

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

CRA-S-103-SB of 2011
DATE OF DECISION :- July 15, 2015.

Satish Kumar and another **...Appellants**

Versus

State of Haryana **...Respondent**

CRA-S-482-SB of 2011

Mohit alias Netra Pal alias Bhura **...Appellant**

Versus

State of Haryana **...Respondent**

CORAM: HON'BLE MR.JUSTICE M.JEYAPPAUL

Present:- Mr. Akshay Bhan, Senior Advocate
with Mr. G.S. Sandhu, Advocate for the appellants.

Mr. Rakesh Dhiman, Advocate for the appellant.

Mr. Tanuj Sharma, Assistant Advocate General, Haryana.

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the digest? **Yes**

M.JEYAPPAUL, J.

1. Accused Satish Kumar, Inder Pal and Mohit @ Netra Pal

were convicted and sentenced by the trial Court as detailed below:-

CRA-S-103-SB of 2011 and
CRA-S-482-SB of 2011

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Name of the convict	Offence under Section	Period of sentence(RI)	Fine imposed (Rs.)	Period of sentence default payment of fine
Satish	395 r.w 397 IPC 25-1B (b) Arms Act	10 Years 2 Years	10,000/- 2,000/-	1-1/2 Year 3 Months
Inder Pal	395 IPC	7 Years	7,000/-	1 Year
Amit	395 IPC	7 Years	7,000/-	1 Year
Mohit	395 IPC	7 Years	7,000/-	1 Year

2. Aggrieved by the above judgment of conviction and sentence passed by the trial Court, accused Satish Kumar and Inder Pal have preferred CRA-S-103-SB of 2011 while accused Mohit @ Netra Pal @ Bhura has preferred separate appeal in CRA-S-482-SB of 2011.

3. PW1 Manoj Kumar was running a jewellery shop in the name of Om Jewellery Palace. PW11 Shamu @ Sheikh Rohullaha was serving in the said shop. PW1 Manoj Kumar and PW11 Shamu @ Sheikh Rohullaha have deposed in one voice that on 27.5.2006 at about 11.30 A.M. two boys of young age came and asked for a gold chain. Another young boy with a red colour bag hanging on his shoulder, came thereafter and asked for a gents ring. After seeing the chain and ring, one of the two boys rang up some one from his mobile and asked him to come and choose the chain. Within two minutes, two more boys arrived to the shop. They pointed out country made pistol on PW1 and PW11 and threatened them not to raise alarm. They were paraded into the strong room. All the accused thereafter looted the gold

jewellery, silver ornaments and diamond articles kept in the show case and window of the shop. They deposed that accused Amit, Inder Pal and Mohit who were present in the Court, came to their shop and looked at the articles before committing dacoity. It was accused Satish Kumar who pointed out the pistol at the throat of PW1 and PW11.

4. On the basis of the statements suffered by PW1, PW6 Inspector Jagat Singh got formal F.I.R. registered through PW2 ASI Raj Kumar.

5. On 22.4.2006, accused Satish and Amit were arrested. On interrogation by PW18, Inspector Jaiveer Singh of CIA staff, accused Satish disclosed that the jewellery items which fell to his share were concealed by him in his rented room at Ballabgarh and the country made pistol and three cartridges were hidden by him in the fields in Uttar Pradesh. On the basis of the above disclosure statement, the above concealed articles were recovered at the instance of accused Satish. On the same day, accused Amit who was also arrested, suffered a disclosure statement and on the basis thereof gold ornaments and other articles were recovered from an iron box in his house at village Prangarh. Accused Inder Pal was arrested on 28.4.2006. On the basis of the disclosure statement suffered by him voluntarily gold ornaments were recovered from his house in village Meerpur. Accused Mohit was produced in the Court on 26.7.2006 on the basis of production warrant issued against him. In police custody, he suffered disclosure statement and on the basis thereof gold ornaments were recovered from his residence.

6. Eighteen witnesses were examined on the side of the prosecution. In their statements under Section 313 Cr.P.C. the above accused have stated that they were not involved in the dacoity projected by the prosecution.

7. The trial Court having adverted to the evidence on record came to the conclusion that accused Inder Pal, Amit and Mohit committed dacoity and accused Satish not only committed dacoity but also made an attempt to cause death with the country made pistol he possessed.

8. PW1, PW7 and PW11 are the star witnesses in this case. PW11 was serving in the jewellery shop. PW1 and PW11 have categorically deposed that these accused/appellants, namely, Satish Kumar, Inder Pal and Mohit came to the jewellery shop of PW1 and in the guise of purchasing some gold articles, accused Satish who was armed with a country made pistol threatened PW1 and PW11 with dire consequences and paraded all the workers in the jewelry shop to the strong room and looted gold ornaments and silver and diamond articles from the shop of PW1. PW7, the father of PW1 had prepared the list of articles on the basis of the information furnished by PW1. The articles had been recovered from the accused/appellants on the basis of the disclosure statements individually suffered by them. In addition to that, a country made pistol was also recovered from accused Satish. The above evidence on record would go to establish that accused Satish Kumar, accused Inder Pal and accused Mohit @ Netra Pal along with two other accused committed dacoity and accused Satish also

threatened PW1 and PW11 with dire consequences by pointing a country made pistol towards them.

9. Learned counsel appearing for the appellants would submit that no identification parade was conducted. Inasmuch as the appellants-accused were already shown to the material witnesses, the accused have rightly refused to participate in the test identification parade. It is highly impossible to identify the accused in the Court after about 1½ years from the date of occurrence, it is submitted.

10. If an occurrence had taken place at a fraction of a second, of course, it may not be possible for a human mind to capture the exact identity of the assailants. Even if the mind had captured the identity of a person who committed an offence in a fraction of a second, such a picture in the mind of the witnesses would fade away in due course of time. Like wise, if an occurrence of a lesser gravity had taken place, the event pictured by the mind may not last long. But if a violent occurrence is captured by the mind of a person, such a picture in the mind lasts long for a number of years. In the same way, if the duration of occurrence is little lengthy, the picture captured by the mind may not fade away so quickly.

11. In the instant case, it is true that identification parade was not conducted. The accused also refused to participate in the test identification parade on the ground that they were already shown to the material witnesses. PW5 would admit that the accused were present at the time when the recovered articles were shown to him in the presence of PW1 at the police station. But the question that arises for

consideration is whether the scene picturized by the mind of the witnesses would have lasted longer till the month of November, 2011, when the witnesses deposed before the Court. The further question that arises for consideration is whether the identification of the accused for the first time before the Court can be safely relied upon by the Court.

12. In the instant case the occurrence had taken place in the presence of PW1 and PW11. Accused Satish had pointed out the pistol on the witnesses and threatened them with dire consequences. The accused had in fact came before PW1 and PW3 and interacted with them in the guise of purchasing some gold articles. Thereafter, the witnesses were paraded to the strong room. PW1 and PW11 had got sufficient opportunity to see the accused for quite a long time. No wonder PW1 and PW11 have recalled the event and identified the accused after about 1 year and 8 months in the Court.

13. The test identification parade is conducted not only to recollect the memory of the witnesses concerned but also to check whether the investigation is proceeding on the right track. Therefore, the identification of the witnesses before the test identification parade cannot be construed as a substantial evidence. It is only the identification of the accused by the witnesses during the course of trial that is considered as material evidence. Therefore, I am of the view that failure to conduct a test identification parade does not affect the case of the prosecution. The identification of the accused by the witnesses, in the Court, in the above facts and circumstances cannot at

all be doubted.

14. It was submitted by learned counsel appearing for the appellants that the other sales girls were not examined to corroborate the evidence of PW1 and PW11. In my considered view, non examination of the sales girls in the shop does not affect the case of the prosecution, inasmuch as the evidence of PW1 and PW11 is found to be credible and trustworthy.

15. It is submitted by the counsel appearing for the appellant that PW1 was not the owner of the shop and PW7 who was also not the owner of the shop, had given the list of articles robbed off by the accused.

16. As per the evidence of PW7, PW1 was at the helms of affairs of the shop though he was not the owner of the shop. PW1 being the manager of the shop has prepared the list of articles through PW7 who is none other than his father. PW1 is also competent to speak about the occurrence which he witnessed in the jewelry shop.

17. In view of the above, I find that there is no merit in the appeal. Therefore, the judgment of conviction and sentence recorded by the trial Court qua the accused-appellants stands confirmed and consequently both the appeals are dismissed.

(M. JEYAPPAUL)
JUDGE

July 15, 2015
p.singh