

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

- (1)

CRA-D-257-DB-2003 (O&M)

Harpal Singh

...Appellant

Versus

State of Punjab

...Respondent
- (2)

CRA-D-274-DB-2003 (O&M)

Gulzar Singh and others

...Appellants

Versus

State of Punjab

...Respondent
- (3)

CRA-D-555-DB-2003 (O&M)

Ashwani Kumar @ Tara

...Appellant

Versus

State of Punjab

...Respondent

**Date of decision: 17.10.2019**

**CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN  
HON'BLE MR.JUSTICE H.S. MADAAN**

Present: Mr. B.S. Bedi, Advocate for the appellant  
in CRA-D-257-DB-2003.

Ms. G.K. Mann, Advocate for the appellants  
in CRA-D-274-DB-2003.

Mr. M.S. Sidhu, Advocate and  
Mr. V.K. Sandhir, Advocate for the appellant  
in CRA-D-555-DB-2003.

Mr. A.A. Pathak, Addl. A.G., Punjab.

Mr. Ankit Midha, Advocate for the complainant.

**H.S. MADAAN, J.**

Briefly stated facts of the case are that on 03.04.2000, while a police party headed by Inspector Atma Singh from Police Station Kotwali, Amritsar was on patrol duty at Chowk Katra Jaimal Singh, Amritsar, Inspector Atma Singh (hereinafter referred to as 'the Investigating Officer/IO') received an information regarding murder of Banarasi Dass. Accordingly, the police party went to the house of Banarasi Dass at Katra Jaimal Singh, Amritsar, wherein the police party came across complainant Smt. Leela Wati wife of Banarasi Dass, who got her statement recorded with the IO, wherein, she stated that she along with her husband Banarasi Dass-deceased had been residing in a house at Katra Jaimal Singh, Amritsar. Sh. Banarasi Dass used to work in the shop along with his son Vinod Kumar, which was being run in the name and style of Sunder Shoes. The deceased used to take rent of the shop on the ground floor and he used to keep the accounts of the business. On intervening night of 2/3.04.2000 at about midnight, while she and the deceased were sleeping in their house, then suddenly, she woke up and found that a Sikh youth wearing a white kurta pajama and patka of the same colour on his head, aged about 35/36 years along with a clean shaven person, aged about 30/32 years were there in the house. The Sikh youth was armed with a dagger/chura and he firstly strangled Banarasi Dass and thereafter, gave him deggar blows while he was lying on the bed. The Sikh youth demanded keys of the Godrej almirah from the complainant, which she handed over out of fear. Thereafter, the Sikh

youth locked her in a bathroom, then, both the intruders remained in the house and collected gold ornaments, cash and other articles. Though, the chowkidaar had rang the call bell but she was confined in the bathroom, therefore, she could not open the door of the house. In the morning, the chowkidaar along with certain other persons got the door of the house opened and door of bathroom was also opened, then, she came out. On search, she found that the intruders/assailants had taken away six gold bangles, Rs.7000/- in cash and other articles including more cash from the wooden almirah. The IO appended his endorsement below such statement of the complainant and sent ruqa to the police station, on the basis of which, formal FIR No.51 dated 03.04.2000, (Ex.PA/2) for offences under Sections 460, 342, 120-B and 34 IPC was registered at Police Station Kotwali, Amritsar. The IO carried out the inquest proceedings with regard to unnatural death of Banarasi Dass, preparing the report in that regard. He drew rough sketch of the place of occurrence and took into possession blood stained bed sheet, after converting it into a sealed parcel. Dead body of Banarasi Dass was sent for post mortem examination. After such examination was over, HC Nirmal Singh produced the clothes of the deceased before the IO, which was converted into a parcel and taken into police possession. The IO recorded the statements of witnesses.

On 19.04.2000, the IO went to the shop of the deceased and took into possession license for running the shop and purchase bills. On 03.05.2000, accused Gulzar Singh, Bikramjit Singh and Ashwani Kumar

were arrested in this case. During the course of interrogation, all those accused had suffered disclosure statements and got the recoveries effected. Ashwani Kumar accused had got recovered three gold biscuits and a wrist watch, whereas, accused Bikramjit Singh had got recovered five gold biscuits of 10 tolas, 20 gold biscuits of 5 tolas each, one gold necklace, two gold bangles, two ear rings, one wrist watch and cash amount of Rs.2,36,000/-. Accused Gulzar Singh had got recovered 10 gold biscuits weighing 10 tolas each, 10 gold biscuits weighing 5 tolas each, cash amount of Rs.1,20,000/- along with a pair of ear rings, two gold bangles, one necklace and a dagger. All the recovered articles were identified by Vinod Kumar, son of the deceased and those were taken into police possession.

On 10.05.2000, accused Harpal Singh and Pavitar Singh were apprehended while they were coming in a car bearing No.PB-02H-3113. They were formally arrested in this case and the car in question was seized. Both the accused were interrogated and they also suffered disclosure statements, in pursuance thereof, Harpal Singh got recovered 10 gold biscuits of 5 tolas each and 08 gold biscuits of 10 tolas, in addition to cash amount of Rs.2,84,000/-, whereas, accused Pavitar Singh got recovered 2 gold biscuits weighing 10 tolas each, a lady wrist watch. Those articles were taken into police possession.

On 18.05.2000, Inspector Atma Singh went to the hotel Sita Niwas and obtained copy of the entry in the register of that hotel. It was seized, vide a recovery memo. On 06.06.2000, HC Kapal Dev produced

two photographs along with negatives, which were taken into possession. Statements of witnesses were recorded.

After completion of investigation and other formalities, the challan against the accused was prepared and filed in the Court of Judicial Magistrate 1<sup>st</sup> Class (for short 'JMJC'), Amritsar, who supplied copies of documents relied upon in the challan to the accused free of costs as provided under Section 207 Cr.P.C and then finding that the offence under Section 460 was exclusively triable by the Court of Sessions, vide her detailed commitment order dated 22.08.2000, committed the case to the Court of Sessions.

On receipt of the challan in his Court, learned Sessions Judge, Amritsar, after finding that prima facie charge for offences under Sections 460, 302, 342 and 120-B IPC was disclosed against the accused, charge-sheeted them accordingly, to which, they pleaded not guilty and claimed trial.

During the course of prosecution evidence, it examined inasmuch as 15 witnesses, as per details below.

PW-1 Leela Wati-complainant provided the eye witness account of the incident, deposing inconsonance with the prosecution story.

PW-2 Nasib Singh, Night Duty Manager from Hotel Sita Niwas, Amritsar stated that on 03.04.2000, two persons had come to their hotel and room No.102 in the hotel was allotted to them. Such room was booked in the name of Harpal Singh, who had signed against the entry in

the register. Those persons had left the room on 03.04.2000 at 8 am. He proved copy of entry as Mark 'A'.

PW-3 Dr. Gurmanjit Rai, Lecturer, Forensic Medicine, Medical College, Amritsar deposed that on 03.04.2000 at 12.30 pm, he conducted post mortem on the dead body of Banrasi Dass and found the following injuries on the person of deceased:-

1. Reddish blue bruise 11 x 8 cm was present on left side of neck, 5 cm below lobule of ear.
2. Reddish brown abrasion 2 x 0.5 cm was present on right side of face at the angle of mandible.
3. Three crescentic shape reddish abrasion 0.5 x 0.2 cm was present on right side of neck, 7 cm below injury No.2.
4. Incised stab wound 2 x 0.4 cm present on left side of abdomen in epigastrium region, 11 cm above umbilicus at 12 O' clock position. Clotted blood was present.
5. 2.5 x 0.5 cm incised stab wound was present on left side of abdomen, 4 cm below umbilicus at 5 O' clock position.

Regarding the cause of death, he stated that the same was due to hemorrhage and shock as a result of injuries No.4 & 5, which were sufficient to cause death in the ordinary course of nature. According to him, all the injuries were ante-mortem in nature and probable time that had elapsed between the injuries and the death was within few minutes and between death and post mortem, it was about 12 to 24 hours.

PW-4 Vinod Singh Chauhan, the employee at the shop of Vinod Kumar, son of the deceased, stated that there are many other employees working in the shop including one Ashwani Kumar. Harpal

Singh and Pehlwan Bikramjit Singh accused used to come to meet Ashwani Kumar accused there and such persons were known to him also. That on 15.03.2000 at about 4/5 pm, Harpal Singh and Pehalwan came there and met Ashwani Kumar accused. They were talking and at that time Banarasi Dass father of Vinod Kumar was counting the money at the counter. Ashwani Kumar told Pehalwan and Harpal Singh that proprietor of their shop Banarasi Dass had sufficient money with him and he also deals in the sale and purchase of gold. Thereafter, Ashwani Kumar accused talked with Harpal Singh and Pehalwan outside the shop. He added that on 02.04.2000 at about 4/5 pm, Bikramjit Singh and Harpal Singh had come to their shop and enquired about Ashwani. It was Sunday and Ashwani Kumar normally did not come to the shop on that day of the week but on that Sunday, Ashwani came to the shop at about 6 pm.

PW-5 Jota stated that he knows Ashwani Kumar accused who was earlier working at Sunder Shoes shop and on second day of the month, a Sunday, he had seen Ashwani Kumar accused standing outside the house, again stated, near house of Banarasi Dass deceased and he was peeping in from outside. The witness added that Banarasi Dass also used to sit at Sunder Shoes shop, Katra Jaimal Singh, Amritsar.

PW-6 Rishi Ram Draughtsman deposed that on 17.06.2000, he had gone to the place of occurrence and prepared the scaled site plan thereof Ex.PF using the scale 1"=10 feet.

PW-7 HC Kapil Devi photographer stated that on 03.04.2000, he had gone to the place of occurrence and taken

photographs at the spot. He had developed the negatives without any touching. He proved photographs Ex.P1 & Ex.P2 and negatives Ex.P3 to Ex.P5, stating that he had handed over those photographs along with negatives to Insepctor Atma Singh on 06.06.2000 and those were taken into possession, vide memo Ex. PG, attested by him and HC Iqbal Singh.

PW-8 HC Sohan Lal, PW-9 HC Nirmal Singh and PW-10 Constable Hazara Singh being formal witnesses had tendered their affidavits Ex.PH, Ex. PJ and Ex.PK respectively.

PW-11 Nirmal Singh, Excise and Taxation Officer stated that in the year 1998, he was posted as ETO in Amritsar. Banarasi Dass, Proprietor of firm M/s Banarasi Lal and Sons had applied for the registration of the firm for Sales Tax number on 18.11.1998 and after due verification of the person and place, RC No.16106015 was issued on 29.01.1999 under the Punjab General Sales Act, 1948 and Section 7 of Central Sales Act, 1955. The copies thereof were Ex.PL and Ex.PM.

PW-12 Vinod Kumar son of the deceased Banarasi Dass supported the prosecution story on material aspects including that on 04.05.2000, he had gone to the police station, where accused Ashwani Kumar, Gulzar Singh, Bikramjit Singh were interrogated and gold biscuits, gold ornaments, wrist watches, cash amount were got recovered by those accused, in pursuance of their disclosure statements, which were identified by him (this witness) and he had attested various recovery memos. Similarly, on 10.05.2000, Harpal Singh and Pavitar Singh were arrested and on interrogation, by suffering statements they got recovered

gold biscuits, cash amount and gold ornaments from their possession, which were seized, vide separate memos, attested by this witness.

PW-13 Gulab Singh, Proprietor, Hotel Sita Niwas near Golden Temple, Amritsar, proved entry dated 03.04.2000 in register Ex.PAA, vide which Harpal Singh accused was allotted Room No.102 in the said hotel.

PW-14 Devinder Kumar deposed that on 18.04.2000, while he was present in his house, five persons namely, Ashwani Kumar, Gulzar Singh, Harpal Singh, Bikramjit Singh and Pavitar Singh came to him and stated that on 02.03.2000, all of them had planned and conspired to rob and kill Banarasi Dass, that Gulzar Singh and Bikramjit Singh had entered the house of Banarasi Dass. Bikramjit Singh had caught hold of Banarasi Dass from his throat and Gulzar Singh gave two stab wounds and wife of Banarasi Dass was confined in a bathroom. Gulzar Singh removed the keys from underneath the pillow of Banarasi Dass and from the almirah, 68 gold biscuits, Rs.6,40,000/- in cash, three watches and gold ornaments were removed and were put in a bag. Those accused stated that there was a police naka, so they remained present in the house of Banarasi Dass and went in a rickshaw towards bus stand and the accused requested him to produce them before the police. According to Devinder Kumar, he told the accused to come to him on the next day but they did not come to him thereafter.

PW-15 Inspector Atma Singh since promoted as DSP who carried out the investigation in this case deposed in that regard, proving

various documents.

With that the evidence of the prosecution got concluded.

Statements of the accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against such accused were put to them but they denied the same, contending that they are innocent and have been falsely involved in this case. Accused Ashwani Kumar, Bikramjit Singh and Gulzar Singh had filed written statements, contending that the allegations against them were false. They were kept in illegal detention and false evidence has been created against them.

Accused Harpal Singh had filed a separate written statement, mentioning therein that he was having a mini bus No.PB-02-H-9661 which he sold on 05.11.1999 for Rs.3,80,000/- to Hakumat Singh, resident of Village Harpura, Tehsil Batala, District Gurdaspur delivering the custody of vehicle to the purchaser. That such accused further stated that he wanted to purchase a truck with the sale proceeds of the said bus which amount was lying at his house. During the investigation of the case, the police unlawfully recovered that amount and out of the said amount, a sum of Rs.2,84,000/- was shown to be recovered from possession of Harpal Singh with a view to create evidence against him and as a matter of fact, no recovery had been effected.

Harpal Singh examined DW-1 Dhanpal Singh, who stated that he had purchased mini bus No.PB-02-H-9661 from Harpal Singh accused for Rs.3,80,000/-, paying the price thereof to Harpal Singh in two

installments i.e. Rs.2,92,500/- on 04.10.1999 against receipt Ex.DW1/A and the remaining amount of Rs.87,500/- on 05.11.1999 against receipt Ex.DW1/B. That he had given undertaking to Harpal Singh regarding payment of balance amount to him. He had applied for transfer of the bus in name of one Hakumat Singh since the route permit was in his name and the bus was to be operated on the basis of route permit; that other documents relating to the transfer of the bus are in the office of District Transport Officer, Gurdaspur.

DW-2 Surinder Mohan Luthra, Steno to DTO Gurdaspur deposed that in terms of their office record, Mini Bus No.PN-02-H-9661 which was previously owned by Harpal Singh was transferred in the name of Hakumat Singh on 04.05.2000. He proved copy of those document in that regarding as Ex.DW2/A.

After hearing arguments, learned Sessions Judge, Amritsar, vide judgment dated 04.02.2003, convicted and sentenced the accused as follows:-

| Sr. | Name of accused | Under Sections | Imprisonment     | Fine                                                                         |
|-----|-----------------|----------------|------------------|------------------------------------------------------------------------------|
| 1.  | Gulzar Singh    | 302 IPC        | For life         | Rs. 1000, in default of payment of fine, to further undergo RI for 06 months |
| 2.  | Gulzar Singh    | 342 IPC        | RI for 06 months | -                                                                            |

| Sr. | Name of accused           | Under Sections | Imprisonment     | Fine                                                                         |
|-----|---------------------------|----------------|------------------|------------------------------------------------------------------------------|
| 3   | Bikramjit Singh @ Pehlwan | 302/34 IPC     | For life         | Rs. 1000, in default of payment of fine, to further undergo RI for 06 months |
| 4.  | Bikramjit Singh @ Pehlwan | 342 IPC        | RI for 06 months | -                                                                            |
| 5.  | Harpal Singh              | 302/120-B IPC  | For life         | Rs. 1000, in default of payment of fine, to further undergo RI for 06 months |
| 6.  | Harpal Singh              | 342/120-B IPC  | RI for 06 months | -                                                                            |
| 7.  | Ashwani Kumar @ Tara      | 302/120-B IPC  | For life         | Rs. 1000, in default of payment of fine, to further undergo RI for 06 months |
| 8.  | Ashwani Kumar @ Tara      | 342/120-B IPC  | RI for 06 months | -                                                                            |
| 9.  | Pavitar Singh             | 302/120-B IPC  | For life         | Rs. 1000, in default of payment of fine, to further undergo RI for 06 months |
| 10. | Pavitar Singh             | 342/120-B IPC  | RI for 06 months | -                                                                            |

It was ordered that both the sentences shall run concurrently.

It was further observed that since the accused had been sentenced under Sections 302, 302/34, 302/342 read with Section 120-B IPC, therefore, no separate sentence was being passed in respect of offence under Section

460 IPC.

All the five accused felt aggrieved by judgment of their conviction and sentence and have approached this Court by way of filing appeals. Accused Harpal Singh has filed an appeal No.CRA-D-257-DB-2003, accused Gulzar Singh, Bikramjit Singh @ Pehlwan and Pavitar Singh had filed joint appeal bearing No. CRA-D-274-DB-2003, whereas, accused Ashwani Kumar @ Tara has filed appeal No.CRA-D-555-DB-2003, notices of which were issued to the State, which has put in appearance through counsel. Since all the appeals have arisen out of the same judgment, those have been taken up together for disposal.

We have heard learned counsel for the parties besides going through the record.

In this case the crucial witness for the prosecution, happens to be PW-1 Leela Wati, widow of deceased Banarasi Dass, who provided eye witness account of the incident, supporting the prosecution story on material aspects. She identified accused Gulzar Singh and Bikramjit Singh, who were present in the Court, pointing out towards Gulzar Singh as a Sikh youth and Bikramjit Singh as a Hindu youth. As per Court observation, Gulzar Singh accused had appeared but was not having long hair and turban. Gulzar Singh was not having long hair and turban is not of much significance because to change the identity, he could have cut his long hair and discarded the turban, while having beard.

PW-1 Leela Wati, was subjected to lengthy cross examination, but she stuck to her guns and could not be shattered on any

material point. She deposed in a natural and convincing manner and account of the incident given by her inspires confidence. Her presence at the spot at the relevant time is natural and probable because place of incident is the residential house, where as per the prosecution story, the deceased alongwith his wife Leela Wati complainant-eye witness used to reside. According to Leela Wati, the accused-assailants had confined her in the washroom. She had adequate opportunity to see the assailants-accused, who had intruded and trespassed in house of the deceased. Therefore, her identification of such accused-assailants in the Court cannot be said to be for the first time, raising any dispute in the mind about their identity.

Though learned counsel for the appellants had attacked the prosecution story stating that since no test identification parade was arranged by the prosecution so as to get the accused Gulzar Singh and Bikramjit Singh identified from Leela Wati eyewitness, that leaves a major lacuna in the prosecution story making the identity of such accused doubtful and benefit of same should be given to the accused, by granting them acquittal.

However, learned State counsel has countered the argument, stating that PW-1 Leela Wati had an ample opportunity to observe and see accused Gulzar Singh and Bikramjit Singh leaving imprints on her mind with regard to their identity and her identifying both the accused in the Court could certainly not termed to be for the first time. The prosecution did not feel the necessity of arranging any test identification parade

keeping in view the facts and circumstances of the case and the prosecution story cannot be made to suffer for that reason. He has further contended that if the accused so desired, they could have requested for holding of test identification parade so as to get the assailants identified from the eye witness but they did not make any such effort.

After hearing learned counsel for the parties, we find that the non-holding of test identification parade in this case is not material.

The next argument advanced by learned counsel for the appellants was that the accused Gulzar Singh and Bikramjit Singh had no motive to commit the murder of Banarasi Dass and even if the prosecution story is taken at its face value, the main purpose for the accused was alleged robbery and not murder of Banarsi Dass and the death of Banarasi Dass might have taken place during the course of alleged robbery. At the best, offence under Section 460 IPC is disclosed and not of murder in terms of Section 302 IPC.

Whereas, learned State counsel has countered that argument also, stating that as per the prosecution story, which was duly supported by PW-1 Leela Wati, identifying the assailants present in the Court as accused, Gulzar Singh having a dagger/chura in his hand alongwith Bikramjit Singh, had trespassed in their house at late night hours i.e. 11/12 midnight and while Bikramjit Singh sat on legs of Banarasi Dass, Gulzar Singh strangulated Banarasi Dass with one hand. Banarasi Dass had raised shrieks, then he gave dagger blows to him. Gulzar Singh had asked this witness for the keys and she had given the same to him out of

fear. Thus the conduct of two of the accused namely, Gulzar Singh and Bikramjit Singh trespassing in house of the deceased at late night hours with Gulzar Singh having a dagger in his hand and on arriving in house of the deceased, both the accused trying to strangle Banarasi Dass and then Gulzar Singh giving dagger blows to him, clearly pointed out that intention of such accused was to commit murder of Banarasi Dass. Simultaneously, they intended to commit robbery also. As regards, the contention raised by learned counsel for the appellants that such accused – assailants had no motive to commit the murder of Banarasi Dass, the same is not of much value since in a case of direct evidence, motive pales into insignificance. Furthermore, motive lies hidden in the mind of a criminal and it is very difficult to dig it out. The criminals might have any reason to commit murder of Banarasi Dass, which may not be forthcoming on the record. However, one thing stands proved that Gulzar Singh and Bikramjit Singh had committed murder of Banarasi Dass, sharing a common intention and common object.

Furthermore, from the statement of PW-1 Leela Wati, such accused having committed robbery also, stands established, in as much as, she stated that when door of the washroom was opened and she came out by that time her husband had died and she found that six gold bangles, Rs.7,000/- in cash were missing from the almirah and a black bag was also found missing. Though, learned counsel for the appellants had contended that the recovery from the accused is in the form of gold biscuits, jewellery and cash amount, is much more than given by

complainant Leela Wati, in her statement to the police and while getting her statement recorded during the trial. But then she has clarified in her statement while appearing as PW-1 that later on when her children came she found that 40 golden biscuits weighing 5 tola each, 28 golden biscuits weighing 10 tolas each, 3 golden sets i.e. 3 golden chains alongwith two 'S' Jhumka and Rs.6.50 lacs in cash and two gents wrist watches and one ladies watch, were also found missing from their house and her supplementary statement had been recorded. That properly deals with the objection raised by counsel for the appellant in that regard.

One more argument advanced on behalf of the appellants was that Banarasi Dass was of old age and he could not have possibly dealt with business of granting loans and any gold trade and as a matter of fact his son Vinod Kumar happened to be a gold smuggler and to legalize his possession of huge quantity of ill gotten gold and cash amount, the recoveries have been planted upon the accused and as a matter of fact, the accused had not suffered any disclosure statements and had not got any recovery effected. Learned State counsel has vehemently opposed those assertions also. We on our part do not find such arguments to be convincing or plausible. There is no age bar for a person to start his business. Furthermore, we are unable to find any merit in the argument that Vinod Kumar son of the deceased was a gold smuggler having huge amount of unaccounted gold and cash amount, possession of which he now wants to legalize by way of showing recoveries from the accused. The golden biscuits, golden jewellery and huge cash amounts do not get

legalized in such a manner.

One more thing to be seen is that the accused have failed to show that the complainant had any reason to involve them in this case falsely. No previous enmity between the complainant and accused has been alleged to be proved, prompted by which she might have decided to tread the dangerous path of false implication, risking getting herself prosecuted, if falsity of her assertions came out to be there. The accused on their part are not shown to have submitted any written representation to the higher police officials complaining against their alleged false implication in this case. If under the circumstances the accused had been roped in wrongly, they would not have kept quiet with the damoclean sword of conviction hanging over their heads. Their silence and inaction in the matter goes to show that they had nothing to say in the matter and their plea of false implication lacks merit.

Another submission made by learned counsel for the appellants was that there was no evidence available with regard to prior meeting of mind between the accused and their having hatched any conspiracy to commit murder and robbery in the house of the deceased. The recoveries are also not proved as per law. The evidence regarding their having made extra judicial confession and last seen evidence, are not convincing and satisfactory. Though the accused are entitled to be acquitted in entirety, nevertheless at the most they can be convicted for offence under Section 411 of IPC, that is for dishonestly receiving stolen property. Whereas the State counsel has vehemently controverted such

contentions contending that the prosecution has successfully proved that all the accused had conspired together and the offences were committed in pursuance of that conspiracy and the evidence adduced by the prosecution with regard to recovery, extra judicial confession and last seen deserves to be accepted and was rightly relied upon by the trial Court.

After hearing these contentions, we find that the prosecution has successfully proved its charge against the accused beyond a shadow of reasonable doubt. Conspiracy is always shrouded by a secrecy and it is very difficult to get direct evidence thereof. The conspiracy has to be inferred from the facts and circumstances of the case and in the instant case it is abundantly clear that the accused had conspired to commit the offence. The direct involvement of accused, Gulzar Singh and Bikramjit Singh in this case is proved by PW-1 Leela Wati. Another important witness in this case happened to be PW-4 Vinod Singh Chauhan, an employee of Sunder Shoes House, Katra Jaimal Singh, Amritsar, which is proprietorship concern of Vinod Kumar, son of the deceased. He deposed regarding Ashwani Kumar accused being an employee at that shop and Harpal Singh and Pahlwan Bikramjit Singh coming to see him and on 15.3.2000, Harpal Singh and Pahlwan Bikramjit Singh coming to the shop to meet Ashwani Kumar at about 4/5 P.M., talking with each other, when Banarasi Dass was counting money at the counter. Ashwani Kumar had said to Pahlwan and Harpal Singh that Banarasi Dass had sufficient money with him and he also dealt in the sale and purchase of gold.

Thereafter Ashwani Kumar had a talk with Harpal and Pahalwan Bikramjit Singh outside the shop and furthermore on 2.4.2000 at about 4/5 p.m. Pahalwan Bikramjit Singh and Harpal Singh came to their shop and enquired about Ashwani Kumar. It was Sunday, on which day normally Ashwani Kumar did not come to the shop. However, on that day, he had arrived there at about 6.00 p.m. The incident had taken place on 2.4.2000 at 12.00 midnight. Therefore, deposition of this witness provide various links showing involvement of Ashwani Kumar, Harpal Singh and Pahalwan Bikramjit Singh in the incident. PW-5 Jota, another employee at the shop of Vinod Kumar son of the deceased, stated that Ashwani Kumar accused was also working there and on 2<sup>nd</sup> day of the month, Sunday, he had seen Ashwani Kumar standing outside the house of Banarasi Dass and he was peeping in from outside. That also provided a crucial link in the story.

PW-12 Vinod Kumar Gambhir had deposed regarding all the accused suffering their disclosure statements i.e. accused Ashwani Kumar, Bikramjit Singh and Gulzar Singh on 4.5.2000 and accused Harpal Singh and Pavittar Singh on 10.5.2000 and getting the recoveries effected in his presence. We do not see any reason to disbelieve his testimony. Therefore, recoveries stand dully proved. There is testimony of PWS-15 Inspector Atma Singh Bhullar, since promoted as DSP, who had corroborated the evidence regarding the recovery.

Vinod Kumar Gambhir had identified the recovery articles. Therefore, those being articles taken away from the house of the deceased

during robbery, stand proved and it is also established that all the accused had distributed the booty among themselves. The accused have miserably failed to account for their possession of such robbed articles, pointing out towards their involvement in the incident.

PW-14 Davinder Kumar, had deposed regarding accused having come to him and made extra judicial confession with regard to their involvement in the crime. In his cross examination, he stated that he is General Secretary of District Congress Committee and he is a property dealer, a social worker and regular visitor to the Police Stations/Police department and other departments and he gets the work of the public done. All the accused had come to him on 18.4.2000 making a confession before him, asking him to present them before the police. He asked them to come on the next day, but they did not up. He had no reason to come forward to depose as a false witness and we do not see any reason to discard his testimony.

Counsel for the appellants had referred to various judgments i.e. *Kuldip Singh vs. State of Delhi 2004 (1) RCR (Criminal) 292,* *Sanwat Khan and another vs. State of Rajasthan 1956 AIR (SC) 54,* *Dhan Raj @ Dhand vs. State of Haryana 2014 (3) RCR (Criminal) 888,* *Jaspal Singh @ Pali vs. State of Punjab 1997 (2) RCR (Criminal) 702,* *Suraj Pal vs. State of Haryana 2019 (1) RCR (Criminal) 919, State of Haryana vs. Hussain 2016 (3) RCR (Criminal) 523, Dana Yadav @* *Dahu and others vs. State of Bihar 2002 (4) RCR (Criminal) 314,* *Pardeep Sharma vs. State of Madhya Pradesh 2006 ILR (M.P.) 653,*

*Musheer Khan @ Badshah Khan and another vs. State of Madhya Pradesh 2010 (2) SCC 748, Sangili @ Sanganathan vs. State of Tamil Nadu 2014 (6) RCR (Criminal) 1, Harpreet Singh vs. State of Punjab 2015 (2) RCR (Criminal) 181 and Om Parkash @ Hakla vs. State of Rajasthan 2014 (5) RCR (Criminal) 237.* However, those are not applicable to the present case, due to different facts and circumstances and the context in which such observations had been made.

Learned State counsel had referred to judgment *Ramesh Dasu Chauhan and another vs. State of Maharashtra 2019 (3) RCR (Criminal) 590.* by the Apex Court in support of his argument that under similar circumstances conviction of the accused had been upheld.

The prosecution has successfully proved its charge against the accused conclusively and affirmatively. The judgment of conviction and sentence recorded by the trial Court does not suffer from any illegality or infirmity. The same is well reasoned.

We do not see any reason to interfere with the same, as such the appeals are found to be without any merit as such the impugned judgment is upheld and all the appeals being devoid of any merit, are dismissed.

**(JITENDRA CHAUHAN)**  
**JUDGE**

17.10.2019  
*sumit.k/chugh*

**(H.S. MADAAN)**  
**JUDGE**

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