

CRA-S-2125-SB-2003 and other connected appeals

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

Date of decision: 22.04.2015

1. CRA-S-2125-SB-2003

Sandeep Singh

.... Appellant

Versus

State of Punjab

.... Respondent

2. CRA-S-2244-SB-2003

Manjit Singh alias Nikki

.... Appellant

Versus

State of Punjab

.... Respondent

3. CRA-S-2302-SB-2003

Baldev Singh alias Deba

.... Appellant

Versus

State of Punjab

.... Respondent

4. CRA-S-39-SB-2004

Gurpreet Singh @ Bholu

.... Appellant

Versus

State of Punjab

.... Respondent

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AND

5. CRA-S-504-SB-2004

Sukhwinder Singh

.... Appellant

Versus

State of Punjab

.... Respondent

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) Whether Reporters of the 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 ?

Present: Mr. G.S.Bhatia, Advocate,
for the appellant in CRA-S-2125-SB-2003.

None for the appellants in CRA-S-2244-SB-2003 and
CRA-S-2302-SB-2003.

Mr. D.S.Sandhu, Advocate,
for the appellant in CRA-S-39-SB-2004.

Mr. G.S.Virk, Advocate for
Mr. G.S.Nagra, Advocate,
for the appellant in CRA-S-504-SB-2004.

Mr. S.S.Chandumajra, DAG, Punjab.

PARAMJEET SINGH, J.

This order shall dispose of CRA-S-2125-SB-2003, 'titled 'Sandeep Singh vs. State of Punjab', CRA-S-2244-SB-2003, titled 'Manjit Singh alias Nikki vs. State of Punjab', CRA-S-2302-SB-2003, titled 'Baldev Singh alias Deba vs. State of Punjab', CRA-S-39-SB-

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2004, titled 'Gurpreet Singh @ Bhola vs. State of Punjab,' and CRA-S-504-SB-2004, titled 'Sukhwinder Singh vs. State of Punjab', as common questions of fact and law are involved in all the criminal appeals.

The Court of Additional Sessions Judge (Fast Track), Kapurthala impugned judgment dated 31.10.2001, held appellants-Sandeep Singh, Manjit Singh alias Nikki, Baldev Singh alias Deba, Gurpreet Singh @ Bhola and Sukhwinder Singh guilty of offence under Section 402 of IPC and appellants-Sandeep Singh and Gurpreet Singh under Section 25 of the Act and vide impugned order dated 05.11.2003, sentenced them as under:

<i>Sr. No.</i>	<i>Name of Accused</i>	<i>Under Section</i>	<i>Sentence awarded</i>
1	Sandeep Singh	402 IPC	To undergo rigorous imprisonment for a period of five years and to pay a fine of ₹1,000/-, in default whereof to further undergo rigorous imprisonment for two months.
		25 of Act	To undergo rigorous imprisonment for three years and to pay a fine of ₹500/-, in default whereof to further undergo rigorous imprisonment for two months.
2	Manjit Singh	402 IPC	To undergo rigorous imprisonment for a period of five years and to pay a fine of ₹1,000/-, in default whereof to further undergo rigorous imprisonment for two months.
3	Sukhwinder Singh	402 IPC	To undergo rigorous imprisonment for a period of five years and to pay a fine of ₹1,000/-, in default whereof to further undergo rigorous imprisonment for two months.

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<i>Sr. No.</i>	<i>Name of Accused</i>	<i>Under Section</i>	<i>Sentence awarded</i>
4	Gurpreet Singh	402 IPC	To undergo rigorous imprisonment for a period of five years and to pay a fine of ₹1,000/-, in default whereof to further undergo rigorous imprisonment for two months.
		25 of Act	To undergo rigorous imprisonment for three years and to pay a fine of ₹500/-, in default whereof to further undergo rigorous imprisonment for two months.
5	Baldev Singh	402 IPC	To undergo rigorous imprisonment for a period of five years and to pay a fine of ₹1,000/-, in default whereof to further undergo rigorous imprisonment for two months.

Both the sentences were ordered to run concurrently.

Instant criminal appeals launch a challenge to the impugned judgment of conviction and order of sentence.

The factual matrix on which the prosecution version is founded is to the effect that on 03.07.2001, the Station House Officer, Police Station Sadar, Kapurthala received secret information that accused-Gurpreet Singh, Manjit Singh, Sukhwinder Singh, Sandeep Singh, Kuldeep Singh and Baldev Singh, who had committed robbery at the gas agency at Kanjli Road, Kapurthala, would assemble with weapons in a deserted brick-kiln in the area of village Rajapur. The secret informer further disclosed that the above named persons had a mind to commit dacoity at the petrol-pump and liquor vend and if a raid is conducted, such a dacoity could be prevented. On finding the information to be reliable, Sub Inspector Satnam Singh joined Darshan

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Singh, Panchayat Member in the police party and proceeded towards the said place. When the police party reached the said brick-kiln, Sub Inspector Satnam Singh overheard the conversation of the accused who were discussing to rob the petrol pump and liquor vend. The police party apprehended accused-Sandeep Singh, Sukhwinder Singh, Manjit Singh and Gurpreet Singh while Balwant Singh, Kuldeep Singh and Baldev Singh ran away from the spot but were identified by Head Constable Jarnail Singh. From the personal search, .315 bore countrymade pistol with two live cartridges was recovered from accused-Gurpreet Singh, .12 bore countrymade pistol, which was loaded with live cartridges, was recovered from accused-Sandeep Singh, hand-pump handle (Hathiya) was recovered from accused-Sukhwinder Singh and one knife was recovered from accused-Manjit Singh. The accused were formally arrested and ruqua was sent to the police station on the basis of which FIR was recorded. The articles recovered from the accused were taken into police possession vide separate recovery memos. During the course of investigation, accused suffered disclosure statements upon which the recovery was effected by the police. After completion of investigation, challan was presented in the Court of Additional Chief Judicial Magistrate, Kapurthala, who vide order dated 01.10.2001, committed the case to the Court of Session for trial. The Additional Sessions Judge, Kapurthala framed the charges against all the accused under Sections 399/401/411 of IPC and also against accused-Sandeep Singh and Gurpreet Singh under Section 25 of the Act, to which they

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pleaded not guilty and claimed trial.

To prove its case, prosecution examined PW 1 Constable Surat Singh, PW 2 Sub Inspector Satnam Singh, PW 3 Assistant Sub Inspector Tarlochan Singh, PW 4 Head Constable Manmohan Singh, Armourer, PW 5 Head Constable Jarnail Singh, PW 6 Assistant Sub Inspector Balkar Singh and PW 7 Mukhtiar Singh. Thereafter, the prosecution closed its evidence while giving up PW Darshan Singh being won over.

Statements of the accused were recorded under Section 313 Cr.P.C. The accused denied all the incriminating circumstances appearing against them in the prosecution evidence and claimed to be innocent. In defence, accused-Baldev Singh appeared as DW 1 as his own witness.

The trial Court after conclusion of trial acquitted the appellants under Sections 399 and 411 of IPC whereas sentenced them as aforesaid. Hence, these appeals by the appellants.

I have heard learned counsel for the parties and meticulously perused the record.

Learned counsel for the appellants emphatically argued that in the light of evidence adduced by the prosecution, conviction of the appellants in no way is permissible and they are entitled to be acquitted. They further contended that the story put forward by the prosecution that Sub Inspector Satnam Singh, investigating officer, overheard the conversation of the accused while they were sitting in a deserted brick-kiln to the effect that they were planning to commit dacoity at the petrol

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pump and liquor vend, was most improbable and unnatural. They further submitted that the mere fact that the accused were allegedly found sitting in a brick-kiln with .315 bore countrymade pistol with two live cartridges, .12 bore countrymade pistol, which was loaded with live cartridges, hand-pump handle (Hathiya) and knife, did not mean that they had assembled there for making preparation to commit dacoity. They further submitted that the trial Court has acquitted the accused under Sections 399 IPC whereas convicted them under Section 402 of IPC on the same findings. Moreover, the accused were not charge-sheeted under Section 402 of IPC by the trial Court. As per the prosecution, Balwant Singh, Kuldeep Singh and Baldev Singh succeeded in running away from the spot but were identified by Head Constable Jarnail Singh. However, when Head Constable Jarnail Singh appeared into witness-box as PW 5, he did not utter even a single word about the identity of Balwant Singh, Kuldeep Singh and Baldev Singh. They further contended that Darshan Singh, Panchayat Member, who was allegedly joined in the investigation, was not examined by the prosecution and given up being won over by the accused. No other witness from the public was joined despite the fact that acting on a tip off, the police proceeded and the police had ample time to join some more witness from the public to join the investigation. They further contended that in the present case, complainant and investigating officer is the same person which also causes dents in the prosecution story. They further contended that the accused were allegedly armed with

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weapons, but they had not shown any resistance towards the police officials for their arrest. They further contended that the prosecution has failed to produce any cogent or reliable evidence to prove the guilt of the accused, therefore, the trial Court has erred in law while convicting the appellants. The impugned judgment of conviction and order of sentence ought to be interfered with in the interest of justice.

Per contra, learned State counsel vehemently opposed the contentions of learned counsel for the appellants and contended that evidence produced by the prosecution was rightly found to be reliable by the trial Court. He further contended that Darshan Singh, Panchayat Member, cited as independent witness, could not be examined being won over by the accused and depositions of police officials are not required to be corroborated with some independent witness. The genuineness of deposition of police officials cannot be doubted until and unless there is proof of enmity or ill motive or false implication. The trial Court has rightly recorded the conviction and sentence of the accused, therefore, no interference is warranted.

I have given thoughtful consideration to the rival contentions of learned counsel for the parties.

In view of arguments advanced on behalf of the appellants coupled with the fact that the appellants have been sentenced to undergo imprisonment for five years each, it is expedient to have a bird's eye view of the relevant prosecution witnesses hereunder:

- (i) PW 2 Sub Inspector Satnam Singh deposed

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that on 03.07.2001, he along with police officials was on patrolling duty in the area of village Rajapur. In the meantime, he received secret information that Sandeep Singh, Sukhwinder Singh, Gurpreet Singh, Manjit Singh, Balwant Singh and Baldev Singh were sitting in a deserted brick-kiln and were planning to commit dacoity on petrol pump and liquor vend in the area of Kalasanghian. He was also informed that accused were armed with weapons and if raid is conducted, they can be apprehended. Darshan Lal, Member Panchayat was joined in the police party and raid was conducted at the aforesaid place after parking the vehicle. He overheard that the accused were planning to commit a dacoity at petrol pump and liquor vend in village Kalasanghian. He further stated that except accused Kuldip Singh, Balwant Singh and Baldev Singh were apprehended at the spot while these three ran away who were identified by Head Constable Jarnail Singh. He further stated that .12 bore countrymade pistol alongwith two cartridges was recovered from the right pocket of pant of accused-Sandeep Singh. He prepared sketch Ex.PA and sealed the same with the seal 'SS' in a parcel and took into police possession vide recovery memo Ex.PA. The seal after its use was handed over to Darshan Lal. He further stated that from the possession of accused-Sukhwinder Singh,

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hathia (Datt) was recovered which was identified by him as Ex.P5. He further stated that one kirch Ex.P6 which was 11/14 inches in length was also recovered from the possession of accused-Manjit Singh and the same was taken into possession vide recovery memo Ex.PB. From the possession of accused-Gurpreet Singh, one countrymade pistol along with live cartridges was also recovered. He also stated that from the place, five vehicles were also recovered vide recovery memo Ex.PC.

- (ii) PW 5 Head Constable Jarnail Singh, who was member of the raiding party, testified that from the possession of accused-Gurpreet Singh, .315 bore countrymade pistol, which was loaded, was recovered along with live cartridges. The sketch Ex.PW 5/A of the pistol was prepared by ASI Balkar Singh and thereafter the same was sealed in a parcel with seal 'BS' and taken into police possession vide recovery memo Ex.PW 5/B.
- (iii) PW 6 ASI Balkar Singh also deposed on similar lines to PW 2 Sub Inspector Satnam Singh. He deposed that from the possession of accused, .315 bore loaded pistol and live cartridges were recovered. He also identified pistol Ex.P1 and cartridges Ex.P-2 to P-3 in the Court. He also proved the sketch of pistol Ex.PW 5/A and factum of sealing it in a parcel with his seal 'BS'. He also proved the recovery memo Ex.PW 5/B. He also

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stated that on 18.08.2001, he produced weapon before PW 4 Head Constable Manmohan Singh, armourer, in a sealed parcel who mechanically tested the same and made test report Ex.PW 4/B.

To prove the guilt of accused under Section 402 of IPC, the prosecution must prove, from some evidence, directly or indirectly, or from attending circumstances, that the accused persons had assembled for no other purpose than to make preparation for commission of dacoity. The prosecution must also show some conduct to prove the factum of “preparation” by the assembly, and that the accused persons had conceived any such design for committing dacoity. Needless to mention here that mere assembly of five or more persons armed with weapons ipso facto will not be sufficient to record and uphold conviction for the offence under Section 402 of IPC.

Before proceeding further, it is necessary to discuss the relevant case law on the subject.

In ***Chaturi Yadav vs. State of Bihar 1979*** Supreme Court Cases (Criminal) 502, the Hon'ble Supreme Court has held as under:

“The Courts below have drawn the inference that the appellants were guilty under both the offences merely from the fact that they had assembled at a lonely place at 1.00 a.m. and could give no explanation for their presence at that odd hour of the night. Mr. Misra appearing for the appellant submitted that taking the prosecution case at its face value, there is no evidence to show that the appellants had

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assembled for the purpose of committing a dacoity or they had made any preparation for committing the same. We are of the opinion that the contention raised by the learned Counsel for the appellants is well founded and must prevail. The evidence led by the prosecution merely shows that eight persons were found in the school premises. Some of them were armed with guns, some had cartridges and others ran away. The mere fact that these persons were found at 1.00 a.m. does not, by itself, prove the appellants had assembled for the purpose of committing dacoity or for making preparations to accomplish that object. The High Court itself, has in its judgment, observed that the school was quite close to the market, hence it is difficult to believe that the appellants would assemble at such a conspicuous place with the intention of committing a dacoity and would take such a grave risk. It is true that some of the appellants who were caught hold of, by the Head Constable are alleged to have made the statement before him that they were going to commit a dacoity but this statement being clearly inadmissible has to be excluded from consideration. In this view of the matter, there is no legal evidence to support the charge under Section 399 and 402 against the appellants. The possibility that the appellants may have collected for the purpose of murdering somebody or committing other offence cannot be safely eliminated. In these circumstances, therefore, we are unable to sustain the judgment of the High Court.”

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In ***Pahalwan Singh vs. State of Madhya Pradesh*** 1978 MP

LJ 449, the Hon'ble Madhya Pradesh High Court has held as under:

“After going through the evidence, there is no dispute that in between the two villages mentioned above, there is a jungle. There is also no dispute that the accused did not have any house breaking implement or any instrument which can be said to be of use while committing dacoity, that is to say, an instrument to break open a lock or any instrument to break open any room or window. The only evidence against them is that they were having arms with them. The other evidence is that before they could be apprehended, some one from the gang said in a loud voice that the time is up to commit dacoity and, therefore, we must proceed. Excepting this, there is nothing to show that the appellants, in any way, were preparing to commit dacoity.”

In ***Baldev Singh vs. State of Haryana*** 1988 (1) Recent Criminal Reports 629, learned Single Judge of this Court has held as under:

“8. Requirement of section 402 IPC is that five or more persons must have assembled for the purpose of committing a dacoity. Apart from the fact that the appellants are said to have been found armed present on the first story of an abandoned building there is no evidence that this assembly of five appellants was for the purpose of committing dacoity. The trial Court has merely drawn an inference that the said assembly was only for the purpose of committing dacoity.”

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In *Des Raj alias Dass vs. The State* 2000 Criminal Law Journal 2083, the Hon'ble Delhi High Court while relying upon Chaturi Yadav's case (supra) held that mere assembly of five or more persons at a deserted place armed with weapons is not sufficient to hold that the accused had committed any offence falling within the ambit of Sections 399 and 402 of IPC until by direct or circumstantial evidence, purpose of the assembly is proved. Nothing was brought on record by the prosecution that the accused were making preparation or had gathered for the purpose of committing dacoity.

In *Asgar and Another v. State of Rajasthan* 2003 (3) Recent Criminal Reports 359, learned Single Judge of the Rajasthan High Court had noticed the law propounded by this Court as under:-

"10. In Karam Dass v. State, AIR 1952 Pun 249: (1952 Cri LJ 1119), the Punjab High Court held that:-

"To bring the case within Section 399 of the Code, it is not necessary that persons shown to be making the preparations should be five or more in number. It is, however, necessary for the prosecution to prove that the raid for which the persons prosecuted were making preparation was to be committed by five or more persons, for otherwise it would not be dacoity but merely robbery, and mere preparation for committing robbery, unless it ends in an actual attempt, is not punishable by law."

In *Mahavir v. State of Haryana* 2010 (6) Recent Criminal Reports 3073, a Division Bench of this Court held as under:-

"15. Now coming to the factum, as to whether, the

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accused were allegedly making preparation to commit dacoity, while sitting in a room, armed with iron rods, a dagger, and a country made pistol, it may be stated here, that the same is not proved, as would be discussed hereinafter. Sections 399 and 402 of the Indian Penal Code, are confined to making preparation for commission of dacoity and have no reference to any other offences. Therefore, the prosecution must prove, from some evidence, directly or indirectly, or from attending circumstances, that the accused persons had assembled for no other purpose than to make preparation, for commission of dacoity. If the evidence falls short of it, the case must fail. Though the word "preparation" has not been defined, in the Penal Code, the prosecution must show some such conduct, to prove the factum of "preparation" by the assembly, and that the accused persons had conceived any such designs for committing dacoity, and, in fact, intended to achieve the object, for which they had assembled. Therefore, the mere fact that some persons were found sitting at a lonely place, at night, in a house which was under construction, and incriminating articles like firearms, some bombs and a Bhujali were recovered from their possession would not be sufficient to prove the charge that they had assembled for making preparation for commission of dacoity. The evidence must be such, which may plainly manifest the main charge to satisfy the conscience of the Court that the members of the assembly did some such act, or acts, which may lead to irresistible presumption, that they had

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assembled for the purpose of committing dacoity and were making preparation for the same, but, in absence of any such evidence, mere assemblage and recovery of firearms do not prove the charge...”

The prosecution has set up its case on the ground that the accused had assembled in a deserted brick-kiln with weapons for making preparation to commit dacoity. The prosecution pleaded that the aforesaid act of the accused is sufficient to infer that they had made preparation to commit dacoity and furthermore the purpose of the assembly. In ***Mohammad Hussain and etc. v. State of Bihar 1987 Criminal Law Journal 1391***, it has been held as under:

*“11. The learned Counsel for the appellants, however, submitted that Section 106 of the Evidence Act could not be invoked for supplementing the evidence adduced by the prosecution. On the other hand, learned Counsel for the State placed reliance on a single Bench decision of this Court in the case of **State v. Dhanpat Chamara, AIR 1960 Patna 582** in support of the view of the learned Sessions Judge. In my opinion, even this decision does not help the prosecution to the extent the learned Sessions Judge has gone. The legal position has been explained in paragraph 19 of this judgment which is as follows:-*

“19. It is perfectly true that the prosecution must establish, in a case of this kind, that the accused had conceived a design for committing dacoity, but it is equally true that the intention of an individual or a number of individuals who have conspired together is seldom known to others, and can only be established by proof of circumstances from which the intention can be inferred. Witnesses cannot give direct

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*evidence as to the intention of the accused; and, if the legitimate inference from the circumstances which are established is that the intention of the accused was to commit dacoity, it is for them to prove that their intention was different. Illustration (a) of Section 106 of the Evidence Act makes this quite clear. Reliance may be placed in this connection upon **Jain Lal v. Emperor, AIR 1943 Pat 82** a case to which I will again have to make reference.”*

So even from, this decision it is clear that it is for the prosecution to establish that the accused had conceived a design for committing dacoity. Of course, it has been stated therein that if the legitimate inference can be drawn from the circumstances which are established in the case that the accused persons had the intention to commit dacoity, it will be for them to prove that their intention was different. It was in this context that reference was made to Section 106 of the Evidence Act, but the learned Sessions Judge has placed the burden itself on the accused to satisfy, the court regarding the object or intention of their presence in the lonely orchard in the dead of night along with many other persons some of whom were armed with firearms and other weapons. What be aforesaid decision wanted to lay down was that once it was established by the circumstances of the case that the intention of the accused persons was to commit dacoity, then it was for the accused persons to explain that their intention was different from that of committing dacoity and not that the burden lay on the accused persons to explain and to satisfy the court about their presence there.

12. *The applicability of Section 106 of the*

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*Evidence Act was considered by the Supreme Court in the case of **Sawal Das v. State of Bihar**, AIR 1974 SC 778. In this case the husband had been convicted for committing the murder of his wife who had died of burn injuries. The defence of the husband was that the wife had met her death because her nylon Sari had accidentally caught fire by a kerosene stove. The following observations of the Supreme Court would explain the obligation of the accused under Section 106 of the Evidence Act:-*

“Neither an application of Section 103 nor of 106 of the Evidence Act could, however, absolve the prosecution from the duty of discharging its general or primary burden of proving the prosecution case beyond reasonable doubt. It is only when the prosecution has led evidence which, if believed, will sustain a conviction, or, which makes out a prima facie case, that the question arises of considering facts of which the burden of proof may lie upon the accused. The crucial question in the case before us is: Has the prosecution discharged its initial or general and primary burden of proving the guilt of the appellant beyond reasonable doubt?”

To draw an inference under Section 106 of the Indian Evidence Act, 1872 that assemblage of accused persons with armed weapons is sufficient to infer that the accused were intending to commit dacoity, this Court will have to appreciate as to whether this part of the evidence is reliable or not. PW.2 Sub Inspector Satnam Singh has admitted that in site plan, the place where the police party spotted the accused and the place where the accused parked their vehicles are not shown. He also stated that they made efforts to join nearby shopkeepers

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in the investigation, but they refused to do so. He admitted that he had not recorded names and addresses of such shopkeepers in the ziminiyies. Even the owner of the brick-kiln was not located, nor his statement was recorded. Even if it is assumed that the accused had assembled at the brick-kiln, their presence would raise only suspicion. The fact that the appellants were found in a brick-kiln gave rise to the inference that they had perhaps collected to murder somebody or to commit some other offence but not of dacoity. No resistance was shown by the accused though they were allegedly armed with weapons. The prosecution witnesses also admitted that no ruqua was sent to the police station after receiving the secret information.

In the present case, Sub Inspector Satnam Singh (PW 2) is the complainant as well as investigating officer. The formal FIR was registered on the complaint of Sub Inspector Satnam Singh (PW 2). Sub Inspector Satnam Singh being complainant should not have proceeded with investigation. The said issue is no more res integra. In ***State By Inspector of Police, Narcotic Intelligence Bureau, Madurai, Tamil Nadu vs. Rajangam*** [2010\(15\) SCC 369](#), the Hon'ble Supreme Court has held as under:

*“9. The learned counsel appearing for the accused submitted that the controversy involved in this case is no longer res integra. In **Megna Singh v. State of Haryana, (1996) 11 SCC 709.**, this Court has taken a categorical view that the officer who arrested the accused should not have proceeded with the*

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investigation of the case. The relevant paragraph reads as under:

"4. We have also noted another disturbing feature in this case. P.W.3, Sri Chand, Head Constable arrested the accused and on search being conducted by him a pistol and the cartridges were recovered from the accused. It was on his complaint a formal first information report was lodged and the case was initiated. He being complainant should not have proceeded with the investigation of the case. But it appears to us that he was not only the complainant in the case but he carried on with the investigation and examined witnesses under Section 161 Cr.P.C. Such practice, to say the least, should not be resorted to so that there may not be any occasion to suspect fair and impartial investigation."

10. *The ratio of Megna's case has been followed by other cases. In another case in **Balasundaran v. State, 1999 (113) ELT 785 (Mad)**, in para 16, the Madras High Court took the same view. The relevant portion reads as under:*

"16. Learned Counsel for the appellants also stated that P.W. 5 being the Inspector of Police who was present at the time of search and he was the investigating officer and as such it is fatal to the case of the prosecution. P.W. 5, according to the prosecution, was present with PWs 3 and 4 at the time of search. In fact, P.W. 5 alone took up investigation in the case and he had examined the witnesses. No doubt the successor to P.W. 5 alone had filed the charge sheet. But there is no material to show that he had examined any other witness. It therefore follows that P.W. 5 was the person who really investigated the case. P.W. 5 was the person who had searched the appellants in question and he being the investigation officer, certainly it is not proper and correct. The investigation ought to have been done by any other investigating agency. On this score also, the investigation is bound to suffer and as such the entire proceedings will be vitiated."

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11. *In this view of the legal position, as crystallized in **Megna Singh's case (supra)**, the High Court was justified in acquitting the accused. We see no infirmity in the view which has been taken by the High Court in the impugned judgment.*

In our considered view, no interference is called for. The appeal, being devoid of any merit, is accordingly dismissed.

Appeal dismissed.”

As per the prosecution, Darshan Singh, Panchayat Member was joined in the investigation, but has not been examined but given up being won over by the accused. The prosecution withheld this witness who could have deposed about the version of prosecution witnesses being true or not. Therefore, adverse inference could be drawn against the prosecution as cross-examination of Darshan Singh would have given necessary leads to the defence. Moreover, shopkeepers nearby the brick-kiln were not joined in the investigation. The effect of non-examination of independent witness has been considered by a Division Bench of this Court in **Mahavir's case (supra)** wherein it has held as under:-

“14...Their evidence, in these circumstances, is required to be scrutinized carefully and cautiously. If the Court, after such scrutiny, comes to the conclusion, that the same is reliable, then mere non-joining of independent witness, pales into insignificance. The other evidence, produced by the prosecution, as would be discussed hereinafter, on

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*scrutiny, has been found to be unreliable. Since an independent witness was not joined, despite availability, though there was sufficient time, with the Investigating Officer, to do so, the case of the prosecution became doubtful. In **State of Punjab v. Ram Chand** 2001(1) RCR (Criminal) (DB) (P&H), no independent witness was joined despite availability, at the time of effecting recovery. In these circumstances, it was held that it was imperative, in the given circumstances, to join and examine an independent witness to vouchsafe the fair investigation. On account of this reason, the accused was held entitled to be given the benefit of doubt. In **State of Punjab v. Bhupinder Singh**, 2001 (1) RCR (Criminal), 356 (DB) (P&H), no independent witness was joined, though the recovery was effected, in a busy locality. Under these circumstances, it was held by this Court that the case of the prosecution became doubtful. In **Ritesh Chakarvarti v. State of Madhya Pradesh**, 2006(4) RCR (Criminal) , 480 (SC), no effort was made to join an independent witness despite availability. The names of the persons, from the public, who were present and asked to join the investigation, were not recorded in any document. Under these circumstances, it was held that the case of the prosecution was doubtful and ultimately, the accused was acquitted. The principle of law, laid down, in the aforesaid authorities, is fully applicable to the instant case. As stated above, a cloud of doubt, was cast, on the prosecution case, on account of non-joining of an independent witness, despite*

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availability, at the time of the alleged raid. The trial Court failed to take into consideration, this aspect of the matter, as a result whereof, it fell into an error in recording conviction and awarding sentence.”

So far as the recovery of arms from accused-Gurpreet Singh @ Bhola and Sandeep Singh alias Channi is concerned, evidence of the prosecution witnesses is consistent. From the evidence led by the prosecution, it is fully proved that .315 bore countrymade pistol with two live cartridges was recovered from accused-Gurpreet Singh and .12 bore countrymade pistol, which was loaded with live cartridges, was recovered from accused-Sandeep Singh. This Court has no reason to doubt the evidence of prosecution witnesses regarding their having apprehended the accused-Gurpreet Singh @ Bhola and Sandeep Singh alias Channi and seizure of fire-arms from them.

It needs to be mentioned here that appellants have been charge-sheeted under Section 401 of IPC, however, no finding has been recorded in this regard. On this account, all the appellants deem to be acquitted qua Section 401 of IPC.

As a result of above discussion, CRA-S-2302-SB-2003, CRA-S-2244-SB-2003 and CRA-S-504-SB-2004 are allowed, judgment of conviction and order of sentence qua the appellants in these three criminal appeals are set aside. The appellants in these three appeals are acquitted of the charges framed against them by giving them benefit of doubt. These three appellants are stated to be on bail. Their bail bonds and surety bonds stand discharged. The fine, if any, paid by them be

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refunded to them.

CRA-S-2125-SB-2003 and CRA-S-39-SB-2004 are partly allowed, judgment of conviction and order of sentence qua Section 402 of IPC are also set aside in respect of appellants-Sandeep Singh alias Channi and Gurpreet Singh @ Bhola whereas conviction and sentence including default clause are upheld for offence punishable under Section 25 of the Arms Act. However, keeping in view the fact that they have faced ordeal for approximately 14 years and it should be a sufficient mitigating circumstance to treat them leniently, this Court deems it fit that it is a fit case wherein sentence awarded to them can be reduced to already undergone and in lieu thereof they can be burdened with fine of ₹ 50,000/- each over and above already imposed. Ordered accordingly. Appellants-Sandeep Singh alias Channi and Gurpreet Singh @ Bhola are stated to be on bail. It goes without saying that if the amount of fine is not deposited, appellants-Sandeep Singh alias Channi and Gurpreet Singh @ Bhola will serve the remaining part of sentence as awarded by the trial Court under Section 25 of the Arms Act.

22.04.2015
parveen kumar

(PARAMJEET SINGH)
JUDGE