

A JASBIR SINGH @ JAVRI @ JABBAR SINGH

v.

STATE OF HARYANA

B (Criminal Appeal No.554 of 2015)

APRIL 06, 2015

**[DIPAK MISRA AND PRAFULLA C. PANT, JJ.]**

C *Penal Code, 1860 – ss. 399 and 402 r/w. s. 25 of Arms Act – Conviction under, by Courts below – On appeal, held: In the facts and circumstances of the case, the charges against the accused not proved beyond reasonable doubt – Hence, the accused is acquitted, by giving him benefit of doubt – Arms Act, 1959 – s.25.*

D **Allowing the appeal, the Court**

E **HELD: 1. None of the charges in the present case, against the appellant, can be said to have been proved beyond reasonable doubt. It is a fit case where the appellant is entitled to the benefit of the reasonable doubt, and deserves to be acquitted. [Paras 11, 13] [548-C; 549-H; 550-A]**

F **2. The High Court has erred in law in not taking note of the following facts apparent from the evidence on record: (i) In a day light incident within the limits of Police Station, there is no public or any other independent witness of the arrest of the appellant along with other accused from the place of incident nor that of the alleged recovery of fire arm said to have been made from two of them. (It is not a case where**

G **arrest or recovery has been made in the presence of**

H

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any Gazetted Officer.) (ii) Complainant (PW-6) has A  
himself investigated the crime, as such, the credibility  
of the investigation is also doubtful in the present  
case, particularly, for the reason that except the police  
constables, who are subordinate to him, there is no  
other witness to the incident. (iii) It is not natural that B  
the six accused, four of whom were armed with deadly  
weapons, neither offered any resistance nor caused  
any injury to any of the police personnel before they  
are apprehended by the police. (iv) It is strange that C  
the accused were wearing blue shirts, as if there was  
a uniform provided to them. (v) It is hard to believe that  
the appellant and three others did not try to run away  
as at the time of the noon they must have easily  
noticed from a considerable distance that some  
policemen are coming towards them. (It is not the case  
of the prosecution that police personnel were not in  
uniform.) [Para 12] [548-G-H; 549-A-F] D

CRIMINAL APPELLATE JURISDICTION: Criminal  
Appeal No. 554 of 2015. E

From the Judgment and Order dated 08.08.2014 of the  
High Court of Punjab & Haryana at Chandigarh in CRA No.  
S-1389-SB of 2004. F

D. S. Bali, Shalu Sharma, Rajesh Sharma, Nitin Kumar  
for the Appellant. G

Devender Kr. Saini, AAG, Sanjay Kumar Visen for the  
Respondent. H

The Judgment of the Court was delivered by

**PRAFULLA C. PANT, J.** 1. This appeal is directed  
against judgment and order dated 8.8.2014, passed by  
the High Court of Punjab and Haryana, whereby Criminal H

A Appeal No. S-1389-SB has been dismissed, and conviction of accused (appellant) Jasbir Singh @ Javri @ Jabbar Singh, recorded by the Additional Sessions Judge, Fast Trek Court, Karnal, has been affirmed in respect of offences punishable under Sections 399 and 402 of the Indian Penal Code (IPC) and one punishable under Section 25 of Arms Act. However, the sentence awarded by the trial court to the appellant under Section 399 IPC has been reduced to the period of imprisonment for five years.

C 2. Heard learned counsel for the parties and perused the papers on record.

D 3 Prosecution story in brief is that on 26.6.2003, PW-6 Sube Singh, Assistant Sub Inspector, Karnal, along with PW-4 Head Constable Ram Singh, PW-1 Constable Satish Kumar, and four others, namely, Head Constable Azad Singh, Constable Arvind, Constable Mahender Singh and Constable Rattan Singh (none of last four examined), was on duty in connection with detection of some crime. He received a secret information that appellant Jasbir Singh @ Javri @ Jabbar Singh, and co-accused Shamsheer Singh, Jagpal, Rattan Singh, Raju and Sumer Singh, armed with deadly weapons, were planning to commit dacoity in a liquor shop on Meerut Road, Karnal. On receiving the information, Assistant Sub Inspector Sube Singh and other police officials proceeded towards electric pole, Ganda Nala, Sector 5, Karnal. It was 1.20 p.m. (noon) when the police party observed that all the accused were in blue shirts. The police team further went near the miscreants and heard the conversation of the appellant and co-accused that they would commit dacoity in the night in the liquor shop on Meerut Road, Karnal. After hearing the conversation, the police officials surrounded and apprehended four of the accused. They succeeded in

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arresting appellant Jasbir Singh @ Javri @ Jabbar Singh and recovered from his possession one country made pistol (Ex. PD) with two live cartridges of .315 bore. The police party further succeeded in apprehending co-accused Shamsher Singh @ Chhammi, Jagpal and Sumer Singh. On personal search of Shamsher Singh one knife (Ex. PF) was recovered, and one Saria (Iron Rod) (Ex. PG) was recovered from Sumer Singh. From accused Jagpal one country made pistol loaded with cartridge (Ex. PE) was said to have been recovered. The other two accused, namely, Rattan Singh and Raj Kumar @ Raju succeeded in running away from the spot.

4. After the arrest of the four accused, as mentioned above, Assistant Sub Inspector Sube Singh (PW-6) prepared memo (Ex. PD/1) in respect of recovery of pistol, memo (Ex. PE/1) relating to recovery of cartridges, memo (Ex. PF/1) relating to recovery of knife, and memo (Ex. PG/1) relating to recovery of iron rod. Ruqa (memo) (Ex. PH) was sent by the Assistant Sub Inspector Sube Singh (PW-6) to Police Station, City, Karnal. On the basis of said report FIR No. 355 dated 26.6.2003 was registered against all the six accused relating to offences punishable under Sections 399 and 402 IPC. As against accused (appellant) Jasbir Singh @ Javri @ Jabbar Singh and co-accused Jagpal, crime in respect of offences punishable under Arms Act were also registered. PW-6, Sube Singh, himself conducted the investigation and prepared the site plan (Ex. PJ) and recorded statements of witnesses. On 29.6.2003, co-accused Rattan Singh and Raju were also arrested. On completion of investigation, charge sheet was filed against all the six accused under Section 173 of the Code of Criminal Procedure, 1973 (for short "the Code") in the court of Ilaqa Magistrate, Karnal, who committed the case to the Court of Sessions for trial of the accused.

A 5. It appears that after giving necessary copies of  
documents, and hearing the parties, charge was framed by  
the trial court against all the accused in respect of  
offences punishable under Sections 399 and 402 IPC, in  
reply to which they pleaded not guilty and claimed to be  
B tried. Additional charge in respect of offence punishable  
under Section 25 of Arms Act, was framed against  
accused Jasbir Singh and one against accused Jagpal to  
which also they pleaded not guilty.

C 6. On this, prosecution got examined PW-1 Satish  
Kumar, PW-2 Prem Kumar, PW-3 Balwant Singh, PW-4,  
Head Constable Ram Singh, PW-5 Narinder Singh (an  
official in the Office of the District Magistrate) and PW-6  
Assistant Sub Inspector Sube Singh. The oral and  
D documentary evidence was put to the accused under  
Section 313 of the Code, in reply to which they stated that  
the same is false. In defence, DW-1 Sushil Kumar Rana  
was got examined, who stated that the appellant and other  
three accused, as suggested by prosecution, were not  
E arrested together. This witness has stated that Jagpal  
was arrested from Government Girls College, Karnal.

F 7. The trial court, after hearing the parties, relied upon  
the testimony of PW- 6, Assistant Sub Inspector Sube Singh,  
which is supported by PW-1 Head Constable Satish  
Kumar and PW-4 Head Constable Ram Singh. It further  
found that the sanction of prosecution given by the  
District Magistrate as against appellant Jasbir Singh @  
Javri @ Jabbar Singh was proved on the record in  
G respect of offence punishable under Section 25 of Arms Act.  
The trial court held all the six accused were guilty of  
charge of offences punishable under Sections 399 and 402  
IPC on 15.5.204. Appellant Jasbir Singh @ Javri @  
H Jabbar Singh and Jagpal were further found guilty and

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convicted under Section 25 of Arms Act. After hearing on the sentence, on 17.5.2004 the trial court (Additional Sessions Judge, Fast Trek Court, Karnal) sentenced each of the convicts, namely, Jasbir Singh @ Javri @ Jabbar Singh, Shamsher Singh @ Chhammi, Sumer Singh, Jagpal, Rattan Singh and Raj Kumar @ Raju to rigorous imprisonment for a period of seven years under Section 399 IPC, and rigorous imprisonment for a period of five years under Section 402 IPC. Appellant Jasbir Singh @ Javri @ Jabbar Singh and co-accused Jagpal were further sentenced to rigorous imprisonment for a period of six months under Section 25 of Arms Act.

8. Aggrieved by the above judgment and order dated 15.5.2004/17.5.2004, passed by the trial court, the convicts, including the appellant Jasbir Singh @ Javri @ Jabbar Singh, filed appeals before the High Court of Punjab and Haryana. The High Court, vide impugned judgment and order dated 8.8.2014, affirmed the conviction of appellant Jasbir Singh @ Javri @ Jabbar Singh and other co-accused, but reduced the sentence under Section 399 IPC to rigorous imprisonment for a period of five years without disturbing sentence on other counts. Hence, this appeal by Jasbir Singh @ Javri @ Jabbar Singh before us through special leave.

9. On behalf of the appellant, it is argued that the High Court has grossly erred in law in not accepting the appeal of appellant Jasbir Singh as the prosecution story was completely false and on the face of it unbelievable. Learned counsel for the appellant contended that the High Court has failed to re-appreciate the evidence on record independently. It is further pointed out that the complainant Assistant Sub Inspector Sube Singh (PW-6) has himself investigated the crime.

A 10. On the other hand, learned counsel for the  
respondent submitted that the appellant along with other  
accused was found planning to commit dacoity and was  
arrested along with fire arm at the spot, as such, the  
courts below have rightly found the appellant guilty of the  
B charge framed against him.

11. Having considered the submissions of the learned  
counsel for the parties and after going through the papers  
on record, we are of the view that none of the charge in  
C the present case, against the appellant, can be said to  
have been proved beyond reasonable doubt. In this  
connection, we would like to quote following observations  
of the High Court, made in the impugned, after re-  
appreciating the evidence: -

D "The statement of ASI Sube Singh and H.C. Ram  
Singh cannot be believed to the effect that they had  
over heard the conversation of the accused,  
E details of which are given above to show that the  
accused were discussing their plan in detail to  
commit dacoity on the liquor shop, situated at  
Meerut Road, Karnal. It is apparently exaggeration and  
padding on the part of Investigating Officer."

F 12. Strangely, even after observing as above, the High  
Court has believed the prosecution story in respect of  
offences punishable under Sections 399 and 402 IPC, and  
one in respect of offence punishable under Section 25 of  
Arms Act. The High Court has erred in law in not taking note  
G of the following facts apparent from the evidence on record:

(i) In a day light incident at 1.20 p.m. within the limits  
of City Police Station, Karnal, there is no public or  
H any other independent witness of the arrest of the

appellant along with other accused from the place of incident nor that of the alleged recovery of fire arm said to have been made from two of them. (It is not a case where arrest or recovery has been made in the presence of any Gazetted Officer.)

- (ii) Complainant (PW-6) has himself investigated the crime, as such, the credibility of the investigation is also doubtful in the present case, particularly, for the reason that except the police constables, who are subordinate to him, there is no other witness to the incident.
- (iii) It is not natural that the six accused, four of whom were armed with deadly weapons, neither offered any resistance nor caused any injury to any of the police personnel before they are apprehended by the police.
- (iv) It is strange that all the accused were wearing blue shirts, as if there was a uniform provided to them.
- (v) It is hard to believe that the appellant and three others did not try to run away as at the time of the noon they must have easily noticed from a considerable distance that some policemen are coming towards them. (It is not the case of the prosecution that police personnel were not in uniform.)

13. In view of the above facts and circumstances, which are apparent from the evidence on record, we find that both the courts below have erred in law in holding that the prosecution has successfully proved charge of offences punishable under Sections 399 and 402 IPC, and one punishable under Section 25 of Arms Act against appellant Jasbir Singh @ Javri @ Jabbar Singh, beyond reasonable doubt. In our opinion, it is a fit case where the appellant is

A entitled to the benefit of the reasonable doubt, and deserves to be acquitted.

14. Accordingly, the appeal is allowed. The Conviction and sentence recorded against appellant Jasbir Singh @ B Javri @ Jabbar Singh under Sections 399 and 402 IPC and one punishable under Section 25 of Arms Act, is hereby set aside. The appellant shall be released forthwith, if not required in connection with any other trial.

Kalpana k. Tripathy

Appeal allowed.