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

**CRM-A-1949-2019 in/and
CRA-AD-288-2026
Date of Decision: 22.07.2026**

JAGDISH CHAND

....Appellant(s)

VERSUS

DAVID MASIH @ TONI AND OTHERS

....Respondent(s)

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

Present: Mr. A.S. Brar, Advocate for the appellant.

Mr. Abhinav Aggarwal, Advocate (Legal Aid Counsel) (through VC)
Mr. Vinay Kumar Gupta, Advocate
for respondents.

Mr. Mohit Kapoor, Senior DAG, Punjab.

VINOD S. BHARDWAJ, J. (Oral)

CRM-A-1949-2019

Heard.

Leave to appeal is granted.

CRA-AD-288-2026

The above appeal has been preferred against the judgment dated 01.05.2018, passed in the Session Case RBT No.35 dated 26.04.2017, arising out of FIR No.125 dated 29.12.2014, registered under Sections 382, 379, 413, 401 IPC, at Police Station Mehna, whereby the respondents – accused persons have been acquitted of the charge levelled against them by Additional Sessions Judge, Moga.

FACTS

2. Brief facts of the case are that on 29.12.2014, the appellant – complainant Jagdish Chand son of Tarlok Chand reported to the police that he has been working as an Accountant (*munim*) for the past 16 years with M/s Faqir Chand Marble House, Amritsar Road Lande Ke. The owner of the shop, as a matter of routine, carries cash to his house situated in Street No.4, Model Town, Amritsar Road, Moga and the same is later deposited with Axis Bank G.T. Road, Moga. On the next day, at 12:00 noon, he collected Rs.10 lakhs to be deposited in the bank, from the house of his owner and was going in a jeep bearing No.PB29V-4908 driven by Leel Singh. He was about 100 yards away from the main road when two motorcyclists alighted from the motorcycles and started throwing brick bats towards his jeep. The front glass of the jeep got smashed. Thereafter, the assailants snatched the cash bag and ran away. The broken pieces of glass caused hurt on the left cheek of the appellant – complainant. He dialed Control Room Number at 100 and on the basis of the same, the FIR was registered under Sections 382, 379, 413 and 401 IPC.

2.1 The police had also registered another FIR No.4/2015 at Police Station Mehna, for offences under Sections 399/402 IPC in which accused Ajay Masih, Sunil Singh @ Illu, Anwar Masih, Samual Masih @ Ballu, David Masih and Arav Thomas, were arrested. When they were in custody, they made a disclosure on interrogation, leading to recoveries of some robbed cash and consequently, all the aforesaid accused were formally arrested in the present FIR as well and vide DDR No.14 dated 11.03.2015, the offence under Sections 379-B/401 IPC was also added. The investigation was conducted and on completion thereof, final report was presented for commitment proceedings.

2.2 On appearance of the respondents – accused before the Illaqa Magistrate, copies of the documents and challan were supplied to the respondents – accused. Finding the case being one triable by the Court of Sessions, it was committed vide order dated 21.03.2015. Subsequently, vide order dated 30.03.2015, charges under Sections 402, 401, 382, 411 and 413 IPC were also framed against respondents – accused, to which they pleaded not guilty and claimed trial.

2.3 In order to prove its case, the prosecution examined three witnesses i.e. Jagdish Chand as PW-1, ASI Sukhjinder Singh as PW-2 and SI Baljinder Singh (now retired) as PW-3. Despite having been afforded with numerous opportunities for over a sufficient duration, the prosecution chose not to lead any further evidence and the summons to the witnesses were being returned in routine. The investigating officer was also directed to appear in person and to produce the prosecution witnesses by making personal efforts, however, the Sub Inspector apprised that since he had retired, he had no authority to produce the said witnesses. He furnished a list of witnesses along with their complete address and mobile phone numbers on being directed. However, despite best efforts were made by the Court to serve on the said addresses, no witness turned up. Consequently, vide a detailed order dated 16.01.2018, the prosecution evidence was closed by order.

2.4 The incriminating evidence which appeared against the respondents – accused was put to them and their statements were recorded under Section 313 Cr.P.C. The respondents – accused denied the incriminating evidence and pleaded false implication. They further submitted that their own money was being planted upon them after concocting a false story and that they were already

in custody at the time when the disclosure statement was allegedly recorded. There was no other witness that had been left for the police to substantiate and corroborate its case.

2.5 No evidence was, however, led by the respondents – accused in their defence. After consideration of the entire evidence and the respective arguments advanced by the parties, the Trial Court came to the conclusion that the prosecution had failed to establish that the respondents – accused had formed a gang of thieves and had made preparations to commit dacoity or that they were found in possession of the stolen vehicle or currency notes. Benefit of doubt was extended to respondents – accused and they were, thus, examined and exonerated of the charges framed against them.

2.6 Aggrieved thereof, the present appeal has been preferred.

3. Learned counsel appearing on behalf of the appellant contends that the Trial Court was in an error in failing to ensure that all prosecution witnesses were examined. The prosecution had conducted a mis-trial in the present case as only three witnesses out of total twenty three witnesses cited in the final report. Numerous opportunities were granted to the prosecution but the witnesses from the Axis Bank, Transport office and other witnesses to the recovery had not been examined. If the entire evidence had been effectively concluded, the charges against the respondents – accused would have been established.

4. Learned legal aid counsel appearing on behalf of the respondents contends that as per the police, the sum of Rs.10 lakhs, as allegedly looted from complainant, had been shared by respondents – accused amongst themselves and they had allegedly purchased certain vehicles with the said proceeds of crime.

He contends that the witnesses who had not been examined in the present case

are from the office of DTO and bank, who were witnesses to the recovery of the vehicles that were registered in the name of certain persons. He contends that since the primary allegations of any currency having been recovered from the respondents – accused is not established, thus, no adverse inference can be drawn against the respondents – accused that the vehicles had been purchased by them from the money looted from the appellant. It is contended that such an inference drawn does not flow from the sequence of events and the burden lies upon the prosecution/appellant to establish that the money allegedly used was actually the money stolen from him. In the absence of recovery of any currency notes, no inference suggesting that the money deployed for carrying out the aforesaid transaction was in fact the money that had been looted from the appellant can be drawn. It is further contended that one of the primary issues was in relation to the identification of the assailants who threw brick bats on the jeep and later went away with the money. No Test Identification parade was conducted and the respondents were identified in the Court itself, and such identification is not admissible in law. It is further contended that even as per the case set up by the prosecution, there were only two persons who came riding motorcycle and threw brick bats and ran away with the cash, however, the net has been expanded by the prosecution by nominating as many as six accused in the present case only to add graver charges for enhanced custody of the respondents.

5. It is contended that mere technical lapse should not be a ground for remanding the case back to the Trial Court for recording of the evidence of other witnesses. The matter pertains to the year 2014 and already a period of 12 years has been lapsed. The appellant did not raise any grievance against the

investigation conducted by the police nor did he raise any challenge to the order whereby evidence of the prosecution was closed by order.

6. Under the given circumstances, the plea raised herein is an afterthought and is not likely to advance the interest of justice. The appeal, thus, be dismissed and the judgment passed by the trial Court dated 01.05.2018 be affirmed.

7. We have heard the learned counsel for the respective parties and gone through the documents appended along with the present petition.

8. It is not disputed that the entire case of the prosecution is that the two assailants snatched away a sum of Rs.10 lakhs from the complainant – appellant and thereafter, the said cash was allegedly distributed amongst the respondents – accused persons. With the aid of the aforesaid distributed cash, the respondents allegedly purchased certain vehicles which had been recovered from them by the police. The witnesses who had not been examined were in fact, the witnesses from the office of the DTO, who would have been able to establish the transfer of vehicles in the name of the respondents – accused and the witnesses to the recovery of the vehicles at the instance/disclosure of the respondents – accused persons. It is further not disputed that the respondents – accused persons had already been arrested in relation to case FIR No.4/2015 at Police Station Mehna and they had been nominated as accused in the present case on the basis of the disclosure statements suffered by them in the said case.

9. It remains undisputed that there is no distinct mark of identification about the alleged cash that had been snatched from the appellant herein. Besides, there is nothing on record on the basis of which it can be assumed that the stolen cash had in fact, been used by the respondents – accused persons for the purchase

of the vehicles. The witnesses sought to be examined are the people from whom vehicles were purchased. They would at best be witness to the sale of the vehicles. In order to assess, we have also considered the effect if such evidence would have been led and are of the opinion that even in such eventuality, the offence is not proved against the respondents – accused. The story of the prosecution is woven only around the disclosure made by the accused persons, while in custody, however, such disclosure is not corroborated by any recovery or any other evidence. Under the given circumstances, it is only on the basis of the preponderance of probabilities that an inference is being projected by the appellant to contend that respondents – accused need to be convicted for the commission of offence allegedly committed by them. Such argument cannot be accepted as there can be no presumption of participation in an offence alleged against the accused persons and the said burden is to be discharged by the prosecution beyond reasonable doubt.

10. In case of “***Bijender @ Mandar vs. State of Haryana***” Law Finder Doc Id # 1905697, the Hon’ble Supreme Court observed as under:-

16. We have implored ourselves with abounding pronouncements of this Court on this point. It may be true that at times the Court can convict an accused exclusively on the basis of his disclosure statement and the resultant recovery of inculpatory material. However, in order to sustain the guilt of such accused, the recovery should be unimpeachable and not be shrouded with elements of doubt.[1] We may hasten to add that circumstances such as (i) the period of interval between the malfeasance and the disclosure; (ii) commonality of the recovered object and its availability in the market; (iii) nature of the object and its relevance to the crime; (iv) ease of transferability of the object; (v) the testimony and trustworthiness of the attesting witness before the Court and/or other like factors, are weighty considerations that aid in gauging the intrinsic evidentiary value and credibility of the recovery. (See: ***Tulsiram Kanu v. The State, AIR 1954 SC 1; Pancho v. State of****

Haryana, (2011) 10 SCC 165; State of Rajasthan v. Talevar & Anr., (2011) 11 SCC 666 and Bharama Parasram Kudhachkar v. State of Karnataka, (2014) 14 SCC 431)

17. Incontrovertibly, where the prosecution fails to inspire confidence in the manner and/or contents of the recovery with regard to its nexus to the alleged offence, the Court ought to stretch the benefit of doubt to the accused. Its nearly three centuries old cardinal principle of criminal jurisprudence that "it is better that ten guilty persons escape, than that one innocent suffer". The doctrine of extending benefit of doubt to an accused, notwithstanding the proof of a strong suspicion, holds its fort on the premise that "the acquittal of a guilty person constitutes a miscarriage of justice just as much as the conviction of the innocent".

11. Even if the remaining evidence, as referred to above, is assumed to have been brought on record, yet, the primary requisite for the commission of the offence do not stand satisfied and the said witnesses could have only deposed with respect to the purchase of the vehicle and the same would not by itself establish that the respondents – accused persons had indulged in the commission of offence.

12. It remains undisputed that the identification of the respondents – accused was also carried out for the first time only in the Court itself and no identification had been undertaken as per the procedure established by law. Moreover, only two persons could have been identified by the appellant – complainant. Further, driver Leel Singh, who was accompanying the appellant had also not been examined. No reasons have been given by the appellant as to why his own driver did not step into the witness box despite being summoned.

13. In the given scenario, the essential link of evidence against the respondents having received or being in possession of any proceeds of the alleged crime has not been established. The charge against them is being assumed solely by proving that they had purchased certain vehicles. The same would

be only one amongst multiple probabilities including the one that the respondents – accused persons may have had their own resources to purchase the said vehicles.

14. The position in law needs no reiteration that suspicion, howsoever strong, is not a substitute for proof.

The foundation principle governing this issue was articulated by the Apex Court in “*Sujit Biswas vs. State of Assam*” 2013(3) RCR(Criminal) 227.

Relevant paras of the said judgment reads as:-

*6. Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that 'may be' proved, and something that 'will be proved'. In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between 'may be' and 'must be' is quite large, and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between 'may be' true and 'must be' true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between 'may be' true and 'must be' true, the court must maintain the vital distance between mere conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny, based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure, that miscarriage of justice is avoided, and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense. (Vide: **Hanumant Govind Nargundkar & Anr. v. State of M.P.**, AIR 1952 Supreme Court 343; **State through CBI v. Mahender Singh Dahiya**, 2011(1) RCR (Criminal) 706 : 2011(1) Recent Apex Judgments (R.A.J.) 389 ; and **Ramesh Harijan v. State of U.P.**, 2012(3) RCR (Criminal) 998 : 2012(4) Recent Apex Judgments (R.A.J.) 218).*

15. Since the requisite evidence for proving the commission of offence against the respondents is not available on record, hence, in the given circumstances, sending the case for recording further evidence is not likely to advance any further purpose and is only likely to delay the proceedings in the present case. Consequently, we find that the judgment of the Trial Court, extending the benefit of doubt to the accused persons does not suffer from any illegality, perversity, impropriety or non-appreciation of the evidence available on record.

16. Consequently, the present appeal is dismissed and the judgment of acquittal dated 01.05.2018, passed in Session Case RBT No.35 dated 26.04.2017, arising out of FIR No.125 dated 29.12.2014, registered under Sections 382, 379, 413, 401 IPC, at Police Station Mehna, is affirmed.

(VINOD S. BHARDWAJ)
JUDGE

(SUKHVINDER KAUR)
JUDGE

July 22, 2026
Sangeeta

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