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

CRA-S-1037-SB -2010
Date of Decision : July 29th, 2016

Parveen Kumar @ Kala and others Appellants

Versus

State of Haryana Respondent

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

Present Mr. Aman Pal, Advocate,
for the appellants.

Mr. Munish Dev Sharma, AAG, Haryana,
for the respondent-State.

SHEKHER DHAWAN, J.

Custody certificates of the appellants produced today in the Court
are taken on record.

Main Appeal

Present appeal is directed against the judgment of conviction
dated 17.04.2010 and order of sentence dated 19.4.2010 passed by learned
Sessions Judge, Sonapat, whereby the appellants were convicted under
Sections 392 read with Section 397 of Indian Penal Code [IPC] and Section

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25 of the Arms Act, 1959 and sentenced as under:-

Name of the appellants	Under Section	Sentence	In default
Parveen Kumar alias Kala	392 read with Section 397-IPC and	to undergo Rigorous Imprisonment for a period of 7 years and to pay a fine of ₹5000/-.	to undergo Imprisonment for a period of six months.
	Section 25 of Arms Act.	to undergo Rigorous Imprisonment for a period of 1 year and to pay a fine of ₹1000/-.	
Lalit Kumar	392 read with Section 397-IPC.	to undergo Rigorous Imprisonment for a period of 7 years and to pay a fine of ₹5000/-.	to undergo Imprisonment for a period of six months.
Devender Kumar alias Bablu	392 IPC and	to undergo Rigorous Imprisonment for a period of 5 years and to pay a fine of ₹5000/-.	to undergo Imprisonment for a period of six months.
	Section 25 of Arms Act.	to undergo Rigorous Imprisonment for a period of 1 year and to pay a fine of ₹5000/-.	

All the sentences were ordered to run concurrently.

2. Relevant facts for the purpose of decision of this appeal; that on May 14, 2008, appellants Parveen Kumar alias Kala, Devender Singh alias Bablu and Lalit Kumar alongwith one Narender alias Sonu forcibly entered into the branch of Punjab National Bank, BMIET College Branch, Raipur [Sonipat] with an intention to loot cash of the bank. They put down the shutter of the bank. They looted the cash of the bank on gun point and fled

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away. The matter was reported to the police and during investigation, the police recovered one motor cycle bearing registration No. HR-06Q-0286 which was allegedly used in the commission of the alleged crime. Accused Parveen Kumar got recovered currency notes worth ₹1,50,000/- and one . 315 calibre pistol. Accused Devender Singh got recovered currency notes worth ₹2,50,000/- and one pistol used for commission of offence whereas a sum of ₹1,50,000/- was recovered from the possession of accused Lalit Kumar. The recovered amount and the weapon used in the commission of offence were taken into custody in the presence of the witnesses. Accused were arrested and after completion of investigation, challan was presented in the Court.

3. During trial, charge for commission of offence punishable under Section 392 read with Section 397 IPC and Section 25 of the Arms Act.

4. Charge under Section 216-A IPC was framed against accused Narender Singh alias Sonu, who was acquitted of the said charge by the trial Court.

5. During trial, prosecution examined as many as 12 witnesses. Accused persons were examined under Section 313 Cr.P.C. After considering the prosecution and the defence evidence on record, learned trial Court held the appellants guilty and convicted them for commission of offence and sentenced them vide judgment and order dated .

6. Aggrieved of passing of judgment of conviction and order of sentence, the appellants are before this Court by way of present appeal.

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7. During the pendency of this appeal, accused Devender Singh alias Bablu [appellant No.2 herein] died and his death certificate was taken on record as Mark-X. Vide order dated 20.05.2016, the present appeal qua Devender Singh alias Bablu was **dismissed** as abated.

8. It was urged by learned counsel for the appellants that they were falsely implicated and in fact, there was no proper test identification parade and the involvement of the accused-appellants has not been proved. The investigation proceedings are just paper formality especially because the disclosure statements of the accused were never suffered by them and the trial Court has completely ignored this fact.

9. Learned State counsel has submitted that the Court below has already considered the entire evidence and the accused persons were arrested and recoveries were effected from their possession in the presence of the witnesses and the present appeal deserves to be dismissed being without any merit.

10. Having considered the submissions made by learned counsel for the parties, this Court is of the considered view that the prosecution case mainly based on the testimony of Dharam Pal [PW-1], who was Manager of the bank where the alleged occurrence had taken place. He has given the detailed version of the occurrence and the witness identified the accused persons in the Court. Thereafter, the said witness, apart from giving telephone call to the College security, police was also informed by dialing No. 100. Large number of people had gathered on the spot. A sum of

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₹11,22,179/- was taken by the accused persons and thereafter, he had reported the matter to the police vide report Ex. PA. This witness was put to cross-examination, but his testimony remained unshaken and the Court below has rightly placed reliance upon the testimony of this witness. The version of PW-1 is duly supported and corroborated by PW-2, Surender Tanwar, who was working as Head Cashier of the same bank and he narrated the same version about the incident. Thereafter recovery of money was effected from the possession of accused persons. Recovery of weapon was also effected from the possession of accused on the basis of disclosure statements recorded in the presence of the witnesses. The defence version is the plea of denial only which does not find support. The testimony of PW-1 and PW-2 is duly supported by the testimony of PW-11, SI Om Parkash, who had visited the spot and recorded the statement of the complainant. He had also arrested accused Parveen Kumar and recovered currency notes from his possession. Thereafter, Parveen Kumar was interrogated in the presence of SI Om Parkash [PW-10]. The Court below has rightly appreciated the oral as well as documentary evidence available on the file.

11. The Test Identification Parade of the accused was to be carried and request in this behalf was made before Shri Rajesh Sharma, Judicial Magistrate Ist Class, Sonipat and the accused person had refused to participate in the Test Identification Parade. The said Magistrate appeared as PW-9 during the trial and proved order Ex. PJ/2 and Ex. PK/2 passed by him after recording the statements [Ex. PJ/1 and Ex. PK/1] of accused Lalit

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Kumar and Parveen Kumar.

12. In view of the above, the Court below has rightly appreciated the documentary evidence and convicted the appellants for the alleged offence and there is no merit in the appeal against judgment of conviction.

13. As regards appeal against Order of sentence dated 19.4.2010, learned counsel for the appellants took the plea that the accused persons are not previous convicts. While referring to the custody certificates of the appellants, produced today in the Court, he has stated that Parveen Kumar alias Kala has already undergone actual sentence of 5 years 8 months and 21 days, whereas appellant, Lalit Kumar has already undergone actual sentence of 6 years and 18 days and as such they have already suffered much agony of law by remaining in custody for such a long time. He has requested that the sentence awarded to the appellants may be reduced to the one already undergone by the accused-appellants.

14. Learned State Counsel submitted that there is no ground to take a lenient view in the matter.

15. Considering the totality of facts and circumstances of this case and the fact that two appellants have already undergone actual sentence of more than 6 years by remaining in custody during investigation and trial of the case and one of the appellants, namely Devender Singh alias Bablu died during appeal proceedings, while taking a lenient view, the present appeal is partly accepted qua the accused-appellants and the sentence awarded to them is ordered to be reduced to the one already undergone by them. They

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shall be released from custody if not required in any other case.

16. The appeal stands partly allowed in the above terms.

(SHEKHER DHAWAN)
JUDGE

July 29th , 2016
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Whether speaking/reasoned	:	Yes
Whether Reportable	:	Yes