

SUPREME COURT OF INDIA

Subhash @ Dhillu

Vs.

State of Haryana

CrI.A.No.1375 of 2010

(Pinaki Chandra Ghose and Abhay Manohar Sapre JJ.)

25.02.2015

ORDER

1. These appeals have been filed by the accused persons who were convicted and sentenced to rigorous imprisonment for ten years by the Additional Sessions Judge, Sonapat, under Section 120-B of the Indian Penal Code (IPC). The appellants were convicted along with two other co-accused who were convicted under Sections 392, 397 of IPC and Section 25 of the Arms Act. All the accused persons preferred appeals before the High Court. The High Court reduced the sentence of the accused for the offences under Section 397 and Section 120 of IPC, from 10 years to 7 years only. However, rest of the sentence for other offences remained undisturbed.

2. Brief facts of the case are that the complainant Bal Kishan and his nephew Sanjay were going on a motorcycle carrying Rs.46,000/- with them in the dicky, for purchasing a piece of land. While they were near a Farm, two accused persons - Manjeet and Bijender (not appellants herein) came from behind in Maruti car. They brandished country made pistol and asked the complainant to stop and as the complainant stopped, the accused persons asked them to hand over the money. The complainant handed over the key of the motorcycle to them. The accused persons took out the money and sped away. The complainant gave the information of this incident to ASI Rajinder Kumar whom he met on the way to the Police Station. On the basis of this information an FIR was registered at Sonapat Police Station. The accused were charge-sheeted for the offence punishable under Sections 120-B, 392, 397 of the IPC and Section 25 of the Arms Act. The Trial Court convicted all the four accused persons and sentenced them for various offences. Accused Manjeet and Bijender were sentenced to undergo five years' rigorous imprisonment and to pay a fine of Rs.5,000/- under Section 392 of IPC. They were further sentenced to undergo 10 years' rigorous imprisonment and to pay a fine of Rs.10,000/- each under Section 397 of IPC. Accused Manjeet was further

sentenced to undergo one year's rigorous imprisonment and a fine of Rs.500/- under Section 25 of the Arms Act. Accused Mukesh and Subhash (appellants herein) were sentenced to undergo 10 years' rigorous imprisonment and to pay a fine of Rs.10,000/- each, under Section 120-B of IPC as according to the Trial Court, the robbery was committed after the conspiracy hatched with them.

3. Aggrieved by the judgment and order dated 20.3.2002 passed by the Additional Sessions Judge, Sonapat, all the accused persons preferred appeals before the High Court. The High Court reduced the sentence of rigorous imprisonment of 10 years to 7 years, in respect of the offence under Section 397 and Section 120-B of IPC. Before us there are only two accused persons, namely, Subhash and Mukesh, who were convicted only under Section 120-B of IPC and no other offence.

4. The allegation against the present appellants is that they both had informed the other accused persons of the fact that the complainant is carrying the money in a motorcycle and that they could loot him. It is further alleged that they received a share of Rs.1000/- each from the looters. Further, the evidence against the present appellants is their own disclosure statement to the police pursuant to which, allegedly, the police recovered Rs.500/- (Mukesh's share left unspent) and Rs.400/- (Subhash's share left unspent). Accused Bijender and Manjeet also made disclosure statement before the police thereby alleging the role of the present appellants as the informers of the group. During the trial the present appellants denied having made the disclosure statement and pleaded false implication. Further, it is pertinent to mention here that in the Trial Court's judgment, nothing can be found in evidence that is incriminating against the present appellants. The statements made to the police have been denied by all the accused persons.

5. To make out the offence under Section 120-B of IPC, the prosecution must lead evidence to prove the existence of some agreement between the accused persons. There is no specific evidence as to where and when the conspiracy was hatched and what was the specific purpose of such conspiracy. No such evidence has been adduced in the present case. Therefore, in our opinion, the conviction and sentence of the appellants have to be set aside. Accordingly, the judgment and order dated 7.9.2009 passed by the High Court and the judgment dated 20.3.2002 passed by the Additional Sessions Judge, Sonapat, so far as it relates to convicting the appellants, are set aside and these appeals are allowed. Appellant in Criminal Appeal No.1328 of 2013 is directed to be released forthwith unless required in connection with any other case. Appellant in Criminal Appeal No.1375 of 2010 is already released on bail granted by this Court. His bail bonds shall stand discharged. There shall be no order as to costs.