

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

**(1) Crl. Appeal No.S-1128-SB of 2001**

Bhagwan Dass

...Appellants

versus

State of Haryana

...Respondent

**(2) Crl. Appeal No.S-1298-SB of 2001**

Raj Kumar

...Appellant

versus

State of Haryana

...Respondent

**Date of Decision: August 19, 2015**

**CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH**

Present: Mr.Rahul Vats, Advocate  
for the appellant (in CRA No.S-1128-SB of 2001).

Mr.J.S.Bedi, Senior Advocate with  
Mr.Sompreet Singh Brar, Advocate  
for the appellant (in CRA No.S-1298-SB of 2001).

Mr.M.S.Sidhu, Addl. Advocate General, Haryana  
for the respondent-State.

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**INDERJIT SINGH, J.**

This judgment shall dispose of above-stated two connected cases arising out of the same judgment of conviction dated 12.09.2001 and order of sentence dated 13.09.2001 passed by learned Addl. Sessions Judge, Gurgaon, whereby, the appellants were

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held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of seven years each and to pay a fine of ₹2,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for a period of two months under Section 392 read with Section 397 IPC.

The brief facts of the case are that on 22.09.1999, on receiving V.T. message that cash was looted from Kanhai Complaint Centre Electricity Board, ASI Sukhbir Singh along with other police officials, reached the spot, where A.S.Jaiswal, SDO, HSEB was present and he gave an application stating that on 22.09.1999 at about 1.40 P.M., Sh.Nandan Singh Cashier and Naresh Kumar Meter Reader after receiving the cash of electricity bills of village Kanhai were checking the accounts in the complaint centre. Kartar Singh lineman was sitting on a chair in front of the gate of the room and they all were waiting for the vehicle of the electricity board which takes the cash. At that time, two boys, one tall and one short statured put pistol point on the ear-pit of Nandan Singh and said 'sale bola to goli maar doonga'. The other boy lifted the bag which was lying on the table having cash of ₹1,08,178/-. The boy having short stature, dragged Kartar Singh and forced him to go inside the room and ran away after bolting the room from outside. After 2-3 minutes, they heard the noise of starting of scooter which was at a considerable distance from the room. It is further stated that tall boy was wearing shirt having strips of grey colour and pant of brown colour. His complexion was wheatish and height was about 5'9" and was having slim body. The boy of short

stature was wearing white shirt and black pant. The above statement was given to the complainant by Nandan Singh cashier. On receipt of above application, FIR was registered. Accused were arrested. After necessary investigation, challan was presented against the accused-appellants.

On presentation of challan against accused-appellants, copies of challan and other documents were supplied to them under Section 207 Cr.P.C. Finding prima facie case, the accused-appellants were charge-sheeted under Section 392 read with Section 397 IPC, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 Nandan Singh, eye witness to the occurrence, who was posted as Cashier and pistol was pointed towards him. He supported and corroborated the prosecution version. PW-2 Naresh Kumar, who was along with Nandan Singh, also deposed as per prosecution version and supported and corroborated the prosecution version. PW-3 Kartar Singh, who was stated to be sitting outside the room and was dragged inside the room, also deposed as per prosecution version. This witness has also identified the accused present in the Court. PW-4 MHC Suresh Kumar deposed that he received a pistol and one packet containing cartridges and one scooter from ASI Chhattar Singh to be deposited in Malkhana. He also send the pistol and cartridges to the FSL. PW-5 MHC Arvind Kumar mainly deposed regarding ruqa. PW-6 DSP Ombir Singh proved the report under Section 173 Cr.P.C. PW-7 Rajinder Singh, did not support the prosecution version and was

declared hostile. PW-8 ASI Inder Singh, is the investigating officer, who deposed regarding investigation conducted by him in the present case.

At the close of prosecution evidence, the accused-appellants were examined under Section 313 Cr.P.C. and they denied the correctness of the evidence and pleaded themselves as innocent.

No witness was examined in defence.

The learned trial Court, after appreciation of the evidence, convicted and sentenced the accused-appellants, as stated above.

At the time of arguments learned counsel for the appellants mainly argued regarding identity of the accused, that it has not been established beyond reasonable doubt. Learned counsel for the appellants argued that the bag stated to be recovered from the accused-appellants, is a common bag, which is easily available in the market. He further argued that pistol which was got recovered from the accused is of some other case and cannot be connected with the present case as none of the witness has stated that the pistol in question is the same pistol which was used in the crime. He next argued that the money recovered from the accused-appellants is not related to present case, which also creates doubt in the prosecution version. He also contended that fact of identification test parade of accused, which was stated to be held in police station and refusal of the accused-appellants of getting identified, has not been duly proved and otherwise also, in no way, it can be held that any adverse inference can be drawn against the accused. Learned counsel for the

appellants, therefore, argued that accused-appellants should be acquitted and both the appeals should be allowed.

On the other hand, learned State counsel argued that prosecution has duly proved its case by leading cogent evidence and the accused-appellants have been rightly convicted and sentenced. He therefore, argued that there being no merit in both the appeals, the same should be dismissed.

After hearing learned counsel for the appellants as well as learned State counsel and after going through the record, first of all, I find that the case property is only a corroborative piece of evidence. The substantial piece of evidence is statement of eye witness to the occurrence. If no amount has been recovered from the accused-appellants, it does not create any reasonable doubt in the prosecution version as admittedly, the accused were arrested in other case and then they have been arrested in the present case. The occurrence is of 22.09.1999 and the accused are stated to be arrested in the month of May 2000 i.e. after eight months. Therefore, there was no chance that accused were still having the same currency notes with them after eight months of the occurrence. Further, the recovery of bag, pistol in another case and recovery of scooter from the accused-appellants, supports and corroborates the prosecution version, though, these are not exclusive circumstances to prove the guilt of the accused.

PW-1 Nandan Singh has deposed in chief-examination that at about 1.40 P.M., one person came inside and after entering the complaint centre, he enquired from Kartar Singh lineman if the

payment of the bills was being made, thereto, which he replied in affirmative. That man came inside and put shirt upto his mouth, who is accused Raj Kumar present in the Court. He was armed with a pistol and placed the same on the temple portion and told him to keep quiet, otherwise, he would be shot dead. Nandan Singh further deposed that another accused remained outside of room, who is accused Bhagwan Dass present in the Court. Though this witness has also stated that they were called in the police station for identification of the accused persons but identification parade was not arranged as the accused persons had refused for being identified by them. This witness also stated that he had identified the bag Ex.P1 as the same which was taken away by the accused containing currency notes.

Learned counsel for the appellants relied upon the statement in cross-examination where PW-3 Kartar Singh was confronted with his statement before the police that he has weak eye sight and cannot identify the accused.

PW-2 Naresh Kumar also in chief-examination has identified both the accused. In cross-examination, he stated that on 04.05.2000, he had identified accused Bhagwan Dass in the police station. PW-3 Kartar Singh also identified the accused in the Court. In cross-examination, he was confronted with the statement where he stated that he has weak eye sight and cannot identify the accused present in the Court.

Keeping in view the evidence on record, I find that

identification of the accused-appellant in the Court is substantial piece of evidence whereas the identification parade is a corroborative piece of evidence. PWs have identified the accused in the Court. The description of the accused-appellants has already been given by the PWs at the time of registration of the FIR. In no way, it can be held that identity of the accused-appellant has not been proved by the prosecution beyond doubt. Rather, PWs have identified the accused, who had caused occurrence. As regarding the description given in the FIR which is not disputed, nothing has been argued by learned counsel for the appellants that the accused-appellants are not of that description. The identity of the accused-appellants has been duly proved by the witnesses. The bag has also been duly identified by the PWs, which corroborates the prosecution version and further the recovery of pistol and scooter from the accused-respondent, also support the prosecution version.

In view of the above, I find that the judgment of conviction dated 12.09.2001 and order of sentence dated 13.09.2001 passed by learned Addl. Sessions Judge, Gurgaon, are correct, as per law and do not require any interference from this Court.

Therefore, finding no merit in both the appeals, the same are dismissed.

Since appellants Bhagwan Dass and Raj Kumar are on bail, their bail bonds stand annulled and they are directed to surrender themselves before the jail authorities immediately for completing remainder of sentence, failing which the concerned authority shall

proceed against them in accordance with law.

**August 19, 2015**  
Vgulati

**(INDERJIT SINGH)**  
**JUDGE**