

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

**CRA-S-938-SB of 2000
Date of decision : 27.11.2015**

Ajmer Singh
..... Appellant

Versus

State of Haryana
..... Respondent

AND

**CRA-S-1309-SB of 2001
Date of decision : 27.11.2015**

Raju
..... Petitioner

Versus

State of Haryana
..... Respondent

AND

**CRA-S-127-SB of 2002
Date of decision : 27.11.2015**

Balwan
..... Petitioner

Versus

State of Haryana
..... Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

**Present: Mr. Amit Kaushik, Advocate
 for the appellant (in CRA-S-938-SB of 2000).**

Ms. Anju Arora, Advocate

for the appellant (in CRA-S-1309-SB of 2001).
Mr. R.N.Kush, Advocate
for the appellant (in CRA-S-127-SB of 2002).

Mr. Ashok Muthreja, DAG, Haryana.

- 1. Whether Reporters of local papers may be allowed to see the judgement?Yes
- 2. To be referred to the Reporters or not?Yes
- 3. Whether the judgement should be reported in the Digest?Yes

DARSHAN SINGH,J

1. This judgment shall dispose of all the three appeals against conviction, mentioned above which have arisen out of the same judgment dated 29.11.1999, vide which the appellants have been held guilty and convicted for the offences punishable under Sections 394/34, 398/34 of Indian Penal Code (for short 'IPC') and Section 25 of Arms Act (for short 'the Act') and the order on the quantum of Sentence dated 30.11.1999, vide which the appellants have been sentenced as under:-

Name of the Convict	Under Section	R.I	Fine	In default of payment of fine to further rigorous imprisonment
Ajmer Singh	394/34 IPC	Ten Years	2000/-	---
	398/34	Ten Years	2000/-	---
	27 of Arms Act(it should be read as Section 25)	Six months		

Name of the Convict	Under Section	R.I	Fine	In default of payment of fine to further rigorous imprisonment
Raju	394/34 IPC	Ten Years	2000/-	---
	398/34	Ten Years	2000/-	---
	27 of Arms Act(it should be read as Section 25)	Six months		

Name of the Convict	Under Section	R.I	Fine	In default of payment of fine to further rigorous imprisonment
Balwan	394/34 IPC	Ten Years	2000/-	---
	398/34	Ten Years	2000/-	---
	27 of Arms Act(it should be read as Section 25)	Six months		

2. The brief facts giving rise to this prosecution are that on 01.08.1997, Inspector Rajesh Kumar Duggal, the then S.H.O, Police Station Civil Lines, Hissar along with police party was present near gate number 1, Haryana Agriculture University, Hissar (for short 'H.A.U') in-connection with patrolling. PW-10 Satish met him and made the statement disclosing therein that he was posted as Assistant-cum-Cashier in the Land Scape Office, H.A.U, Hissar. At about 10.15 a.m, he along with PW-11 Harish Chander, Attendant in the office of Land Scape, H.A.U, Hissar had gone to the State Bank of India, branch H.A.U, Hissar to withdraw the cash for disbursement of the salary to the staff. They withdraw a sum of Rs. 6,25,073/- from the bank and kept said money in a bag. They were going on a 'kachha' passage towards their office. When, they reached near dispensary quarters, a Maruti car bearing registration number DL-5C-5257 was found parked on dispensary road. When, they reached near said Maruti car, then two persons having pistols in their hands came to them. They pointed the pistols on their chest and asked them to hand over the bag containing cash. The complainant and Harish Chander did not allow them to take the bag. The person who has pointed the pistol at the chest of the complainant asked the another person Balwan to fire the shot and he fired the shot from his pistol on the left leg of Harish Chander and they forcibly snatched the bag from Harish

Chander containing Rs.6,25,073/-. The third person was already sitting in the Maruti car. The engine of the Maruti car was already on and they fled away in the car towards gate no.3. The complainant also narrated the physical features of the assailants. Inspector Rajesh Kumar Duggal recorded the statement of complainant Satish Kumar Ex.PG. On the basis of which, the FIR Ex.PG/2 was registered and investigation was started.

3. The Investigating Officer sent the information to the control room for holding the 'Nakabandi' in the area. He also prepared the site plan of the place of occurrence Ex.PL. He lifted the empty cartridge and blood stained pebbles from the spot, which were taken into possession vide memo Ex.PH.

4. At about 3.00 p.m, the Investigating Officer received the wireless message from the control room that accused have been rounded up along with car, cash and arms. Thereafter, he reached Police Post H.T.M, Hissar. Accused-appellants were apprehended by PW-9 HC Ram Singh and his fellow police officials while holding the 'Nakabandi'. Accused-appellant Balwan was carrying bag containing the cash amount of Rs.6,25,073/-. He was also carrying the pistol in his right hand. He had also kept one revolver in his right dub. Three live cartridges were also recovered from him. One cartridge was loaded in the pistol, while two cartridges were kept by him in his pocket. One pistol .315 bore along with one live cartridge was recovered from accused-appellant Raju. One pistol along with three live cartridges was recovered from the possession of accused-appellant Ajmer Singh, who was also driving the car. All the aforesaid articles were taken into possession. The separate cases under

Sections 25 of the Arms Act were got registered against all the three accused for having been found in possession of arms and ammunition bearing FIR Nos. 856/97, 858/97 and 857/97, Police Station City, Hissar, respectively. All the three accused-appellants were interrogated and suffered the disclosure statements Ex.PC, Ex.PD and Ex.PE respectively. On completion of the formalities of the investigation, the report under Section 173 of Code of Criminal Procedure (for short Cr.P.C) was presented.

5. The main case was committed to the Court of Sessions by the learned Additional Chief Judicial Magistrate, Hissar, vide order dated 13.11.1997. All the three cases registered under Section 25 of the Act were also committed to the Court of Sessions by learned Chief Judicial Magistrate, Hissar, vide order dated 21.11.1998.

6. The accused-appellants were charge sheeted in the main case as well as in the cases under the Arms Act separately. They pleaded not guilty to the charges and claimed the trial.

7. In order to substantiate its case, the prosecution led separate evidence in the main case and the cases under the Act.

8. The main case and the cases under the Act were being tried separately. But, vide order dated 01.07.1999 all the three cases under the Act registered against the appellants were clubbed with the main case to be disposed of vide single judgment.

9. On appreciating the evidence/material on record and the pleas raised by the parties, the accused-appellants were convicted and sentenced as mentioned in the upper part of the judgment.

10. Aggrieved with the aforesaid judgment of conviction and order of sentence, the present appeals have been preferred.

11. I have heard Mr.Amit Kaushik, Advocate, learned counsel for the appellant (in CRA-S-938-SB of 2000), Mr. R.N.Kush, Advocate, learned counsel for the appellant (in CRA-S-127-SB of 2002), Ms. Anju Arora, Advocate, learned counsel for the appellant (in CRA-S-1309-SB of 2001) and Mr.Ashok Muthreja, learned Deputy Advocate General, for the State of Haryana and have meticulously examined the record of the case.

12. Initiating the arguments, learned counsel for the appellants contended that the occurrence is alleged to have taken place in H.A.U, Hissar, a public place. But, there is no independent witness to support the prosecution story. Even, at the time of alleged apprehension of the appellants and recovery of the looted property, no independent witness has been associated, which renders the prosecution case doubtful. They further contended that in the site plan the points where the accused were present and where the witnesses were present have not been shown.

13. They further contended that the presence and identity of the appellants is not established. Except appellant Balwan, the name of other appellants was not mentioned in the FIR. Admittedly, the prosecution witnesses were not earlier known to the appellants. No test identification parade of the appellants have been held after their arrest. Thus, the identity of the appellants as the persons who had committed the robbery is not established. They further contended that complainant Satish Kumar has himself contradicted the prosecution story. He has stated that he

cannot identify the accused who had aimed the gun at him as well the person who was driving the car. In the cross-examination, he has stated that appellant Raju has aimed the pistol at him. Whereas, as per prosecution story appellant Ajmer has pointed the gun at the chest of complainant Satish Kumar. So, the case of the prosecution is highly contradictory with respect to the role allegedly played by the appellants.

14. Learned counsel for the appellants contended that PW-10 complainant Satish Kumar has stated that when he went to the Police Post at 2.30 p.m, the bag containing cash was lying on the table in the Police Post. But, as per the prosecution story, the appellants were apprehended after 3.00 p.m. He has also stated that at that time the accused were not present in the Police Post. They further contended that PW-9 H.C Ram Singh, who allegedly apprehended the accused has stated that at the time of apprehension of accused, Inspector Rajesh Kumar Duggal, S.H.O was also present with them. But, as per the prosecution story, Inspector Rajesh Kumar Duggal has reached at the spot only after receiving the information about the apprehension of appellants. Learned counsel for the appellants contended that these material contradictions in the prosecution case has rendered the entire story of the prosecution doubtful and their conviction has been wrongly recorded by the learned trial Court.

15. On the other hand, learned State counsel contended that the accused-appellants have been apprehended just within four hours of the occurrence along with the looted property. So, the presumption under Section 114 of the Indian Evidence Act arises against the appellants to establish that they were the robbers. He further contended that the

weapons along with fire arms and live cartridges were also recovered from the possession of all the three appellants. He further contended that appellants have refused to join the test identification parade. So, the adverse inference arises against the appellants and they can not raise the issue of identification. He further contended that a huge amount of more than Rs. 6 lacs can not be planted by the police from its own sources. He further contended that there is no material on record to show that any public-man was present at the time of occurrence. Moreover, the public-man do not come forward to join the investigation in such type of dare-devil incidents. He further contended that conviction of the appellants has been rightly recorded by the learned trial Court.

16. I have duly considered the aforesaid contentions.

17. Before taking up the case on merits, it is pertinent to mention that there are some infirmities in the proceedings recorded by the learned trial Court. As already mentioned as a result of recovery of the arms and the ammunition, the separate cases under the Act were recorded against all the three appellants. In those cases under the Arms Act, the trial was conducted separately after framing the separate charges under Section 25 of the Act. The entire evidence in the cases under the Arms Act against all the three appellants was recorded separately. Their statements under Sections 313 Cr.P.C were also recorded separately and thereafter, those cases under the Arms Act were clubbed with the main case by the learned trial Court vide order dated 01.07.1999. There is a clear ambiguity in the charges framed by the learned trial Court in the main case. Accused Balwan has been charge sheeted for Section 25 and 27 of the Act. In the

main charge sheet vide which the accused have been charge sheeted for the offence punishable under Sections 420/34, 394/34, 307/34 and Section 398/34 IPC, the name of the appellant Balwan is missing. In the order dated 16.12.1997, the charges have been ordered to be framed against all the appellants. The statements of all the appellants have been recorded separately pleading not guilty and claiming trial. So, virtually in the main case, the charges have been framed against all the appellants, but there is the omission of name of appellant Balwan in the charge sheet dated 16.12.1997. Section 464 Cr.P.C provides that no finding, sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge. Accused-appellant Balwan is the main accused in this case. As per the prosecution case, he has fired the shot and caused injury to PW-11 Harish Chander while committing robbery. He was also holding the bag containing the looted money. Appellant Balwan was fully aware of the charges against him and has faced the trial qua those allegations. This omission in the charge sheet has not caused any failure of justice. It appears that accused-appellant has also no grievance about the omission of his name in the main charge sheet as he was fully aware of the allegations and charges against him for which he had faced the trial. That is why even in the ground of appeal no plea has been taken that the charge was defective or there was any omission in the charges framed by the learned trial Court. Thus, the omission of the name of appellant Balwan in the charge sheet dated 16.12.1997 is purely a clerical and inadvertent mistake/omission without

causing any failure of justice to appellant Balwan and such omission will have no bearing on the validity of the findings of the learned trial Court.

18. The accused-appellants were charge sheeted for the offences punishable under Sections 25 of the Act on account of the recovery of arms and ammunition from their possession.

19. I have perused the original judgment and the interim order passed by the learned trial Court. In the interim order dated 29.11.1999, it has been mentioned that vide separate judgment of even date, the accused have been convicted under Sections 394/34, 398/34 IPC and Section 25 of the Act and the case was posted for hearing on the quantum of sentence for 30.11.1999. in the original judgment dated 29.11.1999, in para no.27 Section 25 Arms Act was typed. But, there is over writing on digit '5' and '7' has been written in ink. Similar, is the position in para no.3 of the order on the quantum of sentence dated 30.11.1999. It is nowhere mentioned in the main judgment that recovery of arms and ammunition from the appellants was not proved. So, the conviction of the appellants shall be deemed to have been recorded under Section 25 of the Act.

20. Now, I take up the case on merits. Complainant Satish Kumar has appeared as PW-10. He has categorically deposed that he along with Harish Chander, Attendant of his office had gone to State Bank of India, H.A.U, Hissar to collect the salary for the month of July 1997. They collected a sum of Rs. 6,25,073/- from the State Bank of India, H.A.U, Hissar and were returning at about 11.05 a.m. The amount was kept in a green colour bag. They were going on foot through the 'kachha' passage near dispensary quarters. Meanwhile, a car stopped

behind them at a distance. They heard noise of opening of the door of the car and his attendant told that there is some problem. Meanwhile, two persons reached near them, who were armed with pistols. They pointed their pistols upon their chest and demanded the cash from them. He asked Harish Chander not to handover the money. Then, the person (Balwan) fired a gun shot, which hit Harish Chander on his left leg. The same person (Balwan) snatched the bag from Harish Chander and ran away. Then, they boarded the car and went away. They called each other by their names, but he could not tell the name of other accused. He further deposed that he cannot identify the accused, who has aimed the gun at him as well as the person who was driving the car because the occurrence has taken place more than a year back. This very sequence of occurrence has been corroborated by PW-11 Harish Chander, the injured. Admittedly, no independent witness has been associated in the investigation. But, there is no material to show that any public-men was present at the time of actual occurrence. Complainant Satish Kumar has categorically deposed in the cross-examination that nobody came during the occurrence. None came from the dispensary quarters. So, no publicman was attracted to the spot at the time of the occurrence. Thus, there can be no question of associating the public-men in the investigation of the case qua this part of the occurrence.

21. This fact is not disputed that accused have been held as a result of 'nakabandi', which led to the recovery of the stolen property, fire arms and live cartridges from the possession of the appellants. There was no secret information with the Investigating Officer or PW-9 H.C Ram

Singh that accused-appellants while fleeing away after committing the crime will adopt that very route to escape. After the occurrence, the message was flashed to the control room for holding the 'nakabandi' to nab the culprits. So, there was no specific information to the police that appellants will adopt only that very route where they were apprehended. In these circumstances, there was no occasion or opportunity with the Investigating Officer to associate the independent witnesses. Moreover, it is well settled principle of law by this time that the non joining of the independent witness is itself not a ground to reject the prosecution version. If, the testimonies of the police officials are trustworthy, those can be safely relied upon to base the conviction. Moreover, in the instant case, prosecution case is also corroborated from the testimonies of PW-10 Satish Kumar and PW-11 Harish Chander, the injured witness. Both of them were the victim in this occurrence. The fire arm injury on the person of PW-11 Harish Chander adds to the evidentiary value to his statement as he is a stamped witness and his presence at the spot can not be doubted. There is also no material to show that the complainant, injured witness and the police officials had any animus or motive for the false implication of the appellants. Thus, in these circumstances, the non-association of the independent witness is no ground to discard the prosecution case.

22. There is no doubt about the identity of the appellants. Sh.S.K.Goel, the then Additional Chief Judicial Magistrate, Hissar has appeared as PW-14. He deposed that on 02.08.1997, the appellants were produced before him and an application Ex.PO was moved for holding

the test identification parade. He recorded the statements of the appellants Ex.PO /1 to Ex.PO/3 wherein they denied to get the test identification parade held. So, the accused-appellants have themselves denied for the holding of test identification parade. This conduct of the appellants raises the adverse inference against them.

23. The relevant portion of Section 114 of the Indian Evidence Act reads as under:-

114. Court may presume existence of certain facts. —The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

Illustrations

The Court may presume—

(a) That a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession;

As per the aforesaid provision of law, if a person is found in possession of the stolen goods soon after the theft, the Court can presume that either he is thief or has received the goods knowing them to be stolen unless he can account for his possession. The Hon'ble Supreme Court in case **Pravin Vs. State of Madhya Pradesh 2008(2) R.C.R (Criminal) 575** has also laid down that in the dacoity case where the stolen property was recovered from the accused, the Court was justified in using the presumption raised by Section 114 of the Indian Evidence Act.

24. As per the consistent testimonies of PW-10 Satish Kumar

and PW-11 Harish Chander, the occurrence has taken place at about 11.05 a.m. From the Statement of PW-9 HC Ram Singh, it comes out that accused were apprehended at 3.00 p.m along with the entire looted cash of Rs. 06,25,073/-. The fire arms and live cartridges were also recovered from their possession. So, all the three appellants were apprehended along with the stolen property just within four hours of the occurrence.

25. I do not find that the contradictions pointed out by learned counsel for the appellants can render the prosecution version doubtful with respect to the apprehension of the appellants and consequent recoveries. No doubt in the examination in chief PW-9 H.C. Ram Singh has stated that Inspector Rajesh Kumar Duggal, SHO was also present with them. But, in the cross-examination he has clarified that Inspector Rajesh Kumar Duggal reached at the spot at 3.30 p.m after he sent the wireless message to him. PW-13 Inspector Rajesh Kumar Duggal, SHO has also stated that at about 3.00 p.m, he received the wireless message from the control room, Hissar that accused of this occurrence have been rounded up with car, cash and arms. Thereafter, he reached Police Post, H.T.M, Hissar and interrogated the accused. So, Inspector Rajesh Kumar Duggal, was not present at the time when the accused were apprehended along with stolen property by PW-9 H.C. Ram Singh and his fellow police officials. He had only reached later on receiving the wireless message from the control room after the apprehension of the appellants. It is settled principle of law that the witnesses are not expected to state the timings with mathematical precision. PW-10 Satish Kumar was the victim in this occurrence. The recovery has been effected within a short span of

four hours. So, by that time he must under shock and it is not expected that he will be able to tell the exact timing of his going to Police Post, H.T.M, Hissar, where the stolen property was lying. So, if he has stated that he had gone to the Police Post at 2.30 p.m, that is not a ground to render the prosecution case doubtful. Similarly, it may be possible that the accused might be detained in another room and may not be in the room where the bag was lying. So, that is also not a ground to create any doubt about the genuineness of the prosecution story. PW-9 HC Ram Singh has stated that appellant Balwan was carrying the bag containing a sum of Rs. 6,25,073/- i.e. the stolen cash. He was also carrying the pistol in his right hand. He was also having a revolver in his right dub. Three live cartridges were also recovered from him. He further deposed that they recovered one pistol .315 bore along with one cartridge from appellant Raju. They also recovered one pistol along with three live cartridges from appellant Ajmer, who was driving the car.

26. A huge amount of Rs. 6,25,073/- has been recovered from the possession of appellant Balwan. It is unlikely that police can plant such a huge amount of cash from its own sources. So, the recovery of stolen property, arms and ammunition from the possession of the appellants is fully established. To support this view reference can be made to case **Narayan Prasad & Ors. Vs. State of M.P 2006(1) R.C.R (Criminal) 1.**

27. The stolen property was recovered from the possession of appellants within four hours of the occurrence. Thus, the recovery of the stolen property from the possession of the appellants soon after the

occurrence raises the presumption under Section 114 illustration (a) of the Act that the accused-appellants were robbers. The accused-appellants have not given any explanation to account for their possession of the stolen property. As the accused-appellants were apprehended soon after the occurrence i.e. within four hours along with the stolen property, there can be absolutely no doubt about the identity of accused-appellants being the persons who had committed the robbery.

28. Mere this fact that bag containing cash was in the hand of appellant Balwan at the time of recovery is no ground to absolve of appellant Ajmer and Raju from the criminal liability. From the evidence on record, it is established that all the three appellants had jointly carried out the commission of the offences i.e. the snatching of bag containing the cash from the hands of PW-11 Harish Chander. Appellant Balwan also fired shot which hit on the left leg of PW-11 Harish Chander in order to snatch the bag. Thereafter, they fled away from the spot together. At the time of apprehension and recovery of the stolen property also they were traveling in the same vehicle together having fire arms and live cartridges which clearly shows that all the three appellants had shared the common intention to commit this crime.

29. From the statement of PW-12 Dr. Usha Kalra who has medico legally examined PW-11 Harish Chander and proved the Medico Legal Report Ex.PJ it has come out that PW-11 Harish Chander has suffered the fire arm injury on his left leg. Ex.PM is the report of Forensic Science Laboratory, which shows that the empty cartridge which was lifted from the spot was fired from the pistol recovered from appellant

Balwan. PW-10 complainant Satish Kumar and PW-11 Harish Chander have also categorically deposed that appellant Balwan has fired a shot at Harish Chander, which hit on his left leg when the complainant asked him not to handover the bag. Thus, appellant Balwan in furtherance of common intention with appellant Ajmer and Raju voluntarily caused hurt to PW-11 Harish Chander while committing the robbery. The appellants were also armed with deadly weapons i.e. the fire arms at the time of commission of robbery. Thus, there is no legal infirmity in the conviction of appellants as recorded by the learned trial Court for the offences punishable under Sections 394, 398 read with Section 34 IPC and Section 25 of the Act.

30. The offence punishable under Section 25 of the Act carries the sentence of imprisonment in term which shall not be less than one year, but which may extend to three years and shall also be liable to fine. It is further provided that the Court may for any adequate and special reasons to be recorded in the judgment imposed a sentence of imprisonment for a term of less than one year. In the instant case, the learned trial Court has awarded the rigorous imprisonment for a period of six months for the offence punishable under Section 25 of the Act (wrongly typed as 27 of the Act). But, there is no challenge to this sentence by the respondent-State of Haryana.

31. Learned trial Court has not mentioned in the order on the quantum of sentence as to whether the sentence awarded to the appellants shall run concurrently or consecutively. It is not disputed that all the offences for which the appellants have been convicted has arisen out of

the same transaction. As per the law laid down by the Hon'ble Apex Court in case **O.M. Cherian @ Thankachan v. State of Kerala and Others 2014(4) R.C.R. (Criminal) 922**, when the prosecution is based on single transaction and it constitutes two or more offences, the sentences are to run concurrently. Imposing separate sentences when the acts constituting different offences form part of the single transaction is not justified. So, the sentences awarded to the petitioner shall run concurrently. However, I do not find any justification to reduce the sentence awarded to the appellants as recorded by the learned trial Court keeping in view the gravity of the offences committed by them.

32. Thus, keeping in view my aforesaid discussion, it is established beyond shadow of reasonable doubt that all the accused-appellants in furtherance of their common intention committed the robbery while armed with deadly weapons and also voluntarily caused fire arm injury to PW-11 Harish Chander while committing the robbery. It is established that appellant Balwan was carrying the pistol in his right hand. He had also kept one revolver in his right dub. Three live cartridges were also recovered from him. It is also established that one pistol and three live cartridges were kept by appellant Ajmer in his pocket, who was also driving the car. It is also established that one pistol .315 bore along with one live cartridge was recovered from accused-appellant Raju.

33. So, I do not find any illegality and infirmity in the conviction of the appellants as recorded by the learned trial Court for the offences punishable under Sections 394, 398 read with Section 34 IPC and Section 25 of the Act which is hereby maintained and confirmed. Learned counsel

for the appellants have also pleaded for reduction of sentence. But, keeping in view the nature of the offence and the manner in which the offence has been committed in broad day light, the robbery was committed by the appellants at the point of fire arms and even a fire arm injury was caused to PW-11 Harish Chander while committing the robbery. So, they do not deserve any reduction in the matter of sentence. However, all the sentences awarded to the appellants by the learned trial Court shall run concurrently.

34. Thus, with aforesaid modification with respect to the sentences running concurrently, there is no merits in the present appeals and the same are hereby dismissed.

35. The accused-appellants are on bail. Their bail stand cancelled. They shall surrender within 15 days from the date of this judgment before the learned Chief Judicial Magistrate, Hisar, who shall send them to jail to undergo the remaining part of their sentence. If, they fail to surrender, the learned Chief Judicial Magistrate, Hisar, shall take coercive steps to secure their presence and send them to jail to undergo the remaining part of the sentence.

November 27, 2015

s.khan

**(DARSHAN SINGH)
JUDGE**