

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

**Criminal Appeal S-865-SB of 2004
Date of Decision: July 28, 2016.**

Kuldeep and others	Versus	Appellants
State of Haryana		 Respondent

CORAM : HON'BLE MR. JUSTICE T.P.S.MANN

Present : Mr. A.P.S.Deol, Senior Advocate with
Mr. H.S.Deol, Advocate
for appellants-Kuldeep and Jitender @ Motu.

Mr. Keshav Partap Singh, Advocate
for appellant-Sukhbir.

Mr. Ashok S. Chaudhary, Addl. A.G., Haryana.

T.P.S.MANN, J.

The appellants were tried for committing offences punishable under Section 392 read with Section 397 IPC. Vide judgment and order dated 4/8.3.2004, learned Additional Sessions Judge (Fast Track Court), Bhiwani convicted them for the aforementioned offences and sentenced them to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.2,000/- each and in default of payment of fine, to further undergo simple imprisonment for a period of six months. The

period already undergone by them was ordered to be set off against the period of sentence awarded to them.

Aggrieved of their conviction and sentence, the appellants filed the present appeal, which stood admitted and notice issued to the State.

The case of the prosecution, in nutshell, is that on 12.5.1998 at about 1.00 p.m., complainant Ramdev started for his village Kheri Khumar, District Jhajjar while driving Tata-709 bearing registration No. HR-46-A-1339, belonging to his brother Bhagwan Dev. Anoop Singh son of Risal was with him in the vehicle. At about 11.30 p.m., when they reached near Bapora bye-pass, then all of a sudden, three young persons came in front of their vehicle and got it stopped. One person, who was having country made pistol, asked Jitender in a loud voice to pull the driver out of the vehicle. Upon this, Jitender pulled the complainant out of the vehicle and told Kuldeep to hit him with a lathi on his head, if he raised any noise. He also told Sukhbir to shoot him, if he tried to run away. The person, who was having a pistol in his hand pointed the same towards the complainant and the remaining two persons removed Rs.3,200/-, which he had kept in the pocket of his pant by rolling them in a hanker-chief with his name Ramdev inscribed on it in blue thread. The search

of the vehicle was also conducted. The accused snatched one bag, which contained the registration certificate, insurance and permit of the vehicle. Thereafter, the complainant and his companions were allowed to leave the spot with the vehicle. The accused were committing robbery upon the passers-by after getting their vehicles stopped.

Further case of the prosecution is that complainant Ramdev made statement before SI Ram Avtar, who alongwith his fellow police officials was present at Tosham bye-pass, near District Jail, Bhiwani in official jeep. On its basis formal FIR was registered. During the investigation of the case, all the three accused were arrested. After completion of necessary investigation and presentation of challan followed by commitment of the case to the Court of Sessions, the appellants were challaned for the aforementioned offences, to which, they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined SI Dharampal as PW1, Constable Ramesh Kumar as PW2, Dr. P.K.Charaya as PW3, Inspector Banwari Lal as PW4, Raj Kumar Photographer as PW5, Dr. Rajive Batish as PW6, Anoop Singh as PW7, Ram Dev as PW8, Satbir Singh as PW9, Joginder as PW10, Om Parkash as PW11 and Inspector Ram Avtar as

PW12.

When examined under Section 313 Cr.P.C., all the appellants denied the allegations levelled against them. In their defence, they did not examine any evidence.

After hearing learned counsel for the parties and on going through the record, the trial Court convicted and sentenced the appellants, as mentioned above.

Having heard learned counsel for the parties and on going through the evidence with their able assistance, this Court finds that in order to prove the charge under Section 392 read with Section 397 IPC, the prosecution examined PW7 Anoop Singh as PW7, who had been working as Conductor (Cleaner) with complainant Ram Dev on the date and time of the occurrence whereas complainant Ramdev was examined as PW8. Similarly, Satbir son of Risal Singh and Om Parkash son of Subh Ram, who, according to the prosecution were also robbed by the appellants on and around the same time and at the same place were examined as PW9 and PW11, respectively. All of them did state that they were robbed of different amounts of money yet none of them deposed that it were the appellants, who had snatched money from them, rather they testified that the accused present in the Court were not the persons, who had robbed and

snatched money from them. Apart from that, the prosecution also examined Joginder son of Ishwar Singh as PW10, who testified that on 13.5.1998, he was coming from Hisar towards Dadri via Bapora and driving trailer No. HR-46-9685 and when he reached near Bapora bye-pass, another trailer was already parked on katcha portion of the road. Three persons came on the road and tried to stop his trailer. He stopped his vehicle. Out of the three persons, two got the window of his trailer opened whereas the third asked Jitender to pull him down from the trailer. He also deposed that he did not know the names of all the accused but he was able to identify two of them, who were present in the Court. Those two were Jitender and Sukhbir. He also testified that they were the same persons, who had opened the window of his trailer. He, however, could not identify the third person. He also deposed that Jitender was holding a knife whereas Sukhbir had a lathi. The third person asked Jitender and Sukhbir that money be snatched from him and if he was not ready to part with the money, then he be shot at. He further deposed that it was Jitender accused, who pulled him down from the trailer and snatched Rs.3,600/- from his pocket. He reported the matter to the police.

As PW10 Joginder did not identify Kuldeep appellant before the trial Court, learned Public Prosecutor had requested

the trial Court to declare him as hostile. During the cross-examination by the learned Public Prosecutor, PW10 Joginder stated that he had not given the name of Kuldeep appellant in his statement Ex.PH. He denied the suggestion that he was falsely deposing to save Kuldeep by not identifying him.

Once, Kuldeep had not been identified by PW10 Joginder, it is difficult to uphold his conviction and sentence as recorded by the learned trial Court. Further, at no point of time either Jitender or Sukhbir appellant had tried to cause any injury to PW10 Joginder while snatching sum of Rs.3,600/- from his pocket. Rather, according to the prosecution PW10 Joginder was to be shot at in case he was not willing to hand over the money carried by him but the said shooting was to be by Kuldeep appellant, who was armed with a firearm at the time of the occurrence but as he had not been identified by PW10 Joginder, both Jitender and Sukhbir could not be held liable for committing offence under Section 397 IPC. However, both Jitender and Sukhbir had robbed an amount of Rs.3,600/- from PW10 Joginder, this Court has no other option but to uphold their conviction for the offences under Section 392 IPC only.

Resultantly, the appeal filed by Kuldeep is accepted and he is acquitted of the charges against him. The appeal of

Sukhbir and Jitender @ Motu is partly accepted by setting aside their conviction and sentence under Section 392 read with Section 397 IPC. Instead, they are convicted under Section 392 IPC and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.2,000/- each and in default of fine, to undergo simple imprisonment for six months.

Disposed of.

July 28, 2016
amit rana

(T.P.S. MANN)
JUDGE

Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No