

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

1 **Criminal Appeal S-1003-SB of 2011**
Date of Decision: August 28, 2015

Sandeep @ Kala
.....Appellant

Versus

State of Haryana
..... Respondent

2 **Criminal Appeal S-983-SB of 2011**

Surender
.....Appellant

Versus

State of Haryana
..... Respondent

3 **Criminal Appeal S-1416-SB of 2011**

Nawab
.....Appellant

Versus

State of Haryana
..... Respondent

4 **Criminal Appeal S-2936-SB of 2013**

Sandeep @ Bablu
.....Appellant

Versus

State of Haryana
..... Respondent

CORAM : HON'BLE MR. JUSTICE T.P.S.MANN

Present : Mr. Anil Kumar Bhardwaj, Advocate
for appellant-Sandeep @ Kala

Mr. D.N.Ganeriwala, Advocate
for appellant-Surender .

Mr. Babbar Bhan, Advocate for
appellants Nawab and Sandeep @ Bablu.

Mr. Praveen Bhadu, Asstt. A.G. Haryana.

T.P.S.MANN, J. (Oral)

Sandeep @ Bablu, Nawab, Surender, Sandeep @ Kala, Narender @ Chhotu and Vipin @ Pappan were tried for committing offences punishable under Sections 395 read with 397, 341 and 412 IPC. Sandeep @ Bablu and Sandeep @ Kala were also tried for committing the offence punishable under Section 25 of the Arms Act. During the trial of the case, Vipin @ Pappan absconded and was declared a proclaimed offender. Vide judgment of conviction and order of sentence dated 23.3.2011 passed by the Additional Sessions Judge (Adhoc) Fast Track Court, Sonipat, Narender @ Chhotu was acquitted of the charges against him. The remaining four accused were convicted under Section 395 read with Section 397 IPC and sentenced to

undergo rigorous imprisonment for seven years and to pay a fine of Rs.5,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for three months. They were also convicted under Section 341 IPC and sentenced to undergo rigorous imprisonment for one month each. Besides, Sandeep @ Bablu and Sandeep @ Kala were convicted under Section 25 of the Arms Act and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.1,000/- each and in default of payment of fine to further undergo rigorous imprisonment for one month. All the sentences were ordered to run concurrently. The period of imprisonment already undergone by the convicts during the course of trial was ordered to be set off against their respective sentences.

Aggrieved of their conviction and sentences, each of the four convicts has filed separate appeals, in which they are presently on bail. As all the appeals arise out of the same incident and against same judgment of conviction and sentence, they are being disposed of together.

The case of the prosecution, in nutshell, is that on 19.5.2006, complainant-Rajiv Gupta was proceeding from Ambala to Delhi in his Wagon-R Car bearing registration No. DL-4AA-2624. At about 11:00 p.m., when he reached near Devi Lal Stadium, G.T.Road, Bahalgarh, a Santro Car of white

colour, which did not have the registration number, overtook his car and halted ahead of him. Three young persons alighted from the said car. One of them was carrying a country made pistol. They took him in his car to an abandoned field, where he was made to alight. The accused snatched his wrist watch of Timex make, two mobile phones of Sony Eriksson and LG and cash amount of Rs.4,000/-. The accused fled away alongwith his car while threatening him that if he tried to look behind, he would be shot dead. The complainant somehow managed to reach his house at Delhi and narrated the incident to the members of his family and also to his friend Mahesh Dhingra. On 20.5.2006, the complainant alongwith Mahesh Dhingra appeared before ASI Dalbir Singh, who was present at Bahalgarh Chowk and submitted written complaint Ex.PA on the basis of which FIR No. 116 dated 20.5.2006 under Sections 341/392/395/412 IPC and Section 25 of the Arms Act was registered at Police Station Rai.

Further case of the prosecution is that during the investigation of the case, the statements of the witnesses were recorded. However, as the identity of the accused could not be established, the police submitted untraced report on 31.8.2006 but the same was not accepted by the Illaqa Magistrate who directed holding of further investigation. During further investigation, appellant-Nawab was arrested on 25.9.2006 and

Timex watch belonging to the complainant was recovered from him. On 14.10.2006, appellant-Sandeep @ Bablu was arrested and a country made pistol recovered from him. On 16.10.2006, Vipin @ Pappan, since declared proclaimed offender, was arrested and music deck of Wagon-R car of the complainant was recovered at his instance. On 31.1.2007, appellant-Surender was arrested and the Wagon-R car of the complainant was recovered from him. On 1.5.2007, appellant-Sandeep @ Kala was arrested and one country made pistol and four live cartridges were recovered from him. On 11.6.2007, accused-Narender @ Chottu, since acquitted, was also arrested in the case.

Upon completion of the investigation and presentation of the challan, followed by commitment of the case, the appellants alongwith Narender @ Chottu and Vipin @ Pappan were charge-sheeted, as mentioned above.

At the trial of the case, the prosecution examined complainant Rajiv Gupta as PW1. Though, he deposed about snatching of his car, Timex watch, mobiles and cash amount of Rs.4,000/- but he failed to identify the accused who were present in the Court. Accordingly, he was declared hostile and cross-examined by the Public Prosecutor but despite the same he did not toe the line of prosecution. Similarly, PW4 Ajay @ Monu testified that though he knew one Lalit but said Lalit did not

disclose anything to him nor he stated that Narender @ Chottu had told him that he, alongwith his companions, namely, Sandeep @ Bablu, Sandeep @ Kala and Nawab had snatched Rs.4,000/-, one Wagon-R car, mobile phones and a wrist watch from the complainant. On request made by the learned Public Prosecutor, even PW4 Ajay @ Monu was declared hostile. During his cross-examination by the learned Public Prosecutor, he denied making statement Ex.PF before the police.

Apart from the aforementioned two independent witnesses, the prosecution had examined PW2 HC Parmod Kumar, PW5 SI Ishwar Singh, PW6 Inspector Ram Avtar, PW8 ASI Mahender Singh, PW9 SI Kalandar Singh, PW10 ASI Khila Ram, PW11 SI Dalbir Singh, PW13 Inspector Yash Pal, PW14 ASI Sombir and PW15 HC Satish Kumar, who deposed about the various steps taken by them during investigation of the case. Apart from them, the prosecution examined PW7 Jagdish Chand, Patwari, who proved the scaled site plan Ex. PF, which he prepared at the spot, PW3 Ram Parshad, Reader to District Magistrate, Sonipat and PW12 Om Parkash, Reader to District Magistrate, Sonipat, who proved sanction orders for the prosecution of Sandeep @ Bablu and Sandeep @ Kala under the Arms Act.

Once the complainant, who is the star witness of the

prosecution has not supported the case of the prosecution in the sense that he did not identify any of the appellants to be involved in the commission of the crime, it would not be suffice to return a finding of guilt against the appellants. The various recoveries stated to have been effected by the police during investigation of the case are not supported by any independent evidence. Similar is the position with the recoveries of the country made pistols at the instance of Sandeep @ Bablu and Sandeep @ Kala as there is no independent evidence that these weapons were got recovered by them. Therefore, these two appellants cannot be convicted for committing the offence punishable under Section 25 of the Arms Act.

In view of the above, this Court is of the considered view that the prosecution has failed to establish its case against the appellants beyond doubt.

Accordingly, the appeals are accepted and all the appellants are acquitted of the charges against them. The appellants are on bail. Their bonds stand discharged. The fine imposed upon the appellants, if already deposited, be refunded to them.

August 28, 2015
amit rana

(T.P.S. MANN)
JUDGE