

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

2026:PHHC:092589-DB



102

CRA-D-223-DBA-2005

Date of decision: 08.07.2026

STATE OF HARYANA

...Appellant

VERSUS

JITENDER @ VIJENDER @ BIHARI & ORS.

...Respondents

**CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ
HON'BLE MRS. JUSTICE SUKHVINDER KAUR**

Present: Mr. Dhruv Dayal, Addl. A.G. Haryana.

Mr. Deep Singh Saini, Advocate and
Mr. Krishan Singh, Advocate for respondent No.5.

VINOD S. BHARDWAJ, J.(ORAL)

The instant appeal has been preferred against the judgment dated 11.08.2004 passed by the Additional Sessions Judge, Jagadhri, in Sessions Case No. 86 of 2003, arising out of FIR No. 74 dated 28.02.2002, registered under Sections 394 and 397 IPC at Police Station City Yamunanagar, whereby the Additional Sessions Judge recorded a finding that the prosecution had failed to prove the guilt of the respondents-accused beyond reasonable doubt and, acquitted the respondents-accused of the charges framed against them.

2 Brief facts of the case of the prosecution as unfolded during trial is that the complainant Krishan Lal was running a jewellery shop at Mundamajra Road, Jain Ki Chakki Chowk, Chhota Model Town,

Yamunanagar under the name Anand Jewellers. On 28.2.2002, at about 9.00 P.M. he was returning to his house on a scooter after closing his shop. He was carrying a bag containing gold jewellery weighing about 450 gms, keys of an almirah and the shop with him. When after covering a distance of about 100 yards from his shop, he reached towards Pyara Chowk, three boys riding a motor cycle came from behind towards his right hand side. The boy who was seated in between was having a pistol in his hand and he fired a shot at the complainant from the weapon possessed by him which hit on his head. The bullet pierced the helmet he was wearing. The boy who was seated at the pillion gave a push to him. He fell down on the road alongwith the scooter. They took away his bag containing keys and ornaments and drove away towards Pyara Chowk. He raised an alarm on which one Kali who runs an electric shop in his neighbourhood and a person from Mahavir Sweet House arrived there. They took him to the Civil Hospital, Yamunanagar. The doctor sent a ruqa to police post Rampura regarding his admission. On receiving information, ASI Ishwar Singh from Police Station City Yamunanagar reached in the hospital and recorded the statement of the complainant Ex.PD. On the basis of that statement F.I.R. Ex.PD/2 was drawn.

3 The complainant was examined medico legally by Dr. Ajesh Goel. On examination following injuries were found on his person:-

1. 10 cm long wound extending from vertex to the right parietal area which was bone deep. The margins were irregular and blackish in colour.

2. A 2 cm long contused lacerated wound on the forehead.

3. A 1 cm circular scar on the right arm middle 1/3rd.

Injury No.1 was caused by firearm whereas injuries No.2 and 3 were simple.

4 After recording the statement Ex.PD, ASI Ishwar Singh went to the place of occurrence and inspected the site. He prepared rough site plan Ex.PM of that place. From the spot he took into possession a scooter, a cap and a broken spectacles vide memo Ex.PL. All these articles belonged to the victim. A photographer was called who took the photographs (Ex.P214 to Ex.P221) of the scene of crime. After examining the complainant, the doctor handed over to the police his clothes and the helmet which he was wearing at the time of occurrence. Those were taken into possession vide memo Ex.PL.

5 On 5.4.2003 accused Joginder, Rajinder and Sanjay were arrested in a case arising out of FIR No. 60 dated 4.4.2003 registered under Sections 399/402 I.P.C. at Police Station Sadar Yamuna Nagar by ASI Krishan Singh from CIA, Yamuna Nagar. On interrogation they made disclosure statements Ex.PV, Ex.PX & Ex.PY regarding this case. They disclosed that at the time of commission of the crime they were accompanied by three more persons namely Jitender, Sushil and Julfkar. Three of them were on a motor cycle, whereas remaining three were on foot. Hence, the above three accused were formerly arrested in this case. On 8.4.2003 they were again interrogated. On interrogation Jitender accused made disclosure statement Ex.PO to the effect that looted articles were distributed by them among them amongst themselves and that a gold chain, 15 gold nose pins, one gold pendent, 5 gold nose rings, one gold pendent with gold chain and a pair of gold ear chain had fallen to his share and that he had kept concealed those ornaments in his house in village Chandchak and offered to get them recovered. The accused Sanjay, on interrogation, made a disclosure statement Ex.PQ to the effect that out of the booty, 2 gold pendants, 15 gold nose pins, 5 gold nose rings and a pair of gold ear chain

had fallen to his share and he had kept concealed those ornaments in his house located in Kuldeep Nagar, Yamuna Nagar and offered to get them recovered there. Rajinder accused, on interrogation, made a disclosure statement Ex.PR to the effect that out of the booty, two gold pendants, 15 gold nose pins, 5 gold ear rings and a pair of gold ear chain had fallen to his share and that he had kept concealed those ornaments in his house in village Ugrao in district Saharanpur and offered to get them recovered from there.

6 Pursuant to of their disclosure statements, all these three accused got recovered the said ornaments from their respectively disclosed places same day which were taken into possession vide memos Ex.PE, Ex.PG & Ex.PH. Rough site plans of the places of recovery were prepared. At the time of effecting the recovery, police was accompanied by the complainant, who identified the ornaments got recovered by the accused as belonging to him of which he was robbed off.

7 On 17.4.2003 remaining three accused namely Jitender, Sushil and Julfkar were also brought from Mujaffarnagar. They were confined there in some other case. They were joined in the investigation and were interrogated. On interrogation they made disclosure statements but no recovery in pursuance of those disclosure statements was effected. They were again interrogated on 20.4.2003. Then they disclosed that the disclosure statements made by them on 17.4.2003 were incorrect and made fresh disclosure statements Ex.PS, Ex.PT & Ex.PU respectively. Jitender accused disclosed that out of the booty, a piece of gold, three pairs of gold ear rings, a pair of gold ear chains, 5 gold nose rings, 15 gold nose pins, one gold pendent and one gold set had fallen to his share and that he had kept concealed those ornaments in his residential house in village Ghasipur and offered to get the same recovered.

8 Sushil Kumar accused made a disclosure statement to the effect that out of the looted articles, one gold set, one gold pedant, four pairs of gold ear rings, 15 gold nose pins, 5 gold nose rings, a pair of gold ear chains and a piece of gold had fallen to his share and that he had kept concealed those articles in his rented accommodation located in Pursharth Colony, Mujaffar Nagar and offered to get the same recovered.

9 Accused Julfkar disclosed that out of the booty, a gold pendent, two gold pendants with chains, four pairs of gold ear rings, 15 gold pins, five gold ear rings and a pair of gold ear chain had fallen to his share and that he had kept concealed those articles in his residential house in village Khubbapur in district Mujaffar Nagar and offered to get the same recovered from there.

10 On 21.4.2003 all these three accused got recovered said ornaments from the disclosed places as per disclosure statements. The ornaments were taken into possession vide memos Ex.PH, Ex.PJ & Ex.PK. Rough site plans Ex.PJ/1, Ex.PJ/1 & Ex.PK/1 of the places of recovery were prepared. At that time also complainant Krishan Lal was with the police party and he identified the ornaments so got recovered as belonging to him of which he was robbed off.

11 On 28.4.2003 the motor cycle bearing No. UP-17-0774 make Yamaha which was used in the commission of crime was taken into possession vide memo Ex.PN from Kotwali Mujaffar Nagar as it was in the custody of police of said Kotwali in a case arising out of FIR No. 374 of 2002 Under Section 147/148/149/307 I.P.C. & 25 of the Indian Arms Act, 1959.

12 After completion of investigation charge sheet was filed against all the six accused to stand trial Under Sections 394/397 I.P.C. and Under Section 25 of the Indian Arms Act, 1959.

13 Charge in respect of commission of offence punishable Under Sections 395 & 397 I.P.C. was framed against all the accused vide order dated 3.9.2003 to which they pleaded not guilty and claimed trial

14 Prosecution, in order to connect the accused with the crime, examined twelve witnesses in all. Thereafter statements of the accused were recorded under Section 313 Cr.P.C. to afford them an opportunity to explain the evidence against them. They in their statements denied all the allegations of the prosecution to be false and pleaded their false implication.

15 When called upon to enter into defence, they did not lead any evidence.

16 After hearing learned counsel for the respective parties and on going through the record, the trial Court extended the benefit of doubt to the respondents-accused and acquitted them of the charges. Hence, the present appeal.

17 Learned State counsel has vehemently argued that the trial Court erred in acquitting the respondents-accused from the charges levelled against them notwithstanding the fact that the prosecution witnesses have supported the case of the prosecution. It is further contended that the trial Court acquitted the respondents primarily on the ground that no Test Identification Parade of the respondents-accused had been conducted. In recording said finding, the trial Court committed in an error in failing to appreciate that PW3-Krishan Lal, the complainant, had identified respondents-accused Jitender @ Vijender @ Bihari, Joginder and Sushil as the persons who had come on a motorcycle and robbed him. It is argued that

the mere non-conduct of a Test Identification Parade, by itself, was not sufficient to extend the benefit of doubt to the respondents, particularly in the facts and circumstances of the present case. It is further contended that the trial Court failed to appreciate that the stolen articles had been recovered and all the three accused have also been identified by the complainant. Once the recovery of the stolen property stood established, the respondents were not entitled to the benefit of doubt, particularly when they were found in possession of the stolen property. Therefore, the order of acquittal passed by the trial Court is liable to be set aside.

18 No other arguments have been raised.

19 Learned counsel for the respondents-accused, however, defends the judgment passed by the trial Court and contends that the identification of the respondents-accused was made for the first time during the Court proceedings. He submits that there is nothing on record to suggest that the respondents-accused were previously known to the prosecution witness. Therefore, the holding of a credible test identification parade was a prerequisite to establish the identity and involvement of the respondents-accused in the commission of the offence.

20 He further contends that the incident in question undisputedly took place during the night and that the complainant had only a fleeting glimpse of the offenders, as he was riding a scooter while the three offenders approached from behind on a motorcycle. Therefore, the identification of the respondents-accused in Court, in the absence of a proper Test Identification Parade, cannot be relied upon, considering the mental state and his ability to identify when one of the accused had allegedly fired a shot and the complainant was also given a push by the other co-accused, as a result of which he fell down, and the offenders drove

away after snatching the bag containing the jewellery. Under these circumstances, we do not perceive that the complainant had any occasion to have a wholesome look at the accused persons who had committed the offence. He contends that the identification of the respondents-accused in Court for the first time has no value, as the respondents-accused had already been exposed to the witnesses.

21 He submits that as per the case of the prosecution, every ornament of the victim was bearing trade name of the complainant, i.e. 'A.J.'. He contends that, in all, there were six recovery memos that had been prepared, and the marks on the recovered ornaments were stated to be 'A.J.'. Whereas, as per the six recovery memos and out of the 213 ornaments allegedly recovered by the State, only one item carried the engraving 'A.J.'. Hence, the recovery is doubtful, and the ornaments allegedly got recovered from the respondents-accused could not be related to the incident in question. The recovery is thus discrepant on other material points as well.

22 We have heard learned counsel for the parties and have gone through the documents and evidence relied upon by them.

23 It needs no reiteration that where the accused are not previously known and the incident is of the nature as alleged in the present case, the test identification assumes significance.

24 The sequence of facts, as set out in the prosecution case, is not disputed. The complainant was travelling on a scooter when one of the accused allegedly fired a shot and pushed him, as a result of which he fell down. Thereafter, the offenders allegedly fled from the spot after snatching the bag containing jewellery. It is stated that the said bag contained gold jewellery weighing about 450 grams. It is also undisputed that the respondents-accused, namely Joginder @ Manoj, Sanjay @ Sunil, and

Rajinder, were already in police custody in another case and that disclosure statements of the said persons were recorded, pursuant to which three other persons, namely Jitender @ Vijender @ Bihari, Joginder, and Sushil, were also nominated as accused. The police allegedly recovered 213 jewellery articles; however, only one jewellery article bore the engraving "A.J.". The said article was also not mixed with the other gold articles allegedly recovered pursuant to the disclosure statements of the respondents-accused for the purpose of identification. Therefore, the recovery in question could be connected or linked with the said incident in question. Further, there is no explanation on record as to the fate of the remaining articles allegedly recovered. Consequently, neither the identification of the respondents-accused has been established beyond reasonable doubt, nor has the recovery been successfully linked to the offence.

25 In view of the aforesaid circumstances, we do not find any infirmity or illegality in the judgment passed by the trial Court, whereby the benefit of doubt was extended to the respondents-accused. Consequently, finding no merit in the present appeal, the same is dismissed. The judgment dated 11.08.2004 passed by the Additional Sessions Judge, Jagadhri, in Sessions Case No. 86 of 2003, arising out of FIR No. 74 dated 28.02.2002, registered under Sections 394 and 397 IPC at Police Station City Yamunanagar, is hereby affirmed.

(VINOD S. BHARDWAJ)
JUDGE

(SUKHVINDER KAUR)
JUDGE

08.07.2026
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<i>Whether reasoned/speaking?</i>	<i>Yes/No</i>
<i>Whether reportable?</i>	<i>Yes/No</i>