

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. **CRA-S-1542-SB of 2011**

DATE OF DECISION: AUGUST 5, 2015

SUBHASH ...APPELLANT

VERSUS

STATE OF HARYANA ...RESPONDENT

2. **CRA-S-3160-SB of 2013**

SURINDER KUMAR & ANOTHER ...APPELLANTS

VERSUS

STATE OF HARYANA ...RESPONDENT

3. **CRA-S-2062-SB of 2015**

SANDEEP KUMAR @ CHHOTA ...APPELLANT

VERSUS

STATE OF HARYANA ...RESPONDENT

CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.

1. Whether the judgement should be reported in the digest? Yes

PRESENT: MR. AMRINDERPREET, ADVOCATE FOR THE APPELLANT
IN CRA-S-1542-SB of 2011.

MR. VINOD BHARDWAJ, ADVOCATE FOR THE APPELLANTS
IN CRA-S-3160-SB of 2013.

MR. R.S.DHULL, ADVOCATE FOR THE APPELLANT
IN CRA-S-2062-SB of 2015.

MR. TANUJ SHARMA, AAG, HARYANA.

M. JEYAPPAUL, J.

1. Accused Rajeev Kumar, Azad @ Jitender, Subhash, Joginder

Singh, Surinder Kumar, Sandeep @ Chhota and Sunil were sent up to face trial. All of them were convicted. The records from the Registry would go to show that Azad @ Jitender had not preferred any appeal. The appeal preferred by accused Joginder Singh and accused Rajeev Kumar were dismissed as infructuous as they had already undergone the sentence imposed on them. Accused Sunil who was arrested later was tried separately, but a common judgement was pronounced by the trial Court.

2. It is the case of the prosecution that on 3.11.2009 when PW4 Manoj Kumar alongwith Rinki Khurana proceeded on his motorcycle carrying ₹10,75,000/- entrusted to him by PW5 Lalit Taneja, General Manager of Akansh Motors for the purpose of depositing in HDFC bank, accused Surinder, Sunil and Sandeep Kumar @ Chhota came on a motorcycle from behind and committed robbery of the said amount at gun point, the moment Manoj Kumar slowed down the vehicle on receiving the signal from those accused and sped away from the scene.

3. PW4 Manoj Kumar has deposed that on 3.11.2009 at about 3.30 p.m. when he was proceeding alongwith Rinki Khurana on a motorcycle to deposit a sum of ₹10,75,000/- entrusted to him by PW5 Lalit Taneja in HDFC bank, three persons in the age group of 25-26 years came on a motorcycle, waylaid them and robbed the said amount showing their gun. He has identified accused Surinder Kumar, Sunil and Sandeep Kumar @ Chhota as persons who committed robbery at gun point. He was also present at the time of recovery that was made on 16.1.2010 and 17.1.2010 from accused Surinder and Sandeep Kumar @ Chhota on the basis of the disclosure statements made by them.

4. PW10 Dr.Ajit Singh medico-legally examined Rinki Khurana and spoke about the simple injuries he had sustained in the occurrence.
5. PW5 Lalit Taneja, General Manager, Akansh Motors deposed that he in fact handed over a sum of ₹10,75,000/- to PW4 Manoj Kumar for depositing in HDFC bank on 3.11.2009.
6. PW1 EHC Kashmir Singh deposed during the course of trial that accused Joginder Singh who was brought to the Court in connection with the hearing of some other criminal case openly conversed with accused Rajeev Kumar who was also brought in connection with some other criminal case that robbery should be committed as he was in dire need of some money. The fact remains that he was interrogated by the police on 30.11.2009 after about 27 days of occurrence.
7. PW7 ASI Rajbir Singh speaks of recovery of ₹1,90,000/- and country made pistol from accused Surinder Pehalwan on the basis of the disclosure statement suffered by him. He also deposed that on the basis of the disclosure statement suffered by Sandeep Kumar @ Chhota, a sum of ₹1,10,000/- and a country made pistol were recovered.
8. PW11 SI Sugam Chand deposed that on the basis of the disclosure statement made by accused Subhash, a sum of ₹3500/- was recovered.
9. PW13 Ravinder Tomar, Inspector/SHO of the Police Station City Kaithal recorded the statement of PW4 Manoj Kumar and investigated the case. He deposed that accused Rajeev and Subhash were already in police lock-up in connection with FIR No.760 dated 28.12.2009. They confessed the crime during the course of investigation.

10. PW14 ASI Satyawar depose that accused Surinder and Sandeep Kumar @ Chhota who were also in police lock-up were taken out from police custody and during the course of interrogation they also confessed the crime.

11. The fact remains that no independent witness was associated during the course of recording the disclosure statement and the recovery effected thereupon.

12. Learned counsel appearing for the appellants would vehemently submit that it is purely a cooked-up case by the police officials in order to demonstrate the detection of crime and minor recovery effected from the accused. It is their submission that evidence of PW1 is totally unbelievable. Of course, learned AAG for the State would submit that PW4, the star witness in this case has identified the accused Surinder, Sunil and Sandeep Kumar @ Chhota during the course of trial. Recovery also has been effected from them on the basis of the disclosure statement suffered by them. Therefore, conviction has been rightly recorded, he would submit.

13. First let me take up the evidence of PW1 EHC Kashmir Singh. He comes out with a very artificial version that when accused Joginder Singh was brought for the hearing of a different criminal case, he loudly conversed with accused Sandeep Kumar @ Chhota who was also brought in connection with another criminal case that he was in dire need of money and therefore, robbery should be committed.

14. It is very relevant to note that he suffered a statement only on 30.11.2009 after 27 days of the occurrence. His version that the information he furnished as regards such an episode that took place in the Court

premises to his higher official and SHO of the police station is found to be totally unbelievable. No accused would have the guts to discuss about such a plan openly in the Court premises, that too in the very presence of police official. The very fact that no action had been initiated to avert the robbery designed to be committed speaks of the hollow version of PW1. Therefore, I have no hesitation to reject the testimony of PW1.

15. Let me now take up the evidence of PW4 who is the star witness in this case. True it is that there had been a robbery committed when PW4 Manoj Kumar was proceeding alongwith Rinku Khurana. PW4 had not been associated for the purpose of identification of the accused before the trial was taken up by the Court. PW13 and PW14 have come out with a totally incredible story that the accused who were in police custody in connection with another case confessed the robbery committed by them when they were taken up from the lock-up and subjected to interrogation. There would have been no occasion for these accused who were in lock-up in connection with another case to confess the commission of robbery which had been committed on the highway.

16. It is true that the identification of the accused by the witness before the Court is substantial evidence. But the manner in which the accused were arrested and were involved in the crime would go to show that the identification of accused Surinder, Sunil and Sandep Kumar @ Chhota in the Court does not inspire confidence. .

17. A huge amount of ₹10,75,000/- was allegedly robbed by three accused. But a very paltry amount was allegedly recovered from the accused. Therefore, such a meagre recovery based on the doubtful

disclosure statement allegedly suffered by the accused is not sufficient to connect the accused with the crime of robbery.

18. In my considered view, the entire case of the prosecution is riddled with serious doubt as regards the involvement of these accused in the crime of robbery. Therefore, the appellants are entitled to acquittal.

19. In view of the above, the above criminal appeals are allowed and appellants Subhash, Surinder, Sunil and Sandeep @ Chhota are acquitted of the charges framed as against them. Consequently, the judgement of conviction and order of sentence recorded by the trial Court are set aside. Appellants, namely, Surinder, Sunil and Sandeep @ Chhota are undergoing sentence in connection with these cases. They be set at liberty forthwith, if their custody is not required in connection with any other case.

20. Appellant Subhash is on bail. The bail bond executed by him shall stand discharged.

August 5, 2015
Gulati

(M. JEYAPPAUL)
JUDGE