

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

333

CRA-S-472-SB-2004

Decided on : 15.02.2023

Karambir and another

Versus

State of Haryana

... Appellants(s)

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Ms. Ritu Punj, *Legal Aid Panel Counsel*,
for appellants.

Mr. Pawan Kumar Jhanda, AAG, Punjab.

SANJAY VASHISTH, J. (Oral)

1. Appellants, namely Karambir and Rambir have filed the present appeal against the judgment of conviction and order of sentence dated 21.02.2004 passed by the Court of learned Additional Sessions Judge, Rewari, in sessions case No. 33 of 2003, after they being convicted for the offence under Section 25 (IB) (a) of the Arms Act in case FIR No. 82 dated 04.06.2003 under Sections 412 IPC and 25/54 of the Arms Act, 1959, registered at Police Station Bawal, District Rewari.
2. Both the appellants were convicted for the offence under Section 25 of the Arms Act. Details of sentence awarded to both the appellants are as under:-

(1) Accused Karambir (appellant No. 1, herein) :-

Section(s)	Sentence (R.I.)	Fine in Rs.	In default
25 of the Arms Act	01 year	1000/-	02 months R.I.

(II) Accused-Rambir (appellant No. 2, herein)

Section(s)	Sentence (R.I.)	Fine in Rs.	In default
25 of the Arms Act	01 year	1000/-	02 months R.I.

Both the convicts/appellants were held guilty for the offences punishable under Section 25 of the Arms Act, 1959, who deposited their respective amount of fine before the Court of learned Trial Court on the date of order of sentence itself.

3. Brief facts emerging from the First Information Report (FIR) are that on 04.06.2003, ASI Surender Singh (PW4) alongwith Constable Parkash Chand (PW5) and constable Surender Singh was present in his Government Jeep bearing registration No. HR-36B-9400 at a siege laid at Parampura Bawal road near Village Shahpur. A WT message was received from police Station Mundawar (Rajasthan), that two youths after committing loot at town Mundawar are coming to the side of Bawal in Maruti Car bearing No. DL-2CC-0759. If siege is laid, they can be apprehended. Police party, saw a Maruti car coming towards them bearing No. DL-2CC-0759 from the side of Parampura and with the help of police officials, ASI Surender Singh (PW4) succeeded in apprehending the car. On enquiry, the person sitting in the driver seat told his name as Karambir s/o Risal Singh and the other person sitting besides him, told his name as Rambir s/o Balwan. On making search, Rs. 17,000/- were recovered from the right pocket of trouser of accused-Karambir. Said amount was in the form of three wads of Rs. 50/- each, and four currency notes of Rs. 500/- each. Two wads of Rs. 50/- were having the seal of State Bank of Bikaner and Jaipur. Besides this, from the left pocket of pant of said accused, two alive cartridge

recovered from the right pocket of shirt worn by him. Besides this, a loaded country made pistol of 315 bore and one live cartridge were recovered from the right 'dub' of the said accused Rambir. Pistol, cartridges, recovered money from both the accused (appellants herein) and the car used by them were taken in the possession vide recovery memo as Ex. PD/1. After preparation of the ruqa, same was sent to the Police Station through Constable Parkash Chand, resulting into the registration of the formal FIR (Ex. PC).

4. After arresting the accused, other required legal formalities for conducting investigation were completed and final report/challan was submitted to the Court concerned.

Vide order dated 19.09.2003, learned trial Court challaned the appellants/accused for the offence under Section 412 IPC and Section 25 of the Arms Act.

5. In support of its case, prosecution has examined total five witnesses, those are

➤ **PW1-Lakhmir Singh**, Ahlmad to District Magistrate, Rewari.

Said witness proved the sanction order passed by District Magistrate for prosecuting the accused under the Arms Act.

➤ **PW2- Constable Jai Bhagwan, Armourer.**

Said witness appeared and proved that the recovered pistol is in working condition.

➤ **PW3-HC Nihal Singh,**

Said witness proved the registration of the FIR.

➤ **PW4-ASI Surender Singh (I.O.),**

Said witness proved his investigation and the recoveries effected from both the appellants.

➤ **PW5-Constable Parkash Chand.**

Said witness is also the recovery witness, being member of the investigation team.

6. It is worth to note down here that learned trial Court has recorded the clear findings of acquittal *qua* offence under Section 412 IPC.

Paragraphs No. 12, 13, 14 and 15 of the judgment of learned Trial Court says as under:

“12. In the present case, what to talk of proving commission of robbery by five or more persons, prosecution has failed to lead evidence even to the effect that any robbery/dacoity was at all committed. Learned P.P drawn my attention towards disclosure statements Ex.PD/4 and Ex.PD/5 made by the accused. As per these disclosure statements, these two accused alongwith two others had committed robbery of Rs.1.43,629/- from a motor-cyclist in Mundawar Iown (Rajasthan). As no recovery has been effected on the basis of these disclosure statements, so these disclosure statements are not admissible in evidence. Even otherwise, assuming for the sake of arguments that these are admissible in evidence, it will show commission of robbery by four persons and not by five or more. Meaning thereby, no dacoity was committed and, therefore, the amount of Rs.33,000/- recovered from the possession of accused can not be held to be stolen property in commission of a dacoity. Thus ingredients of Section 412 IPC are not proved at all.

13. *Learned P.P then contended that even if it is not proved that amount recovered from the accused was a property stolen in commission of dacoity but as it was a property stolen in commission of robbery, so accused can still be convicted under Section 411 IPC. I am afraid that contention has no force. As already stated, prosecution has not led any evidence to show that any robbery was committed. No person has been examined by the prosecution, who was robbed of any amount at Mundawar. So much so, not even the FIR registered at Mundawar has been proved to show that any case was registered regarding the robbery committed in Mundawar town. Perusal of the file reveals that it contain a request application made by Incharge Police Mundawar to learned Area Magistrate, Rewari, to transfer the case property to Police Station Mundawar as it was the case property of case FIR No. 144 of 2003 under Section 394 IPC read with Section 25 of the Arms Act registered at Police Station Mundawar (Alwar). This application further shows that, that FIR at Mundawar was registered on the complaint of one Ravidatt Rewari, who was robbed of the amount, nor even the FIR registered at his instance at Mundawar has been produced or proved on file.*
14. *Apart from above, in order to hold a conviction under Section 411 IPC, it is necessary that stolen property and property recovered from the accused should be the same. Reference in this regard can be made to "Babu Singh versus State 19/4 C.L. R. 255. In this case, there is no evidence worth name that Rs. 17,000/- and Rs.16,000/- allegedly recovered from*

accused Karambir and Rambir respectfully was the part of stolen property. As already stated prosecution has even failed to prove that any robbery had been committed and so it can not said that money recovered from the accused was stolen property.

15. *As a result of my above discussion. I hold that prosecution has failed to bring home charge against the accused either under Section 412 IPC or section 411 IPC.”*

7. Thus, as referred in the beginning of the said judgment, both the appellants were convicted for the offence under Section 25 (IB) (a) of the Arms Act.

8. Learned State counsel has produced the status report dated 06.02.2023, by way of short affidavit of Rajesh Lohan, HPS, DSP, Bawal, District Rewari, in Court today, which is taken on record. Registry is directed to tag the same at appropriate place.

A copy thereof has been handed over to learned *Legal Aid Counsel*.

9. As per said status report, appellant No.1 – Karambir, had expired on 04.12.2017 i.e. during the pendency of present appeal before this Court. Para No.3 of the status report says as under:-

“That as verified from the native place of appellant Karambir, Village Garhi Bohar, Rohtak, said Karambir had died on 04.12.2017 and the event of his death was registered with the competent authority on 23.12.2017. The copy of the death certificate issued by the Registrar Birth and Death, PGIMS Rohtak dated 01.01.2021 is being appended alongwith the present status report as Annexure R-1.”

expired during the pendency of present appeal, **appeal qua Karambir stands abated.** However, it would be subject to the terms & conditions laid down in IOIN-CRA-S-4686-SB-2018 in CRA-S-4686-SB-2018, titled as, “**Shivji Ram @ Dimple Vs. State of Punjab**”, decided on **24.11.2022, 2022 SCC OnLine P&H 3759, Law Finder Doc ID #2076392.**

Now, this Court is left with the issue of decision on the appeal filed by appellant No.2 – Rambir.

11. While challenging the judgment of conviction, Mrs. Ritu Punj, *Legal Aid Counsel* for appellant(s), has argued that story propounded by the prosecution is completely false. After recording of the finding of the acquittal by learned Trial Court for the offence under Section 412 IPC, prosecution has failed to bring on record the very basis of installing of a ‘naka’ relying upon the alleged secret information through WT message. One issue of committing the loot/dacoity is left but without there being any evidence, arrest of the appellants in the manner it is alleged, becomes highly doubtful. Statements of PW4-Surender Singh and PW5-Constable Parkash Chand, if compared, material contradiction is found. Learned legal Aid Counsel points out that as per the statement of ASI- Surender Singh (PW4) ‘*when WT message was received regarding the looting incident, secret information was received that culprits, who had committed looting incident were coming towards Bawal, in car No. DL-2CC-0759.*’ On the other hand, when constable-Parkash Chand (PW5) appeared, he deposed that ‘*at about 12.30 pm, WT message was received from Mundawar that two youths were coming in a Maruti Car without Number after committing a loot in Mundawar. At about 2.30 pm secret information was received that two youths were coming in a Maruti Car.*’

While referring statements of both the prosecution witnesses, it

getting information of the car number but said fact is not there in the statement of other witness i.e. PW5-Constable Parkash Chand.

12. Learned *Legal Aid Counsel* further submits that on receiving of a secret information, same was required to be recorded in the roznamcha register by sending information to the police Station. Admittedly, there is nothing produced on record as to whether the secret information was reduced into writing and same was sent for intimation to the police station.

Rather ASI-Surender Singh (PW4) admits in his cross examination that ‘ *WT message was received by me at about 12.30 pm. Secret information was received at about 2.30 pm. Accused in the car reached there at about 3.00 pm. **That secret information was not converted into writing.** XXXXX After nabbing the accused, I donot send any intimation to the police station Mundawar. XXXXXXXX. It is true that the road, where siege was laid is a busy road. Vehicles were passing at that time and I tried to join the public person, but no vehicle stopped. I did not mention said fact in my police zimni.*’

13. While referring the statement of said star witness of prosecution, who is investigating officer i.e. ASI Surender Singh (PW4), counsel submits that the very fact of the arresting of the appellants on the discussed spot, makes the case highly doubtful; because had they been arrested at that place after forwarding the information received through WT message of committing of dacoity/loot in Mundawar, there was no reason for the investigating officer to not to revert back to the Mundawar Police officials to deliver the information of arresting of the accused successfully. Thus, it is submitted that case in hand is highly planted one.

14. Learned *Legal Aid Counsel* also submits that from the evidence of the investigating officer, it is clear that some independent witness could

have been joined, but neither such witness was joined nor produced in the witness box.

15. To buttress the arguments of non joining of the independent witness, learned *Legal Aid Counsel* relied upon the judgment passed by Hon'ble Punjab and Haryana High Court in case **Pardeep v. The State of Haryana, 1988 (1) R.C.R. (Criminal) 409, Law Finder Doc ID# 46913.**

Relevant paragraphs No. 6 and 7 of the said judgment says as under:-

“6. *It is well settled law that in case of secret information, the investigating agency must join some independent witnesses. This requirement of joining of independent witnesses is only to ensure that what the official witnesses are deposing is supported by such witnesses. In the case of Rajinder, appellant, both the independent witnesses were not examined and in the case of Pardeep, the only independent witness, Rajinder, did not support the prosecution case. In such a situation, where the independent witnesses are either not examined or do not support the prosecution case, it will not be safe to accept the testimony of official witnesses alone. In the circumstances of the case, especially when these two appellants have been acquitted in the main case under Sections [392/397](#), Indian Penal Code, I do not feel safe to maintain the conviction of the appellants. Accordingly they are given the benefit of doubt and acquitted of the charge.*

7. *The judgment and order of the Court below convicting*

the appellants under Section [25](#) of the Arms Act, are set aside and both the appeals are allowed.”

16. Counsel also relied upon another judgment passed by Punjab and Haryana High Court in case ***Ashok v. State of Haryana, 2011 (3) Law Herald 1996 : 2011 (22) R.C.R. (Criminal) 385, Law Finder Doc Id# 605711.***

Relevant paragraphs No. 11 and 12 of the said judgment says as under:

“11. In the present case, the police party had conducted the raid after a secret information was received. The secret information was received near a school at Sonapat Road, Rohtak. Besides there being a sufficient time for the police party and the place where secret information was received, being a thoroughfare, no independent witness was associated. Non-examination of any independent witness in the facts and circumstances of the present case will be fatal, when this Court has given no credence to the prosecution version that the accused had assembled and were planning to commit dacoity. A connected appeal filed by the accused viz. Criminal Appeal No.932-SB of 2002 has been accepted by this Court vide a separate order of even date. Hence, this Court extends benefit of doubt to the appellant.

12. Consequently, the present appeal is accepted and the appellant is acquitted of the charge for offence under Section [25](#) of the Arms Act.”

Regarding failure to reduce in writing the secret information as

DDR in the case of Arms Act, learned *Legal Aid Counsel* relied upon the judgment passed by Punjab and Haryana High Court in case **State of Haryana v. Deepak**, **2017 (1) Law Herald 142, Law Finder Doc Id # 823617**.

Relevant paragraph No. 5 of the said judgment says as under:

“5. We heard the submissions made by learned counsel appearing for the State of Haryana. Normally, the secret information received is reduced into writing as DDR. But in this case, the prosecution has not produced any document to show that the secret information was reduced into writing as DDR. It is the admitted case of the prosecution that none of the police officials ever acquainted with the accused, though he was a wanted accused. But for the reasons best known to the police officials, no test identification parade was conducted to make sure the identity of the accused who was allegedly spotted in the Innova car. It was really surprising that the police officials could straight-away identify the accused in the Court.”

18. To counter the submissions addressed by learned *Legal Aid Counsel* for the appellant(s), learned State counsel argues that present case is fully proved against the appellant(s) and in this regard, all the five prosecution witnesses have proved the case against the appellant(s) and weapon recovered is also found in working condition. There is nothing to

disbelieve the deposition of the witnesses and there is no perversity or

illegality in the judgment passed by learned Trial Court. In view of the clarity of the evidence led by the prosecution, there is no substance in the arguments addressed by learned *Legal Aid Counsel* for the appellant(s).

19. I have considered the submissions addressed by both the sides and after examining the record available before me, I find that there is substance in the submission addressed by the counsel for the appellant(s). First of all, there is material contradiction in regard to the 'secret information' received by the investigation team before laying down the seige, as both the material witnesses i.e. ASI Surender Singh (PW-4) and Constable-Parkash Chand (PW-5) have deposed differently. Thus, it becomes doubtful, whether secret information was really received or not.

20. Moreover, it is admitted case of prosecution that nothing has been produced on record to show that secret information or WT message was reduced into writing as DDR. In this view of situation also, judgment cited by learned *Legal Aid Counsel* in **State of Haryana's case (supra)** applies in its entirety.

21. Another aspect is that once, the seige is laid on the spot on the basis of secret information received from the Mundawar police, for what reason such a important source of information through WT message i.e., Mundawar Police (Rajasthan), was not apprised about the status of the arrest and recovery of the looted amount from the appellants.

In other words, when aspect of not sending of any information, has been categorically accepted by the Investigating Officer/ASI Surender Singh (PW4) in his cross examination; story propounded by the prosecution seems to be doubtful.

22. Moreover, there is no plausible reason brought on record by the prosecution that why no independent witness was joined at the time of

effecting recovery from the nabbed accused. In support of the said submission addressed by the learned *legal Aid Counsel*, help is taken from the Judgment passed by Hon'ble Punjab and Haryana High Court in cases ***Ashok v. State of Haryana, 2011 (3) Law Herald 1996 : 2011 (22) R.C.R. (Criminal) 385, Law Finder Doc Id# 605711. Pardeep v. The State of Haryana, 1988 (1) R.C.R. (Criminal) 409, Law Finder Doc ID# 46913.***

23. Thus, based upon the reasons of contradictions, lack of reliability of the depositions in the testimony of the investigating officer and the another recovery witness as well as the other legal submissions notice here-in above, this Court is very much convinced for accepting the appeal.

24. Therefore, judgment of conviction and order of sentence dated 21.02.2004 passed by the Court of learned Additional Sessions Judge, Rewari, is ***set-aside***. Appellant(s) is ordered to be hereby acquitted from the charges levelled against him.

25. **Appeal i.e. CRA-S-472-2004 stands allowed.**

(SANJAY VASHISTH)
JUDGE

15.02.2023

Riya

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