

2024:PHHC:064216-DB



**In the High Court for the States of Punjab and Haryana
At Chandigarh**

(I) CRA-D-420-DBA-2001 (O&M)

State of Haryana ... Appellant

Versus

Raghbir Singh and others ... Respondents

(II) CRA-S-990-SB-2000 (O&M)

Khichu ... Appellant

Versus

State of Haryana ... Respondent

(III) CRA-S-1091-SB-2000 (O&M)

Raghbir and another ... Appellants

Versus

The State of Haryana ... Respondent

Date of Decision:-8.5.2024

**CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL
HON'BLE MR. JUSTICE N.S. SHEKHAWAT**

Present:- Ms. Sheenu Sura, DAG, Haryana,
for the appellant –State of Haryana in CRA-D-420-DBA-2001 &
for the respondent – State of Haryana in CRA-S-990-SB-2000 &
CRA-S-1091-SB-2000.



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Mr. Rajiv Sharma, Advocate,
for the appellant in CRA-S-990-SB-2000 and
for respondent No.6 in CRA-D-420-DBA-2001.

Mr. Karan Pathak, Advocate,
for the appellant in CRA-S-1091-SB-2000 and
for respondent No.1 CRA-D-420-DBA-2001.

GURVINDER SINGH GILL, J.

1. This judgment shall dispose of the aforesaid three appeals which are directed against the same very judgment dated 12.9.2000 passed by learned Additional Sessions Judge, Faridabad.
2. While CRA-S-990-SB-2000 & CRA-S-1091-SB-2000 have been filed by the accused Raghbir, Gattan @ Riyasat and Khichu, who stand convicted for having committed offence under Section 412 of Indian Penal Code, CRA-D-420-DBA-2001 has been filed on behalf of State of Haryana challenging acquittal of the aforesaid accused in respect of charges under Sections 332, 353, 395, 397 and 307 IPC and complete acquittal of the remaining remaining accused. Vide judgment dated 12.9.2000 passed by learned Additional Sessions Judge, Faridabad, accused Raghbir, Gattan @ Riyasat and Khichu have been sentenced as under:

Name of the Convict/s	Offence Under Section/s	Imprisonment	Fine	In default of payment of fine
Raghbir	412 IPC	Rigorous Imprisonment for Seven Years	Rs.5,000/-	R.I. for One year
Gattan @ Riyasat	412 IPC	Rigorous Imprisonment for Seven Years	Rs.5,000/-	R.I. for One year
Khichu	412 IPC	Rigorous Imprisonment for Four Years	Rs.3,000/-	R.I. for 9 months



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3. The FIR in question came to be lodged on the basis of statement (Ex.PT) made by Gautam Chand on 3.6.1992, wherein it is alleged that on the night intervening 2.6.1992 and 3.6.1992 he went to sleep on the roof of his house as usual. However, during midnight he heard noises of a door being pushed. The complainant woke up and saw that 10-12 persons armed with weapons like axes etc. had entered into his house after breaking open the door and were beating children and the said persons were looting household articles as well as gold ornaments. After looting the house of complainant, the said persons entered into house of complainant's neighbour namely Babu Ram and committed dacoity therein as well. It is further the case of prosecution that pursuant to receipt of said information, the police rushed to the spot and had an encounter with the dacoits during the course of which Constable Vinay sustained gunshot injuries. It is alleged that the dacoits injured several other police officials and managed to escape from the spot. Investigation was conducted by the police, during the course of which cartridges were recovered from the spot; rough site plan of the place of occurrence was prepared and statement of witnesses were recorded.
4. On 29.6.1992, the police received information that 19 persons had committed dacoity in the house of Gautam Chand and Babu Ram and that the said persons had moved to Uttar Pradesh (UP) from Haryana on a tractor. The police conducted raids at several places and was able to intercept Massey-Fergusson tractor bearing registration No.UP-81-9284. The occupants of the said tractor were arrested and their search was effected leading to recovery of 3 gold coins from the possession of one Sapeeha, which were taken into



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possession by the police vide recovery memo Ex.PG. Three gold bangles were recovered from possession of one Fakruddin, while another 2 gold bangles were recovered from possession of Ram Kishore, which were taken into possession by the police vide recovery memos Ex.PF and PE, respectively.

5. It is further the case of prosecution that on 19.8.1992, accused Raghbir appeared before the police and produced a pair of gold ear-rings and 4 gold buttons, which were taken into possession by the police vide recovery memo Ex.PCC. The aforesaid recovered articles were duly identified by complainant Gautam Chand and Babu Ram as belonging to them. On 9.9.1992, a raid was conducted at the house of Gattan, who was arrested and pursuant to his disclosure statement, he got recovered a pair of 'Kandula' one pair of 'pajeb' and one Hassali, which were taken into possession vide recovery memo Ex.PFF on 17.9.1992. He (Gattan) further disclosed that he had handed over some of the looted properties to his relative Khichu. Pursuant to said disclosure statement, Khichu was also arrested and a pair of 'Kadula', one silver hasli and a pair of 'pajeb' were recovered from possession of said Khichu, which were taken into possession vide Ex.PA on 17.9.1992.
6. It is further the case of prosecution that on 18.8.1992, accused Safiya got a 12 bore pistol and 2 live cartridges recovered pursuant to his disclosure statement. On 24.8.1992, accused Kallu @ Guddu was arrested and 2 gold coins (mohars) were recovered from his possession. On 20.10.1992 accused Sadhu @ Lalla was arrested and pursuant to his disclosure statement 2 silver



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'tagris' were recovered, which were taken into possession by the police vide Ex.PLL on 22.10.1992. Accused Zahid was also arrested on the same day i.e. on 22.10.1992 pursuant to secret information and who also made a disclosure statement leading to recovery of 40 'Lachhe' of silver from his house.

7. Accused Sahab Khan, Sindi, Furkan, Shambir, Islam, Fajjar, Yasin, Aas Mohmmad and Guljar were declared proclaimed offender, while efforts were still being made to arrest remaining accused namely Johra, Mangal, Kamal and Subhash through warrants. It is thus the case of prosecution that 13 accused came to be arrested. However, before challan could be presented, accused Kallu @ Guddu and Shambir absconded and were declared proclaimed offenders. Consequently, charge were framed against 11 accused, but during the course of trial Zahid also absconded and was declared a proclaimed offender, while Juhru and Furkan expired. Thus, ultimtely it is only 8 accused, who face trial.
8. The prosecution in order to establish its case examined 25 witnesses. On the other hand, the accused also led evidence and examined as many as 7 DWs to establish their plea of false implication. The Trial Court, upon marashlling the evidence on record, held that the prosecution was able to establish its case qua offence under Section 412 of Indian Penal Code only qua 3 of the accused namely Raghbir, Gattan @ Riyasat and Khichu and acquitted them of the remaining offences. The remaining accused, who had faced trial, were acquitted of all the charges framed against them.
9. Learned State counsel submitted that the evidence led by prosecution clearly established all the charges framed against the accused and that once the Trial



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Court had accepted the factum of recovery of stolen articles from the 3 accused, their complicity in respect of the remaining offences was also clearly borne out particularly having regard to the statement made by the injured police official. It has further been submitted that the Trial Court also fell in error in acquitting the remaining five accused of all the offences, despite the fact that they were also found in possession of some of the stolen articles.

10. On the other hand, learned counsel representing the accused have not only supported the findings of Trial Court as regards acquittal of the 5 accused namely Shafi Mohamad @ Sapeeha, Fakruddin, Ram Kishore, Sabu @ Lalla and Kamal, but have also assailed the conviction of three accused namely Raghbir, Gattan @ Riyasat and Khichu in respect of offence under Section 412 IPC.
11. This Court has considered rival submissions addressed before this Court and have also gone through the evidence led by the prosecution as well as the accused.
12. The relevant discussion pertaining to acquittal of all the accused with respect to offences under Sections 332, 353, 395, 397 and 307 IPC is reproduced hereinunder:

"12. As regards to the offences punishable under Section 332, 353, 395, 397 and 307, the prosecution has miserably failed to prove the same. None of the dacoits was apprehended on the spot, an encounter ensued between the police party and the dacoits and thereafter the dacoits were able to escape from the spot. None of the



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police officials had seen any of the dacoits nor any of them (dacoits) was earlier known either to the police party or to the complainants. PW - 4 Babu Ram Aggarwal, the person in whose presence the dacoity was committed, has deposed on the factum of dacoity and also proved the identification memo Ex.PJ and recovery memos Ex.PK and Ex.PL but failed to identify the accused persons to be those persons who had committed dacoity in the house. He was declared hostile on that fact but to no effect. Only Gautam Chand complainant, as PW – 11 tried to identify the accused persons deposing that the accused persons had refused to join the test identification parade. The identification of PW-11 Gautam Chand is not proved beyond doubt. He made a casual statement that the accused person present in the Court were the same who had committed the dacoity. As already pointed out it had come during investigation that about 19 persons had committed dacoity. Some of the accused persons facing trial and present in the Court on 21.9.1999 when the statement of Gautam PW-11 was recorded, were not those who had participated in the commission of dacoity. Some of them were those persons who had subsequently acquired the possession of the stolen articles after dacoity. Thus the statement of the complainant cannot be taken as true worthy. He made a cursory statement implicating all the accused in the act of commission of dacoity when some of accused persons had not participated in dacoity but have been charged under Section 412 IPC only. Once the statement of PW-11 complainant in XXXX disbelieved on this fact. Charges under Section 332, 353, 395, 397 and 307 IPC are not proved against any of the accused persons and hence all the accused are hereby acquitted thereunder.”

13. This Court finds that it is a case where none of the accused was identified at the spot nor any of the said persons was known to any of the members of the police party or to the complainant. PW-4 Babu Ram Aggarwal, in whose



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presence dacoity had been committed and who had also signed on various recovery memos, failed to identify the accused and was declared hostile. Although the complainant - Gautam Chand did state regarding identification of the accused, but his statement is shorn of any other reliable corroborative evidence. It need to be borne in mind that it is a case where the occurrence had taken place during the midnight and while the complainant was on the roof of his house, the occurrence had taken place on the ground floor and thus identification of accused would certainly be difficult. Even though, one of the injured police official i.e. PW – Vinay Kumar had been examined by the prosecution, but even in his statement not a word has been stated regarding identification. Rather, in his examination-in-chief he categorically stated that he cannot identify any of the dacoits, who had fired at him. Thus, while it can be said that there is evidence to the effect that a dacoity had taken place, but the prosecution has failed to establish that it is the accused, who had committed the said offences. Consequently, this Court does not find any ground to take a view different from what has been taken by the Trial Court as regards acquittal of the accused for offences under Sections under Sections 332, 353, 395, 397 and 307 IPC.

14. As far as offence under Section 412 IPC is concerned, this Court finds that charges were framed by the Tria Court only in respect of the jewellery recovered from the three accused namely Raghbir, Gattan @ Riyasat and Khichu belonging to the complainant Gautam Chand only and no charges were framed with respect to the jewellery, which had been recovered from the remaining accused. Thus in the absence of any specific charges



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pertaining to the articles recovered from the remaining 5 accused namely Shafi Mohamad @ Sapeeha, Fakruddin, Ram Kishore, Sabu @ Lalla and Kamal, they certainly could not have been convicted for the said offences. The articles of jewellery recovered from the accused Raghbir, Gattan @ Riyasat and Khichu have not only been identified by the complainant, but the factum of recovery also stands duly established from the testimonies of the prosecution witnesses. Under these circumstances, the conviction of three accused namely Raghbir, Gattan @ Riyasat and Khichu is fully justified and does not suffer from any infirmity and is upheld. The remaining accused, in the absence of any evidence, deserve to be acquitted in respect of offence under Section 412 IPC as have been rightly acquitted by the Trial Court.

15. As a sequel to the discussion made above, the appeal i.e. CRA-D-420-DBA-2001 filed on behalf of State of Haryana is found to be devoid of merits and is hereby dismissed.
16. While the conviction of appellants namely Raghbir, Gattan @ Riyasat and Khichu in respect of offence under Section 412 is upheld, but having regard to the fact that appellant - Raghbir was aged 68 years, appellant – Khichu was aged 55 years and appellant - Gttan @ Riyasat was aged 32 years at the time of passing of impugned judgment and there is no evidence that they are involved in multiple cases, it will be in the fitness of things that the substantive sentence of rigorous imprisonment as imposed upon appellants – Raghbir & Gattan @ Riyasat i.e. 7 years and appellant – Khichu i.e. 4 years be reduced to the one already undergone. Thus the appeals filed by the aforesaid accused i.e. CRA-S-990-SB-2000 filed on behalf of appellant -



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Khichu & CRA-S-1091-SB-2000 filed on behalf of appellants – Raghbir and Gattan @ Riyasat are accepted to the limited extent of reduction in substantive sentence of imprisonment as indicated above. The fine imposed shall, however, remain unaltered. Their bail bonds/surety bonds shall stand dischrqed.

17. A copy of this order be placed on the file of each connected case. All quarters concerned be informed.

(GURVINDER SINGH GILL)
JUDGE

8.5.2024
Pankaj

(N. S. SHEKHAWAT)
JUDGE

Whether speaking /reasoned	Yes
Whether Reportable	No