



IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRA-S No.285-SB of 2008
Reserved on: 17.09.2026
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*Whether only operative part of the judgment is
Pronounced or the full judgment is pronounced: operative part/full judgment*

Ramesh

Versus

State of Haryana

...Appellant

...Respondent

CORAM: HON'BLE MS. JUSTICE MANDEEP PANNU

Argued by:- Mr. Abhishek Sindhu, Advocate
for the appellant.

Ms. Sheenu Sura, DAG, Haryana
for the respondent-State.

MANDEEP PANNU, J.

1. The present appeal has been filed against the judgment of conviction dated 9th January, 2008 and order of sentence dated 12th January, 2008 passed by learned Sessions Judge, Jind, in FIR No.152 dated 26th June, 2006, registered under Sections 399/402 IPC and Section 25 of the Arms Act at Police Station Nirwana, District Jind, whereby the appellant along-with co-accused Naresh, Shishpal and Balinder has been convicted and sentenced as under:-

Convicts	Under Section	Imprisonment awarded	Fine	Imprisonment in default of payment of fine
Ramesh, Naresh,	Section 399 IPC	R.I. for 03 years each	Rs.3,000/- each	R.I. for 03 months each



Shishpal and Balinder				
Ramesh, Naresh, Shishpal and Balinder	Section 402 IPC	R.I. for 03 years each	Rs.3,000/- each	R.I. for 03 months each
Ramesh and Balinder	Section 25 of the Arms Act	R.I. for 02 years each	Rs.2,000/- each	R.I. for 03 months each

The sentences awarded were ordered to run concurrently. The period already undergone by the accused during trial was ordered to be set off against the substantive sentences of imprisonment.

2. Prosecution story, in brief, is that on 26th June, 2006 at about 10.00 p.m., Inspector Ravinder Kumar, PW-5, along with Head Constable Baljeet Singh, was present at T-point near the cremation ground, Nirwana, on patrol duty and for crime checking in government Gypsy bearing registration No. HR-31-B-7831, being driven by EHC Ved Prakash. At that time, the police party headed by ASI Rameshwar Das, PW-7, along with Head Constable Ravinder Kumar, Constable Rajinder Singh and other police officials, travelling in government vehicle bearing registration No. HR-31-B-6995, being driven by Constable Rohtas, met them. While they were talking to each other, a secret informer came there and informed Inspector Ravinder Kumar that five young persons, armed with deadly weapons, were sitting in an abandoned octroi kotha situated on Uklana Road and were planning to loot the passengers of a Haryana Roadways bus coming from Chandigarh to Hisar during the night, as the bus used to stop at that point. Inspector Ravinder Kumar apprised the other police officials of the information received from the secret informer and organized a



raiding party. Thereafter, a raid was conducted and the octroi kotha was surrounded. A white Maruti car was also found parked on the western side of the kotha. On reaching near the window of the kotha, Inspector Ravinder Kumar allegedly overheard the conversation of the accused persons. One of them was saying that as soon as the Haryana Roadways bus stopped, he would board the bus from the front window, whereas Balinder would board it from the rear window with their respective pistols. Shishpal would cover the driver at the point of his pistol, whereas Naresh and 'S' (Juvenile) would loot the passengers and, in case of resistance by anyone, Balinder would shoot him. Ramesh was stated to be their ring leader.

3. Thereafter, Inspector Ravinder Kumar raised an alarm that the accused persons had been surrounded by the police from all four sides and that anyone attempting to escape would be shot dead. Upon this, the accused opened the door of the kotha. First, accused Ramesh came out and his personal search was conducted. A pistol of .315 bore was recovered from the left dub of his pants. On checking, the pistol was found loaded. It was unloaded and its sketch was prepared. One live cartridge was also recovered from the right side pocket of his pants. Thereafter, accused Balinder came out of the kotha and a country-made pistol of .12 bore was recovered from the right dub of his pants. The same was also found loaded. It was unloaded and its sketch, Exhibit P7, was prepared. The third person to come out of the kotha was accused Shishpal, who was carrying an air gun in his right hand. Its sketch, Exhibit P8, was prepared. Thereafter, accused 'S' (Juvenile), who was facing trial before the Juvenile Justice



Board and not before learned trial Court, came out of the kotha carrying a *danda*. Its sketch, Exhibit P9, was prepared. Lastly, accused Naresh came out of the kotha, also carrying a *danda* in his hand, and its rough sketch, Exhibit P10, was prepared. The pistols, cartridge, air gun and *dandas* were converted into separate parcels, which were sealed with the seal bearing impression “RS”, and the parcels were taken into possession. The Maruti car was also taken into possession vide recovery memo, Exhibit P12.

4. After completion of the necessary investigation, all the above said five accused were sent up for trial along with the report under Section 173 Cr.P.C. However, out of the aforesaid accused, ‘S’, was found to be a juvenile and a supplementary challan against him was ordered to be presented before the Juvenile Justice Board. Charge was, thereafter, framed against the other four accused, namely, Naresh, Shishpal, Balinder alias Pala and Ramesh son of Dharampal, (appellant), under Sections 399 and 402 IPC, and against accused Ramesh and Balinder under Section 25 of the Arms Act. The accused pleaded not guilty to the charges and claimed trial.

5. The prosecution, in order to prove its case, examined PW-1 Ram Niwas, Ahlmad, in the Court of District Magistrate, Jind, who proved sanction orders Exhibits P1 and P2 passed by the District Magistrate, Jind. PW-2 Head Constable Armourer Dharambir Singh, deposed regarding production of three sealed parcels in intact condition by PW-4 SI Pratap Singh before him along with application Exhibit P3. One parcel contained a country-made .315 bore pistol and two live cartridges bearing the seal “RS”, the second parcel contained a .12 bore pistol and two live cartridges



of the same bore, whereas the third parcel contained an air gun. He further deposed that after opening the parcels, he examined pistols Exhibits PB and PG and found the same to be in working order. Exhibit PA was the air gun. After giving his report Exhibit P4, the witness resealed the pistols as well as the cartridges in the same parcels with his own seal “DS” and returned the same to SI Pratap Singh. PW-3 Head Constable Suresh Kumar, the attesting witness, is also a formal witness who dealt with the case property. He proved on record his affidavit Exhibit P5 and deposed regarding deposit of the parcels with him on 27th June, 2006 and their subsequent handing over to SI Pratap Singh on 18th July, 2006. He further deposed that SI Pratap Singh re-deposited the parcels with him on the same evening, bearing the seals “RS” and “DS”. PW-4 SI Pratap Singh deposed regarding getting the pistols and cartridges tested from Armourer PW-2, taking them back from MHC Suresh Kumar and thereafter, re-depositing the sealed parcels with the MHC in intact condition. PW-5 Inspector Ravinder Kumar is the complainant as well as the Investigating Officer. PW-6 Kuldeep Singh is the draftsman, who proved on record the scaled site plan. PW-7 ASI Rameshwar Das is the recovery witness. Thereafter, the prosecution closed its evidence.

6. Statements of the accused were, thereafter, recorded under Section 313 Cr.P.C., wherein all the incriminating evidence appearing against them was put to them. The accused denied the same and pleaded false implication in the case. In their defence, the accused did not examine any witness.



7. Thereafter, learned trial Court heard learned APP for the State and learned defence counsel. After hearing the arguments of both the parties, learned trial Court convicted the accused persons under Sections 399 and 402 IPC and also convicted accused Balinder and Ramesh under Section 25 of the Arms Act, as detailed in paragraph No.1 of this judgment.

8. Feeling aggrieved by the aforesaid judgment of conviction and order of sentence passed by learned trial Court, the present appeal has been preferred by Ramesh, appellant.

9. Notice of the appeal was issued to the State, which has contested the same.

10. Before advertng to the contentions raised by the parties, it would be appropriate to notice the essential ingredients of the offence punishable under Section 399 IPC. To bring home the charge under Section 399 IPC, the prosecution was required to establish that the accused had made preparation to commit dacoity. Mere intention to commit dacoity was not sufficient; there had to be some act or acts amounting to preparation towards the commission of dacoity. The preparation, however, need not have extended to the stage of attempt.

11. In order to prove the aforesaid ingredients, the prosecution examined PW-5 Inspector Ravinder Kumar, who was the complainant as well as the Investigating Officer, and PW-7 ASI Rameshwar Dass, who was also a member of the raiding party. The prosecution case, in brief, is that on receipt of secret information, the police party reached the octroi kotha where the accused were allegedly found present. According to the prosecution, the



police officials overheard the accused discussing their plan to commit dacoity on a bus going from Chandigarh to Hisar. The accused were, thereafter, apprehended and weapons were allegedly recovered from them. The prosecution relies upon this evidence to establish that the accused had assembled and were making preparation for committing dacoity and, thus, had committed the offence punishable under Section 399 IPC.

12. According to PW-5 and PW-7, the police party, after receiving the secret information, reached the spot and took position near the octroi kotha. The accused were allegedly present inside the octroi kotha and were discussing the manner in which the proposed dacoity was to be committed. PW-5 Inspector Ravinder Kumar allegedly overheard the conversation and, thereafter, apprehended the accused when they came out of the octroi kotha. Weapons were allegedly recovered from the accused during the proceedings conducted thereafter. The prosecution relies upon this circumstance of the alleged conversation, coupled with the presence of the accused at the spot and the recovery of weapons, to establish preparation for committing dacoity.

13. Learned counsel for the appellant, however, disputed the prosecution version and raised several contentions regarding the manner in which the accused were allegedly apprehended and the evidence relied upon by the prosecution to prove the alleged preparation for committing dacoity.

14. Learned counsel for the appellant first contended that only two out of the nine police officials who had conducted the raid were examined as prosecution witnesses, namely PW-5 Inspector Ravinder Kumar and



PW-7 ASI Rameshwar Dass. It was submitted that HC Baljeet Singh and Mohinder Singh, who were also members of the raiding party and were material witnesses, were not examined by the prosecution. According to learned counsel, their non examination assumes significance as they were present at the spot and had witnessed the apprehension of the accused, the alleged conversation and the recovery of weapons from them.

15. Learned State counsel, on the other hand, submitted that there is no requirement in law that each and every member of the raiding party must be examined. It was argued that PW-5 and PW-7 had given the necessary evidence regarding the raid, apprehension of the accused and recovery effected from them and their evidence cannot be discarded merely because the other members of the police party were not examined.

16. I have considered this contention of learned counsel for the appellant. The contention does not carry much weight. There is no requirement that every member of a police party must be examined as a prosecution witness. What is required to be seen is whether the evidence of the witnesses who have been examined is reliable and sufficient to prove the prosecution case.

17. In the present case, PW-5 Inspector Ravinder Kumar and PW-7 ASI Rameshwar Dass were examined as witnesses to the raid and the proceedings conducted thereafter. Both were members of the police party and have supported the prosecution case regarding the presence and apprehension of the accused and the recoveries effected from them. The mere fact that HC Baljeet Singh and SI Mohinder Singh were not examined



does not by itself make the evidence of PW-5 and PW-7 unreliable. The non-examination of the other members of the police party may be considered along-with the other circumstances pointed out by learned counsel for the appellant. However, it cannot by itself be a ground to discard the testimony of PW-5 and PW-7, particularly when their evidence is otherwise found to be consistent on the material aspects of the prosecution case.

18. Learned counsel for the appellant next contended that the prosecution had failed to join any independent witness despite the fact that the alleged place of occurrence was near human habitation. It was submitted that the Police Station was only about one kilometre from the spot and a school was situated at a distance of about 500 metres. According to learned counsel, when the police party had sufficient opportunity to associate an independent person, the failure to do so casts a doubt on the prosecution version. It was further submitted that the entire prosecution case rests upon the statements of PW-5 Inspector Ravinder Kumar and PW-7 ASI Rameshwar Dass, both being police officials, and their statements should not be accepted without independent corroboration.

19. Learned State counsel submitted that the place of occurrence was an abandoned octroi kotha and there was no person available at the spot who could have been joined in the proceedings. It was further submitted that the mere fact that the Police Station and a school were situated at some distance from the spot does not mean that independent persons were available at the relevant time. Learned State counsel argued



that the evidence of the police officials cannot be discarded merely because no independent witness was joined, particularly when there is no reason to believe that PW-5 and PW-7 would falsely implicate the accused.

20. I have considered this contention. The non-joining of an independent witness is a circumstance which has to be considered while appreciating the evidence, but it is not a requirement of law that the testimony of a police official cannot be relied upon unless it is supported by an independent witness. The evidence of PW-5 and PW-7 has to be considered on its own merits.

21. In the present case, the prosecution version is that the accused were found sitting inside an abandoned octroi kotha at about 10.00 p.m. The fact that the Police Station was about one kilometre away or that a school was situated at some distance from the spot does not establish that any independent person was actually available at the spot at that particular time. The prosecution witnesses have stated about the proceedings conducted at the spot and their evidence cannot be discarded merely for want of independent corroboration.

22. It is also relevant that the defence has not been able to show any reason why PW-5 and PW-7 would falsely implicate the appellant. Their presence at the spot is not in dispute in any meaningful manner and the recovery of the weapon from the appellant is supported by the evidence of the other witnesses connected with the case property. Therefore, the mere non-joining of an independent witness does not create a doubt in the prosecution case.



23. Learned counsel for the appellant next contended that there are material contradictions between the statements of PW-5 Inspector Ravinder Kumar and PW-7 ASI Rameshwar Dass. It was submitted that PW-5 stated that the cartridges recovered from the .315 bore pistol were bearing the marking "KA8MM", whereas PW-7 stated that the marking on the cartridges was "8CC". It was further submitted that PW-5 and PW-7 gave different versions regarding the number of windows in the octroi kotha. According to learned counsel, PW-7 stated that there were two windows, whereas only one window was shown in the site plan. Learned counsel also referred to the contradiction regarding the manner in which the writing work was completed at the spot. It was submitted that PW-5 stated that the police officials were sitting on chairs and there was a lamp post nearby, whereas PW-7 stated that the writing work was done while sitting on the ground with the help of a torch. According to learned counsel, these contradictions show that the presence of the witnesses at the spot and the manner in which the proceedings were conducted are doubtful.

24. Learned State counsel submitted that the contradictions pointed out by learned counsel for the appellant are minor and relate to matters which are not material to the prosecution case. It was argued that there is no contradiction regarding the presence of the accused at the spot, their apprehension or the recovery of weapons from them. Learned State counsel submitted that minor variations in the statements of witnesses are bound to occur with the passage of time and such variations cannot be made a ground to discard otherwise consistent evidence.



25. I have considered this contention. The contradictions pointed out by learned counsel for the appellant do not affect the material part of the prosecution case. The difference regarding the marking on the cartridges is not such as would make the recovery of the pistol from the appellant doubtful. The cartridges were produced before PW-2 Armourer Dharambir Singh, who examined the pistol and found the same to be in working order. The case property was also dealt with by PW-3 Suresh Kumar and PW-4 SI Pratap Singh and the evidence regarding its deposit, examination and resealing has already been noticed.

26. The difference regarding the number of windows also does not affect the fact that the accused were apprehended from the octroi kotha. The site plan was prepared by the draftsman on the basis of the place shown to him and a minor difference in the description of the windows cannot by itself make the entire prosecution version doubtful.

27. Similarly, the difference between the statements of PW-5 and PW-7 regarding whether the writing work was done while sitting on chairs or on the ground, and whether the light was provided by a lamp post or a torch, relates to the manner in which the proceedings were carried out at the spot. It does not affect the fact that the accused were apprehended and the weapons were recovered from them. Such differences in the statements of witnesses regarding peripheral matters cannot be treated as material contradictions so as to discard their evidence on the main occurrence.

28. What is important is that both PW-5 and PW-7 have consistently supported the prosecution case regarding the presence of the



accused at the octroi kotha, their apprehension and the recovery of weapons from them. The contradictions pointed out by learned counsel do not create a doubt regarding these material facts.

29. Learned counsel for the appellant next contended that the prosecution version regarding the alleged conversation overheard by PW-5 Inspector Ravinder Kumar is highly improbable. It was submitted that it was unlikely that the police party would reach the spot at the very time when the accused were discussing their plan to commit dacoity and that they would speak in such a loud voice that their conversation could be heard by the police officials standing outside the octroi kotha. It was further submitted that the accused, if they were actually planning to commit dacoity, would have kept a watch on the persons approaching the kotha and would not have continued discussing their plan in such a manner. Learned counsel, therefore, argued that the alleged conversation cannot safely be relied upon for holding that the accused were making preparation to commit dacoity.

30. Learned State counsel submitted that PW-5 has categorically stated in his examination-in-chief that he overheard the conversation of the accused and that the roles to be played by the accused in committing the dacoity were being discussed. It was submitted that this part of the testimony of PW-5 was not challenged in cross-examination. Not even a suggestion was put to him that he had not overheard any such conversation. Learned State counsel argued that the defence cannot now challenge a fact which was not put to the witness in cross-examination.



31. I have considered this contention. PW-5 Inspector Ravinder Kumar has categorically stated in his examination-in-chief that when he reached near the window of the octroi kotha, he overheard the conversation of the accused persons. He has also stated the substance of the conversation and the specific roles which were being assigned to the accused for committing the dacoity. This part of his testimony is important for determining whether the accused had made preparation to commit dacoity.

32. Significantly, the witness was not cross-examined on this aspect. Not even a single question was put to PW-5 suggesting that he had not overheard any conversation or that the conversation stated by him was not taking place inside the octroi kotha. The cross-examination of PW-5 is directed towards other aspects of the prosecution case, including the manner of apprehension of the accused, the place of occurrence and the recovery of weapons. Thus, the material assertion of PW-5 regarding the conversation remained unchallenged.

33. The defence had an opportunity to question PW-5 about the manner in which he was able to hear the conversation and to put to him that no such conversation had taken place. No such question or suggestion was put to him. In these circumstances, the subsequent argument that PW-5 could not have overheard the conversation cannot be accepted merely on the basis of an assumption as to how the accused would ordinarily behave while making such a plan.

34. The conversation stated by PW-5 also cannot be viewed separately from the other circumstances appearing in the prosecution



evidence. The accused were allegedly found together in the abandoned octroi kotha, weapons were recovered from Ramesh and Balinder, and the prosecution case is that specific roles had been assigned to the accused for committing the dacoity. These circumstances, taken together, support the prosecution version that the accused were not merely present at the spot but were making preparation to commit dacoity.

35. Learned counsel for the appellant next contended that it was highly unlikely that the accused, who were allegedly carrying weapons, would come out of the octroi kotha along with the weapons when the police party was already waiting outside to apprehend them. It was submitted that any person who was aware that the police had surrounded the place would have tried to throw away the weapon or conceal it before coming out of the kotha. Learned counsel argued that the alleged recovery of weapons from the accused in these circumstances is therefore doubtful. Reliance was placed upon the judgment in *Jasbir Singh @ Javri @ Jabbar Singh vs. State of Haryana, 2015(5) SCC 762*, wherein, according to learned counsel, the Hon'ble Supreme Court had found it unnatural that the accused, despite being armed with deadly weapons, would neither offer resistance nor cause any injury to the police officials before being apprehended.

36. Learned State counsel submitted that the conduct of an accused cannot be judged on the basis of an assumption as to how he should have behaved in a particular situation. It was argued that the accused may choose not to resist the police and may also come out with the



weapons in their possession.

37. I have considered this contention. The submission proceeds on the assumption that a person carrying a weapon would necessarily try to throw it away or offer resistance on finding himself surrounded by the police. Such conduct cannot be said to be the only natural reaction in such a situation. The conduct of a person depends upon how he reacts to the particular situation in which he finds himself. Some persons may choose to resist, whereas others may choose not to resist and surrender themselves to the police. Therefore, merely because the accused did not offer resistance before being apprehended cannot, by itself, be made a ground to doubt the prosecution version.

38. The judgment relied upon by learned counsel for the appellant in *Jasbir Singh @ Javri @ Jabbar Singh (supra)* was rendered on its own facts and does not lay down that absence of resistance by an accused who is alleged to be carrying a weapon must, in every case, result in rejection of the prosecution version. The conduct of the accused has to be considered in the facts and circumstances of each case. In the present case, the absence of resistance, by itself, does not create any doubt in the prosecution case.

39. Learned counsel for the appellant next contended that there are material contradictions and discrepancies in the statements of PW-5 Inspector Ravinder Kumar and PW-7 ASI Rameshwar Dass. It was submitted that PW-5 stated that efforts were made to join independent witnesses, whereas PW-7 stated that no effort was made to join any independent witness. It was further submitted that PW-5 stated that he



remained at the spot from about 8.00 p.m. till 2.00 a.m., whereas PW-7 gave a different version regarding the period for which the police party remained there. Learned counsel also referred to the difference in the statements of the two witnesses regarding the manner in which the writing work was completed at the spot. According to learned counsel, these discrepancies are material and show that the prosecution witnesses are not consistent about the proceedings conducted at the spot.

40. Learned State counsel submitted that the differences pointed out by learned counsel for the appellant are minor variations in the statements of the witnesses and do not relate to the main occurrence. It was submitted that both PW-5 and PW-7 are consistent regarding the presence of the accused at the octroi kotha, their apprehension and the proceedings conducted against them. Learned State counsel argued that such variations are natural and cannot be made a ground to discard the entire prosecution case.

41. I have considered this contention. The contradictions pointed out by learned counsel for the appellant are mainly regarding the manner in which the proceedings were conducted at the spot and the time spent there by the police officials. These contradictions do not affect the main part of the prosecution case regarding the presence of the accused, their apprehension and the circumstances in which the police proceedings were conducted.

42. The difference regarding the joining of independent witnesses has already been considered. The fact that PW-5 stated that an effort was made to join independent witnesses whereas PW-7 stated that no such effort was made is a variation in their statements, but it does not, by itself,



make their entire testimony unreliable.

43. Similarly, the difference regarding the period for which the police party remained at the spot has to be considered in the light of the entire evidence. A variation regarding the exact time spent at the spot cannot by itself discredit the witnesses when their statements remain consistent regarding the material facts of the occurrence.

44. As regards the manner in which the writing work was completed, whether the police officials were sitting on chairs or on the ground and whether the light was provided by a lamp post or a torch, these matters relate to the manner in which the proceedings were recorded. They do not affect the material facts which the prosecution was required to prove under Section 399 IPC.

45. Thus, the discrepancies pointed out by learned counsel for the appellant do not create a doubt regarding the main prosecution case. They are not of such a nature as to make the evidence of PW-5 and PW-7 unreliable on the material facts.

46. Learned counsel for the appellant next contended that the provisions of Section 100(4) Cr.P.C. were not complied with while conducting the search of the octroi kotha. It was submitted that the trial Court wrongly observed that Section 100(4) Cr.P.C. was not attracted as the police officials had not entered the octroi kotha for the purpose of apprehending the accused. Learned counsel referred to the statement of PW-7, who stated in his cross-examination that after the accused had come out of the octroi kotha, he searched the kotha with the help of a torch. It was argued



that the expression “place to be searched” used in Section 100(4) Cr.P.C. would include the octroi kotha and, therefore, the requirement of associating independent witnesses could not have been ignored.

47. Learned State counsel submitted that Section 100(4) Cr.P.C. has no application to the facts of the present case. It was argued that the police party did not enter the octroi kotha for the purpose of apprehending or searching the accused. The accused themselves came out of the kotha after they were informed that the police had surrounded the place. The search of the kotha, thereafter, was only a part of the police proceedings and the recovery relied upon by the prosecution was from the accused and not from inside the kotha. It was, therefore, submitted that no adverse inference can be drawn on this ground.

48. I have considered this contention. Section 100(4) Cr.P.C. requires the officer conducting a search to call upon two or more independent and respectable inhabitants of the locality to attend and witness the search. In the present case, the accused were not apprehended as a result of a search of the octroi kotha. The prosecution case is that the police party reached the spot on receipt of secret information, surrounded the octroi kotha and the accused came out of the kotha after being informed that they had been surrounded by the police.

49. It is also important that the alleged recovery of weapons, which is relied upon by the prosecution, was effected from the accused after they came out of the octroi kotha. The subsequent statement of PW-7 that he searched the kotha with the help of a torch does not change the



nature of the proceedings or make the recovery from the accused a recovery as a result of search of the kotha. Therefore, the provisions of Section 100(4) Cr.P.C. cannot be invoked merely because PW-7 stated that he had searched the octroi kotha after the accused had come out. The contention of learned counsel for the appellant on this ground, therefore, does not create any doubt in the prosecution case.

50. Learned counsel for the appellant next contended that the accused had not been apprehended from the octroi kotha in the manner alleged by the prosecution. It was submitted that Ramesh and Shishpal had been picked up by the police from Narwana, whereas Balinder and Naresh had been picked up from their respective places. According to learned counsel, the accused were already wanted by the police in other cases and, in order to implicate them in another case, they were picked up from different places and the present case was falsely planted upon them. It was further submitted that the registration of another case against Ramesh on the following day also supports this defence version.

51. Learned State counsel submitted that the defence version is only an assertion made on behalf of the accused and there is no evidence on record to support the same. It was argued that the prosecution witnesses have categorically deposed regarding the apprehension of the accused from the octroi kotha and the defence has not been able to bring anything in their cross-examination which would establish that they were picked up from some other place.

52. I have considered this contention. The plea that the accused



were picked up from different places and were thereafter falsely implicated in the present case has not been supported by any evidence. No defence witness was examined by the accused to establish that they had been picked up from their respective places or that they were not present at the octroi kotha at the relevant time. The accused, in their statements under Section 313 Cr.P.C., denied the prosecution case and pleaded false implication, but a mere denial cannot by itself establish the defence version.

53. The fact that the accused may have been wanted in some other case also does not establish that the present case was falsely registered against them. The registration of another case against Ramesh on the following day, by itself, cannot prove that he had been falsely implicated in the present case. There has to be some material on record to support such a serious allegation against the police officials.

54. In the present case, no such material has been brought on record. The defence has not been able to show any reason for falsely implicating the accused in the manner alleged. The plea that they were picked up from different places, therefore, remains only a suggestion and is not supported by any evidence. It does not create a doubt in the prosecution case regarding their presence at the octroi kotha and their apprehension there.

55. The evidence discussed above, particularly the testimony of PW-5 and PW-7 regarding the presence of the accused at the octroi kotha, the conversation overheard by PW-5 regarding the manner in which the dacoity was to be committed and the respective roles assigned to the accused, coupled with the recovery of weapons from the accused,



establishes that the accused had gone beyond a mere intention to commit dacoity and had made preparation for the same. The prosecution has, therefore, been able to prove the necessary ingredients of Section 399 IPC against the appellant beyond reasonable doubt. The finding of learned trial Court in this regard calls for no interference.

56. Coming to the offence under Section 402 IPC, the prosecution was required to establish that five or more persons had assembled for the purpose of committing dacoity. In the present case, the prosecution evidence shows that five accused persons had assembled in the octroi kotha and were discussing the plan to commit dacoity on the Chandigarh to Hisar bus. The conversation overheard by PW-5 clearly indicates that the accused had assembled with a common purpose and that specific roles had been assigned to them for committing the dacoity. Their presence together at the spot, coupled with the conversation proved by PW-5, establishes that their assembly was not accidental but was for the purpose of committing dacoity. The ingredients of Section 402 IPC are, therefore, also established against the appellant and the conviction under Section 402 IPC does not call for interference.

57. Coming to the charge under Section 25 of the Arms Act, as per the prosecution version, a country made .315 bore pistol was recovered from the left side dub of the pants of the appellant Ramesh when he came out of the octroi kotha. The pistol was found loaded and, after unloading the same, its sketch was prepared. One live cartridge was also recovered from the right side pocket of his pants. The pistol and cartridge were taken



into possession, sealed and subsequently produced before PW-2 Head Constable Armourer Dharambir Singh for examination. PW-2 examined the pistol and found the same in working order. The prosecution also relied upon the sanction granted by the District Magistrate, Jind, for prosecution under the Arms Act.

58. Learned counsel for the appellant next contended that the recovery of the .315 bore pistol and live cartridge from the appellant Ramesh had been falsely planted upon him. It was submitted that the appellant was not in possession of any such weapon and that the alleged recovery was part of the false case prepared by the police. Learned counsel, therefore, argued that the conviction of the appellant under Section 25 of the Arms Act was not sustainable.

59. Learned State counsel, on the other hand, submitted that the recovery of the .315 bore pistol and live cartridge from the appellant had been duly proved by the prosecution witnesses. It was argued that the recovery was made at the spot immediately after the appellant came out of the octroi kotha and that there was no reason to disbelieve the evidence of the police officials regarding the recovery. Learned State counsel further submitted that the pistol was subsequently examined by the Armourer and was found to be in working order. The requisite sanction had also been duly proved on record.

60. I have considered this contention. The allegation of false recovery has already been considered while discussing the prosecution case under Sections 399 and 402 IPC. The evidence on record shows that the .315



bore pistol was recovered from the appellant at the spot. The pistol was unloaded and its sketch was prepared at the spot. The recovery proceedings were duly recorded and the case property was sealed and deposited in accordance with the prosecution evidence.

61. The prosecution has further examined PW-2 Head Constable Armourer Dharambir Singh, who deposed regarding the production of the sealed parcel containing the .315 bore pistol and live cartridges. After opening the parcel, he examined the pistol and found the same to be in working order. He, thereafter, prepared his report Exhibit P4 and resealed the pistol and cartridges with his seal 'DS'. The sealed parcel was, thereafter, returned to SI Pratap Singh and was subsequently re-deposited with the MHC. The evidence regarding the deposit and re-deposit of the sealed parcel has also been proved by the concerned witnesses.

62. The prosecution has also proved the requisite sanction for prosecution. PW-1 Ram Niwas, Ahlmad, in the Court of the District Magistrate, Jind, proved sanction orders Exhibits P1 and P2 passed by the District Magistrate, Jind. Thus, the statutory requirement regarding sanction also stands duly proved.

63. The evidence regarding recovery of the pistol from the appellant, its examination by the Armourer and its being found in working order, the safe custody of the sealed parcel and the sanction granted by the competent authority, when considered together, establish the charge under Section 25 of the Arms Act against the appellant. The plea of false recovery is not supported by any material on record. The conviction of the appellant



under Section 25 of the Arms Act, therefore, also calls for no interference.

64. In view of the discussion made above, the prosecution has been able to prove the charges against the appellant under Sections 399 and 402 IPC as well as under Section 25 of the Arms Act beyond reasonable doubt. The evidence on record establishes that the appellant was present with the other accused at the spot and was making preparation to commit dacoity, and the prosecution has also proved the recovery of the .315 bore pistol and live cartridge from his possession. The findings recorded by learned trial Court are based on the evidence on record and do not suffer from any illegality or infirmity. The conviction of the appellant under Sections 399 and 402 IPC and Section 25 of the Arms Act is, therefore, upheld. The present appeal is dismissed qua the conviction.

65. Coming to the question of quantum of sentence, learned counsel for the appellant submitted that the appellant is suffering from liver cirrhosis and has remained involved in the criminal proceedings for a long period. It was submitted that the occurrence pertains to the year 2006, whereas the appeal has remained pending since the year 2008. Learned counsel submitted that the appellant has faced a long and protracted trial and thereafter the present appeal for a considerable period. It was, therefore, prayed that the sentence awarded under Sections 399 and 402 IPC may be reduced from three years to two years.

66. Learned State counsel opposed the prayer for reduction of sentence and submitted that the sentence awarded by learned trial Court is appropriate having regard to the nature of the offences and the



circumstances in which the appellant was apprehended.

67. Having considered the submissions regarding the quantum of sentence, the occurrence pertains to the year 2006 and the appellant has been facing the proceedings for about two decades. The trial itself took place long ago and the present appeal has remained pending since 2008. Thus, a considerable period has elapsed since the occurrence. The appellant has also placed his medical condition before the Court as a circumstance for consideration. Taking into consideration the aforesaid circumstances, the sentence awarded under Sections 399 and 402 IPC is reduced from three years to two years. The sentence of fine and the sentence awarded in default of payment of fine shall remain unaltered. The sentence under Section 25 of the Arms Act shall also remain unaltered. All the substantive sentences shall run concurrently. The period already undergone by the appellant during investigation, trial and pendency of the present appeal shall be set off against the substantive sentence imposed upon him in accordance with law.

68. The present appeal is partly allowed in the aforesaid terms.

69. All pending applications, if any, also stand disposed of.

24.09.2026

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(MANDEEP PANNU)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>