

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

Reserved on : 22.1.2019

Date of decision : 6.2.2019

1. CRA-D No. 506-DB of 2012 (O&M)

Parvesh Appellant

versus

State of Haryana ... Respondent

2. CRA-D No. 560-DB of 2012 (O&M)

Maman Singh Appellant

versus

State of Haryana ... Respondent

**Coram: Hon'ble Mr. Justice Rajiv Sharma
Hon'ble Mr. Justice Harinder Singh Sidhu**

Present Mr. Deepender Singh and Mr. Ram Krishan Rana, Advocates,
for the appellant in CRA-D No. 506-DB of 2012,
Mr. Vinod Ghai, Senior Advocate with
Mr. Amrit Singh Kang, Advocate,
for the appellant in CRA-D No. 560-DB of 2012.

Ms. Shubhra Singh, Additional Advocate General, Haryana.

Rajiv Sharma, J.

1. Since common questions of law and facts are involved in these appeals bearing CRA-D No. 506-DB of 2012 -Parvesh vs State of Haryana and CRA-D No. 560-DB of 2012 Maman Singh vs State of Haryana, the same are being disposed of by a common judgment.

2. The present appeals are instituted against the judgment dated 26.4.2012 and order dated 8.5.2012, rendered by Additional Sessions Judge, Rewari, in SC RT No. 34 of 2011/2010, vide which accused Maman Singh and Parvesh, who were charged with and tried for the offence punishable under Sections 394/ 397/302 IPC and Section 25 of the Arms Act in FIR No. 173 dated 14.6.2008, registered at Police Station Dharuhera, District Rewari, were convicted and sentenced under Section 302 IPC to undergo imprisonment for life and to pay fine of ₹ 10,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for three months. They were further convicted and sentenced under Section 394 IPC to undergo rigorous imprisonment for ten years and to pay fine of ₹ 5,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for two months. They were further convicted and sentenced under Section 397 IPC to undergo rigorous imprisonment for seven years and to pay fine of ₹ 5,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for two months. All the sentences were ordered to be run concurrently.

3. The case of the prosecution in a nutshell is that on 14.6.2008 at about 12.05 P.M., Inspector/ SHO Sadhu Ram along with HC Pritam Singh and Constable Ajit Singh was investigating the case bearing FIR No. 152 of 2008. He received a telephonic message to the effect that two young boys had looted the cash after firing at bank guard. Inspector Sadhu Ram reached at the spot. He came to know that two young boys came to the bank on a motorcycle and looted the cash amount from the cashier after firing at the guard and fled away towards Pataudi side. An application, Ex.PB, was moved by Rohtash, Manager of Gurgaon Gramin Bank, Kapriwas.

According to the averments contained in application, Ex.PB, on 14.6.2008 at about 10.20 A.M. they were doing their normal office work. In the meantime, two unknown young persons entered the bank premises and tried to snatch the gun of the guard. When they could not succeed, they fired at the guard and snatched his gun. Thereafter, one of them went to the cashier for looting cash and asked the keys of safe from Balram Peon. Another person, aged about 28/32 years, kept standing on the gate of the bank. After that, both the intruders fled away on their motorcycle after looting cash amounting to ₹ 1,32,810/-. They closed the shutter from outside. The injured guard was already sent to the hospital.

4. The matter was investigated by Inspector/ SHO Sadhu Ram. On 17.6.2008, Gabdu Khan, guard died. Post-mortem examination was conducted by PW8 Dr. Gaurav Vinod Jain. Accused Maman was arrested in case FIR No. 203 of 2007, registered under Sections 392/34 IPC and Section 25 of the Arms Act, at Police Station, Dharuhera. He was interrogated. On 16.2.2010, accused Maman was arrested in the present case. He made disclosure statement and demarcated the place of occurrence. On 18.2.2010, accused Parvesh was arrested. He also made disclosure statement and demarcated the place of occurrence. He also got recovered the bag which they used in the crime. The same was taken into possession. The motorcycle as well as country made pistol were also recovered. The pistol and cartridges were taken into police possession. Site plan was prepared. Investigation was completed and challan was put up after completion of all the codal formalities.

5. The prosecution examined a number of witnesses in support of the case. The statements of the accused were also recorded under Section

313 Cr.P.C. They denied the case of the prosecution. The accused were convicted and sentenced, as noticed above. Hence, the present appeals.

6. Learned counsel appearing on behalf of the appellants vehemently argued that the prosecution has failed to prove its case. Learned counsel appearing for the State vehemently argued that the prosecution has proved its case beyond reasonable doubt and supported the judgment and order of the learned Court below.

7. We have heard learned counsel for the parties and gone through the judgment and record very carefully.

8. PW2 Rohtash Saini testified that on 14.6.2008, he was posted as Manager, at GGB, Kapriwas. On that day at about 10.15 A.M., two persons entered into the bank premises. One of them was wearing helmet, while the helmet of other person had fallen down while grappling with the bank guard. Both of them had tried to snatch the gun of the guard. They opened fire on the guard and hit him with the revolver. One of them went to cashier Amar Singh. The other was standing as guard at the gate of the bank. One of them looted the entire cash from the cashier and pressurised Peon Balram to bring the keys of the chest of the bank. After looting the cash, the accused fled away on their motorcycle. One of them was of whitish colour and another was wearing helmet. He identified both the accused, who were present in the Court. Thereafter, he moved an application, Ex.PB. In his cross-examination, he could not tell the names of the accused. The accused themselves told their names as Hoshiyar and Maman. The Public Prosecutor had pointed out that in this case arising out of FIR No. 173 of 2008, under Sections 394, 397, 302 IPC and 25 of the Arms Act, Police Station, Dharuhera, only two accused, namely, Maman

and Parvesh, were facing trial. In another case, arising out of FIR No. 245 of 2009, under Sections 394, 397, 341 IPC and the Arms Act, Police Station, Khol, accused Maman and Hoshiyar were facing trial and the same was pending in the Court. It was listed for framing of charge. Thus, accused Hoshiyar and Maman were brought. Public Prosecutor stated that accused Hoshiyar be sent back to the judicial lock up and in his place accused Parvesh be called from the judicial lock up. Thereafter, accused Parvesh was produced before the Court. In his cross-examination, PW2 Rohtash admitted that he had not mentioned in his application, Ex.PB, that helmet of one of the intruder had fallen down while grappling with the guard. According to him, the intruder had taken away that helmet along with him. The occurrence had lasted within 1 or 2 minutes. He also deposed that police officials of CIA, Rewari, had informed that the intruders of his bank had been nabbed by them about one month prior to the date of demarcation of the place of occurrence. The police had not summoned him during the period of one month. He was able to identify one of the intruders on the basis of his height, though he was wearing helmet. The other intruder, who was also present in the Court, was identified by him as he was not wearing helmet at that time.

9. PW3 Amar Singh deposed that on 14.6.2008 at about 10.20 A.M., two persons entered the bank premises. At that time he was busy in handling the cash. He heard the sound of firing. One of those intruders came to him and asked for the cash. He handed over the cash of ₹ 1,32,810/- to him out of fear. Thereafter, he asked for the keys of the strong room but he refused as he was not having the same. After that he went to the strong room with Balram Peon. The other intruder gave a call from outside to come out

quickly. Thereafter, both the intruders fled away on their motorcycle after snatching the cash. The guard sustained bullet injury. The accused, present in the Court, were not the intruders. Volunteered that he was not able to recognise their faces. He was declared hostile. He was cross-examined by the learned Public Prosecutor. He denied the contents of statement, Ex. PE. He could not tell as to where Rohtash Singh, Branch Manager was present at the time of occurrence. He deposed that the intruders kept wearing their helmets throughout the occurrence. None of them had followed the intruders.

10. PW4 Balram deposed that on 14.6.2008, at about 10.20 A.M., he was searching files in the stationery room when he heard a gun shot. He came out and noticed that one person was standing near cashier. He could not see anything because of fear. He sat down. One person asked him to open the chest upon which he told that he was not having the keys. He accompanied him up to the strong room. He could not open the safe out of fear. There was a call from the outside '*bhag jao, bhag jao*', upon which that person left him there and fled away. The intruders were two in number. He had seen both the accused present in the Court. They were not those persons who had come in the bank and looted the same after hitting the guard. He was also declared hostile and was cross-examined by the learned Public Prosecutor. He deposed that he had not given statement, Ex.PF. He could not recognise the intruders as they were in muffled faces. No body part of the intruders was exposed.

11. PW7 Dr. C. K. Avasthi deposed that he medico-legally examined Gabdu Fauji on 14.6.2008. There was an alleged history of bullet injury on left cheek at about 10.20 A.M. at GGB, Kapriwas. He noticed the

following injuries on his person:-

1. A bullet injury on left side of cheek present.
2. Deep abrasion left hand.

In his cross-examination, he admitted that there was no blackening of skin. He had not mentioned in MLR whether the skin was charring or not. He did not mention the dimension of injuries. He had also not mentioned the direction of wound whether it was down ward or upward or transverse. The wound was skin deep. He did not measure the depth of the wound.

12. Dr. Gaurav Vinod Jain appeared as PW8. He conducted the post-mortem examination on the body of Gabdu Khan. In his affidavit, he stated that he found firearm entry wound over left mandible with abrasion collar. The injury had gone into neck towards right side, damaging the mandible laryngeal apparatus and neck vessels. A bullet with pointed nose was recovered under the skin from right side of neck. He had mentioned all the injuries found on the person of the deceased in the post-mortem report. The cause of death was injury to neck produced by a firearm projectile, which was sufficient to cause death in ordinary course of nature. In his cross-examination, he has admitted that he had not mentioned the time elapsed between the injury and death and also the time elapsed between post-mortem examination.

13. PW16 HC Om Parkash deposed that on 20.2.2010, he was posted at CIA Staff, Rewari. On that day, he was associated with the investigation by Inspector Lal Singh. Accused Parvesh was in police custody. He led the police party to the *chobara* of his residential house situated in village Sansheri. He got recovered one *chaindar* bag of black colour from an iron box. The bag was converted into a sealed parcel.

Recovery memo was prepared.

14. PW17 HC Krishan Kumar deposed that accused Parvesh was in custody. He was interrogated. He made disclosure statement to the effect that in the month of June, 2008, he along with Maman had gone to the GGB, Kapriwas on Bajaj Discover motorcycle and entered the bank armed with pistols. He opened fire on guard of the bank. Maman snatched ₹ 1.30 lacs from the cashier of the bank. Thereafter, he put the money in a black colour *chaindar* bag. Maman was wearing a helmet and he muffled his face with a cloth. They fled away on the motorcycle. In his cross-examination, he deposed that interrogation was conducted in the room of the Manager. The disclosure statement, Ex.PR, was prepared in the room of the Manager. Investigating officer had asked the Bank Manager to attest the disclosure statement but he refused to sign the same.

15. PW21 Rajender Parshad deposed that accused Hoshiyar and Parkash were arrested in case FIR No. 34 of 2010, under Sections 398/401 IPC, Police Sation, Dharuhera. On the basis of the disclosure statement made by Parkash, he was arrested in case FIR No. 203 of 2007. On interrogation, he made disclosure statement to the effect that he along with accused Maman had committed robbery in Kapriwas Bank on 7.7.2007. He disclosed that at the time of committing robbery he and accused Maman were armed with country made pistols. They had looted about ₹ 3 lacs and ₹ 1.5 lacs had come to his share. The country made pistol, which was used in the crime, was kept concealed in his residential house at village Khanpur, PS Bhiwari. On 8.2.2010, accused Parkash in pursuance of his disclosure statement got recovered one country made pistol and six live cartridges of 7.65 mm. Thereafter, on the basis of disclosure statement of accused

Parkash, accused Maman was arrested in case FIR No. 203 of 2007 on 12.2.2010. He made disclosure statement, Ex.PS, admitting his involvement in the crime in question and other crimes also. He disclosed that in the month of June, 2008, he along with accused Parvesh had committed bank robbery in Gurgaon Gramin Bank, Kapriwas. His disclosure statement, Ex.PS, was reduced into writing by Inspector Lal Singh. He took the police party to his residential house situated in the area of village Sheethal. He got recovered one pistol with magazine, one country made pistol, three hand grenades Mark-HE 36, one country made bomb, etc. The same were taken into possession vide memo. Ex.PT. Thereafter, accused Maman in pursuance of his disclosure statement got recovered ₹ 7.50 lacs containing in two plastic containers. The same were taken into possession vide memo Ex.PU. On 9.2.2010, accused Hoshiyar was interrogated in case FIR No. 245 dated 19.11.2009, Police Station Khol. He made disclosure statement admitting his involvement in bank robberies vide Ex.PV. He led the police party to his residential house in village Khanpur and got recovered ₹ 3,20,000/-. On 16.2.2010, accused Maman was arrested in the present case. He got recorded his statement, Ex.PY. On 17.2.2010, he again made his disclosure statement, Ex.PY/1. On 8.2.2010, in pursuance of disclosure statement, accused Parkash got recovered one pistol and six cartridges, which were taken into possession vide recovery memo, Ex.PR. The pistol is Ex.P42. On 12.2.2010, accused Maman got recovered one country made pistol, one country made *katta*, three hand grenades, one packed containing detonator (desi bomb), 216 cartridges out of which 13 cartridges were empty and one white colour bag having marka of safety matches 502, etc. These were taken into possession.

16. PW23 ASI Laxmi Narayan deposed that he handed over the sealed parcels to Ct. Palvir for deposing to FSL, Madhuban.

17. PW24 DSP Lal Singh deposed that he was posted as Inspector at CIA, Rewari on 16.2.2010. On that day, accused Maman suffered disclosure statement, Ex.PY, admitting his involvement in the crime. According to him, he along with accused Parvesh had gone to GGB, Kapriwas. He was carrying country made pistol. Parvesh was also having another pistol. Thereafter, they entered at about 10.30 A.M. in the bank and looted cash from the bank. On 18.2.2010, accused Parvesh was interrogated. He suffered disclosure statement, Ex.PR. They admitted their involvement in the crime. In his cross-examination, PW24 Lal Singh admitted that no test identification parade was conducted. The concerned officials from the bank had not given any specific identification mark regarding the intruders.

18. FSL report is Ex.PX. According to report, bullet marked BC/1 had been fired from a countrymade firearm as no regular rifling marks were observed on BC/1.

19. The incident is dated 14.6.2008. According to the prosecution, FIR, Ex.PH, was registered on the basis of application, Ex.PB, moved by PW2 Rohtash, Manager of Gurgaon Gramin Bank, Kapriwas. As per the contents of the application, two unknown young persons entered the bank premises. They tried to snatch the gun of the guard. They fired on the guard and snatched his gun. He identified one of the intruders, in the Court, as his helmet had fallen down while grappling with the bank guard. In his cross-examination, PW2 Rohtash could not tell the names of the accused. The accused themselves told their names as Hoshiyar and Maman, who were accused in FIR No. 245 of 2009, registered at Police Station, Khol. Thus, a

wrong person was identified by PW2 Rohtash to be Parvesh, though he was Hoshiyar. Thereafter, accused Parvesh was brought to the Court. PW2 has identified one of the intruders merely on the basis of height i.e. Parvesh. The other intruder, he identified as he was not wearing helmet at the time of robbery.

20. PW3 Amar Singh was posted as cashier at that time. He deposed that the accused were not the persons who entered the bank. In his cross-examination, he stated that the intruders were wearing helmets throughout the occurrence. Similarly, PW4 Balram had also not identified the accused. In his cross-examination, he deposed that he could not recognise the intruders as they had muffled their faces. PW3 Amar Singh and PW4 Balram were working in the same bank at the time of incident on 14.6.2008. They categorically deposed that the appellants were not the persons, who were the intruders in the bank. The police has not held any test identification parade. The prosecution case is not supported by independent witnesses PW3 Amar Singh and PW4 Balram, more particularly, the identity of the accused. It has come in the statement of PW3 Amar Singh that the accused were wearing helmets throughout the occurrence. PW2 Rohtash deposed that helmet of one of the intruders fell down. PW4 Balram deposed that he could not recognise the intruders as they had muffled their faces. There are contradictions in the statements of the prosecution witnesses. PW2 Rohtash identified a wrong person to be Parvesh, though he was Hoshiyar.

21. The eye-witnesses, PW3 Amar Singh and PW4 Balram have not identified the accused. The statement of PW2 Rohtash does not inspire confidence since in his examination-in-chief he has identified a wrong

person as Parvesh. According to him, helmet had fallen down, however, according to PW3 Amar Singh the intruders were wearing the helmets throughout the occurrence. PW4 Balram deposed that the intruders have muffled their faces.

22. The prosecution has failed to prove the case against the appellants beyond reasonable doubt. Accordingly, the appeals are allowed and the judgment dated 26.4.2012 and order dated 8.5.2012, are set aside. The appellants are acquitted of all the charges framed against them by giving them benefit of doubt. The appellants be released forthwith, if not required in any other case.

(Rajiv Sharma)
Judge

6.2.2019
vs

(Harinder Singh Sidhu)
Judge

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