

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

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1. **CRA-S-1864-SB-2004 (O&M)**
Date of Decision: 28.03.2023

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

2. **CRA-S-1881-SB-2004 (O&M)**

Nahar Ram @ Nara	Versus	...Appellant
State of Punjab		... Respondents

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

Present : Mr. P.S. Ahluwalia, Advocate as Amicus Curiae
for the appellants in CRA-S-1864-SB-2004.

Mr. Gurbinder Singh, Advocate
for the appellant in CRA-S-1881-SB-2004.

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

N.S.SHEKHAWAT, J.

This judgment shall dispose off above mentioned two criminal appeals, which arise out of the common impugned judgment and order dated 13.09.2004 passed by the learned Additional Sessions Judge, Fatehgarh Sahib, whereby, the appellants were convicted for the offence punishable under Section 399 IPC and sentenced to rigorous imprisonment for three years and to pay a fine of Rs.500/- each alongwith default stipulation.

The criminal law was set into motion in the instant case on the basis of a *rukka* dated 01.08.2003 to the effect that on the said day, Darshan Singh, Inspector/Incharge, CIA Staff Sirhind, alongwith other police officials was present at Bus Stand, Amloh, Nabha Road, in connection with checking of bad elements and patrolling on a government vehicle. At about 04.00 p.m., Darshan Singh, Inspector received a secret information to the effect that six accused, namely, Jaggu Bahadur, Lakhvir Singh, Harchand Singh, Nahar Ram, Siwan Paswan and Gopal Paswan were sitting 100 yards ahead of unmettled road, Amloh and were planning to commit robbery at petrol pump. They were also having Hero Honda motorcycle and one Bajaj Chetak scooter with them, which was also parked at that place. As per the secret informer, if the raid was conducted, they could be apprehended at the spot. Darshan Singh, Inspector constituted different parties in order to conduct the raid and to arrest the accused. The first party was constituted under the supervision of SI Ram Dial with the directions that he should go to the place of raid via *pucca* road from Nabha road, the second party headed by ASI Rajinder Pal Singh was directed to reach at the disclosed place via *katcha* road leading from pipe factory and third party headed by ASI Vijay Singh was directed to reach the spot from *katcha* path, which leads directly to the disclosed place. All the parties were directed to raid at 05.00 p.m. and Deep Singh Head Constable was directed that he should watch all the activities of the accused by concealing himself near them and to inform the police party by raising his hand on the head. As per the plans, the raid was conducted and the raiding parties noticed that the accused were

talking loudly that they would commit dacoity at the petrol pump on the night itself. On this, the police parties asked them to surrender as they had been surrounded from all sides. The accused tried to run away on motorcycle and scooter but they apprehended by the Inspector with the help of other police officials. On inquiry, the person, who was driving the motorcycle, disclosed his name as Jaggu Bahadur whereas the persons, who were riding pillion disclosed their names as Nahar Singh and Lakhvir Singh. The person, who was driving the scooter disclosed his name as Chand Singh whereas the persons who were the pillion riders disclosed their names as Siwan Paswan and Gopal Paswan. The personal search of Jaggu Bahadur was conducted and as a result of which one .12 bore country made pistol and two live cartridges were recovered from the right pocket of the pant of the accused. One *Gandasa* was recovered from Nahar Singh, accused. The *Gandasa*, pistol and live cartridges were taken into possession by preparing separate recovery memos in this regard. Lakhvir Singh got recovered one iron chain of motorcycle and the same was taken into possession by the police vide recovery memo. Harchand Singh, Siwan Paswan and Gopal Paswan got recovered one iron rod each and all these were taken into possession vide separate recovery memos, which were attested by the witnesses. Accused Jaggu Bahadur also failed to produce any document regarding possession of motorcycle and the same was also taken into possession vide separate recovery memo. Accused Harchand Singh also failed to prove the ownership of the scooter and the same was also taken into possession vide separate recovery memo. Darshan Singh, Inspector,

prepared a *rukka* and sent the same to the police station for registration of the case, on the basis of which, a formal FIR was recorded by the police. After necessary investigation, the final report under Section 173 Cr.P.C. was presented against all the accused. Apart from that, a separate case under Arms Act was registered against Jaggu Bahadur for keeping in his possession .12 bore pistol with live cartridges of the same bore.

After finding a *prima-facie* case, charge under Section 399/402 IPC was framed against the accused, who pleaded their false implication and claimed trial.

In order to prove the charge against the accused, the prosecution examined PW1 SI Ram Dial Singh, who was heading one of the police team, which conducted the raid on the accused. He supported the case of the prosecution as stated in the FIR. In his cross-examination, he admitted that no attempt was made by the Inspector to join any independent person from the place, where he received secret information. Even no watchman from the pipe factory was joined in the investigation by the Investigating Officer, which is at a distance of 15 karams from the place of recovery. The prosecution further examined PW2 Inspector Darshan Singh, who had received the secret information and arrested the accused. He also conducted the initial investigation at the spot. He admitted that the pipe factory was at a distance of one farlang from the place of recovery and no watchman or any other person from the pipe factory was joined in the investigation. Still further, he stated that the accused were seen sitting by the police party from a distance of one farlang. Before reaching the

spot, he sent HC Deep Singh to ascertain the presence of the accused at the spot. HC Deep Singh heard the voice of the accused and signalled the police party. He himself had heard the accused saying that they would loot a petrol pump on that night. The entire police party was in uniform. A *katcha* path leads to power grid, which further leads to the place of recovery. They remained at the spot for four hours but no attempt was made to join any independent person. The prosecution further examined PW3 Daljit Singh, Junior Assistant, who brought the record relating to the registration of Bajaj Chetak scooter, which was registered in the name of Gurcharan Singh son of Sant Singh resident of village Tanna, Tehsil and District Fatehgarh Sahib. The prosecution further examined PW4 Shingara Singh, Patwari, who visited the spot and prepared the site plan Ex.PQ of the place of occurrence at the instance of Inspector Darshan Singh.

After the closure of the prosecution evidence, the statements of all the accused were recorded under Section 313 Cr.P.C. Accused Jang Bahadur Singh, Lakhvir Singh and Harchand Singh stated that they had been falsely implicated in the instant case. However, in his statement under Section 313 Cr.P.C., accused Nahar Ram @ Nara stated that he was innocent and was falsely implicated at the instance of Ajaib Singh, Sarpanch, as he belonged to other faction of the village. Similarly, Siwan Paswan and Gopal Paswan pleaded their false implication in the matter.

In their defence, Sarifa wife of Nahara Singh was examined as DW1, who stated that on 24.07.2003, the police of Police Station Sirhind picked her from the house at about 08/09 p.m.

The police demanded Rs. 5,000/- from them in order to release her husband and on her expressing the inability to pay the said amount, he was falsely involved. On 28.07.2003, she sent telegrams to higher police officers vide receipts Ex.D1 to Ex.D8 that a false case was planted on her husband. Similarly, Isher Singh appeared as DW2, who stated that Harchand Singh and Lakhvir Singh, both the accused were involved in the criminal case at the instance of Pardeep Singh Sarpanch of village Kheri Golian. There was a dispute regarding Panchyat elections as the accused belonged to the opposite group of Sarpanch and they were falsely involved in the present case.

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

Learned counsel for the appellants vehemently argued that the appellants had been falsely involved in the present case and they have been wrongly convicted under Section 399 IPC. There was no evidence to show that the appellants were making preparations to commit dacoity. Merely because some deadly weapons were recovered from the accused did not lead to the conclusion that they were preparing to commit dacoity. Learned counsel for the appellants also referred to law laid down in various judgments, i.e. **Chaturi Yadav and others Vs. State of Bihar, 1979(3) SCC 430; Jasbir Singh @ Javri @ Jabbar Singh Vs. State of Haryana 2015(5) SCC 762; Mohan Singh and another Vs. State of Punjab and connected appeals (CRA S-790-SB of 2005, CRA S-1723-SB of 2005 and CRA S-1945-SB of 2009; Amar Singh @ Arvind Vs. State of Haryana and connected appeals (CRA S-2318-SB-2004, CRA S-2395-SB of**

2004, CRA S-2424-SB of 2004, CRA S-2416-SB of 2004 and CRA S-58-SB of 2005 and Kuldeep Singh Vs. State of Punjab 2011(8) R.C.R.(Criminal) 231 to contend that the story propounded by the prosecution was unbelievable on the face of it and the appellants had been wrongly held guilty of the charge. The submissions made by the learned counsel for the appellants have been vehemently opposed by the learned State counsel by contending that PW1 SI Ram Dial Singh and PW2 Inspector Darshan Singh had assigned specific roles to all the appellants and they were arrested at the spot, while they were making preparations to commit dacoity and had been rightly convicted by the learned trial Court. Before proceeding to analyse the evidence led by the prosecution, it would be appropriate to refer to various judgments passed by this Court as well as the Hon'ble Apex Court in similar circumstances.

It has been held by the Hon'ble Supreme Court of India in the matter of Chaturi Yadav and others Vs. State of Bihar, 1979(3) SCC 430 as follows:-

“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”.

The Hon'ble Apex Court held in the matter of **Jasbir Singh @ Javri @ Jabbar Singh Vs. State of Haryana 2015(5) SCC 762** as follows:-

“12. Strangely, even after observing as above, the High Court has believed the prosecution story in respect of offences punishable under Sections 399 and 402 I.P.C., and one in respect of offence punishable under Section 25 of Arms Act. The High Court has erred in law in not taking note of the following facts apparent from the evidence on record :-

(i) *In a day light incident at 1.20 p.m. within the limits of City Police Station, Karnal, there is no public or any other independent witness of the arrest of the appellant along with other accused from the place of incident nor that of the alleged recovery of fire arm said to have been made from two of them. (It is not a case where arrest or recovery has been made in the presence of any Gazetted Officer.)*

(ii) *Complainant (PW-6) has himself investigated the crime, as such, the credibility of the investigation is also doubtful in the present case, particularly, for the reason that except the police constables, who are subordinate to him, there is no other witness to the incident.*

(iii) *It is not natural that the six accused, four of whom were armed with deadly weapons, neither offered any resistance nor caused any injury to any of the police personnel before they are apprehended by the police.*

(iv) *It is strange that all the accused were wearing blue shirts, as if there was a uniform provided to them.*

(v) *It is hard to believe that the appellant and three others did not try to run away as at the time of the noon they must have easily noticed from a considerable distance that some policemen are coming towards them. (It is not the case of the prosecution that police personnel were not in uniform.)*

13. In view of the above facts and circumstances, which are apparent from the evidence on record, we find that both the courts below have erred in law in holding that the prosecution has successfully proved charge of offences punishable under Sections 399 and 402 I.P.C., and one punishable under Section 25 of Arms Act against appellant Jasbir Singh @ Javri @ Jabbar Singh, beyond reasonable doubt. In our opinion, it is a fit case where the appellant is entitled to the benefit of the reasonable doubt, and deserves to be acquitted.

Still further, similar observations have been made by this Court in the matters of *Mohan Singh and another Vs. State of Punjab and connected appeals (CRA S-790-SB of 2005, CRA S-1723-SB of 2005 and CRA S-1945-SB of 2009; Amar Singh @ Arvind Vs. State of Haryana and connected appeals (CRA S-2318-SB-2004, CRA S-2395-SB of 2004, CRA S-2424-SB of 2004, CRA S-2416-SB of 2004 and CRA S-58-SB of 2005 and Kuldeep Singh Vs. State of Punjab 2011(8) R.C.R.(Criminal) 231.*

Now adverting to the facts of the instant case, it is apparent that when the police parties conducted the raid, the accused/appellants were found present at the place. As per the prosecution witnesses, accused Jaggu Bahadur was carrying a .12 bore country made pistol, Nahar Ram @ Nara was carrying a *Gandasi* whereas Lakhvir Singh was carrying an iron chain. As per the prosecution, Harchand Singh, Siwan Paswan and Gopal Paswan, all accused, were carrying one iron rod each. However, the prosecution could not lead any evidence to show that the accused had assembled or were making preparations to commit dacoity. Simply because the accused were armed with some deadly weapons cannot lead to an inference that they were making preparations to commit dacoity. For showing the said fact, the prosecution was under an legal obligation to prove something more than that and the prosecution failed to discharge the said onus. Consequently, the findings recorded by the learned trial Court are apparently unsustainable.

Learned counsel for the appellants further submitted that as per the prosecution the police had overheard the accused making a

plan to commit dacoity cannot be believed. As per the story of the prosecution, when the police party surrounded the accused, they overheard that the accused were saying that they would commit dacoity on the petrol pump on that night itself. Thus, it is unbelievable that the accused started planing after the arrival of the police party at the place of arrest. The said submissions have been refuted by the learned State counsel by contending that the accused were conspiring to commit dacoity on a petrol pump on that night itself and the police had no reason to falsely involve the accused in the instant case. I have heard learned counsel for the parties and find sufficient force in the submissions made by learned counsel for the appellants. Learned counsel for the appellants have rightly placed reliance on the judgments passed by the Hon'ble Supreme Court in the matter of **Suleman Vs. State of Delhi through Secretary 1999 SCC (Criminal) 515.** Further, learned counsel for the appellants also relied upon the law laid down by this Court in the matters of **Rajesh and others Vs. State of Haryana and connected appeal 2010(4) RCR (Criminal) 928; Bagga @ Bangu Vs. State of Haryana 2011(2) R.C.R. (Criminal) 238** and **Piru and others Vs. State of Haryana 2015(3) R.C.R. (Criminal) 395.**

As per the story of the prosecution, when the police parties reached at the spot, they overheard that the accused were talking in a loud voice that they would commit the dacoity at a petrol pump on that night itself. As per PW2 Inspector Darshan Singh, he had constituted three teams to surround the accused at the place of occurrence. As per the story of the prosecution, HC Deep Singh after

hearing the voice of all the accused signalled the police party. PW2 Inspector Darshan Singh stated that he had heard the accused saying that they would loot the petrol pump on that night. In fact, the story of the prosecution is highly unbelievable. It is against the normal human conduct that in case a man intends to commit such a serious crime, planing would not be made in a loud voice at a public place. Still further, in case the accused were sitting at a public place and were conspiring to commit dacoity, they would not talk on such a volume, it could be heard by others. Still further, it is quite unbelievable that the accused will continue with same conversation repeatedly till the police parties arrive at the disclosed place and could overhear the conversation.

Still further, even no independent witness was joined by the prosecution in the instant case. PW1 SI Ram Dial Singh stated that no attempt was made by the Inspector to join any independent person from the place, where he received the secret information. Even no watchman from the pipe factory was joined by the Investigating Officer in the investigation, which was at a distance of about 15 karams from the place of the recovery. Similarly, PW2 Inspector Darshan Singh also admitted that no attempt was made to join any independent person. Even, the pipe factory was at a distance about one farlang from the place of the recovery and no watchman or any other person from the pipe factory was joined in the investigation. Consequently, there was no independent corroboration of the prosecution case in the instant case.

In view of the above discussion, it can be safely concluded that the prosecution had failed to prove the charge against the present appellant beyond the shadow of reasonable doubt and by extending the benefit of doubt, the appellants in both the appeals are liable to be acquitted. As a consequence, both the appeals succeed and the impugned judgment and order dated 13.09.2004 passed by the learned Additional Sessions Judge, Fatehgarh Sahib, are set-aside and the appellants are ordered to be acquitted of the charge.

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. P.S. Ahluwalia, learned Amicus Curiae, who had rendered able assistance to this Court.

28.03.2023
amit rana

(N.S.SHEKHAWAT)
JUDGE

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