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

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**CRA-S-2286-SB-2003  
Date of Decision: 06.02.2017**

Subhash Chander and another

..... Appellants

Versus

State of Haryana

..... Respondent

**CORAM: HONBLE MR. JUSTICE SUDIP AHLUWALIA**

Present: Mr. Ashok Arora, Advocate,  
for the appellants.

Mr. Vijesh Sharma, D.A.G., Haryana.

**SUDIP AHLUWALIA, J.**

The appellants in this case were convicted by the Ld. Additional Sessions Judge, Fatehabad (referred as 'the trial Judge') of the offence under Section 392 of the Indian Penal Code (for short 'the IPC'). They had been charged with the accusation that, on 22.03.2001, in the area of Village Hijrawan Khurd, they committed theft of an amount ₹50/- from complainant-Bhagwan Dass and another theft of ₹200/- and of a wrist watch from one Rur Singh while putting said PW on fear at pistol point. They were also separately charged with the offences under Sections 398 and 506 IPC with the accusations that they committed robbery, being armed with deadly weapon i.e. pistol, and thereby also caused criminal intimidation to the aforesaid victims.

2. However, after conclusion of trial, the Ld. trial Judge held them guilty of offence under Section 392 IPC only, for which he awarded a sentence of Rigorous Imprisonment for Five years, apart from imposing a

3. They jointly filed the appeal. But during the pendency of the same, the appellant No.1-Subhash Chander died, on account of which, the appeal has abated against him. This Court has, thereafter, heard the submissions of both sides in relation to the merits of the surviving appellant's conviction.

4. The factual matrix of the occurrence as noted by the Ld. trial Judge is set out as below:

*“2. In short the case of the prosecution is on 22.3.2001 a police party headed by SI Parkash Chander (PW1) was present near Ratia chungi Fatehabad in connection with patrolling. Complainant Bhagwan Dass (PW2), Rur Singh (PW4), Kishan Chand, Sarpanch (PW5) and one Om Parkash met them. Statement of complainant Bhagwan Dass was recorded, according to which he used to manufacture furniture in village Hijrawan Khurd. On that day he had gone to village Ratta Tibba to meet some relatives. At about 7.30 p.m. he was going back on a bicycle towards village Hijrawan Khurd. When he was 3 Km. short of village Hijrawan Khurd, from that side a motor-cycle No. HR 08A- 6432 came being driven by the accused. They got stopped the complainant. One of them was having an illicit pistol and the other caught hold of the complainant. The pistol was planted on his chest and he was told to hand over to them whatever he had. The accused forcibly took out Rs.50/- from his pocket and threatened to shoot him in case he disclosed the happening to anybody. In the meantime, Rur Singh son of Partap Singh, caste Rai Sikh, resident of Rania, reached there. He was also stopped by the accused. Similar treatment was given to him and he was robbed of Rs.200/- and a wrist watch.*

*3. Meanwhile from the side of village Hijrawan Khurd, Kishan Chand, Sarpanch (PW5) and Om Parkash son of Mohan Ram reached there in a jeep. The complainant, Rur Singh, Kishan Chand, Sarpanch and Om Parkash managed to*

*nab the accused along with the motor-cycle. The accused disclosed their names and addresses. When the aforesaid four persons were going to report the matter to the police; near Ratia Chungi the aforesaid police party was found available. The accused were handed over to the police alongwith the pistol, two live cartridges and a motor cycle. The motor cycle, pistol and the ammunition were taken into possession by the police. Rough sketch of the pistol (Ex. P4) was prepared.”*

5. Ld. counsel for the surviving appellant in order to challenge the conviction has raised a number of points which according to him clearly break the chain of credibility in the prosecution version, on account of which, the judgment is liable to be set aside. Those points are enumerated as below:-

- (A) That there is a major discrepancy in relation to the watch allegedly stolen by the convicts from the possession of victim Rur Singh (PW4). The recovery memo (Ex. P-3) shows the watch recovered from the deceased convict Subhash Chander was of “Sonika” make, whereas the watch actually produced in Court during trial was of “HMT” make;
- (B) In the back-drop of this discrepancy regarding the actual make/brand of the stolen watch, the prosecution side had failed to examine the Moharir Head Constable (MHC), who had allegedly retained custody of the seized item during the intervening period. Even the Malkhana Register was not led into evidence to explain how this discrepancy came to have occurred;

- (C) That the Arms Expert's Report (Ex. P-8) does not mention anywhere that the fire-arm/country-made pistol allegedly recovered from the accused was in 'actual working condition', thereby implying that there could have been no occasion to put the alleged victims of the incident in fear of death or grievous hurt;
- (D) That admittedly, the serial numbers of the currency notes allegedly taken by the convicts from the victims and subsequently recovered from them were not noted down, nor such seized case property was appropriately sealed. Similarly, the other material exhibits being the seized fire-arm and ammunition were not sealed properly thereby creating doubt on credibility of the prosecution case;
- (E) That the Ld. Trial Court denied a fair opportunity of leading defence evidence to the convicts since both of them in answering the last question put to them during their examination under Section 313 Cr.P.C. had stated that they wanted to lead evidence from their side. However, the Court without granting such opportunity closed their evidence and pronounced the judgment of conviction on that very date, i.e., the 12.09.2003, which in the given circumstances, is perfunctory and not well founded;
- (F) That the Recovery Memo (Ex. P-3) itself clearly bears the name and date of the FIR registered, thereby

indicating that it was actually drawn up subsequently, and the recovery itself did not lead to registration of the FIR;

(G) In addition, according to Ld. counsel for the appellant, there are material discrepancies in the statements of various prosecution witnesses, which again have the effect of breaking the requisite chain of events, which otherwise could have had the effect of making the entire story credible beyond any reasonable doubt. Those contradictions may be briefly summarized as follows:-

(i) That according to the I.O. (PW-1) only two cartridges were recovered in this case which is also noted in the relevant recovery memo, whereas according to the complainant (PW-2) as many as five cartridges were recovered in the case including two from the accused and another three which were allegedly lifted by the Police 'from the spot';

(ii) That Rur Singh (PW-4) had stated that he left for his home from Ratia Chungi itself and he remained present only till production of the accused persons there. He further stated that he did not put his signature or thumb impression on any document in the case, whereas the recovery memo (Ex. P-3) actually bears his thumb impression;

(H) It has also been emphasized on behalf of the appellant that 'no independent witness was examined from the

prosecution side', nor the witness deposing before the Court described the specific role of each of the accused persons in the alleged occurrence;

- (I) It is also submitted that the motorcycle allegedly seized from the accused was not produced before the Court. Further according to its Registration Book, it was owned by some 'Banarsi Dass', who was not examined by the prosecution in order to throw light as to how the accused persons came in possession of the vehicle.

6. On the other hand, Ld. State counsel has while producing the custody certificate of the appellant supported the judgment of Ld. Trial Court by arguing that the judgment is well-balanced and well-founded, being based on the evidence on record, which was properly considered by Ld. Court. This Court is now to consider whether the impugned judgment is sustainable in the light of the aforesaid submissions raised on behalf of the appellant.

7. In relation to points (A & B) mentioned in para 5 earlier, it may be observed that mere difference in nomenclature of the seized/robbed article may not be altogether fatal to the prosecution case. This is so because “Sonika” could as well be the name of the model of the robbed watch, among several models manufactured under the domain name of “HMT”. The appellants' side has been unable to place any material on record to indicate that “Sonika” in its own right is a full fledged domain name representing the particular brand purportedly manufactured by any different Company. It would also be too much to expect of the victims/witnesses coming from a rural back-ground, to be so distinctly aware of the settled

differences between a manufacturer's 'Domain Name' and a 'Model'.

8. The point (C) mentioned in para 5 above again is not very convincing, considering that for the purpose of committing robbery by 'extortion' it is not necessary that the weapon or fire-arm with which the victim is put in fear of death or grievous injury, must have to be in working order. Whether a fire-arm is actually in working order or not, cannot be known by the person so put in fear at the given crucial time. If the same is found to have been unusable later on after appropriate tests by the concerned expert, the effect would be only to negate any involvement of the offences connected with the Arms Act, but not those falling under the IPC in the nature of extortion or robbery, which has exactly been the course adopted in the present case. Regarding the alleged non-sealing or not drawing up of inventories of the currency notes, as argued at point (D), earlier, it may be mentioned that the total amount of money robbed was ₹50/- from the complainant-Bhagwan Dass and an additional amount of ₹200/- only from witness-Rur Singh. The same would ordinarily connote that only a few currency notes subject to a minimum of 3 in number were robbed from the two victims, who obviously were not carrying any more cash on their respective persons at the relevant time. So the non-sealing or non-drawing of inventory of those currency notes would again be not very fatal, as the victims could rightly recognize the same which were in their custody till only a short while ago.

9. Point (E) is altogether without any substance. It has been submitted before this Court that in spite of the answers given by the two convicts in their statements under Section 313 Cr.P.C. that they wanted to lead evidence from their side, such opportunity was denied to them by the

Ld. Trial Judge. It is found to be fallacious on perusing the original LCR. It is seen from the relevant order passed on 12.09.2003 that after examination of the accused had been completed, their own defence counsel had submitted before the Court that their evidence be treated as closed.

10. The submission under point (F) of preceding paragraph 5 is, however, found to be correct on perusal of the LCR. It is seen that the Recovery Memo at the top of page-2 (Ex. P-3), actually bears the distinct number of the FIR i.e. 157 dated 22.03.2001, thereby indicating that it was undoubtedly drawn up after the FIR had already stood registered. Similarly, the thumb-impression of the victim/witness Rur Singh is also seen on the said recovery memo, which would, therefore, automatically negate his statement that he directly left for home from Ratia Chungi or that he did not put his signature or thumb-impression on any document.

11. The submission that 'no independent witness was examined from the prosecution side' as noted in point (H) is, however, not convincing, as the prosecution is under no obligation to needlessly call any person as witness only to do away with a general presumption associated with persons actually involved in the occurrences as being 'interested'. However, the failure to produce the Registration Book of the motorcycle belonging to some 'Banarsi Dass', or even to bring that registered owner before the Court to authenticate the veracity of this claim, does appear to be a somewhat serious error.

12. In the totality of the circumstances of this case, therefore, this Court is of the view that there is no manifest perversity in the findings arrived at by the Ld. Trial Judge in holding that the two accused persons were actually involved in the offence of 'robbery' at the relevant date and

time. It is, however, to be remembered that the actual acts of robbery were all committed by the co-convict (since deceased) Subhash Chander, and the present appellant was only his accomplice in the crime. Therefore, considering the nature of his limited involvement in the occurrence, his case is found to be even better than that of the convict in Criminal Appeal No.63-SB of 1998 in "Dhian Singh vs. State of Punjab" reported as 2006(3) RCR Criminal 493, wherein an accomplice convicted under Section 392 IPC, who had similarly not himself robbed, but had pushed the victim out of the car in which the robbery was committed. The appellant in that case, after having been originally sentenced to undergo RI for 5 years, was ordered to be released by reducing the sentence of imprisonment to RI for 3 years, by a Coordinate Bench. Other Coordinate Benches of this Court also have similarly reduced the sentence after conviction under Section 392 IPC in Criminal Appeal No.287-SB of 1989 titled as "Nagina and ors. vs. State of Haryana" and "Ram Udgar Singh vs. State of Bihar", reported in 2003(3) RCR Criminal 194; and "Ganesh Vs. State of Haryana" reported in 2007(3) RCR (Criminal) 415. In the present case however, from the Custody Certificate of the appellant (placed on record by the State counsel on 03.02.2017), it is seen that the present appellant has undergone actual sentence of 3 years, 4 months and 4 days, which in the given facts and circumstances, does appear to be adequate to meet the ends of justice.

13. The appeal is, therefore, disposed of with the observation that while conviction of the appellant No.2-Satbir @ Bhira son of Rull Ram is upheld, but the sentence awarded to him is reduced from 5 years RI to the term already already spent by him in custody. He shall, however, have to deposit the fine imposed upon him by the trial Court, if already not so

deposited. The Ld. Trial Court be informed accordingly, and the original LCR be also sent back.

06.02.2017  
*Bhumika*

(SUDIP AHLUWALIA)  
JUDGE

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|-------------------------------|-----|----|
| Whether speaking / reasoned : | Yes | No |
| Whether Reportable :          | Yes | No |