

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S No.1428-SB-2004
Decided on : 31.07.2019

Naveen Kumar & anr. Appellants

Versus

State of Haryana Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by : Mr. A.P.S.Deol, Sr. Advocate with
Mr. H.S.Deol, Advocate and
Mr. Vishal Rattan Lamba, Advocate
for the appellants.

Mr. S.S.Pannu, DAG, Haryana and
Mr. Rajbir Singh, AAG, Haryana.

Manjari Nehru Kaul, J.

The instant appeal has been preferred against the impugned judgment of conviction dated 31.05.2004 and order of sentence dated 02.06.2004 passed by Addl. Sessions Judge, Rewari vide which the accused-appellants were convicted and sentenced as under:

| <i>Name of Convict</i> | <i>Offence</i> | <i>Period of sentence</i> | <i>Fine imposed</i> | <i>Period of sentence in default of payment of fine</i> |
|--------------------------------------|--|--|--------------------------------|--|
| Naveen Kumar Teja @ Tej Ram | 393 IPC read with Section 398 IPC | Rigorous imprisonment (RI) for 07 years | Rs.2,000/- | RI for Six months |
| | 471 IPC | RI for 2 years | Rs.1,000/- | RI for three months |
| | 25 Arms Act | RI for 02 years | Rs.500/- | RI for two months |

All the sentences were ordered to run concurrently.

The prosecution case was set in motion on the statement Ex.PC made by the complainant Jaswant Singh (PW-5) before ASI Jawahar Singh (PW-9) wherein he stated that while he was on duty at about 7-7.30 pm on 19.06.2003 at the petrol pump situated at Haryana Tourism Resort, Dharuhera, a red coloured Hero Honda motorcycle bearing registration No.HR-26E-0452 being ridden by two youths came for getting fuel filled up in their motorcycle. After the fuel had been filled up by PW-6 Ram Kishan, the youth, who was riding the motorcycle moved it closer to the showroom situated within the petrol station. The other youth, who was a pillion rider, went inside the showroom and asked the complainant -PW-5 Jaswant Singh for a tin of mobil oil. Immediately, thereafter this youth brandished a pistol at him and asked him to hand over all the cash to him. This led to an altercation between the two inside the showroom. During the scuffle, the complainant succeeded in snatching the loaded pistol of the youth and immediately raised an alarm upon which the youth fled away on the motorcycle along with the other youth, waiting outside the showroom. At the time of giving the aforementioned complaint, the complainant PW-5-Jaswant Singh gave a description of the two miscreants and also other details including that of the motorcycle on which the miscreants had come to the petrol station. The complainant PW-5-Jaswant Singh also handed over the weapon to the investigating agency, which he had managed to snatch from one of the miscreants. The complainant before giving the aforementioned statement Ex.PC, had also telephonically intimated the Police Station Dharuhera about the alleged occurrence. On the same

evening at about 11.00 pm, during a naka laid by the police, both the miscreants i.e. accused-appellants Naveen Kumar and Teja @ Tej Ram were apprehended in the presence of complainant Jaswant Singh. The appellant Naveen Kumar was riding the motorcycle whereas appellant Teja @ Tej Ram was pillion riding. On search of person of accused-appellant Teja @ Tej Ram, an iron 'panch' from the left pocket and two live cartridges from the right pocket of his trouser were recovered. A 'khukhri' which had been concealed by the appellant Teja @ Tej Ram on his left calf was also recovered from his person. On search of the appellant Naveen Kumar, two live cartridges along with a loaded pistol of .315 bore, which was kept in his 'dub' were recovered. All these recovered articles used in the crime were sealed and seized vide recovery memo Exs.PC/2 and PC/3 including the motorcycle bearing registration No.HR-26E-0452. On the basis of statement Ex.PC, a formal FIR Ex.PE was registered. After completion of investigation, challan was presented. The charges were framed under Sections 393/398 and 471 IPC and Section 25 of Arms Act against the accused to which they pleaded not guilty and claimed trial. In support of their case, the prosecution examined as many as 10 witnesses. After the conclusion of prosecution evidence, all the incriminating circumstances appearing against them in evidence were put to the appellants-accused under Section 313 Cr.PC to which they pleaded innocence and false implication. In their defence, the accused examined two witnesses. Learned trial Court convicted both the accused and sentenced them as already detailed above.

Learned senior counsel for the appellants strenuously argued

that the learned trial Court gravely erred in relying upon the testimony of PW-5 Jaswant Singh and PW-6 Ram Kishan as no test identification parade was conducted and even the FIR revealed that except for a mention that the miscreants were young boys, no other description of the miscreants had been given by the complainant Jaswant Singh. Hence, the identification of the accused-appellants by them in the Court for the first time should not have been given any credence. He further submitted that the weapons allegedly recovered had in fact been planted by the investigating agency to create evidence so as to attract offence under Sections 393 and 398 IPC. Learned senior counsel vehemently argued that during the alleged occurrence no damage or hurt had been caused to any of the persons present at the petrol station much less with the weapons allegedly recovered from the appellants-accused. While drawing the attention of this Court to the report Ex.PA of the Armourer PW-1 Jai Bhagwan, he urged that as per his own admission he did not test fire from any of the weapons from which it could be ascertained that the same had been used in the alleged occurrence or if they were even in working condition more so since the presence of “web and rust” in the barrel of the pistols allegedly recovered left no manner of doubt that they were unfit for firing. It was urged that the essential ingredients of Sections 393 and 398 IPC were not attracted at all particularly so in the case of appellant Naveen Kumar as he had no role to play in the crime. As per the complainant PW-5 Jaswant Singh, it was the appellant Teja @ Tej Ram, who had allegedly walked inside the showroom to buy mobil oil and it was only he, who had demanded the cash to be handed over to him. Therefore, the appellant

Naveen Kumar neither had any intention nor knowledge to commit the offence of robbery. Learned Senior counsel lastly challenged the conviction of the appellants under Section 471 CPC for riding the said motorcycle with a fake number plate as the said fake number plate allegedly recovered from the motorcycle was neither produced nor exhibited before the trial Court.

Per contra learned State counsel vehemently opposed the submissions made by the counsel opposite and submitted that the identification of the appellants in the Court for the first time could not be faulted with as the occurrence had lasted for a considerable time for the complainant PW-5 Jaswant Singh and PW-6 Ram Kishan to have a good look at them. He submitted that the prosecution case stood fully corroborated in all respects. He further submitted that the appellant Naveen Kumar had both the intention and knowledge to commit the offence under Section 398 IPC.

Heard learned counsel for the parties and perused the evidence as well as other material available on record.

Coming to the first challenge qua the identification of the appellants for the first time in the Court and no test identification parade having been conducted, the same is devoid of any merit. Both the complainant PW-5 Jaswant Singh and PW-6 Ram Kishan deposed that the accused-appellants came to the petrol station at about 7-7.30 pm on 19.06.2003, they got fuel put in their motorcycle and thereafter appellant Teja @ Tej Ram walked up to the showroom where he expressed his desire to purchase mobil oil. It goes without saying that the entire sequence of events would have lasted for at least 5 minutes if not more. Another fact,

which cannot be ignored is that in the month of June at 7-7.30 pm since there is enough visibility and light, it could not be said to be a case of mistaken identity. Hence, both of these witnesses would have got ample time and opportunity to have a good look at both the accused-appellants so as to remember their physical features well coupled with the fact that both of these accused-appellants were arrested by the police soon after the occurrence and that too in the presence of complainant PW-5 Jaswant Singh. Hence, in this background, there could not have been any question of the two eye-witnesses PW-5 Jaswant Singh and PW-6 Ram Kishan faulting with their identification. They both come across as most trustworthy and reliable.

The next contention of the learned counsel that the recoveries were allegedly planted by the investigating agency to create evidence so as to attract offence under Sections 393 and 398 IPC cannot be believed. In the case in hand, not only did PW-5 Jaswant Singh after a scuffle with the appellant Teja @ Tej Ram manage to snatch the loaded pistol but thereafter when the two appellants were apprehended by the police at that time as well they both were found to be having weapons in their possession. It is indeed hard to digest as to why both of these witnesses PW-5 Jaswant Singh and PW-6 Ram Kishan would falsely implicate the accused-appellants in the instant case without any previous history of enmity having been alleged against them. It has come in the testimony of PW-1 Constable Jai Bhagwan wherein he categorically deposed that since a web was found in one of the pistols and the inside of the barrel of the weapon was rusted, it was not possible for him to put the cartridges and fire from the same. His reason for

not test firing comes across as convincing. The occurrence is of 19.06.2003 and the weapons were inspected by PW-1 Constable Jai Bhagwan on 25.07.2003. Hence, the likelihood of the web and rust developing in the pistols during the intervening period i.e. from the date of recovery cannot be thus, ruled out. Even assuming for the sake of arguments that the weapon so recovered from the possession of the accused-appellant was not in a working condition as it was found to be rusted from inside, the fact which is to be appreciated is that when the accused-appellant Teja @ Tej Ram brandished the same at the complainant PW-5 Jaswant Singh, the complainant could not have been expected to know whether the same was in a working condition or not. In order to attract the mischief of Section 398 IPC it is not necessary that the accused-appellant must have used the deadly weapon. Section 398 IPC covers attempts to commit robbery or dacoity when "being armed" is by itself sufficient even though the deadly weapons may not have been used by the accused while attempting robbery or dacoity. Hence, the terror at the sight of deadly weapons would be enough to make the victim feel threatened that the same could be used against him at any moment. Coming to the case in hand, the intention of the accused-appellant was very evident to commit robbery by creating fear and by brandishing the pistol at the complainant PW-5 Jaswant Singh, which in fact led to the scuffle between the complainant and the accused-appellant Teja @ Tej Ram and the complainant succeeded in disarming him. Hence in this background, the appellants cannot derive any benefit in their favour.

As far as appellant Teja @ Tej Ram is concerned, there is clinching and cogent evidence that he attempted to commit robbery on

PW-5 Jaswant Singh on 19.06.2003 at the petrol pump, Haryana Tourism Resort, Dharuhera.

Coming to the appellant Naveen Kumar, it was vehemently argued by the learned Senior counsel that no common intention and knowledge could be attributed to him as he did not participate in any manner in the alleged occurrence nor did he in any way help the co-accused at the time of the alleged scuffle. Hence, there was no common intention and knowledge on his part to commit robbery.

No doubt, the individual role of an accused has to be considered for attracting the mischief of Section 398 IPC in relation to the use or carrying a weapon during the crime but coming to the instant case, I am however, unable to agree with the submission of the learned senior counsel for the appellant that the case of the appellant Naveen Kumar is distinguishable from the appellant Teja @ Tej Ram. Though the appellant Naveen Kumar did not go along with the appellant Teja @ Tej Ram inside the showroom when he went there on the pretext of buying mobil oil and demanded cash from the complainant, one fact, which cannot be lost sight of, is that both of them came to the petrol pump together, got fuel put in their motorcycle, which was being ridden by none other than the appellant Naveen Kumar. After the alleged occurrence, when the weapon was snatched by PW-5 Jaswant Singh from the appellant Teja @ Tej Ram and an alarm was raised, the appellant Teja @ Tej Ram managed to flee alongwith the appellant Naveen Kumar, who was waiting just outside the showroom on the motorcycle. The appellant Naveen Kumar may not have been an active participant in the occurrence, which took place inside the showroom

but the sequence of events including his act of bringing the motorcycle close to the showroom leaves no manner of doubt that not only did he have the knowledge but also the intention to commit the robbery and thus, he was an active participant in the commission of offence. Had it not been for the appellant Naveen Kumar, the accused-appellant Teja @ Tej Ram would not have managed to flee from the spot as it has come in the evidence of both the witnesses PW-5 Jaswant Singh and PW-6 Ram Kishan that they tried to chase the accused-appellants but they managed to flee as they were riding a motorcycle. Therefore, the only inference which can be drawn is that the appellant Naveen Kumar was as much an active participant in the crime as appellant Teja @ Tej Ram. The subsequent recoveries from the appellant Naveen Kumar of fire arm, which was just a couple of hours later after the alleged occurrence, nails him in the crime inasmuch as he had both the intention and the knowledge of the crime that he and the co-accused Teja @ Tej Ram were going to commit at the petrol station for which he can definitely be held liable under Section 398 IPC.

As far as conviction under Section 471 IPC is concerned, the fake number plate allegedly recovered from the motorcycle was neither exhibited nor produced before the trial Court for which the accused-appellants deserve the benefit of doubt. Hence their conviction under Section 471 IPC is set aside.

As a sequel to the above discussion, the present appeal being devoid of merit is dismissed. The conviction and sentence of both the appellants under Sections 393 read with 398 IPC and 25 of Arms Act is upheld. The accused-appellants are on bail. Their bail bonds/surety bonds

stand cancelled. Necessary steps be taken to secure their custody.

(MANJARI NEHRU KAUL)
JUDGE

31.07.2019
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| Whether speaking/reasoned: | Yes/No |
| Whether reportable : | Yes/No |