehicle bearing No. PB-05-3090 which was being driven by C. Harjinder Singh 815, on that moment a secret informer came and informed that Jagshir Singh son of Gurdev Singh Mazbi Sikh resident of Madir Nawan, Baljit Singh son of Sadhu Singh caste Goldsmith resident of Bhai Rupa and Kuldip Singh son of Chhinda Singh Mazbi resident of Dharam Singh Wala and Buta Singh son of Amar Singh Mistri, Chamkaur Singh son of Surjit Singh, Mohan Singh @ Mohni son of Gurcharan Singh resident of Saido Ke were committing dacoities and on that day also they were armed with deadly weapons and were making preparations to commit a dacoity near Rade College behind the water-works in front of the hospital. He further informed that in case a raid is conducted, they can be apprehended alongwith the arms and other weapons. Since, the information was found to be reliable and it constituted an offence under Sections 399/402 IPC, consequently, *ruka* was sent through Constable Jagsher No. 918 to the police station for registration of the case. A further prayer was made by the complainant to inform him about the FIR number and inform the control room and higher police officials as well. Accordingly, a raid was conducted and behind the hospital, six persons started running in different directions on seeing the police party. Inspector Ram Parkash apprehended accused Jagsir Singh with the help of his co-officials of his sub-party. A revolver of 32 bore alongwith three live cartridges of 32 bore were recovered from him. ASI Surjit Singh 1246/FDK

apprehended accused Boota Singh with the help of his co-officials of his sub-party. From him a country made pistol of 12 bore in working condition alongwith two live cartridges of 12 bore were recovered. ASI Surjit Singh 1066/FDK with the help of his co-officials of his sub-party apprehended accused Chamkaur Singh. A revolver of 32 bore alongwith five live cartridges was recovered from him. ASI Jaswant Singh apprehended accused Kuldeep Singh with the help of his co-officials of his sub-party. A country made pistol of 12 bore and two live cartridges of 12 bore were recovered from him. ASI Manjit Singh with the help of his co-officials of his sub-party apprehended accused Baljeet Singh. From his possession a sword and two live cartridges of 12 bore description were recovered. All such police officers heading respective sub-parties prepared their respective rukas and sent the same to police station whereon respective FIRs were lodged and Jugraj Singh and police officials of his sub-party ran after a fleeing accused. He was Mohan Singh alias Mohini. SI Jugraj Singh was already knowing him. He succeeded to evade from arrest.

The police officers, after arrest of the accused had taken them to SI Jugraj Singh and they were interrogated in the presence of other police officials. After completing the necessary legal formalities and finding sufficient evidence against the accused, they were ordered to be arrested in the present case. A rough site plan of the place of occurrence was prepared and the statements of the witnesses were recorded separately. Later on, accused Mohan Singh @ Mohini

obtained anticipatory bail and he was also joined in the investigation and after completion of the investigation, the final report under Section 173 Cr.P.C., was prepared against the accused.

After presentation of challan, the case was committed by the learned Ilaqua Magistrate to the Sessions Court as the case was triable exclusively by the Sessions Court. The charge under Sections 399/402 IPC was ordered to be framed against in these appeals against the four appellants/accused and they pleaded not guilty and claimed trial.

To prove the charge, the prosecution examined seven witnesses and the learned public prosecutor closed the prosecution evidence.

The prosecution examined ASI Surjit Singh as PW1, who was part of the raiding team. He alongwith other police officials, raided the accused on getting the secret information and the recovery of weapons were made as per the averments made in the FIR by the complainant. He supported the case of the prosecution in detail. In his cross-examination, he admitted that many persons were present in Gaushala to serve the cattle, but SI Jugraj Singh did not try to join any of them before conducting the raid. Even they did not call anyone from the school, hospital and water-works before conducting the raid. The raid was conducted in the private gypsy owned by ASI Jugraj Singh. Still further, he did not prepare any parcel of the arms and ammunition recovered from the accused Boota Singh. The other

police officials also did not prepare the parcels of arms and ammunition recovered from the accused and it took about four hours to complete the proceedings at the place of recovery. The prosecution further examined SI Jugraj Singh as PW2 who also supported the case of the prosecution with regard to the receipt of secret information, raid and the recoveries made from the accused. He also admitted in his cross-examination that the main road leads to Moga to Kotakpura and is always frequented by number of people day and night. Many people met them on their way and the place of the occurrence but they did not stop anyone to join the police party while going towards the place of occurrence. He further admitted that they did not call anyone from any institute near the place of recovery. He further admitted that there was no specific mark or identification marks on the cartridges and he did not sent these cartridges for the ballistic expert report. Still further, the prosecution examined ASI Manjit Singh as PW3, who was also joined by the police at the time of the raid. He also admitted that there were 20/25 shops at the bus stand of Smalsar, however, none of the shop keepers were joined by the police party, while conducting raid. Further, the prosecution examined PW4 Gursewak Singh, Drafts Man, who had prepared the site plan of the place of the occurrence as Ex.P7. Still further, SI Balbir Singh was examined as PW5, who had lodged the FIR Ex.P3 and he proved the same before the Court. PW6 ASI Jaswant Singh was examined to show that he was part of the raiding team. The said witness stated that

the accused were planing to commit dacoity. However, in cross-examination, he stated that he was not having prior acquaintance with the accused. He did not know as to what proceedings were conducted by SI Jugraj Singh against the accused. Still further, the prosecution examined PW7 HC Gurnaib Singh, who was also part of the police team. He admitted in his cross-examination that he did not know if there was any specific mark of identification on the cartridges. Even with regard to *kirpan* he stated that such like *kirpans* were easily available in the market and there was no need to have a licence for retaining such type of *kirpans*. After examining seven witnesses, the prosecution evidence was closed.

The evidence was put to the accused and they pleaded their false implication. Even they stated that they had been brought from their homes and after making them to sit in the police station for many days they were involved falsely in a case. Even in the case under Arms Act a false confessional statement was recorded by the police.

In defence, the learned defence counsel had examined DW1 Sarwan Singh and also produced Ex.D1 a certified copy of the application of Chamkaur Singh dated 09.04.2002 addressed to the learned Sessions Judge, Moga and Ex.D2 copy of another application addressed to the Hon'ble Chief Justice of Punjab and Haryana High Court Chandigarh dated 09.04.2002.

Learned counsel for the appellants submitted that a false case has been planted on the appellants after taking them from their respective homes. Even there was no evidence to show that the accused had ever assembled or prepared to commit dacoity and there was no evidence to that effect. Learned counsel further submitted that even if it is admitted for the sake of arguments that the accused had assembled with deadly weapons it cannot be inferred that they had assembled for the purpose of committing dacoity and no offence under Sections 399/402 IPC is made out against the accused/appellants. Still further, the pistols and cartridges were not converted into sealed parcels, which were mandatory and the possibility of tampering with the weapons of offence cannot be ruled out. Still further, the recovery of the alleged weapons was made on 15.04.2002, whereas the same were sent to range armourer on 11.06.2002 and there is unexplained delay in sending the weapons for the required test. Still further, even as per the test report Ex.PA, no fire shot was fired from the recovered weapon to test as to whether the same was in working condition or not.

Learned counsel for the State has vehemently opposed the submissions raised by the learned counsel for the appellants. The learned State counsel stated that the testimonies of PW1 to PW7 cannot be brushed aside only on the ground that they were the official witnesses rather from the testimonies of PW1 to PW7, it is evident that all the accused were armed with deadly weapons and on seeing

the police party, they ran away in different directions. This clearly establishes that all the accused had assembled there to commit the offence of dacoity. The said submission finds corroboration from the fact that all the accused were found to be armed with deadly weapons, which were recovered from them by following due process of law. Even the appellants had criminal past, which also proves on record that they were making preparations to commit dacoity and had assembled for the said purpose.

I have heard learned counsel for the parties and with their able assistance, I have gone through the record of the trial Court.

First of all, this Court has to examine as to whether the accused were allegedly making preparations to commit dacoity and had assembled for the purpose of committing dacoity, while they were sitting at a place duly armed with firearms and various other weapons. Sections 399 and 402 of the Indian Penal Code clearly provides that making preparations for the commission of dacoity and assembling for the purpose of dacoity are punishable offences. Consequently, the prosecution is bound to prove, from some evidence directly or indirectly or from the attending circumstances that the accused persons had assembled for no other purpose but to make preparations and assembling for the commission of dacoity. If the evidence led by the prosecution falls short of it, the case is bound to fail. Though word **“preparation”** has not been defined in the Indian Penal Code, the prosecution is obligated to lead some evidence to show such a

conduct, which is sufficient to prove the factum of “**preparation**” by the assembly and that the accused persons had conceived any such designs for committing dacoity and in fact, intended to achieve some object, for which, they had assembled. Therefore, mere fact that some were found sitting at a lonely place at mid night and certain firearms and weapons were recovered from their possession would not be sufficient to prove the charge that they had assembled for making preparation for commission of dacoity. The evidence must be such, which may plainly manifest the main charge to satisfy the conscience of the Court that the members of the assembly did such act, or acts, which may lead to irresistible presumption, that they had assembled for the purpose of committing dacoity and were making preparation for the same, but in absence of any such evidence, mere assemblage and recovery of firearms do not prove the charge.

In the instant case, as per the witnesses produced by the prosecution, the raid was conducted by the authorized police party at the place of occurrence. It has been shown that on seeing the police party, the accused started running into different directions. It has been shown that Jagshir Singh was apprehended by Inspector Ram Parkash and a revolver of 32 bore alongwith three live cartridges of 32 bore were recovered from him. Boota Singh was apprehended by ASI Surjit Singh with the help of other police officials and a country made pistol of 12 bore in working condition alongwith two live cartridges of 12 bore were recovered from him. Similarly, Chamkaur Singh was

apprehended by ASI Surjit Singh and a revolver of 32 bore alongwith five live cartridges of 32 bore were recovered from him. ASI Jaswant Singh apprehended accused Kuleep Singh and a country made pistol of 12 bore alongwith two live cartridges of 12 bore were recovered from him. Accused Baljeet Singh was apprehended by a team of police officials led by ASI Manjit Singh and a sword and two live cartridges of 12 bore were recovered from him. Even separate FIRs were registered against them on recovery of firearms/cartridges from them. However, the prosecution did not lead any evidence to show that the accused had assembled or were making preparations to commit dacoity.

In the matter of **Chaturi Yadav and others Vs. State of Bihar, 1979 AIR (Supreme Court) 1412**, the Hon'ble Supreme Court held as follows:-

“4. The Courts below have drawn the inference that the appellants were guilty under both the offences merely from the fact that they had assembled at a lonely place at 1 A.M. and could give no explanation for their presence at that odd hour of the night. Mr. Misra appearing for the appellant submitted that taking the prosecution case at its face value there is no evidence to show that the appellants had assembled for the purpose of committing a dacoity or they had made any preparation for committing the same. We are of the opinion that the contention raised by the learned counsel for the appellants is well founded and must prevail. The evidence led by the prosecution merely shows that eight

persons were found in the school premises. Some of them were armed with guns, some had cartridges and others ran away. The mere fact that these persons were found at 1 A.M. does not, by itself, prove that the appellants had assembled for the purpose of committing dacoity or for making preparations to accomplish that object. The High Court itself has, in its judgment, observed that the school was quite close to the market, hence it is difficult to believe that the appellants would assemble at such a conspicuous place with the intention of committing a dacoity and would take such a grave risk. It is true that some of the appellants who were caught hold of, by the Head Constable are alleged to have made the statement before him that they were going to commit a dacoity but this statement being clearly inadmissible has to be excluded from consideration. In this view of the matter there is no legal evidence to support the charge under Sections 399 and 402 against the appellants. The possibility that the appellants may have collected for the purpose of murdering somebody or committing some other offence cannot be safely eliminated. In these circumstances the refore, we are unable to sustain the judgment of the High Court”.

Still further, similar view has been taken by this Court in the matter of **State of Haryana Vs. Randhir Singh @ Dheera and others, 2009(3) R.C.R. (Criminal) 227;** by Hon'ble Bombay High Court in the matter of **Satish Vithoda Diwate Vs. State of Maharashtra 2008 (1) Crimes 5;** by Hon'ble Orissa High Court in the matter of **Jaganath Mundari Vs. State of Odisha 2021 Criminal**

Law Journal 4212 and by this Court in Criminal Appeal No. 1138-SB of 2021 titled as **Wazir Singh @ Wazira Vs. State of Haryana,** and connected cases.

In fact, the findings recorded by the learned trial Court in this regard are apparently unsustainable. The learned trial Court wrongly held that in case accused persons were having no *mens rea* for doing any crime, the mere presence of police could not have made them so scared that they started running in different directions. Consequently, the learned trial Court has drawn an inference that these accused persons, while armed with deadly weapons were making preparations to commit dacoity. In fact, the said observation is apparently unsustainable in view of the law laid down by this Court in the matter of **Wazir Singh @ Wazira and Chaturi Yadav's** cases (*supra*).

Even, the learned trial Court wrongly held that in this case, the accused were armed with firearms and cartridges and from the very beginning it was the preparation for committing of the offence of dacoity and had satisfied the ingredients of Section 399/402 IPC. In fact, the mere assemblage of six accused duly armed with various weapons would not prove that they had either assembled or prepared to commit dacoity. For showing the said fact, the prosecution was under an obligation to prove something more than that and no such evidence was led by the prosecution in the instant

case. Consequently, the findings recorded by the learned trial Court in this regard are legally unsustainable.

The learned trial Court completely failed to appreciate that in the instant case the prosecution examined PW1 ASI Surjit Singh, who admitted in his cross-examination that many people were present in Gaushala to serve the cattle, but SI Jugraj Singh did not try to join any of them before conducting the raid. They did not call anyone from the school, hospital and water-works before conducting the raid. Similarly, PW2 SI Jugraj Singh also admitted that the place of occurrence was always frequented by the traffic throughout day and midnight but no efforts were made to join the public witnesses. Consequently, despite the availability, no independent witness was joined by the Investigating Officer and the prosecution case becomes doubtful.

In the matter of State of Punjab v. Ram Chand 2001(1) RCR (Criminal) (DB), this Court has held as follows:-

“No independent witness was joined despite availability, at the time of effecting recovery. In these circumstances, it was held that it was imperative, in the given circumstances, to join and examine an independent witness to vouchsafe the fair investigation. On account of this reason, the accused was held entitled to be given the benefit of doubt”.

Similar view has also been taken by this Court in “State of Punjab v. Bhupinder Singh, 2001(1) RCR 356 (DB), (Criminal), 356 while observing as under:-

“No independent witness was joined, though the recovery was effected, in a busy locality. Under these circumstances, it was held by this Court that the case of the prosecution became doubtful”.

Furthermore, in Ritesh Chakarvarti v. State of Ritesh Chakarvarti v. State of Madhya Pradesh, 2006(4) RCR (Criminal) , 480 (SC), the Hon'ble Supreme Court has held as under:-

“No effort was made to join an independent witness despite availability. The names of the persons, from the public, who were present and asked to join the investigation, were not recorded in any document. Under these circumstances, it was held that the case of the prosecution was doubtful and ultimately, the accused was acquitted. The principle of law, laid down, in the aforesaid authorities, is fully applicable to the instant case. As stated above, a cloud of doubt, was cast, on the prosecution case, on account of non-joining of an independent witness, despite availability, at the time of the alleged raid. The trial Court failed to take into consideration, this aspect of the matter, as a result whereof, it fell into an error in recording conviction and awarding sentence”.

Still further, the evidence led by the prosecution clearly shows that the accused had offered no resistance, when they were apprehended by the police at the spot. Still further, no tools for **house breaking** were recovered from the accused and these factors also render the case of the prosecution to be highly unbelievable.

Still further, it is apparent from the prosecution evidence that the arms, which were recovered from the witnesses were not sealed and the parcels were not prepared. As per PW1 ASI Surjit Singh, it took about four hours to complete the proceedings at the place of recovery. This apparently shows that he was present at the place of the raid and remained associated throughout. However, he admitted in his cross-examination that he did not prepare any parcel of the arms and ammunition recovered from the accused Boota Singh. He also admitted that other police officials also did not prepare the parcels of the arms and ammunition recovered from the accused. This clearly shows that the parcels were prepared at a later stage and this casts a cloud of suspicion on the entire prosecution case. Still further, the prosecution has shown the recovery of weapons on 15.04.2002, whereas the said weapons were sent for examination to the armourer on 11.06.2002 and there is an unexplained delay in sending the weapons for the required test. Still further, no test firing was done and this again raises a question mark on the prosecution case.

In view of above observations, it is not safe to base the judgment of conviction on the evidence led by the prosecution and by extending the benefit of doubt, the appellants in all the four appeals are required to be acquitted. Consequently, all the four appeals, i.e., CRA-S-790-SB of 2005 titled as 'Mohan Singh and another Vs. State of Punjab', CRA-S-1418-SB of 2006 titled as 'Kuldeep Singh Vs. The State of Punjab', CRA-S-1945-SB of 2009 titled as 'Baljit Singh Vs.

State of Punjab' and CRA-S-1723-SB of 2005 titled as 'Boota Singh Vs. State of Punjab' succeed and the impugned judgment of conviction dated 06.04.2005 and order of conviction dated 07.04.2005 passed by the learned Additional Sessions Judge, Moga, are hereby set-aside. The appellants are ordered to be released from custody, if not required in any other case.

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.

30.11, 2022
amit rana

(N.S.SHEKHAWAT)
JUDGE

Whether reasoned/speaking	:	Yes/No
Whether reportable	:	Yes/No