

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

1.

CRA-S-1842-SB-2011 (O&M)
Date of decision : 17.09.2019
- Kuldeep Singh @ Keepa and another
- ...Appellants
- Versus
- State of Haryana
- ...Respondent
2.

CRA-S-3229-SB-2013 (O&M)
Date of decision : 17.09.2019
- Mandeep @ Deepa
- ...Appellant
- Versus
- State of Haryana
- ...Respondent
3.

CRA-S-3397-SB-2013 (O&M)
Date of decision : 17.09.2019
- Mandeep @ Deepa
- ...Appellant
- Versus
- State of Haryana
- ...Respondent
4.

CRA-S-4518-SB-2014 (O&M)
Date of decision : 17.09.2019

Kuldeep Singh @ Keepa

...Appellant

Versus

State of Haryana

...Respondent

5.

CRA-S-4935-SB-2014 (O&M)
Date of decision : 17.09.2019

Kuldeep Singh @ Keepa

...Appellant

Versus

State of Haryana

...Respondent

6.

CRA-S-2070-SB-2015 (O&M)
Date of decision : 17.09.2019

Jasbir Singh

...Appellant

Versus

State of Haryana

...Respondent

7.

CRA-S-2191-SB-2015 (O&M)
Date of decision : 17.09.2019

Jasbir Singh

...Appellant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Sanjeev Sharma, Legal Aid Counsel for the appellant(s)
(In CRA-S-1842-SB-2011)

Mr. Nandan Jindal, Advocate for the appellant(s)
(In CRA-S-4518-SB-2014 and CRA-S-4935-SB-2014)

Mr. Gautam Kumar, Advocate for
Mr. Satnam Singh Gill, Advocate for the appellant(s)
(In CRA-S-3229-SB-2013 and CRA-S-3397-SB-2013)

Mr. Sanjeev Majra, Advocate for the appellant(s)
(In CRA-S-2070-SB-2015, CRA-S-2191-SB-2015)

Mr. Vikas Chopra, Deputy Advocate General, Haryana.

ANIL KSHETARPAL, J.

In India, the police force, which has also been assigned the work of Investigating Agency, plays an important role in criminal justice delivery system. Hence, the expectations from the police force are high. However, if the police force itself starts falsely implicating the accused in a revengeful/retaliatory manner on the suspicion that one of their colleague had been killed or murdered by the aforesaid accused, the Court is forced to make certain observations. This Court on re-appreciation of the evidence finds that this set of appeals is one such instance. Hence, this Court in strongest words deprecate the police officials who indulged in false implication of the appellants/convicts herein in as many as 16 criminal cases within a span of 12 days. Hence, let a copy of this judgment be forwarded to the Home Secretary, State of Haryana and Director General of Police for information. In these cases, false implication of the appellants cannot be ruled out.

By this judgment, CRA-S-1842-SB-2011, CRA-S-3397-SB-2013, CRA-S-2070-SB-2015, CRA-S-2191-SB-2015, CRA-S-3229-SB-2013, CRA-S-4518-SB-2014 and CRA-S-4935-SB-2014, shall stand disposed of.

Basically, these seven criminal appeals can be further subdivided into three following criminal cases:-

- a) CRA-S-1842-SB-2011, arises out of criminal case registered on the basis of FIR No.67 dated 08.10.2009,
- b) CRA-S-4935-SB-2014, CRA-S-2191-SB-2015 and CRA-S-3397-SB-2013 arise from FIR No.213 dated 08.10.2009
- c) CRA-S-3229-SB-2013, CRA-S-2070-SB-2015 and CRA-S-4518-SB-2014 arise from FIR No.216 dated 09.10.2009.

The reasons why all these seven appeals are being taken up together and disposed of, are as under:-

- 1) It is the case of the appellants that they are suspected to have killed/murdered a Assistant Sub Inspector Mohinder Singh, for which FIR No.61 dated 08.10.2009 under Sections 302, 485, 34 of the Indian Penal Code, Police Station Naggal, District Ambala had been registered and the police force as a class in retaliation have registered in all the nearby districts as many as 16 false FIRs against them in which they have been later on falsely implicated.
- 2) It is undisputed that out of those 16 FIRs, which have been registered, appellants have already been acquitted in 5. All these 16 FIRs are blind FIRs, registered within a span of 12 days.

Allegations of the prosecuting agency in all these 7 appeals

which have come up for disposal together are that appellants have committed offences of robbery, dacoity while giving threat to life. At this stage, it would be appropriate to notice the case set up by the prosecution in each of the case in detail.

Facts as noticed by the Court of Sessions in CRA-S-4518-SB-2014 arising from FIR No.216 dated 09.10.2009 registered under Sections 397, 341, 392, 506 of the Indian Penal Code and 25 of the Arms Act at Police Station Sadar, Kaithal, are extracted as under:-

“That on 9.10.2009, Sub Inspector Balbir Singh was present at Police Post Sangatpura where complainant Bijender Kumar, who has appeared in the witness box as PW3, came and moved a written complaint Ex.PA to the effect that on 7.10.2009, he was proceeding towards Kaithal from his village Dhanoury by his motorcycle bearing registration No. HR-32C-3750. When he reached two acres ahead of bus stand Dilowali, the accused, who were riding on a motorcycle, had stopped him and looted his purse containing about Rs. 2000/-, two ATM cards, a cell phone, containing two Sims bearing No. 99912-24527 and 94676-61408, his identity card including the keys of the motorcycle and thereafter the accused fled away by their motorcycle. The articles belonging to the complainant were looted under the threat of a gun point as one of the assailants was also armed with a pistol.

3. *After recording police proceedings Ex.PA/3 by Sub Inspector Balbir Singh, who has been examined as PW6, it was sent to the police station Sadar Kaithal for registration of FIR and on the basis of written complaint and police proceedings a formal FIR Ex.PA/1 was recorded by ASI Karamvir Singh, who has been examined as PW1 and the*

endorsement Ex.PA/2 on the original complaint was also made thereon. The investigations were commenced and since the accused were already arrested by the police of Police Station Pehowa in FIR No.340 dated 16.10.2009 under sections 398, 401, 307 of the Indian Penal Code and 25 of the Arms Act, they were interrogated and during interrogation, they have also admitted about their involvement in the present crime including the recovery of weapon which is subject matter of the present case and as such they were arrested in the present case and the accused had also suffered disclosure statements, on the basis of which, the recoveries were effected from them. Statements of the witnesses were recorded, site plan of the place of occurrence was prepared. After completion of investigations, a final report under section 173 of the Code of Criminal Procedure was prepared and presented in the court for trial of the accused.”

Similarly, facts as noticed by the Court of Sessions in CRA-S-1842-SB-2011 arising from FIR No.67 dated 08.10.2009 registered under Sections 392 and 397 of the Indian Penal Code at Police Station Guhla, are extracted as under:-

“2. On 8.10.2009 at around 2.30 AM, Anand Parkash Sub Inspector/SHO Police Station Guhla along with Constable Rajinder Singh, Constable Raj Singh, EASI Parma Nand was going on Kaithal-Cheeka Road towards Village Theh Mukerian for the purpose of patrolling in Govt. Vehicle No.HR-64/0990 which was being driven by EHC Ramesh Kumar. When he reached Cheeka Chowk Cheeka, Sandeep Kumar son of Bahadur Singh appeared and got recorded his statement to the effect that he was resident of Village Kichhana, Police Station Rajound. He was working as a

cashier with Hari Om Industries, Khal Bhandar, Kaithal Road Cheeka. On that day, at around 7.37 PM, he along with Kuldeep Singh son of Balbir Singh, his cousin brother had started from village Kichhana to Cheeka on motorcycle C.D. Deluxe red colour bearing temporary No.HR99 DY 5509. At around 9.00 PM, when they were crossing Kangthali-Bhuna Road, on Bhuna turn a young man with muffled face signaled them to stop. He did not stop his motor cycle. At around 9.15 PM, when they reached near Peedal Minor Kaithal-Cheeka Road, from the side of Kaithal three young persons came on Pulsar Motor Cycle without number black colour. They crossed his motor cycle and parked their motor cycle in front of them, as a result of which he had to stop his motor cycle. All the three persons were with muffled faces. They were tall in structure. They were wearing black jeans. One person was wearing white shirt. The person wearing white shirt was sitting on the back seat, last of all and was holding a pistol in his hand. All the three persons came to them. The person who was holding pistol asked them as to why they did not get stopped his motor cycle, when they were signaled to stop. The person who was wearing white shirt asked them to hand over whatever they were having. The other two persons took out mobile phones and purses from both of them. He was having mobile phone number 9467047387 marka Chinese NKTEL. In his red coloured purse, he was having Rs.500/-, five currency notes of Rs.100/- each and his driving licence. The mobile number of Kuldeep Singh was 9991546267 Micro Max. He was also having Rs.4000/-, eight currency notes of Rs.500/- each, voter-card, driving licence. All these articles were forcibly snatched. Those three persons locked his motor cycles, took out the keys and ran away along with their motor cycle. They could be recognized on seeing them.

The motor cycle was dragged and it was parked in Hari Om Industries Cheeka and informed Bahadur Singh son of Tek Chand, his father who was working in the same factory.

3. *FIR under Sections 341 and 392 IPC and Section 25 of Arms Act was registered against three unknown persons. Accused Kuldeep and Jasbir Singh were in police custody in FIR No.118 dated 7.10.2009 under Sections 392 IPC and 25 of the Arms Act, Police Station Siwan. During interrogation of that case both of them had made confession with regard to the present occurrence. Both accused namely Kuldeep and Jasbir were joined in the present case by ASI Prithvi Singh. During interrogation they made disclosure statements on 21.11.2009 and also named third person as Mandeep Singh. Since the police could not arrest accused Mandeep Singh, challan against accused Kuldeep and Jasbir was submitted in the court on 15.1.2010. Later on accused Mandeep was arrested in FIR No.118 dated 7.10.2009 under Sections 392 IPC and 25 of the Arms Act and was lodged in Police Station Siwan. On 3.4.2010 ASI Prithvi Singh joined him in the present case and also formally arrested him. His supplementary challan was submitted in the court on 14.5.2010.”*

Facts of the case of the prosecution as noticed by the Court of Sessions in CRA-S-2191-SB-2015 arising from FIR No.213 dated 08.10.2009 registered under Sections 397, 341 of the Indian Penal Code at Police Station Sadar, Kaithal, are extracted as under:-

“In brief the prosecution case is that on 07.10.2009 at about 9.00 p.m. a message was received from Police Control Room regarding snatching of money and firing shots from a weapon in the air whereupon, ASI-Kanwarpal alongwith his colleagues went to T-Point Ssirta in the area of village

Khanpur. It is further alleged that when they were doing Nakabandi then Naresh and Jagroop met Sub Inspector and Naresh recorded a statement. In his statement, the complainant got recorded that he is owner of two Tata 709 vehicles and he himself maintains his vehicles. He drives Tata 709 bearing registration No.HR37-6699 and the second vehicle was being driven by Rohtash son of Pale Ram. On 7.10.2009 at about 8.00 p.m. The complainant was going on motorcycle bearing registration No.HR012-7116 for Sirta from Kaithal. It is further alleged that near T Point in the area of Khanpur, Jagroop-co-villager also sat on his motorcycle. That near Sirta drain, three boys came on a motorcycle Pulsar and obstructed their way. One of them fired in the air and the second boy snatched the bag containing vegetables and third boy took out Rs.1800/-, a diary, driving Licence, mobile No.94165-57849, Jagroop was also robbed of Rs.140/-. That they could recognize those boys if they are brought before them and after committing the crime, they sped away on the same motorcycle towards village Khanpur. A request was made to take legal action. Upon it, offence punishable under Sections 341, 392, 397 of Indian Penal Code and Sections 25-54-59 of the Arms Act was found to have been committed, therefore, present case was got registered. ASI Prithvi Singh during the investigation in case FIR No.118 dated 07.10.2009 under section 392 of IPC and section 25-54-59 of Arms Act Police Station, Siwan came across, the person who confessed to have committed the instant crime, whereupon Kuldeep and Jasbir were arrested in this case. The robbed articles were got recovered from accused Kuldeep Singh whereas Jasbir also got recovered diary and .315 bore country made pistol used in the commission of crime whereas other articles were got recovered by accused Jasbir and Kuldeep in case FIR

No.67 of Police Station, Guhla. After completion of usual investigation, challan against the accused for commission of offences punishable under Sections 341, 392, 397 of IPC and Section 25-65-59 of the Arms Act was prepared and presented in the Court. Initially, third accused Mandeep could not be arrested and therefore, challan against him was submitted in the court later on his arrest on 04.04.2010.”

It may be noted here that the appellants have been convicted in FIR No.61 dated 08.10.2009 under Sections 302, 485, 34 of the Indian Penal Code, Police Station Naggal, District Ambala, concerning the murder of a police official Assistant Sub Inspector Mohinder Singh and appeal against the aforesaid judgment is pending before the Division Bench.

Learned counsels for the appellants while drawing attention of the Court to the facts of each case, have submitted that the appellants have been falsely implicated and consequently wrongly convicted by the Court of Sessions. They submitted that all these FIRs are result of reaction of the police officials as the appellants were suspected of killing their colleague.

Learned counsels while drawing attention of the Court, have submitted that in these 3 criminal cases from which 7 appeals have come up for hearing, the allegations are of similar nature and almost at the same within a short duration. They further submitted that all these FIRs are blind FIRs and the appellants have been later on implicated in these cases. They further submitted that the appellants have already been acquitted in the criminal cases arising from FIR No.63 dated 10.10.2009, FIR No.65 dated 14.10.2009, FIR No.329 dated 08.10.2009, FIR No.118 dated 07.10.2009 and FIR No.325 dated 06.10.2009. In the aforesaid cases also, similar

allegations were made against the appellants. Learned counsels while referring to the judgment passed by the Court of Sessions arising from FIR No.329 dated 08.10.2009 under Sections 307, 216, 120-B, 34 of the Indian Penal Code, have submitted that in all these cases, appellants were falsely implicated. Judgment passed by the Additional District Judge in Session Case No.10 of 2010 is part of the record in CRA-S-1842-SB-2011 Ex.DA. Similarly, reference has also been made to Session Case No.11 of 2010 arising from FIR No.325 dated 06.10.2009 under Sections 392, 397, 420 of the Indian Penal Code wherein also, appellants were acquitted vide judgment dated 31.07.2012 Ex.DB, part of the record in CRA-S-1842-SB-2011.

Learned counsels for the appellants have also submitted that in 7-8 FIRs, the alleged occurrence of committing offence is on a single day i.e. 07.10.2009. The appellants were later on falsely implicated on the basis of the disclosure statement allegedly suffered by the appellants while they were in police custody.

Learned counsels while drawing attention of the Court have submitted that in FIR No.216, the alleged incident is of 7.30 PM on 07.10.2009 where ₹2,000/- was snatched. In FIR No.213, alleged incident is at 8:00 PM on 07.10.2009 in which ₹1800/- are alleged to have been snatched. Third incident is of 07.10.2009 at 9:00 PM of Village Bhuna where ₹5,000/- is alleged to have been snatched (subject matter of FIR No.67). Next incident on same day is of 9:30 PM wherein ₹6,000/- is alleged to have been snatched whereas fifth incident is at 10-10:15 PM on the same day wherein ₹3,000/- is alleged to have been snatched. 6th incident

is also alleged to be at 10:30-11:00 PM same day when the offence under Section 25 of the Arms Act was committed.

In all these cases, it is alleged that three appellants went to the tubewell on the same day and all the documents were left at an abandoned place qua which FIR No.332 was registered.

Learned counsel for the appellants have further submitted that the appellants-Kuldeep Singh and Jasbir Singh were produced by the Sub Inspector Prithvi Raj before the first informant on 21.11.2009 at Police Station Siwan as admitted by him as well as Prithvi Raj.

Prosecution in order to fill up the lacuna filed application on 22.11.2009 for Test Identification Parade, however, appellants declined on the ground that they have already been produced before the first informant-victim.

Still further, it has been submitted that the Identity Card, Driving Licence, keys of motorcycle, gun point .315 bore were found from the abandoned place for which FIR No.332 dated 12.10.2009 was registered and appellants have already been acquitted. Further Sub Inspector Prithvi Raj in his deposition has admitted that the first informant failed to produce any documents regarding ownership of the mobile phones. The purse which was produced in CRA-S-1842-SB-2011 was a new purse, as admitted by the first informant in cross-examination. He admitted that this is a brand new purse whereas purse which was snatched from him was old one.

Learned counsel further submitted that the currency notes which were alleged to have been recovered do not bear any mark and, therefore, currency notes could not be connected with the currency allegedly

snatched by the appellants. It has further been submitted that Daljit Kaur, sister of Mandeep Singh has not been examined although it is the case of prosecution that recovery of currency notes were from her house. At the time of recovery, no independent witness was joined. It has further been submitted that in the case arising from FIR No.67 dated 08.10.2009 under Sections 392, 397 of the Indian Penal Code, Mandeep Singh was tried separately and acquitted as the Court did not find prosecution story reliable.

Now, the stage is set for considering the evidence case wise.

In criminal appeals bearing CRA-S-2070-SB-2015, CRA-S-3229-SB-2013 and CRA-S-4518-SB-2014, which arise from FIR No.216 dated 09.10.2009 registered under Sections 397, 341, 392, 506 of the Indian Penal Code and Section 25 of the Arms Act at Police Station Sadar, Kaithal, appellants/convicts have been convicted under Sections 397 and 341 of the Indian Penal Code. The evidence produced by the prosecution in these appeals are as under:-

1. *ASI Karambir Singh was examined as PW1 who proves the special reports sent to the Illaga Magistrate, SP Kaithal and DSP Kaithal and also proves that he has recorded the formal FIR Ex.PA/1.*
2. *PW2 EHC Ram Mehar has proved that ASI Karamvir has handed over three envelopes containing special reports and he was handed over the same to the Illaga Magistrate, SP Kaithal and DSP Kaithal.*
3. *PW3 first informant Bijender Kumar deposed on the same line, as stated in the FIR that his purse containing ₹2000/-, two ATM Cards, one Identity card, mobile phone bearing two sim has been looted by the accused on the gun point and the accused came on their motorcycle No.HR-08-*

E-786 or 886 or 876.

It is relevant to mention here that in his cross examination he admits that the police called him at Sirta Drain on 22.11.2009 and I found police party alongwith accused Kuldeep and Jasbir and I identified both the accused on 22.11.2009 and in his presence the currency notes were recovered from the house of father in law of co-accused Mandeep Singh.

Even in the cross examination he admits that the police did not join any independent witness from village Jansui at the time of recovery and also admits that the purse Ex.P1 are easily available in the market.

4. *SI Balbir Singh as PW6 who stated that the first informant Bijender Kumar moved an application Ex.PA and the same was sent by him for recording the FIR through EHC Kamal Rattan. Thereafter the spot was inspected and site plan was prepared as Ex.PJ. Thereafter on 19.10.2009 the investigation of the case was transferred to CIA Kaithal.*

5. *PW8 Rajesh Kumar, ACE Crime Gurugram has stated that on 16.10.2009 I was posted as CIA Inspector Kurukshetra and he got registered an FIR No.340 dated 16.10.2009 and he arrested Kuldeep Singh alias Keepa and Jasbir Singh.*

6. *PW9 Prithvi Singh, Deputy Record Keeper, Judicial Record Room, Pehowa, who proves that the FIR No.332 dated 12.10.2009 was registered under Arms Act at Police Station Pehowa and also admitted that the accused Kuldeep and Jasbir stands acquitted vide Judgment dated 22.02.2011.*

7. *PW10 Sita Ram SI who proves that he has recorded the disclosure statement of the accused, whereby they admits all the crimes.*

8. *PW14 SI Prithvi Raj who stated that on 22.11.2009, he alongwith other police officials and accused Jasbir and Kuldeep were present at Sirta Drain in connection with the investigation of the case FIR No.213 and the accused while interrogated by me on 20.11.2009 suffered disclosure statement Ex.PJ that at about 7.30 PM his other co-accused looted ₹2000/-, ATM, Mobile, keys of the motorcycle on pistol point.”*

Similarly, in the evidence led by the prosecution in criminal appeals bearing CRA-S-3397-SB-2013, CRA-S-2191-SB-2015, and CRA-S-4935-SB-2014 which are arising from criminal case initiated from FIR No.213 dated 08.10.2009 registered under Sections 397, 341 of the Indian Penal Code at Police Station Sadar, Kaithal, the witnesses have stated as under:-

1. *EHC Ram Mehar was examined as examined as PW1 who proves the special reports sent to the Illaqa Magistrate, SP Kaithal and DSP Kaithal.*
2. *PW2 ASI Shiv Kumar has proved that he received the ruga Ex.PA through EHC Baljit Singh and recorded the formal FIR ExPA/1.*
3. *PW3 Ramesh Chand HC No.546 deposed that Prithvi Raj ASI deposited with me one driving licence of Naresh Kumar and one small telephone diary pertaining to this case and thereafter on 22.11.2009 Prithvi Raj ASI again came alongwith the first informant Naresh Kumar in the police station and the aforesaid driving licence and diary were taken out by me from the Malkhana and shown to the first informant, who identified them, vide memo Ex. PB.*
4. *PW4 Kanwar Pal SI, stated that first time the information was received by him from the first informant as Ex.PA and he send the same to the police station for*

recording the FIR and he inspected the spot in the presence of Naresh and Jagroop and also prepared the site plan.

However, in his cross examination he admits that no bullet or empty cartridge was recovered from the spot. Even physical appearance of the accused was not told by the first informant and Jagroop and also admitted that there is no light arrangement at the place of occurrence.

5. *PW5 Karnail Singh who stated before the police that the police has received one secret information on 12.10.2009 and I was joined in the investigation of this case and from the spot one country made pistol .315 bore, three purses, two motorcycle keys, three telephone diary, one driving licence pertaining to Naresh, three ATMs, one Identity Card pertaining to Gurjinder, 73 visiting cards, one application, one driving licence of Gurdeep and 9 photographs were found in abandoned place in a paddy crop in the fields.*

It is relevant to mention here that qua the said recovery, a separate FIR vide FIR No.332 dated 12.10.2009, under section 25 of the Arms Act has been registered by the police and it is also relevant to mention here that in the said case the present appellants were arrayed as accused and admittedly all the accused have been acquitted in the said case.

6. *PW6 ASI Rajesh Kumar, who stated that I was posted as ASI CIA Staff Kurukshetra and on that day Sita Ram SI interrogated Kuldeep Singh and Jasbir Singh and their disclosure statements were recorded vide Ex.PE and the said disclosure statement was reduced into writing and the same was signed by the accused.*

It is relevant to mention here that the said disclosure statements were recorded firstly in FIR No.340 dated 16.10.2009 under sections 307/398/401 of IPC and

25/54/59 of Arms Act. It is also relevant to mention here that the said disclosure statements which are on record as Ex.PE, were recorded by Sita Ram SI CIA Staff in the presence of one ASI Daljit Singh 435/CIA Kurukshetra and one ASI Ranesh Kumar 970, not in the presence of PW6 ASI Rajesh Kumar and the said disclosure statements has wrongly been exhibited by ASI Rajesh Kumar, despite knowing the fact that the same were not recorded in his presence.

7. PW7 first informant Naresh Kumar deposed on the same line, as stated in the FIR that ₹1800/-, one diary, one driving licence, one mobile phone has been snatched by the accused and ₹150/- were stanchefrom Jagroop.

It is relevant to mention here that in his cross examination he admits that Prithvi Raj ASI told him that these are the accused from whom the recovery have been effected in Guhla Court and also shown to him the looted item including mobile phone, driving licence and diary. Even once the accused have already been shown to the first informant Naresh Kumar on 22.11.2009 and only to fill up the lacuna the prosecution has moved an application on 23.11.2009 for test identification parade, which is proved from Ex.PK/1 (at page 89) and once the accused has already been shown, there the alleged test identification parade is a futile exercise and it was genuinely refused by the appellant for the test identification parade.

8. PW12 SI Prithvi Rai who is the investigating officer of the present case, stated that the accused were given the disclosure statement firstly in the FIR No.340 dated 16.10.2009 and during the investigation, which was carried out by ASI Sita Ram, Kuldeep also suffered disclosure statement Ex.PE and Jasbir suffered disclosure statement as Ex.PF. He stated that all the recoveries were effected on

the disclosure statements of the accused, from the house of co-accused Mandeep and currency notes were recovered from the house of sister of co-accused Mandeep and the driving licence, diary which were recovered in FIR No. 332 dated 12.10.2009, were also shown to the first informant and mobile phone Ex.P3 were recovered from accused Kuldeep.

It is relevant to mention here that regarding the recovery of driving licence and the diary of the first informant Naresh, which was effected from an abandoned place on a disclosure statement and qua that the FIR No.332 dated 12.10.2009, under section 25 of the Arms Act has been registered, in which the present accused-appellants have already been acquitted and regarding the mobile phone, SI Prithvi Raj admitted that there is no ownership of document of mobile phone were given, shown or in record to prove the same belongs to the first informant. He further admitted that there is no specific mark on the recovery notes, which were allegedly recovered from the appellant.

9. PW4 Jagroop who was present on the spot, did not recognize the accused present in the Court, because he admits that there is darkness at that place.”

In criminal appeal bearing CRA-S-1842-SB-2011 which arises from FIR No.67 dated 08.10.2009 registered under Sections 392 and 397 of the Indian Penal Code at Police Station Guhla, District Kaithal, appellant has been convicted under Section 397 of the Indian Penal Code. It may be noted here that co-accused Mandeep Singh has been acquitted in a separate trial. The evidence produced in this appeal by the prosecution is as under:-

1. The first informant Sandeep Kumar was examined as PW1 and deposed on the same line, as stated in the FIR that

his purse red colour containing ₹500/- in the shape of five currency notes of 100-100 each and his driving licence, mobile phone of his cousin make Micromax and ₹4000/- cash i.e. 8 currency notes of ₹500/- each, his voter card and driving licence was also snatched and the keys of the motorcycle were also taken by the said assailants. He also admits in his examination in chief that on 21.11.2009 he received the telephone call from Prithvi Singh ASI and he had gone to P.S. Guhla where accused Kuldeep Singh was in the police custody and on the disclosure statement of Kuldeep Singh purse was recovered from the house of Daljit Kaur who is sister of Mandeep Singh other co-accused and the purse containing ₹500/- and the mobile phone was shown to be recovered and on the same day the other co-accused Jasbir Singh was guided by the police party to the house and got recovered the purse of brown colour as well as voter card of my cousin was got recovered.

In his cross examination, he admits that all the three assailants were muffled faces and also admits that he has not noticed the features of the assailants and also admits that he was summoned to the police station on 21.11.2009 and the accused were shown to him and also admitted that the purse Ex.P1 is a brand new purse (as observed by the Court while recording evidence), whereas his purse was 3-4 months old one and also admitted that he cannot tell the number of the currency notes, contained in his purse.

2. *PW2 Kuldeep Singh son of Balbir Singh has been examined in the Court and stated on the same lines, as stated by PW1 the first informant. However, he also admits that on 21.11.2009 I alongwith first informant Sandeep went to Police Station Guhla and accused Kuldeep Singh and Jasbir Singh were lying detained in their custody. He also admitted that at the time of incident the assailants were*

having muffled faces and they had not noted down the features of the assailants.

3. *PW3 SI Sita Ram who proves that he has recorded the disclosure statement of the accused, whereby they admits all the crimes and the said disclosure statement is Mark A. But the said disclosure statement was recorded by him in the case FIR No.340 dated 16.10.2009 and not in the present case.*

4. *PW5 ASI Ishwar Singh stated that a secret information was received that in the fields of Karnail Singh son of Pala Ram one country made pistol and other documents were lying and on the secret information he proceeded to the disclosed place and took in possession the said documents vide recovery mark D and also admitted that the said pistol and the documents are not present in the Court today.*

It is relevant to mention here that on the basis of the disclosure statement the recovery was effected and FIR No.332 dated 12.10.2009 was registered against the appellants, however, in the said FIR the appellants have been acquitted by the learned Trial Court.

5. *PW7 ASI Randhir Singh who stated that on 21.11.2009 I alongwith ASI Prithvi Raj alongwith HC Karamvir Singh proceeded for police station Siwan from CIA Staff, Kaithal, where accused Kuldeep Singh and Jasbir Singh were already present in the police lockup in case FIR No.118/2009 PS Siwan. Thereafter the accused were into police custody in this case and thereafter their disclosure statements were recorded and recoveries were effected.*

However, in the cross examination he admits that at the time of disclosure statement no independent witness was joined and even at the time of recovery no independent witness was joined and even admit that no identification

marks were affixed on the recovered articles.

6. *PW9 Jai Parkash Reader of District Magistrate, Kurukshetra appeared and produced the original record of sanctioned order against Kuldeep Singh in FIR No.340/2009 of PS Dehowa and sanctioned order against accused Kuldeep Singh in case FIR No.332.*

7. *PW11 ASI Prithvi Raj CIA Staff Kaithal, who stated that on 21.11.2010, the accused Kuldeep Singh and Jasbir Singh were joined in the investigation by him in PS Guhla after obtaining production warrants in case FIR No.118 P.S. Siwan and the accused are already confessed about the crime in case FIR No.340 dated 16.10.2009, under section 398/307/401 IPC and on interrogation Kuldeep Singh and Jasbir Singh both suffered disclosure statements regarding their involvement in the present case and also admitted that on 22.11.2009 the accused were produced in the court and an application for conducting the identification parade Ex.PM was given and as the accused denying the conduct of identification parade.*

In cross examination, he admits that no identification parade was conducted, no independent witness was called at the time of interrogation and no identification marks was fixed on the currency notes and no identification marks was affixed on the purse also and no ownership of the place of recovery was taken from the revenue official. Even Daljit Kaur was not joined in the investigation at the time of affecting the alleged recovery.”

In the considered view of this Court, prosecution has failed to establish its cases beyond the shadow of reasonable doubt. In all these cases, it is a case of the prosecution that the appellants/convicts had covered their faces. In all these cases, it is undisputed that the first informant/victim

were shown the appellants/convicts by the police on 21.11.2009 or 22.11.2009. Therefore, the identification of the appellants/convicts in the Court does not prove the involvement of the appellants beyond shadow of reasonable doubt.

All the three incidents are one after the other. In FIR No.216, the alleged occurrence is of 7:30 PM on 07.10.2009 near Bus Stand Dillowali. Whereas in FIR No.213, the alleged occurrence is of 8:00 PM on the same day i.e., 07.10.2009 near Sirta Drain. Whereas in FIR No.67, occurrence is alleged to have taken place at 9:15 PM on 07.10.2009. Thus, all the occurrences are of the same day. In all the cases, vehicle registration number of the motorcycle allegedly used by the appellants, has not been disclosed. It is the case of the prosecution that the appellants had killed their colleague/police official on 08.10.2009. It is against the normal human behaviour that after having murdered a police official, appellants would feel emboldened and go on a crime committing spree rather than hiding themselves in a safe hide out.

Still further, the alleged recovery from the appellants is doubtful as discussed while discussing the evidence. The recovery of identity cards, driving licence, keys of motorcycle and gun point .315 bore from abandoned place qua which separate FIR No.332 dated 12.10.2009 was registered has resulted in acquittal. It clearly prove the falsity of the case set up by the prosecution. In most of the cases, even recovery memo has not been prepared in accordance with law. It has also come in evidence that none of the victim/first informant produced any documents to prove the ownership of the mobile. In one of the case, the Court itself observed that

the purse which has been produced in the Court is a brand new purse.

Recovery of currency notes on the disclosure made by the appellants does not prove that the same currency notes were snatched because there are no identification marks exist on the alleged currency notes. No independent witness was joined at the time of alleged recovery.

Still further, it is apparent that in FIR No.67, the amount allegedly snatched is ₹4,500/-, in FIR No.216, the amount allegedly snatched is ₹2,000/- whereas in FIR No.213, the amount snatched is ₹1,950/-. The amounts snatched in all these three cases does not exceed ₹10,000/-. The appellants, who as per the case of the prosecution had committed murder of a Assistant Sub Inspector, cannot be normally expected to indulge in such petty crimes. The appellants are not even alleged to have taken away the motorcycle from each of the alleged victims. Hence, false implication of the appellant cannot be ruled out.

For the reasons recorded above, all the criminal appeals are allowed while setting aside the judgments of conviction.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

17.09.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No