

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

Date of Decision: 23.09.2015

1. CRA-S No.1011-SB of 2009

Sukhwinder SinghAppellant

Vs

State of Haryana ...Respondent

2. CRA-S No.1078-SB of 2009

Joginder SinghAppellant

Vs

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Jatinder Nara, Advocate
as Amicus Curiae for the appellants.

Mr. Arun Luthra, A.A.G., Haryana.

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

RAJ MOHAN SINGH, J.

[1]. Vide this common judgment two appeals i.e. CRA-S Nos.1011-SB and 1078-SB of 2009 are being disposed of. Since both these appeals have arisen from a common judgment of conviction, therefore, facts are being taken from CRA-S No.1011-SB of 2009.

[2]. Accused Sukhwinder Singh, Joginder Singh and Manjinderpal Singh were convicted under Sections 392/34 IPC.

Sukhwinder Singh and Joginder Singh were also held guilty under Section 397 IPC. Offence qua Joginder Singh and Sukhwinder Singh in respect of Arms Act could not be proved and they were acquitted. Since all the accused were held guilty under Section 392 read with Section 34 IPC, taking into consideration the custody of Manjinderpal Singh, he was let off after awarding sentence which he had already undergone.

[3]. Accused Joginder Singh and Sukhwinder Singh were sentenced to undergo rigorous imprisonment for a period of five years alongwith fine of Rs.2,000/- each for the offence under Section 392 IPC and in default of payment of fine to further undergo simple imprisonment for a period of six months. They were further sentenced to undergo rigorous imprisonment for a period of seven years under Section 397 IPC. All the sentences were ordered to run concurrently.

[4]. The case of the prosecution in brief is that on 01.09.2003, Virender Singh SI/SHO, Police Station Rori alongwith police party was going from Rori to village Faggu for patrolling and crime detection duty. When he reached near Mattar chowk, Karamvir Singh, Manager of Hisar Sirsa Kshetriya Gramin Bank, Kuranganwali met him. Dalip Singh, Peon was also present with with. He moved an application to him alleging therein that he was posted as Manager of the Gramin Bank, Kuranganwali. On that day at about 10:15 a.m., when he alongwith Dalip Singh was opening the door of the Bank, three persons entered the Bank. One of them put a pistol on his neck and

asked him to take out the cash. The person had muffled his face with handkerchief and was wearing a turban. He was wearing blue colour shirt and pant. One button of his shirt was missing. The second person put pistol towards the head of Dalip Singh, the said person was also wearing blue pant and white shirt and was wearing turban of biscuit colour. Height of this person was about six feet. Third person was also of the height of six feet. He was wearing Khaki colour turban, blue check colour shirt and was wearing green pant. The person who put the pistol on his neck asked others to hurry up and take the amount. The person wearing Khaki turban took out all the money and telephone was disconnected after taking money, they took out key of his motorcycle from him after bolting them inside and ran away on Hero Honda motorcycle. The person who was wearing turban of biscuit colour managed to ran away on a white Chetak scooter without number. In this way robbers took away an amount of Rs.67,906/-.

[5]. The complainant raised alarm upon which school Teachers were attracted to unbolt the door and thereafter complainant and others came out. On the basis of the complaint FIR No.137 dated 01.09.2003 under Sections 392/397 IPC and under Sections 25/27/54/59 of the Arms Act was registered at Police Station of Rori and investigation was done.

[6]. During investigation names of the accused were came to the knowledge of the Investigating Officer. Accused Sukhwinder Singh and Joginder Singh were on one motorcycle. ASI Sita Ram

and Head Constable Ram Kumar along with other police officials reached at Mattar Chowk and the SHO disclosed them about the robbery and asked them to chase the robbers. After sometime they found that two persons were spotted coming on motorcycle and on seeing the Police party they tried to retreat and in that process the motorcycle slipped and the occupants fell down. Sukhwinder Singh fell underneath the motorcycle whereas Joginder Singh managed to run away from the spot. Sukhwinder Singh also received injuries on account of said fall and he was apprehended by the Head Constable Ram Kumar with the help of other police officials. Sukhwinder Singh was produced before the SHO Virender Singh. Personal search of Sukhwinder Singh yielded one countrymade pistol with one live cartridge of .315 bore and three packets containing 100 currency notes of denomination of Rs.10/- each. The notes were taken into police possession along with pistol. Sketch of the pistol and rough site plan of the place of recovery were prepared.

[7]. The chase of Joginder Singh resulted in his arrest by ASI Sita Ram with the help of other police officials. Search of Joginder Singh was also conducted. From his possession one countrymade pistol and a live cartridge of .315 bore were recovered. Sketch of the pistol and site plan of the place of recovery were prepared. Two packets containing 100 notes of the denomination of Rs.10/- each were recovered from him. During course of interrogation Joginder Singh made disclosure statement that he had taken away the key of motorcycle and had thrown the same in bushes near the bus stand

of Kuranganwali. On such disclosure statement, he led the police party to recover key of the motorcycle. The same was taken in police possession. Accused Manjinderpal Singh could not be arrested and later on he was arrested. He was also interrogated and also suffered disclosure statement and got recovered one scooter Chetak from his residential house in Bhawanigarh. The police prepared the rough site plan and supplementary challan was also filed.

[8]. After necessary compliance accused were chargesheeted for the offences punishable under Sections 392, 397 IPC read with Section 34 IPC. They pleaded not guilty and claimed trial.

[9]. The prosecution in order to prove its case examined as many as 15 witnesses and thereafter closed the evidence.

[10]. Statements of the accused were recorded under Section 313 Cr.P.C., and entire incriminating material/circumstances were put to them in the statements. They denied all the incriminating circumstances appearing against them and pleaded their innocence. Accused Joginder Singh also opted to lead evidence in defence. He examined Harnek Singh as DW-1, Kuldeep Singh as DW-2 and thereafter closed the defence evidence.

[11]. Prosecution got in its evidence examined retired SI Jarnail Singh as PW-1, who stated that on 06.12.2003 he was posted as SHO Police Station Rori and after completion of investigation a report under Section 173 Cr.P.C., was prepared. PW-2 Mohan Lal prepared the site plan in the presence of complainant after visiting the spot. PW-3 retired ASI Richhpal Singh tendered his affidavit

Ex.PB in link evidence. PW-4 SI Hukam Chand stated that on 02.09.2003, he was posted in Police Station Rori and on that day he was joined in the investigation by SHO Virender Singh. In the presence of witnesses accused Joginder Singh was interrogated and he made a disclosure statement regarding throwing of key of motorcycle in the bushes near bus stand of village Kuranganwali which he had taken from the motorcycle standing in front of the Bank. The disclosure statement Ex.PC was signed by him.

[12]. PW-5 ASI Dalbir Singh stated that on 04.09.2003 he was posted in the Police Station Rori and was associated by the SHO in the investigation. Accused Joginder Singh led the police party to the place of recovery and got recovered key of motorcycle. The recovered key was taken into police possession vide recovery memo Ex.PD. The memo was signed by him as well as by Constable Ram Phal.

[13]. PW-6 Darshan Singh Drawing Teacher of the Government High School, Kuranganwali has also stated that on 01.09.2003 he was posted as Drawing Teacher in the School. He heard the noise from the Bank premises. He along with Sham Sunder, SS Teacher had gone to the premises of the Bank and found that the door of the Bank was bolted, he unbolted the same. Thereafter Karamvir Singh and Dalip Singh, Chowkidar came out.

[14]. PW-7 Head Constable Madan Lal also tendered affidavit in evidence. PW-8 Budh Singh, SI (retired) also stated that on 16.11.2003 he was posted as SHO Police Station Rori and partly

investigated the case by recording statements of witnesses of Madan Lal, MHC and Richhpal Singh EHC under Section 161 Cr.P.C.

[15]. PW-9 Karamvir Singh, Manager of the Bank gave the narration in respect of prosecution story that he alongwith Dalip Singh opened the gate of the Bank at 10:00 a.m. and at about 10:15 a.m., cash was taken out from the safe, then three persons with muffled faces entered the Bank premises and one of them put a revolver on his neck and second put revolver near the ear of Dalip Singh and three persons took the cash from the drawer. The cash amount was to the tune of Rs.67,906/-.

[16]. The witness has given appearance and clothing of the accused persons with reference to height and colour of the clothes. He further deposed that the robbers disconnected the telephone connection and also took away key of his motorcycle. They also confined them inside the room and bolted the same. On raising alarm, the door was unbolted by the teacher of the school. Thereafter they came out. Robbers managed to fled away from the slot on motorcycle and scooter. The witness could not tell about the remaining digits of number of motorcycle after giving PB-10.

[17]. The application Ex.PF moved before the Police resulted in lodging of the FIR. On the same day he was taken to police Station where Joginder Singh and Sukhwinder Singh were present. The Police disclosed their names and the witness identified the cash which was recovered from the possession of the accused. Pant

Ex.P1, Baniyan Ex.P-2, handkerchief Ex.P-3 were recovered by the Police. The robbers were wearing these clothes when incident took place.

[18]. ASI Sita Ram was also examined as PW-9, who had stated that on 01.09.2003 he was posted in Excise Staff, Sirsa. On that day Police was going from village Kalanwali for Rori. SHO met him at turn of village Mattar and thereafter SHO disclosed that a robbery had taken place in the Bank and two robbers are on motorcycle and one was on scooter. All the three robbers had muffled faces. He also disclosed that those robbers had gone towards village Rori and he was asked to chase the robbers. The witness along with other police officials reached Jutana turn in village Rori. Two persons were found coming on motorcycle and on seeing the police party they tried to retreat, resulting in slipping of motorcycle. One person managed to escape and another was apprehended who also received injuries while coming underneath the motorcycle. Second robber was also chased by ASI Sita Ram with the help of villagers and he was also apprehended.

[19]. Search of second robber resulted in recovery of one countrymade pistol of .315 bore and one live cartridge of .315 bore. An amount of Rs.2,000/- was recovered from his left pocket having stamp of Haryana Gramin Bank, Kuranganwali. The accused was brought to Mattar turn and was handed over to SHO along with case property. Necessary preparation of site plan and sketches of the pistols so recovered from the accused were done. Parcel of packet

of currency notes was prepared which is Ex.P-6.

[20]. Virender Singh SI/I.O. has been examined as PW-10 who has given the prosecution version from the date of commission of offence i.e. 01.09.2003, when he was posted as SHO/S.I., Police Station Rori. Complainant gave him the complaint in respect of dacoity in the Bank. Application Ex.P-10/F was produced before him on which he made endorsement Ex.PW-10/B and sent the same for registration of the case. He along with complainant and Chowkidar Dalip Singh went to village Kuranganwali and in the meanwhile ASI Sita Ram and Head Constable Ram Kumar with other police officials met them. Some public persons were also along with them. The Investigating Officer asked Sita Ram to chase the robbers and also flash a VT message to Control Room, Sirsa as well as neighbouring Police Station of Haryana and Punjab through wireless sets. ASI Sita Ram and Head Constable Ram Kumar had gone to chase the robbers. He recorded statements of school teachers under Section 161 Cr.P.C.

[21]. Later on ASI Sita Ram produced Joginder Singh and Head Constable Ram Kumar produced Sukhwinder Singh accused before the SHO. One countrymade pistol each from the accused were recovered along with live cartridges which were taken into possession vide recovery memos duly signed and witnessed by the witnesses. Currency notes were also recovered from the possession of the accused which were identified by the complainant of his own Bank. Investigating Officer interrogated the accused Joginder Singh

who made disclosure statement and later on got recovered key of motorcycle of Karamvir Singh complainant which was allegedly taken away when he left the premises of the Bank. The same was got recovered from the bushes near the bus stand of village Kuranganwali. Later on accused Manjinderpal Singh was also arrested and was interrogated. His disclosure statement resulted in recovery of scooter from his residential house. The scooter was taken into possession vide seizure memo which was signed by the witness. In this way recoveries were effected from all the three accused.

[22]. Joginder Singh and Sukhwinder Singh were arrested by the ASI Sita Ram and Head Constable Ram Kumar respectively and recoveries of one pistol with live cartridge of .315 bore each were made from them along with amount of Rs.2,000/- and 3,000/- respectively.

[23]. The complainant Karamvir Singh has stated that the accused were shown to him in the Police Station and their names were also told. The fact remains that when these robbers were arrested and produced before the Investigating Officer Virender Singh, complainant Karamvir Singh was present with him and he identified the accused by features and by clothes which were on their person at the time of incident. Since there was no such time gap between the occurrence, arrest and recovery, therefore, the identification of the accused by the complainant when those were produced before the Investigating Officer, the same was a natural

consequence of prosecution case.

[24]. I have considered the arguments of both sides and have perused the material on record.

[25]. Learned counsel for the appellant has argued that complainant PW-9 in his cross-examination has stated that he came to know about the names of the accused while sitting in the Police Station. He has argued that prosecution story is discrepant with regard to time, place and manner of apprehending the accused. In fact accused were not apprehended in the manner as suggested by the prosecution. According to learned counsel, the altercation with the Police resulted in false implication. When the complainant PW-9 did not support the prosecution story, in that eventuality it was duty of the prosecution to get declare him hostile and permission should have been granted by the Court to cross-examine him.

[26]. Learned counsel further argued that the statements of complaint PW-9 Karamvir Singh, ASI Sita Ram, Head Constable Ram Kumar revealed that they have not made statements Ex.DA and Ex.DB and the statement made by them in the Court are the true version.

[27]. According to defence, the prosecution story is based on discrepant improvements in the statements of the witnesses later on and, therefore, their statements are not worth reliance. The evidence brought in defence is worth reliance wherein the one of defence witnesses namely Harnek Singh has categorically stated that when he was going from village Bhikhi to village Killianwali on his

motorcycle, he was stopped by Police and documents were asked. The Police was of Police Station Rori. Since he was not having registration certificate of the motorcycle, the Police wanted to challan him, but on his request that he would produce registration certificate the motorcycle was kept by them. On the next day he brought the registration certificate of motorcycle and produced the same before the Police. The Police told him that they would keep the motorcycle for two days because the same was involved in some case. He got the motorcycle released from the Court.

[28]. DW-2 Kuldeep Singh has also stated that accused Sukhwinder Singh was known to him. Daughter of his sister was married to the brother of Sukhwinder Singh. On 31.08.2003 his father was ill. Both the accused came to village Rori to see him. Both stayed overnight in the village. On 01.09.2003 at about 09:00 a.m., both left the house. Police was present at the bus stand of Rori and they started personal search of the accused. Nothing was recovered from them. They were asked to put off their turban. On their objection, altercation took place between them and the Police officials. Police officials took them to Police Station, there he came to know that this occurrence had taken place. This defence witness has also deposed that at the time of arrest of the accused many independent persons were present, but they were not joined, rather they were given up being unnecessary.

[29]. Learned counsel for the accused also argued that no test identification parade was conducted. Karamvir Singh PW-9 identified

them in the Police Station when they were apprehended by the Police. Their names were disclosed by the I.O., to the complainant. Learned counsel further argued that the site plan prepared by the I.O., is not exists on record. The countrymade pistols so recovered from the accused were not subjected to any test from the Armourer in order to prove that they were in working condition. False implication has been alleged.

[30]. On consideration of prosecution story as well the incriminating material on record, it has come on record that immediately after this occurrence ASI Sita Ram and Head Constable Ram Kumar apprehended Joginder Singh and Sukhwinder Singh when both were found travelling on the motorcycle and on seeing Police party they tried to retreat, resulting in slipping of motorcycle and falling of the accused. Sukhwinder Singh came underneath the motorcycle and sustained injuries and he was apprehended from the spot. Head Constable Ram Kumar made the recoveries of countrymade pistol and one live cartridge along with amount of Rs.3,000/- from Sukhwinder Singh. Similarly Joginder Singh accused was apprehended by ASI Sita Ram with the help of other police officials and from his possession one countrymade pistol alongwith one live cartridge of .315 bore besides an amount of Rs.2,000/- were recovered. Complainant Karamvir Singh has identified the currency notes which were having seal and stamp of the Bank. The variance in the statements of PW-9 Karamvir Singh, Virender Singh SI are not such which can be treated to be sufficient for discarding the

prosecution case.

[31]. The prosecution version has been corroborated by all material witnesses on bare configurations and involvement of the accused with reference to lawful recoveries effected by the Police. Co-accused Manjinderpal Singh was once declared proclaimed offender, he was arrested in some other case. His disclosure led to recovery. The small improvements are bound to happen in the statements of PW-9 Karamvir Singh, ASI Sita Ram, Head Constable Ram Kumar due to passage of time. On that premise entire prosecution case cannot be thrown away because after the occurrence, the accused were promptly arrested and recoveries were effected from Sukhwinder Singh and Joginder Singh. Scooter was also recovered from third accused Manjinderpal Singh. Since Manjinderpal Singh was arrested later on and the different story as propounded by defence witness cannot be believed in the light of prosecution version which has established link evidence. The accused on their implication in the case remained contended as they did not move any complaint to the higher Authorities in respect of their alleged false implication.

[32]. After considering the prosecution story in its entirety and material on record wherein the accused Joginder Singh and Sukhwinder Singh were lawfully arrested by ASI Sita Ram and Head Constable Ram Kumar and were produced before the Investigating Officer at Mattar chowk and that complainant was also present along with Investigating Officer. The identification of the accused at that

time by the complainant with reference to their appearance, their configuration in terms of their height and clothing cannot be termed to be an instance of showing the accused by the Police to the complainant without undertaking any test identification parade. There was no occasion to conduct test identification parade when the accused were promptly arrested and were produced before the Investigating Officer in the presence of the complainant Karamvir Singh at Mattar chowk.

[33]. Since it is a case of prompt arrest and recoveries made from the person of the accused. The recovery of currency notes was having the stamp of the Bank and, therefore, the prosecution version cannot be tilted on the threshold of any defence evidence alleging that the accused were arrested not in a manner as suggested by the prosecution.

[34]. Sukhwinder Singh is having antecedent behaviour of criminal activity of similar nature. Both the accused have close proximity as evidently according to them they came to village Rori in connection of seeing ailing relatives and thereafter the manner in which they were shown arrested by the Police according to defence version, cannot be accepted in the light of overwhelming evidence on record which has been duly corroborated by the official witnesses. No witness from the public wanted to become prosecution witness in such type of cases because no one wants to buy enmity with such like accused, therefore, keeping in view the heinous crime and nature of proceedings to be very prompt, non-association of

independent witness cannot be taken to be an instance of giving premium to the guilt of the accused.

[35]. Resultantly, this Court is of the view that prosecution has successfully brought home the guilt of the accused to the hilt and they do not deserve any leniency in terms of act done. Consequently, finding no merit in these appeals, the same are dismissed. Normal consequences to follow.

September 23, 2015

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**(RAJ MOHAN SINGH)
JUDGE**