

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. **CRA-S-2891-SB of 2009**

DATE OF DECISION: DECEMBER 19, 2015

PAWAN @ PONA ...APPELLANT

VERSUS

STATE OF HARYANA ...RESPONDENT

2. **CRA-S-2232-SB of 2009**

SONU ...APPELLANT

VERSUS

STATE OF HARYANA ...RESPONDENT

3. **CRA-S-2912-SB of 2009**

MUKESH ...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. VIKRAM PUNIA, ADVOCATE FOR THE APPELLANT
IN CRA-S-2891-SB of 2009 & CRA-S-2232-SB of 2009.

MR. R.S. MALIK, ADVOCATE FOR THE APPELLANT
IN CRA-S-2912-SB of 2009.

MR. MUNISH DEV SHARMA, AAG, HARYANA.

M. JEYAPPAUL, J.

1. Accused Pawan, Sonu and Mukesh who have been convicted
under Section 392 read with Section 397 IPC and were each sentenced to
undergo 10 years R.I. and to pay a fine of ₹10,000/- and in default, to under

a further period of 1 year, have preferred the present appeal.

2. PW1 Manjit Singh who was the complainant in this case and PW2 Kaptan Singh who was the partner of PW1 in Sony Mobile World run by them deposed that on 14.8.2006 at about 9.30 p.m., they proceeded on a motorcycle towards their house at village Atawla after closing the shop. When they reached Hidana turn near cremation ground on Adiyana Road, four young men came on a motorcycle from behind with headlight switched-off. Accused Pawan threatened PW1 and PW2 to stop the motorcycle by showing a pistol. Accused Mukesh was driving the motorcycle. Accused Jasmer was sitting behind accused Mukesh and Sonu. Accused Sonu caught hold of PW1 and accused Pawan aimed pistol at him. Accused Mukesh and Jasmer caught hold of PW2 Kaptan Singh. Accused Pawan relieved PW1 of his three mobile phones, purse containing ₹12,000/-, white handkerchief and a photograph. Accused Mukesh and Jasmer snatched mobile phone Nokia 1110 from PW2 Kaptan Singh. Mukesh also snatched away the motorcycle and thereafter all of them sped away on the motorcycle towards village Madlauda. PW1 did not know the name of Sonu. Sonu was known to him by face.

3. PW7 ASI Ram Rattan stated that on 30.9.2006 when he was serving at Police Station City Gohana, he arrested accused Jasmer @ Pappa and Mukesh in connection with yet another case in FIR No.221 dated 16.9.2006 under Section 302/120-B/34 IPC read with Section 25-54-59 of the Arms Act of Police Station City Gohana. One pistol .12 bore was recovered from under the seat of the motorcycle from the house of Mukesh. During the course of interrogation, both the accused made disclosure

statements regarding the present case. PW10 speaks of the arrest of the accused and the recovery made from them.

4. PW12 Inspector Rajesh Kumar recorded formal first information report based on the complaint given by PW1 Manjit Singh and took up the case for investigation. He speaks of the identification of accused Jasmer and Mukesh by PW1 and PW2 in the police station.

5. In the statement under Section 313 Cr.P.C., accused have come out with a usual plea that they were innocent, but a false case was foisted on them.

6. I heard the elaborate submissions made by learned counsel appearing for the appellants as well as learned counsel for the State.

7. Let me first consider whether the prosecution has established the charge under Section 392 read with Section 397 IPC against accused Sonu. PW1 has stated in the first information report that four young persons way-laid him alongwith his partner Kaptan Singh and robbed them at gun point. Physical features of those young boys had not been furnished in the first information report. Very strangely, PW1 has stated that Sonu was known to him by face previously. Had Sonu been known to PW1 by face, even though he did not know his name, he would have definitely stated that amongst four young persons who robbed PW1 and PW2, one was known to him by face. Such a material lapse on the part of PW1 shakes the very foundation of the case of the prosecution.

8. Sonu was not identified by PW1 and PW2 in the police station after arrest. Except the evidence of PW1 and PW2, there is no other evidence to implicate accused Sonu. PW1 and PW2 had also not dropped

any clue as regards the role of Sonu during the course of investigation. The outcome is not far to seek. There was no investigation directed against Sonu by PW12. No recovery also was effected from him. He was also not involved in any other criminal case. Under such circumstances, the submission made by learned counsel appearing for appellant Sonu that PW1 and PW2 have given a clean chit to Gaje Singh during the course of trial and implicated Sonu who was not concerned with this case as Gaje Singh had some connection with PW1 and PW2, cannot be rejected. In the above facts and circumstances, I am of the considered view that the prosecution has not made out a case against accused Sonu. Therefore, accused Sonu is entitled to acquittal.

9. Coming to the charge against accused Pawan @ Pona and Mukesh, it is found that both of them have been identified by PW1 and PW2 who had lost their personal assets in the robbery committed by them. It is true that no test identification parade was conducted by PW12 to enable PW1 and PW2 to recall the memory and ascertain their role during the course of investigation. But, it is a well settled proposition of law that the sole purpose of conducting test identification parade is to make sure whether the investigation is going on in the right direction as against the accused. It is only the identification made by the witnesses in the Court that is very much admissible in evidence. The trial had concluded within 10 months of the occurrence. PW1 and PW2 had an occasion to see the accused in close quarters for sufficient length of time. Therefore, there is every chance for them to recall the features of the accused who participated

in the robbery within a span of 10 months. Therefore, the identification of accused Pawan and Mukesh by PW1 and PW2 cannot be simply ignored by the Court.

10. It is found that pistol had been recovered from Pawan when he was arrested in connection with yet another case in FIR No.221 dated 16.9.2006 under Section 302/120-B/34 IPC read with Section 25-54-59 of the Arms Act of Police Station City Gohana and the same was exhibited during the course of trial of this case. Though no charge was framed as against accused Pawan under the Arms Act, the evidence to the effect that accused Pawan armed with pistol extended threats with dire consequences cannot be ignored by the Court. That apart, a sum of ₹1000/- was recovered on the basis of the disclosure statement suffered by accused Pawan and a sum of ₹700/- was recovered from accused Mukesh on the basis of the disclosure statement suffered by him.

11. It is true that no independent witness was associated for the purpose of effecting recovery of the material objects. Of course, the investigating official should have associated an independent witness while effecting recovery of material objects. But in the face of evidence of PW1 and PW2, non-association of independent witness for the recovery does not, in any way, tilt the case of the prosecution.

12. I am of the considered view that the prosecution has established beyond reasonable doubt that accused Pawan @ Pona and Mukesh armed with a lethal weapon, namely, pistol committed robbery and thereby they committed an offence punishable under Section 392 read with Section 397

IPC. But considering the fact that lethal weapon was not used while committing robbery and the nature of articles robbed, I am of the view that the sentence could be reduced to the minimum prescribed under Section 397 IPC.

13. Therefore, the judgement of conviction and sentence passed by the trial Court as against accused Sonu stands set aside and accused Sonu is acquitted of the charge under Section 395 read with Section 397 IPC. He is on bail. His bail bond and surety bond stand discharged. CRA-S-2232-SB of 2009 preferred by accused Sonu stands allowed.

14. The conviction of accused Mukesh and Pawan @ Pona under Section 392 read with Section 397 IPC stands confirmed. But the sentence imposed on them is reduced to 7 years R.I. and to pay a fine of ₹1000/- each and in default, to undergo a further period of 3 months R.I.

15. With the above modification in the matter of sentence, CRA-S-2912-SB of 2009 preferred by accused Mukesh and CRA-S-2891-SB of 2009 preferred by accused Pawan @ Pona stand dismissed.

16. Accused Pawan @ Pona and Mukesh are undergoing sentence. They be set at liberty, if they have completed their sentence and their custody is not required in connection with any other case. If fine is not paid, they shall undergo the default sentence.

December 19, 2015
Gulati

(M. JEYAPPAUL)
JUDGE