

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

DATE OF DECISION: 06.09.2016.

1. **CRA-S-228-SB of 2013**
- | | | |
|-------------------------|---------------|-----------------------|
| Sukhbir Singh | Versus | ...Appellant. |
| State of Haryana | | ...Respondent. |
2. **CRA-S-2310-SB of 2012**
- | | | |
|-------------------------|---------------|-----------------------|
| Sunil Kumar | Versus | ...Appellant. |
| State of Haryana | | ...Respondent. |
3. **CRA-S-2425-SB of 2012**
- | | | |
|-------------------------|---------------|-----------------------|
| Babu @ Kalu | Versus | ...Appellant. |
| State of Haryana | | ...Respondent. |
4. **CRA-S-2453-SB of 2012**
- | | | |
|---------------------------|---------------|-----------------------|
| Hariom @ Havaladar | Versus | ...Appellant. |
| State of Haryana | | ...Respondent. |

CORAM: HON'BLE MR.JUSTICE SHEKHER DHAWAN

Present: Mr. Kewal Krishan, Advocate for
Mr. Anoop Sheoran, Advocate
for the appellant in (CRA-S-228-SB of 2013).

Mr. Pawan Hooda, Advocate
for the appellant (in CRA-S-2310-SB of 2012).

Mr. Sudhir Hooda, Advocate
for the appellant (in CRA-S-2453-SB of 2012).

Ms. Monika Tanwar, Advocate for
Ms. Savita Tanwar, Advocate
for the appellant (in CRA-S-2425-SB of 2012).

Mr. Munish Dev Sharma, AAG, Haryana.

SHEKHER DHAWAN, J.(Oral)

1. The above titled four appeals are being disposed of by this common judgment. Challenge herein is to the common judgment of conviction dated 17.07.2012 and order of sentence dated 19.07.2012 whereby the appellants were convicted and sentenced as under:-

Name	Under Section	Sentence	In default
1. Anil Kumar 2. Babu @ Kalu 3. Sukhbir Singh 4. Sunil Kumar	Section 395 of Indian Penal Code (for short, "I.P.C.")	to undergo Rigorous Imprisonment for seven years each and to pay of fine of ₹1000/- each.	To further undergo RI for one year each.
5. Hariom @ Havaladar @ Bhanu	Section 395 I.P.C.	to undergo Rigorous Imprisonment for seven years and to pay of fine of ₹1000/-.	To further undergo RI for one year.
	Section 25 of the Arms Act	to undergo Rigorous Imprisonment for one year and to pay of fine of ₹500/- .	To further undergo RI for one month.

2. Relevant facts for the purpose of decision of these appeals; that on 29.01.2010 at about 11:15 A.M., Inspector Jagbir Singh was present near Central Bank, Grain Market Pundri, while he was on patrolling duty. At that time he heard a noise. He alongwith Sub Inspector Anand Parkash rushed towards that side. During that process, they apprehended two young boys who later on disclosed their names to be Hariom and Babu @ Kalu who are appellants herein. At that time, Hariom was having in his possession one country made pistol of .315 bore and Babu was having a bag containing currency notes worth Rs.4,60,000/-. One live cartridge was also recovered from the pocket of Hari Om. The police recorded the statement of the complainant. Pistol cartridge and bag as well as currency notes were converted into parcels and sealed at the spot and were taken into police

possession. During investigation, motorcycle bearing registration No.DL-85-AK-1797 was also recovered from the spot and was taken into police possession.

3. As per complainant Arjun Dass, he was working as Muneem/Clerk at the shop of M/s Ram Parkash & Sons Commission Agent, New Grain Market, Pundri and as a part of his duty he used to withdraw the amount from State Bank of India, Pundri. On 29.01.2010, at about 11:15 A.M., Anil Gupta, Proprietor of M/s Ram Parkash & Sons handed over a cheque of Rs.4,60,000/- for withdrawal of the amount from the bank and accordingly he visited the bank on his bicycle alongwith a cloth bag. After encashment of cheque he had put the currency notes in the bag. While returning back on his bicycle, at about 12:00 P.M., when he reached in front of M/s Ram Lubhaya Ram Parkash Commission Agent, Shop No.21, three young boys riding on a motorcycle and two young boys riding on another motorcycle, hit their motorcycle against the bicycle of the complainant, as a result of which, the complainant fell down on the ground and the accused persons snatched the bag from his hands at pistol point. On raising alarm, police and other people attracted there and they had apprehended two assailants at the spot. Subsequently, during investigation, remaining accused Sunil Kumar and Sukhbir Singh were arrested. Accused Anil Kumar was also arrested and later on but he absconded and was declared Proclaimed Offender.

4. After completion of investigation proceedings, challan was presented in the Court for trial.

5. During process of trial, learned trial Judge framed charge against accused persons. After recording of statement of prosecution

witnesses and examination of accused under Section 313 Cr.P.C. and after considering the prosecution version as well as the defence evidence on record, held all the appellants guilty and convicted and sentenced them as detailed in Para No.1 above.

6. Learned counsel for appellants Sunil Kumar and Sukhbir Singh contended that there was nothing against both the appellants because they were never apprehended on the spot nor there was recovery of any country made pistol or currency notes from them. More so, the most important witness i.e complainant PW10 Arjun Dass had not identified either of the appellants on the spot nor there was any identification parade so as to connect appellants-Sunil Kumar and Sukhbir Singh except for the identification by the police officials. Learned counsel for appellant Sunil Kumar further contended that the only piece of evidence against appellant Sunil Kumar is the statement of PW9 Thambu Ram, who had deposed in his examination-in-chief that motorcycle bearing registration No.HR-31-D-8173 was actually being used by Sunil Kumar but in the cross-examination he also admitted that the same was handed over to him in February, 2010 whereas the alleged occurrence is of January 29, 2010.

7. Learned State counsel while arguing on this point submitted that though complainant Arjun Dass has supported the prosecution case, but could not identify the main culprit because he was under threat and pressure. However, at the same time police officials who had apprehended the two out of five accused on the spot, had identified the accused persons.

8. Learned counsel for appellant Babu @ Kalu submitted that as per prosecution case, there is recovery of currency notes worth Rs.4,60,000/- from the appellant but the prosecution version is not

supported by the statement of any eye witness. This fact assumes much more importance especially when the only material witness, Arjun Dass examined as PW10 turned hostile and had not deposed anything about the identification of appellant Babu. There was no separate Test Identification Parade so as to connect the appellant with the alleged crime. Learned counsel for the appellant also submitted that even the basic ingredients of such offence under Section 395 IPC are not attracted in the present case.

9. Learned State counsel while arguing on this point contended that appellant Babu was apprehended on the spot and recovery of currency notes of Rs.4,60,000/- was effected from his possession, so the offence against appellant Babu had certainly been proved beyond shadow of doubt. Even complainant Arjun Dass had deposed about the entire incident. As regards to the identity of the accused persons, the same stands established in the statements of police officials who had apprehended appellant Babu on the spot, so appeal against appellant Babu be dismissed.

10. Learned counsel representing appellant Hariom submitted that the appellant has already undergone sentence of more than three years and five months and the alleged recovery is of country made pistol, whereas there is no eye witness to the alleged recovery. PW10 Arjun Dass has nowhere deposed that Hariom was involved in the offence or he had seen Hariom on the spot. Again there is no test identification parade in case of appellant Hariom.

11. Learned State counsel submitted that appellant Hariom was apprehended alongwith country made pistol and live cartridge on the spot and the entire incident has been narrated by Arjun Dass. There is no dispute about identification of appellant Hariom and he has been rightly been

convicted and sentenced as per law, so appeal against him be also dismissed.

12. Having considered the submissions made by learned counsel for both the sides and appraisal of record, this Court is of the considered view that as regard to appeals having been filed by appellant Sunil Kumar and Sukhbir Singh there is no substantive material against them so as to convict and sentence them for offence under Section 395 IPC. The only allegation against appellant Sunil Kumar is regarding recovery of motorcycle No.HR31-D-8173, but he was not the owner of the vehicle on the date of occurrence i.e. 29.01.2010 nor he was user of the same on that day. It is established on the file that he was not apprehended on the spot. Similarly, there is no material to connect appellant Sukhbir Singh with the alleged offence under Section 395 IPC and there is no recovery as well. Hence, the appeals filed by appellants Sunil Kumar and Sukhbir Singh are accepted and judgment of conviction and order of sentence qua both these appellants is set aside.

13. As regard to appeal having been filed by appellants Babu @ Kalu and Hariom @ Havaladar, their case is certainly distinguishable from remaining co-appellants. They were apprehended on the spot. Babu was found to be in possession of currency notes of Rs.4,60,000/- whereas Hariom was found to be in possession of country made pistol with live cartridge. Both of them were apprehended by PW13 Inspector Jagbir Singh on the spot alongwith above mentioned articles. Mere contention having been raised by learned counsel for the appellants that no independent witness was joined, is without any basis because the police officials are as good witnesses as witnesses from the general public. The real test of law is

that the witnesses must stand-by the test of cross-examination. In the present case, PW13-Inspector Jagbir Singh has given detailed and correct narration of incident and he was subjected to lengthy cross-examination. The trial Magistrate has rightly relied upon the testimony of Inspector Jagbir Singh PW13 and other police official namely, PW12 Sub Inspector Anand Parkash who was also present on the spot at the time of alleged recovery. Similarly, Hariom was apprehended on the spot and recovery of country made pistol was effected from him and learned trial Judge has rightly held the appellant guilty while relying upon the testimony of PW12, Sub Inspector Anand Parkash and PW13, Inspector Jagbir Singh alongwith testimony of PW10 complainant Arjun Dass and the appeals having been filed by both these appellant against judgment of conviction is without any merit and same stand dismissed.

14. As regard to appeals against order of sentence of both appellants Babu @ Kalu and Hariom @ Havaladar, learned counsel for the appellants contended and they have already undergone more than three years' of actual sentence against the awarded sentence of seven years and that they have already suffered much having been in conflict with law while remaining in custody, during investigation, trial of the case and pendency of appeals. Considering the matter in its entirety, the order of sentence of both the appellants Babu @ Kalu and Hariom @ Havaladar is modified to the effect that both appellants Babu @ Kalu and Hariom @ Havaladar are sentenced to undergo Rigorous Imprisonment for a period of three years and the same shall be set off against the sentence already undergone by them.

15. Resultantly, appeals filed by two appellants Sukhbir Singh and Sunil Kumar i.e. CRA-S-228-SB of 2013 and CRA-S-2310-SB of 2012 are

accepted and the judgment of conviction and order of sentence qua appellants Sukhbir Singh and Sunil Kumar are set aside and they are acquitted of the charge. They be set at liberty if not required in any other case. The appeals filed by Babu @ Kalu and Hariom @ Havaladar i.e. CRA-S-2425-SB of 2012 and CRA-S-2453-SB of 2012 are accepted partly in above terms.

(SHEKHER DHAWAN)
JUDGE

06.09.2016.

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Whether Speaking/reasoned	:	Yes
Whether Reportable	:	Yes