

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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1) **CRA-S-1825-SB-2004**
Decided on : 14.03.2023

Mahabir Singh and others
Versus . . . Appellant(s)

State of Haryana
. . . Respondent(s)

2) **CRA-S-433-SB-2005**

Shyam Lal
Versus . . . Petitioner(s)

State of Haryana
. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Akshay Rana, Advocate for
Mr. S.S. Rana, Advocate
for the appellant(s).

Mr. Pawan Kumar Jhanda, AAG, Haryana.

SANJAY VASHISTH, J.

1. This judgment shall dispose of CRA-S-1825-SB-2004 and CRA-S-433-SB-2005, as both the appeals are interconnected and are arising out of the same judgment of conviction dated 13.08.2004 and order of sentence dated 14.08.2004. However, for the sake of brevity, facts are being extracted from CRA-S-1825-SB-2004.

2. CRA-S-1825-SB-2004 has been filed by appellants namely; (1) Mahabir, (2) Gian @ Giani, and (3) Gurdas, and CRA-S-433-SB-2005, has been filed by appellant – Shyam Lal against the judgment of conviction dated 13.08.2004 and order of sentence dated 14.08.2004, passed by the Ld. Additional Sessions Judge, Panchkula, in Sessions Case No. 26 of

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12.11.2003, arising out of FIR No.164, dated 06.08.2003, under Sections 399, 402 of IPC, registered at Police Station Kalka. Accused-appellants were held guilty for commission of offences punishable under Sections 399 and 402 of IPC, and were ordered to undergo sentence(s), as detailed in the following table:

Name of Convict	Under Section	Sentence	Fine	In Default
Mahabir, Gian @ Giani, Gurdas, and Shyam Lal	399 IPC	04 years RI	Rs. 500/- each	02 months SI
	402 IPC	03 years RI	Rs. 500/- each	02 months SI

3. Facts emerging from First Information Report (F.I.R.) are that “on the night of 5/6.8.2003, SI-Surjit Kumar, Incharge CIA Staff alongwith other police officials, was on patrolling in the area of railway crossing, Kalka road. There, he received a secret information to the effect that the accused had assembled in the area of Mehtab Majra near the river in jhuggi alongwith weapons of offence, for the purpose of committing dacoity having made preparation for doing so and if a raid was conducted, they could be caught red handed. Believing the information, SI- Surjit Kumar formed three raiding parties. One raid party was headed by ASI-Jai Pal Singh, second one by ASI-Mahi Pal Singh and third one was headed by SI- Surjit Kumar himself. After reaching the spot, SI- Surjit Kumar found that there was a jhuggi on the Paploha road about 20 paces away on the southern side and a candle was lit in the said jhuggi. SI Surjit Kumar and ASI- Mahi Pal Singh went near the jhuggi and saw that five young persons were sitting inside the jhuggi in the candle light and they were planning to commit dacoity. One of the said persons said that they would commit dacoity on that night in the

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kothis situated outside village Kanguwal. One other young person said that Shyam Lal accused and Gurdas accused will patrol the area from outside and he himself alongwith accused-Gian @ Giani and accused- Manga would enter the kothi and commit looting. After hearing this, SI- Surjit Kumar and ASI-Mahi Pal raised lalkara to the accused challenging them that they had been rounded up by the police from all corners and they should surrender alongwith their weapons and if somebody tried to flee, he shall face the consequences. On hearing this, all the accused persons sitting in the jhuggi tried to run away. Out of them, four persons were arrested and one person succeeded to run away under the cover of darkness. The names and addresses etc. of the four arrested persons were inquired and they were arrested. The accused persons further disclosed that the boy, who had escaped and run away, was Mangal @ Manga son of Sant Ram, resident of Bangla Colony, Ratpur, Pinjore. An iron rod was recovered the possession of accused- Mahabir, an iron rod was recovered from the possession of accused Giani @ Gian, a danda eucalyptus was recovered from the possession of accused Shyam Lal and a dada eucalyptus was recovered from the possession of accused- Gurdas. The same were taken into police possession vide different recovery memos Ex.PB, Ex.PC, Ex.PD and Ex.PE.”

Thereafter, at 12:10 A.M. on 06.08.2003, SI - Surjit Kumar sent a rukka (Ex.PA), which was converted into the formal FIR (Ex.PA/1).

4. After completion of investigation, final report under Section 173 Cr.P.C. was submitted. Thereupon, case was committed to the Court of Sessions vide order dated 29.10.2003. Charges were framed against accused-appellants under Sections 399 and 402 of IPC.

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5. To prove its case, prosecution examined as many as total 06 witnesses (PW1 to PW6), which are as under:-

- PW1 – ASI Angrej Singh, who recorded formal FIR Ex.PA/1 on receiving of rukka (Ex.PA). Special report was also sent by him.
- PW2 – Constable Surjit Kumar, his testimony is in regard to delivery of special report to the Illaqa Magistrate, SP Panchkula and DSP, Kalka.
- PW3 – SI/SHO Harbans Lal, who proved the submission of final report under Section 173 Cr.P.C. after completion of investigation.
- PW4 – HC Joginder Singh, who was posted as MHC, Police Station Kalka, and with whom SI – Surjit Kumar deposited two dandas of eucalyptus (safeda) and two iron rods.
- PW5 – ASI Mahi Pal, CIA Staff, who proved the raid and the investigation done in the case being member of the raiding party.
- PW6 – SI Surjit Kumar, who is the complainant as well as Investigating Officer. He arrested the accused persons and completed investigation.

ASI Jai Pal was given up by the prosecution being unnecessary.

While recording statement under Section 313 Cr.P.C., all the four accused persons took a common stand of “*being innocent*” as they have been falsely implicated.

6. Thereafter, Ld. Trial Court conducted trial and sentenced the appellants, which has been assailed by way of aforementioned two appeals.

7. Mr. Akshay Rana, learned counsel for the appellants submits that story framed up by the prosecution is totally false and concocted. Even, there is no evidence in clear words that appellants were planning and making preparation for committing dacoity. It is also argued that there is no

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corroborative evidence to the statement of SI – Surjit Kumar (PW6). Another witness of the raiding party i.e. ASI Mahi Pal (PW5) did not utter a word that what he heard from the mouth of four persons about preparation of dacoity. Thus, the sole evidence that too oral is of the Investigating Officer SI – Surjit Kumar (PW6), and thus, no offence is even alleged to have been proved.

It is also argued that one important witness of the raiding party ASI Jai Pal was not examined by the prosecution, though he was a material witness for proving the raid & arrest of the accused.

8. It is further argued by learned counsel for the appellants that SI – Surjit Kumar (PW6) received secret information and being complainant, he prepared rukka, and then proceeded for conducting raid and arrested all the four accused, and thus, he himself acted as complainant and investigating officer both.

In support of his contention, learned counsel for the appellants has placed reliance upon the judgment of this Court rendered in **Sandeep Singh v/s State of Punjab (and other connected cases)**, 2015(4) RCR (Crl.) 276, (Law Finder Doc Id # 695323). Para No.21 was highlighted, which says as under:-

*“21. In the present case, Sub Inspector Satnam Singh (PW 2) is the complainant as well as investigating officer. The formal FIR was registered on the complaint of Sub Inspector Satnam Singh (PW 2). Sub Inspector Satnam Singh being complainant should not have proceeded with investigation. The said issue is no more res integra. In **State By Inspector of Police, Narcotic Intelligence Bureau, Madurai, Tamil Nadu vs. Rajangam** 2010(15) SCC 369,*

the Hon'ble Supreme Court has held as under:

"9. The learned counsel appearing for the accused submitted that the controversy involved in this case is no longer *res integra*. In **Megna Singh v. State of Haryana, 1997 (2) RCR (Criminal) 3 : (1996) 11 SCC 709**, this Court has taken a categorical view that the officer, who arrested the accused should not have proceeded with the investigation of the case. The relevant paragraph reads as under:

"4. We have also noted another disturbing feature in this case. P.W.3, Sri Chand, Head Constable arrested the accused and on search being conducted by him a pistol and the cartridges were recovered from the accused. It was on his complaint a formal first information report was lodged and the case was initiated. He being complainant should not have proceeded with the investigation of the case. But it appears to us that he was not only the complainant in the case but he carried on with the investigation and examined witnesses under Section 161 Cr.P.C. Such practice, to say the least, should not be resorted to so that there may not be any occasion to suspect fair and impartial investigation."

10. The ratio of Megna's case has been followed by other cases. In another case in **Balasundaran v. State, 1999 (113) ELT 785 (Mad)**, in para 16, the Madras High Court took the same view. The relevant portion reads as under:

"16. Learned Counsel for the appellants also stated that P.W. 5 being the Inspector of Police who was present at the time of search and he was the investigating officer and as such it is fatal

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to the case of the prosecution. P.W. 5, according to the prosecution, was present with PWs 3 and 4 at the time of search. In fact, P.W. 5 alone took up investigation in the case and he had examined the witnesses. No doubt the successor to P.W. 5 alone had filed the charge sheet. But there is no material to show that he had examined any other witness. It therefore follows that P.W. 5 was the person who really investigated the case. P.W. 5 was the person who had searched the appellants in question and he being the investigation officer, certainly it is not proper and correct. The investigation ought to have been done by any other investigating agency. On this score also, the investigation is bound to suffer and as such the entire proceedings will be vitiated."

11. In this view of the legal position, as crystallized in Megna Singh's case (supra), the High Court was justified in acquitting the accused. We see no infirmity in the view which has been taken by the High Court in the impugned judgment.

In our considered view, no interference is called for. The appeal, being devoid of any merit, is accordingly dismissed.

Appeal dismissed."

9. Another argument addressed by learned counsel for the appellant is that there is no material with the prosecution to prove that appellants had assembled for the purpose of committing dacoity, or that they had done any preparation for committing dacoity. Said argument is substantiated with the fact that there is no recovery of any deadly weapon, as only two iron rods and two eucalyptus (safeda) dandas, which are easily available everywhere, are shown to have been recovered. Even these

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recoveries are not admissible. Learned counsel further placed reliance upon the judgment of the Hon'ble Apex Court rendered in **Chaturi Yadav and others v/s State of Bihar**, 1979 AIR (SC) 1412, (Law Finder Doc Id # 104943). Para No.4 of which says as under:-

“4. The Court 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 appellants had assembled for the purpose of committing dacoity or for making preparations to accomplish the 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 Section 399 and 402 against the appellants. The possibility that the appellants may have collected for the purpose of murdering somebody or committing other offence cannot be safely eliminated. In these circumstances, therefore, we are unable to sustain the judgment of the High Court.”

10. Learned counsel for the appellants further argues that for the alleged offence there has to be a group of minimum five persons, but in the present case, only the four appellants have been prosecuted and convicted for the allegations of preparation of dacoity, whereas, according to the definition of dacoity minimum gathering of five persons for committing or attempt to commit dacoity is required. He further submitted that though, prosecution has projected the 5th name i.e. Mangal @ Manga, but right from the registration of the FIR, till date, there is no clue with the prosecution as to why such person is not ever prosecuted. Prosecution has even failed to explain that if any person with such name is existing. Thus, with the assembly of four persons, preparation for committing robbery is not a punishable offence under the Indian Penal Code (IPC). For the said purpose, Sections 391, 399 & 402 of IPC, have been referred, which are reproduced as under:-

“391. Dacoity.- *When five or more person conjointly commit or attempt to commit a robbery, or where the whole number of*

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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.

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.

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. ”

11. Reliance has also been placed upon the judgment of the Rajasthan High Court rendered in Asgar and another v/s State of Rajasthan, 2003(3) RCR (Crl) 359, (Law Finder Doc Id # 58574). Para Nos. 8 & 9 of the said judgment are reproduced as under:-

“8. I have given my thoughtful consideration to the submissions made by learned counsel. Dacoity has been defined by Section 391 IPC which reads as under ;-

"391. Dacoity.- When five or more person 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."

Sections 399 and 302 IPC read as under :-

"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."

"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."

9. *From the above-quoted Sections, it is clear that in order to establish an offence punishable under Section 399 IPC some act amounting to preparation must be proved and what must be proved further is an act for which preparation was being made was a dacoity, that is to say, robbery to be committed by five or more persons. The prosecution has to establish under Section 402 IPC that there had been an assembly of five or more persons constituted for the purpose of committing dacoity and that the accused persons were members of that assembly. If there is no clear and acceptable evidence of any assemblage of the appellants with three or more persons for the purpose of committing dacoity then the appellants cannot be held liable under Section 402 IPC."*

12. Thus, learned counsel for the appellants submits that it being a false case, without any believable version, the judgment of conviction cannot sustain and same requires to be set-aside.

13. *Per contra*, learned State counsel has opposed the contentions

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addressed by learned counsel for the appellants. He has submitted that the deposition of the police officials is more believable for the reason that they cannot be said to be inimical to any of the accused. Even, there is no evidence to that effect.

Learned State counsel further submits that recovery of two iron rods and two eucalyptus (safeda) dandas are enough to believe that appellants were equipped with arms, though may be easily available everywhere, but their arrest on the spot along with said weapons and corroborated in the statements of ASI Mahi Pal (PW5) and Investigating Officer – SI Surjit Kumar (PW6), is enough to believe the prosecution version.

14. In support of his submissions, learned State counsel has also relied upon the judgment of Hon'ble Apex Court rendered in **Mukesh Singh v/s State (Narcotic Branch of Delhi)**, 2021 All SCR (Cr1.) 1 (SC) (Law Finder Doc Id #1738791), and submitted that as per the observations made in referred judgment, no trial can be vitiated in ordinary manner, if the Investigating Officer conducting the investigation is himself lodger of the FIR. Thus, he sought dismissal of the appeals.

15. I have considered all the submissions addressed by both the sides and have also carefully examined the evidence available on record.

16. Prosecution has summed up its material evidence only through two witnesses i.e. ASI Mahi Pal (PW5) and Investigating Officer – SI Surjit Kumar (PW6). On going through the evidence of ASI Mahi Pal (PW5), it would be clear that he failed to explain the conversation he heard from the mouth of the accused persons sitting in the hut (jhuggi). For convenience, examination-in-chief of ASI Mahi Pal (PW5) is reproduced herein-below:-

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*“That on 5.8.2003, I along with SI Surjit Kumar, ASI Jai Pal, HC Bhagwan Dass and other police officials was present near railway crossing Kalka in connection with the search of crime. We were having talk with each other, in the mean-while, SI Surjit Kumar received a secret information that in a hut situated near the rivulet in the area of village Mehtabpur, five persons were making preparation to commit dacoity in the house situated on the outer strip of village Kanguwal. SI Surjit Kumar cormede the raiding party. **Thereafter, we all went to the disclosed place. I along with Surjit Kumar went near the hut to h ear their conversation. A person in the hut was making preparation in the candle light. As per the directions, all the police officials made corridor around the hut. Surjit Kumar alarmed the accused persons. All the five persons tried to flee away but four of them were apprehended along with their respective weapons, one of the culprits became successful to run. All the four persons gave their names as Mahavir, Sham Lal, Gurdas and Gian @ Giani. All the accused area present in the court. At the time of arrest of Gurdas, he was having a Danda in his hand, and the same was taken into possession vide recovery memo Ex.PB. The length of the Danda was about 3’. Ex.PB bears my signature. Thereafter, a Danda was recovered from Sham Lal and was taken into possession vide memo Ex.PC. Danda Ex.P1 is the same which was recovered from accused Gurdas. Ex.P2 is the same Danda which was recovered from Sham Lal and was taken into possession vide recovery memo Ex.PC. Thereafter, Saria Ex.P3 was recovered from the accused Mahavir. The length of the saria***

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was 2'2" and was taken into possession vide recovery memo Ex.PD. Thereafter, a saria was also recovered from Gian @ Giani accused and was taken into possession vide recovery memo Ex.PE. The length of saria was 2'4" and the same is Ex.P4.

On the intervening night of 5/6.8.2003, during the interrogation, Mahavir accused made a disclosure statement about the commission of offence committed in village Dharampur and also disclosed the name of the fifth accused who was Mangal, resident of Rathpur Colony, Pinjore. After completion of the disclosure statement Ex.PF, all the accused persons were formally arrested in this case. The information regarding their arrest was sent to their respective relatives. After completion of the investigation at the spot, the accused were taken to police station Kalka and were put under lock up. The case property was deposited with the MHC, Kalka. In this case, ruka was sent from the spot through a constable for registration of the present case."

Reproduction of the testimony of this witness nowhere points out that accused were making a preparation, in specific for dacoity.

17. During cross-examination, this witness has further admitted that there was attendant on railway crossing and there was a cabin of Railway Department, but he does not know the name of attendant. Situation of houses and one Sanyasi Ashram near to the railway crossing was also admitted. It is also admitted that persons were residing in the Ashram. But they did not go there and no police official from the Police Station Kalka came to the place where the information was received. It is also admitted

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that accused-persons were not known to the police earlier to this occurrence. No khakha of the weapons was prepared. The candle was not taken in police possession. There was no attempt to lookout the owner of that hut (jhuggi). **Recovered weapons were not converted into parcels or even sealed. Identification marks were not put on the recovered weapons at the time of recovery.**

According to view point of this Court, I find that the deposition of ASI Mahi Pal (PW5) weakens the case of the prosecution, and rather, gives an impression that the witness is unable to explain with full confidence about the conducting of raid and arrest of accused.

18. With respect to the statement of another star witness i.e. SI Surjit Kumar (PW6), who is complainant in the FIR as well as Investigating Officer, complete examination-in-chief of the said witness is reproduced hereunder:-

“That on 6.8.2003, I was posted as SI in CIA Staff, Panchkula. On that day, I along with ASI Mahi Pal, HC Bhagwan Dass, EHC Joginder Singh and constable Ravi Kumar was present near Railway Phatak, Kalka. We were in Government vehicle, and constable Bal Kishan was driver on that vehicle. In the meanwhile, ASI Jai Pal along with other three constable came there. Thereafter, I received a secret information that five persons were present in a Jhuggi which is situated near Paploha road in the area of village Mehtabpur and were preparing for committing dacoity in the area of village Kangwal. If raided, they could be caught red handed. I prepared three separate raiding parteis of the police oficals. One was led by me, second was led by ASI

Mahi Pal and third was led by ASI Jai Pal. Thereafter, we all reached at the disclosed place. The head was rounded up. I and ASI Mahi Pal went near the jhuggi. The gate of the hut was covered with a polythene, and I peeped into by removing that polythene and saw five persons were sitting inside the hut along with the weapons. One of them was directing the others by saying that Sham Lal and Gurdas would stay outside. Mahavir and Mangal alias Manga and Giani would enter in the house for looting. I made Lalkara to them. On this, all the five persons tried to flee away. Out of them, four persons namely Mahavir son of Sant Ram; Sham Lal son of Mittu; Giani son of Mittu and Gurdas son of Mittu were apprehended. All accused present in Court were apprehended at the spot. One of the accused Mangal alias Manga succeeded to flee away. Their personal search was taken, and a Saria Ex.P3 was taken into possession, vide memo Ex.PD. The length of the rod was 2'2". During the search of Giani present in court, an iron rod measuring 2'4" was recovered, which is Ex.P4 and was taken into possession vide recovery memo Ex.PE. During the search of Sham Lal accused present in Court, a wooden bat was recovered measuring 3' and was taken into possession vide recovery memo Ex.PC. During the search of Gurdas accused present in court, a wooden bat measuring 3½' Ex.P1 was taken into possession vide recovery memo Ex.PD. Danda recovered from Sham Lal is Ex.P2. Then, I sent rukka Ex.PA through constable Padam Singh for registration of the case. I prepared rough site plan Ex.PG. During the interrogation, accused-Mahavir also confessed for committing

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dacoity in village Dharampur. I recorded the statement of Pws without any omission and alteration. After completion of the investigation at the spot, all the four accused along with the recovered weapons were taken to Police Station Kalka where the case property was deposited with MHC and all the accused were put under lock up. All the papers of the investigation were submitted before the SHO, Shri Harbans Lal, after completion of the investigation.”

19. During the cross-examination, SI – Surjit Kumar (PW6) admitted that he did not join any person from Police Station Chandimandir. It is also admitted that weapons Ex.P1 to Ex.P4 are easily available in the market and recovered weapons were not sealed in the parcels. Even half burnt candle was found in the hut, but was not taken into police possession. This witness has also admitted that he cannot explain, who is the owner of the said land. From the testimony of the Investigating Officer also, this Court is not fully satisfied. Even if role described by him, which he over heard, is taken to be correct, same is left without any other supporting/corroborative evidence. ASI Mahi Pal (PW5) is silent about the roles and prosecution did not examine ASI Jai Pal, being unnecessary. Thus, by relying upon the sole testimony of the Investigating Officer without there being any corroboration, in any manner, this Court is unable to reach to the conclusion that the story put-forth by the prosecution is true. Even if, same is considered to be true, the deposition is not enough to assume that the accused were making preparation for dacoity. It is also surprising for the Court that in the rukka or FIR, name of the accused are not mentioned.

There is no explanation that in the absence of any such evidence, from where names of the accused were acknowledged, that too in the dim light of the candle, which also is stated to be not recovered.

20. Other submissions addressed by learned counsel for the appellants, which are based upon the judgments relied upon by him, also give strength to his submissions.

There is no other aspect in the matter as without there being proving of gathering of total five persons, the statutory requirement to define dacoity under Section 399 of IPC, would not be fulfilled, and in the absence of same, simple preparation, if any, cannot be said to be for committing of dacoity.

21. During the short hearings on some previous dates of hearing, this Court gave enough opportunities to the State of Haryana to clarify the whereabouts of fifth accused, who is named as Mangal @ Manga. Despite of grant of 5/7 opportunities, no plausible explanation was put-forth, rather, one status report dated 01.03.2023 is presented in the shape of affidavit of Ram Kumar, HPS, Assistant Commissioner of Police, Kalka, on behalf of the respondent-State. The said status report says as under:-

“1. That the above said case came up for hearing on dated 06.02.2023 before this Hon’ble Court and the Hon’ble Court was pleased to direct “To find out the status of 5th accused – Mangal @ Manga....” and adjourned the case for 01.03.2023.

2. That challan in the present case bearing FIR No.164 dated 06.09.2003 under sections 399/420 of IPC at Police Station Kala was presented against four accused persons. Since 5th

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accused namely Mangal @ Manga fled away from the spot.

3. *That as per police rules, the files of old cases are destroyed after a period of every four years. Subsequently, the file of the present case was destroyed. A copy of Reply from VRK branch O/O Deputy Commissioner of Police, Panchkula annexed as an **Annexure – R1**.*
4. *That regarding 5th accused namely Mangal @ Manga, as per information received from the office, neither said accused has been arrested till date nor proceedings qua proclaimed offender has ever been initiated against him.*

In the view of above mentioned facts the present petition filed by the petitioners may kindly be disposed in the interest of justice.”

22. Considering the aspect that the case was registered way back on 06.08.2003, after conducting raid, but till date prosecution is unable to explain or even failed to bring any material about the fact that any such person ever existed or if existed, what steps were taken by the prosecution to make their story more reliable i.e. gathering/assembly of five persons at the time of committing raid. Thus, in the absence of same, this Court cannot accept the version of the prosecution that name of the fifth accused is the correct one or not?

On the other hand, Ld. State counsel is unable to cite any law to say that preparation of committing robbery would be punishable under the Indian Penal Code (IPC).

23. Thus, in totality of circumstances available on record; taking

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into consideration the submissions made by both the sides; and relying upon the judgments cited by learned counsel for the appellants; this Court considers it appropriate to allow the appeals, and consequently to acquit the appellants from the charges levelled against them.

Accordingly, judgment of conviction dated 13.08.2004 and order of sentence dated 14.08.2004, passed by Ld. Trial Court, are hereby *set aside*, and consequently, **appeals are allowed** by acquitting the appellants from all the charges levelled against them.

Appeals stand disposed of.

(SANJAY VASHISTH)
JUDGE

March 14, 2023
J.Ram

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