



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRR-3596-2016 (O&M)

Date of decision: May 17th, 2024

Anil Kumar and another

.....Petitioners

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Luvinder Sofat, *Amicus Curiae*
for the petitioner.

Mr. Rajesh Gaur, Additional Advocate General, Haryana.

MANJARI NEHRU KAUL, J.

Learned *amicus* for the petitioner has impugned the judgment of conviction dated 17.10.2012 passed by learned Sub Divisional Judicial Magistrate, Loharu, and order of sentence dated 02.11.2012 passed by learned Chief Judicial Magistrate, Bhiwani, whereby the petitioners have been sentenced to undergo R.I. for a period of four years and to pay a fine of ₹4,000/- each under Sections 392/34 IPC and R.I. for a period of six years and to pay a fine of ₹6,000/- each under Sections 394/34 IPC, which was later upheld by learned Additional Sessions Judge, Bhiwani, vide judgment dated 15.09.2015, on the following grounds:-

2. **Submissions of learned *amicus* for the petitioner:**

(i) that the Courts below wrongly convicted the petitioners without properly evaluating the evidence on record. The evidence had been grossly misread and misinterpreted and on the face of it, did not inspire any confidence. Hence, the entire approach of both the Courts

below was fundamentally flawed;

(ii) that the prosecution did not adduce any convincing much less cogent evidence to prove that the petitioners with a common intention, committed the robbery of a vehicle (Boloro bearing registration No.HR-61/5868) belonging to complainant Anil Kumar PW-4, or they caused harm to PW-4 Anil Kumar during the robbery or attempt thereof. Furthermore, no cogent evidence was led that the petitioners were in possession of the swords;

(iii) that the statements of PW-4 Anil Kumar and PW-5 Dalip Singh, the alleged eyewitness, are inconsistent and lack credibility. A perusal of their testimonies does not inspire confidence and comes across as being totally unbelievable; that there is no link evidence connecting the petitioners to the alleged crime. The essential ingredients of Sections 392 and 394 read with Section 34 were not conclusively proved against the petitioners during trial;

(iv) that the medical evidence did not align with the oral deposition of the witnesses. PW-5 Dalip Singh, being the real brother of PW-4 Anil Kumar, was an interested witness and thus, his testimony lacked credibility;

(v) that despite the availability of independent witnesses, none was joined by the police. The confessional statements allegedly made by the petitioners have no evidentiary value;

(vi) that the false implication of the petitioners is further evident from the fact that Dr. Manish Kumar PW-2 during trial testified that injury sustained by PW-4 Anil Kumar could have been caused on account of a fall on a hard surface, contrary to the claim by PW-4 Anil Kumar that it had been caused by a sword. Rather, the medical

evidence indicates that a blunt weapon had been used to inflict the injury;

(vii) that the learned Court below ignored that the alleged recovery of weapons was on the basis of disclosure statements made by the petitioners, which has very weak evidentiary value. The prosecution failed to present any additional facts pursuant to the disclosure statement suffered by the petitioners and even the evidence produced by the prosecution regarding the commission of offence under the Arms Act against the petitioners was unconvincing;

(viii) that the prosecution failed to prove that the petitioners had been apprehended with a Bolero bearing registration No.HR-61/5868 on 05.07.2011. PW-4 Anil admitted that it is common that quarrels do take place between taxi stand drivers, which also hinted towards a fabricated version having been brought forth against the petitioners by the complainant;

(ix) that it was very evident that the case of the prosecution was based on conjectures and surmises, and there was no direct or indirect evidence to link the petitioners with the crime.

3. Learned counsel has thus, prayed for setting aside the impugned judgment of conviction passed against the petitioners and acquitting them of the charges framed against them.

4. The case as set up by the prosecution may be noticed as thus:

(i) On 05.07.2011, Police Station Behal received a telephonic message reporting the forcible snatching of a Bolero vehicle (registration No.HR-61/5868) by three young men, who threatened the driver with deadly weapons, specifically swords. The three young men

then drove away with the vehicle towards Isharwal village.

(ii) On arrival at Bus Stand Katwar, the complainant PW-4 Anil Kumar, who was present along with his brother PW-5 Dalip Singh, reported the incident to the police. Complainant Anil Kumar alleged that his brother owned a white Bolero; on the day of the incident, the complainant was at the Behal Bus Stand, booking passengers and was talking with his brother Dalip. Accused Anil Kumar (son of Om Parkash) approached them to book a vehicle for a wedding in Bhandwa, with plans to pick it up from Miran village. Accused Anil Kumar son of Om Parkash agreed to the booking for ₹1200/- and directed the complainant to take the vehicle to Kashni Khurd Bus Stand, where two of his friends, Dharmbir and Ramphal, were waiting.

(iii) Upon reaching Kashni Khurd Bus Stand, the vehicle was stopped. Accused Dharambir holding a sword attacked the complainant, while accused Ramphal and accused Anil son of Om Parkash restrained him. Accused Dharambir snatched the keys of the vehicle and thereafter, all three of them threw the complainant from the vehicle and fled towards Isharwal. The complainant immediately informed his brother Dalip Singh about the occurrence in question leading to the registration of the FIR Ex.PW6/B.

(iv) Finding a *prima facie* case, all the three accused were charged under Sections 392, 394 read with Section 34 of the IPC and Section 25 of the Arms Act to face trial, to which they pleaded not guilty and claimed trial. The prosecution in support of its case, examined as many as six witnesses, including the complainant as well as his brother Dalip, who deposed as PW-4 and PW-5 respectively. On the basis of the material and other evidence led, the learned CJM,

Bhiwani, convicted them as under:-

Offence(s) u/s	Period of sentence(s)	Fine imposed	Period of sentence in default of payment of fine
392/34 of the IPC	4 years	₹4,000/- each	2 months
394/34 of the IPC	6 years	₹6,000/- each	3 months

Both the sentences were ordered to be run concurrently.

5. Learned State counsel has vehemently opposed the prayer and submissions made and has aruged that the impugned order is a well reasoned one and cannot be faulted with; sufficient cogent and convincing evidence was led during trial which also included the deposition of the complainant as well as his brother Dalip Singh, who fully supported the case of the prosecution. Both these key witnesses were subjected to an extensive cross-examination, however, the defence was unable to create any dent in their depositions.

6. I have heard learned counsel for the parties and perused the relevant material on record.

7. A perusal of the material and other evidence on record leaves no manner of doubt that both the material witnesses i.e. PW-4 Anil Kumar (complainant) and PW-5 Dalip (alleged eyewitness) provided testimony that fully supported the case of the prosecution. Furthermore, the ocular testimony stands totally corroborated by the medical evidence on record, which further nails the accused in the crime. While testifying, PW-4 Anil Kumar (complainant) gave a detailed and vivid account of the sequence of events right from the time when he was initially approached by one of the accused to rent his vehicle and subsequently, how the crime was committed by all the

accused on the fateful day. The FIR question was promptly lodged by the complainant, eliminating any possibility of a false or fabricated case against the accused.

8. As a sequel to the above, this Court does not find any merit in the present revision petition, which deserves to be dismissed.

9. A prayer has been made by learned *amicus* that a lenient view be taken as the petitioners are first time offenders and have never been involved in any other criminal case after the registration of the FIR in question. It has been submitted that petitioner No.1-Anil Kumar has undergone custody of more than 3 years and petitioner No.2-Ramphal has undergone custody of more than 4 yeras. It has also been submitted that the petitioners have been suffering the agony of a protracted trial for the past 13 years and in the preceding years, they have been fastened with a lot of responsibilities.

10. Keeping in view the facts and circumstances of the case as well as the submissions made by learned *amicus*, this Court is of the considered view that ends of justice would be met, if while maintaining the conviction of the petitioners, their substantive sentence of 6 years is reduced to the period already undergone by them in the present case, more so when it has not been disputed by learned State counsel, on instructions, that the petitioners are not involved in any other criminal case and in the preceding 13 years after the occurrence in question, have not been involved in any other untoward incident/criminal case.

11. Ordered accordingly.

12. There will be no modifications with regard to sentence of fine. The same shall be deposited by the petitioners before the

trial/successor Court, if already not deposited.

13. With the aforesaid modifications, the instant revision petition is disposed of.

May 17th, 2024
Puneet

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No