

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-1299-SB-2014 (O&M)
Date of Decision: 14.07.2023

Sanjeev Kumar and others

..... Appellants

Versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. B.B.S.Randhawa, Advocate for the appellants.

Mr.Manish Dadwal, AAG, Haryana.

HARPREET SINGH BRAR, J.(Oral)

1. This appeal is directed against the judgment of conviction and order of sentence dated 18.12.2013 passed by learned Additional Sessions Judge, Ambala whereby the appellants have been sentenced to undergo rigorous imprisonment for a period of two years with a fine of Rs. 2000/- each for the commission of offence punishable under Section 224 read with Section 120-B IPC.

FACTUAL BACKGROUND

2. Factual matrix of the prosecution case is that on 24.10.2008, on receipt of an information with regard to digging of a tunnel, Inspector Suraj Bhan along with other police officials reached Central Jail, Ambala and Sher Singh, the then Deputy Superintendent, Central Jail, Ambala moved a letter dated 24.10.2008 stating therein that death convicts namely Sanjeev Kumar,

Anand Kindo, Rajan Gaur and Masood Akhtar Haidar @ Ramu were lodged in 32 Cell Ward of Central Jail, Ambala. On 18.10.2008, a surprise checking was conducted of the said Cell Ward during which a 2-2^{1/2} feet deep pit was found in the corner of the Cell near the wall. On interrogation, it was found that the aforesaid convicts, in connivance with each other, had planned to escape from jail by digging a tunnel. On this complaint, offence punishable under Section 224 read with Section 34 IPC was found to have been committed. The matter was investigated and during investigation involvement of other accused namely Sonia, Poonam, Raj Kumar @ Prince, Rishi Raj and Rajeev Kumar was also found as they provided a SIM card and a mobile phone on forged ID to facilitate their plan to run away from the jail by digging tunnel. The aforesaid accused persons were arrested and after completion of investigations, challan against the accused for commission of offence punishable under Sections 224/419/420/467/468/471/222/34/120-B IPC was presented in the Court.

3. After complying with the provisions of Section 207 Cr.P.C., charge under Section 224 read with Sections 34/120-B IPC was framed against all the accused, charge under Sections 225 read with Sections 34/120-B IPC was also framed against accused Raj Kumar @ Prince, Rishi Raj @ Rishi, Rajeev Kumar and Poonam, charge under Section 222 IPC was framed against accused Poonam, charge under Section 419 IPC was framed against accused Raj Kumar @ Prince, charge under Sections 420/467/468/471 IPC read with sections 34/120-B IPC was framed against accused Raj Kumar @ Prince, Rishi Raj @ Rishu and Rajeev Kumar vide order dated 10.07.2009, to which they all pleaded not guilty and claimed trial.

4. In order to prove its case, prosecution examined as many as 16 witnesses. In their defence evidence, the accused examined three witnesses.

5. After hearing arguments of both the sides, the trial Court held the present appellants-accused Sanjeev Kumar, Masood Akhtar @ Haidar @ Ramu, Anand Kindo and Rajan Gaur guilty of offence punishable under Section 224 IPC read with Section 120-B IPC and convicted them. Since there was no incriminating evidence against the remaining accused, they were acquitted of the charges levelled against them.

CONTENTIONS

6. Learned counsel for the appellants has argued that the occurrence had taken place on 18.10.2008 whereas the FIR had been registered on 24.10.2008. As per him, the delay of six days in lodging the FIR is quite enough to concoct a story. He further asserted that there is no mention of the articles allegedly recovered from the spot in the complaint. The whole case of the prosecution is based on disclosure statements of accused persons before the police. Moreover, the articles alleged to have been recovered from the spot i.e. *khurpi*, *thali*, *danda*, iron rod etc. where the alleged pit was found, fall under the definition of 'prohibited articles' mentioned in para 606 of Punjab Jail Manual and there is no report about the theft of aforesaid articles. In addition, as per Ex.DW1/1, the daily search report, no pit was found and the prosecution was not able to show any instrument or weapon used by accused to allegedly dig up the tunnel. Learned counsel for the appellants has prayed that the appellants deserve to be acquitted.

7. On the other hand, learned State counsel has argued that there is

sufficient evidence on record to prove the commission of offence by the appellants. The delay in lodging the FIR is also well explained. Further, he has invited the attention of the Court towards the testimony of Sher Singh, Deputy Superintendent of Police (PW1) who is also the complainant in the present case. As per PW1, the matter remained under consideration before the higher authorities as to whether a case should be registered and the same was decided in affirmative after the Sessions Judge, Superintendent of Police and Deputy Commissioner, Ambala visited the Central Jail, Ambala.

OBSERVATION AND ANALYSIS

8. Having heard learned counsel for the appellants, learned State counsel and perusing the record with their able assistance, this Court is of the opinion that the present appeal deserves to be dismissed.

9. As far as the non mentioning of articles used to dig the tunnel in the FIR is concerned, it is a settled law that the FIR does not require to contain the minutest of details. The argument of learned counsel for the appellants that no pit was found at the spot is baseless since as per the testimony of Surinder Pal Chauhan, Superintendent, Central Jail, Ambala (PW4,) a pit around 2-2^{1/2} feet deep was found to have been covered with *thalies* fitted by iron pipes and wires. The photographs tendered in evidence as Ex.MO/1 to Ex.MO/3 also prove the existence of the pit in the Cell.

10. As regards the argument of delay in lodging the FIR, this Court is of the opinion that the delay is satisfactorily explained. As discussed above, it has been stated in the testimony of PW1-Sher Singh that the matter was discussed by the higher authorities among themselves and it was only thereafter that the FIR was registered. The case of the prosecution cannot be thrown away only because there is delay in lodging the FIR. A three

Judge Bench of the Hon'ble Supreme Court in **Mukesh v. State for NCT of Delhi, Supreme Court, 2017(6) SCC**, speaking through Justice Dipak Misra, held as follows:-

“49. Delay in setting the law into motion by lodging of complaint in court or FIR at police station is normally viewed by courts with suspicion because there is possibility of concoction of evidence against an accused. Therefore, it becomes necessary for the prosecution to satisfactorily explain the delay. Whether the delay is so long as to throw a cloud of suspicion on the case of the prosecution would depend upon a variety of factors. Even a long delay can be condoned if the informant has no motive for implicating the accused.”

A two Judge Bench of the Hon'ble Supreme Court in **Ramesh Maruti Patil v. State of Maharashtra, Supreme Court, 1995 SCC(Cri) 149**, held as follows:-

“2...We are mindful of the position that the FIR is not a substantive piece of evidence and has a limited use. It is also not an encyclopedia of the prosecution case. It is from the nature of the FIR and other surrounding circumstances to be seen whether there was any scope for any confusion at the time when the informant gave it or was it a version which merited explanation at the eventual trial”

Thus, the argument of learned counsel for the appellants that the prosecution has concocted a story, is highly improbable. It is settled law that the FIR is not an encyclopedia of the entire prosecution case. It only gives information that a cognizable offence has been committed. Hence, the argument of learned counsel for the appellant that the articles allegedly recovered from the spot did not find mention in the FIR, stands rejected.

Moreover, pursuant to the disclosure statement suffered by appellant Sanjeev

Kumar, the *khurpi* used for digging the tunnel was recovered vide seizure memo Ex.P31.

11. Another argument of learned counsel for the appellant that whole case of the prosecution is based on the disclosure statements of the accused persons is also not tenable. A careful perusal of the evidence led by the prosecution makes it clear that the case of the prosecution does not hinge only on the disclosure statements and there is sufficient evidence on record to bring home the guilt of the appellants/accused.

CONCLUSION

12. In view of the above discussion, this Court is of the considered opinion that the findings recorded by the learned trial Court are seemingly reasonable and logical. Hence, the judgment of conviction as well as order of sentence dated 18.12.2013 passed by the learned Additional Sessions Judge, Ambala is upheld and the present appeal is dismissed accordingly qua appellants No.1, 3 and 4. However, appeal qua appellant No.2 namely Masood Akhtar Haidar @ Ramu already stands dismissed as withdrawn vide order dated 19.02.2016 of this Court.

13. Pending application (s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

14.07.2023

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Whether Reasoned/Speaking : Yes/No
Whether Reportable : Yes/No