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(i) CRA-S-1896-SB-2007

Mahesh

...Appellant

VS.

State of Haryana

...Respondent

(ii) CRA-S-2159-SB-2007

Devender

...Appellant

VS.

State of Haryana

...Respondent

(iii) CRA-S-2161-SB-2007

Virender and another

...Appellants

VS.

State of Haryana

...Respondent

(iv) CRA-S-2324-SB-2007

Gainda Lal

...Appellant

VS.

State of Haryana

...Respondent

(v) **CRA-S-798-SB-2008**

Biri Singh

...Appellant

VS.

State of Haryana

...Respondent

(vi) CRA-S-1347-SB-2008

Pappu

...Appellant

VS.

State of Haryana

...Respondent

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present : Mr. Atul Pratap Dhankar, Advocate for

Mr. Bijender Singh Dhankar, Advocate
for the appellant(s) in CRA-S-1896-SB-2007.

Mr. Kunal Dawar, Advocate
for the appellants in CRA-S-2159-SB-2007.

Ms. Rupinder Kaur Thind, Advocate
for the appellant(s) in CRA-S-2161-SB-2007.

Ms. Tanu Bedi, Legal Aid Counsel,
for the appellant(s) in CRA-S-2324-SB-2007,
CRA-S-798-SB-2008 and CRA-S-1347-SB-2008.

Ms. Sheenu Sura, Deputy Advocate General, Haryana.

N.S.Shekhawat J.

This judgment shall dispose of six appeals i.e. CRA-S-1896-SB-2007 titled as Mahesh Vs. State of Haryana; CRA-S-2159-SB-2007 titled as Devender Vs. State of Haryana; CRA-S-2161-SB-2007 titled as Virender and another Vs. State of Haryana; CRA-S-2324-SB-2007 titled as Gainda Lal Vs. State of Haryana; CRA-S-798-SB-2008 titled as Biri Singh Vs. State of Haryana and CRA-S-1347-SB-2008 titled as Pappu Vs. State of Haryana, as the same arise out of a common judgment dated 11.09.2007 and order of sentence dated 14.09.2007, passed by learned Additional Sessions Judge, Faridabad, whereby the appellants in these appeals have been held guilty under Sections 395 IPC, Section 395 read with Section 397 of IPC read with Section 149 IPC and were sentenced as under:-

Sentence under Section 395 IPC:

Convicts are sentenced undergo rigorous imprisonment for a period of six years and also to pay a fine of Rs.4,000/- each. In default of payment of fine, they shall undergo further rigorous imprisonment for a period of two months each.

Sentence under Section 395 read with 397 read with Section 149

IPC:-

Convicts are sentenced undergo rigorous imprisonment for a period of seven years and also to pay a fine of Rs.5,000/- each. In default of payment of fine, they shall undergo further rigorous imprisonment for a period of three months.

The sentences were ordered to run concurrently by the learned trial Court.

Assailing the findings recorded by the learned trial Court, the convicts have filed the above mentioned six appeals before this Court.

The brief facts of the case are that on 20.05.2005, ASI Sarup Singh along with Sukhbir Singh, ASI, Constable No.1831, Mukesh Kumar, Constable No.1817, was present at Rajiv Gandhi Chowk, Hodal in connection with in election duty, wherein, an information was received to the effect that certain persons had looted cash amount from the Central Cooperative Bank, Hodal after firing shots at the Cashier. ASI Sarup Singh along with other police officials reached the spot, where Mahavir Singh, Branch Manager of the Bank met them there and moved an application. The injured had already been shifted to the hospital. In his application, Mahavir Singh, Branch Manager/ complainant stated that he was posted as a Manager in the Faridabad Central Cooperative Bank, Hodal Branch. On 20.05.2005, he was present in his office of the Bank. At about 11.00 a.m. Madan Lal, Cashier was working in his cabin and Ved Parkash, Clerk and Jai Pal, Peon were also present in the Bank premises. About 20-25 persons from the general public were also present in the Bank. At that time, three young persons entered the Bank in routine and out of

them, one person entered in the cabin of the Cashier and tried to take away the cash lying there. On raising the objection by the Cashier, the said accused took out a pistol and fired at the Cashier and the bullet hit the hand of the Cashier. Another accused gave a knife blow on the head of Cashier. People started running for shelter and the accused ran away after taking the cash amount. While leaving, the accused also fired at the main gate, where many persons were present. After looting the cash in a blue colour bag, the said three accused fled away on a black colour Hero Honda motorcycle, which was already parked outside the Bank. Another person, who was having a different motorcycle also fled from the spot on his motorcycle. All the accused were young boys aged about 20/25 years and were wearing pant, shirt and out of them, one boy was of middle height, blackish colour and strong body and was wearing blue coloured strips clothes. Another person was of thin body and his height was about 5 ft. and 8 inches. Jai Pal, Peon and Yoginder S/o Ram Sawroop received injuries by the bullet shots. He stated that the exact amount of looted cash will be disclosed after verification and the accused would be identified, when produced.

Initially, on the basis of the statement made by Mahavir Singh, Branch Manager, the FIR under Sections 392, 394, 397 of IPC and Section 25 of Arms Act was registered against four unknown persons. Thereafter, the investigation proceeded and the MLRs of both the injured were got prepared. Tara @ Kalwa and Mahabir S/o Ram Sawroop were arrested in the case on 10.06.2005 and were produced in the Court. However, they were found to be innocent and the applications were moved to the Court for discharging them.

Accordingly, both the accused were ordered to be discharged by the Competent

Court. Thereafter, on 16.06.2005, Ajit Singh, SI, CIA Palwal was informed by Naresh Kumar, S.O., Police Station Kosi (U.P.) and he was informed that Devender, Santosh, Gopal, Pappu, Gainda Lal, Bir Singh, Kaushal have been arrested by U.P. police in a case under Section 399, 402 of IPC and they had suffered separate disclosure statements and they had disclosed that they were involved in the incident of looting the Bank at Hodal on 20.05.2005 and all the accused were confined in Mathura Jail. On getting this telephonic information, production warrants were taken from the Court and on 29.07.2005, Devender, Pappu, Gopal, Bir Singh, Gainda Lal and Santosh were taken into custody by ASI Rohtash Kumar, CIA Palwal and were produced before the Area Magistrate. After producing them, the accused suffered their respective disclosure statements and various amounts were recovered from the accused and a motorcycle was also recovered. Ultimately, the final report under Sections 392, 394, 395, 397 of IPC and Section 25 of the Arms Act was presented against the appellants in the Competent Court. After finding sufficient evidence against the appellants, charges were ordered to be framed against the appellants under Section 395 of IPC and under Sections 392/395 IPC read with Section 397 IPC by the Court of learned Additional Sessions Judge, Faridabad.

In support of the prosecution case, 14 witnesses were examined to prove the charge against the appellants. The prosecution examined PW-1 Rohtash Kumar, ASI, who was the Investigating Officer of the present case on 29.07.2005. The accused were produced by him in the Court on 29.07.2005 through production warrants from Mathura Jail. They were joined in the investigation after seeking permission of the Court and were put under arrest.

On interrogation, accused Devender suffered a disclosure statement Ex. P-1 in the presence of HC Ram Bir and HC Ram Babu. However, no recovery was effected in pursuance of the said disclosure statement. Again on 04.08.2005, Pappu, Gainda Lal, Ashok, Devender, Gopal and Bir Singh suffered their respective disclosure statements Ex.P-2 to Ex.P-7, respectively. He clarified that the disclosure statement of Ashok was recorded on 12.08.2005. In pursuance of their disclosure statements, they got recovered the amount, which had fallen to their shares. Pappu got recovered an amount of Rs.3,000/-, which was seized vide memo Ex.P-8; Gainda Lal got recovered Rs.5,000/-, which was taken into possession vide memo Ex.P-9; accused Ashok got recovered a motorcycle Hero Honda Splender on 13.08.2005 and Rs.5,700/- also, which were taken into possession vide memo Ex.P-10; accused Devender got recovered an amount of Rs.10,000/-, which was taken into possession, vide memo Ex.P-11; accused Gopal got recovered a sum of Rs.3,000/-, which was seized vide memo Ex.P-12; and accused Bir Singh got recovered a motorcycle and a sum of Rs. 3,000/-, which were taken into possession vide memo Ex. P-13. Accused Virender was arrested on 06.08.2005 and on 09.08.2005, his subsequent disclosure statement Ex.P-14 was recorded on the basis of which a motorcycle and Rs.5,000/- were recovered from his house on the same day, which were seized vide memo Ex.P-15. On 13.08.2005, accused Mahesh was arrested and his disclosure statement Ex.P-16 was recorded on the basis of which a cash amount of Rs.5,000/- was recovered and the seizure memo in this regard was Ex.P-17. He also prepared the site plans showing the places of recoveries and various memos were prepared by him. The said witness stated in his cross-examination that he received a disclosure statement from U.P. police

and on the basis of the same, he presumed that the above-said accused had committed the offence under this FIR. The disclosure statement was regarding all of the eight accused plus one more Santosh, who was found innocent and was accordingly, discharged. Regarding the disclosure statement recorded by the U.P. police, he could not tell anything as he was informed in this regard by Naveen Sehgal, Incharge, CIA Palwal. He arrested Pappu, Devender, Virender, Gainda Lal and Santosh on 29.07.2005 and they were produced in the Court on production warrants. On the same day, the accused were taken into custody in the Court in police remand. He was not aware of the fact that earlier Tara @ Kalwa and Mahabir were arrested in this case on 10.06.2005 and they were discharged later on. He further admitted that when the disclosure statements were recorded, a large number of persons from the general public were present in the Court premises. However, they were not joined in the investigation. He further admitted that no recovery could be effected in pursuance of those six disclosure statements. He also admitted that except that of Devender, accused, disclosure statements of the remaining accused were not on the Court file. He further stated that interrogation continued from 29.07.2005 to 04.08.2005 and nothing was disclosed prior to 04.08.2005. On 04.08.2005, interrogation commenced in CIA staff premises at 8.15 a.m. and continued upto 12 O' clock in the day time. No persons from the public were associated even at the time of said interrogation. However, the recovery was effected from the accused on the same day. He admitted that no person was associated at the time of making recoveries. He further admitted that none of the accused was subjected to test identification parade after their arrest in this case, even when they were not specifically named in the FIR.

The prosecution further examined PW-2 Jogender, who was an eye-witness of the occurrence. He stated that the accused present in the Court were not those persons, who had entered in the Bank as they were keeping their faces muffled. He further stated in the cross-examination that the miscreants were two in number and out of the 6/7 accused present in the dock of the Court on that day, none of them was the said miscreant. Even the police did not hold any test identification parade, for getting the accused identified. The prosecution further examined PW-3 Madan Lal, who was posted as a Cashier in the Bank and was an eye-witness. He stated that one of the accused fired a shot, which hit him on his right hand and the other accused inflicted knife blow which had fallen on his head. He stated that the miscreants had covered their faces, so he could not identify them. The said witness admitted in cross-examination that no test identification parade was ever conducted by the Investigating Agency. The prosecution examined PW-4 Nahar Singh, who was an eye-witness to the occurrence. He stated that he was terrified and took shelter in some corner of the Bank and could not identify the person who had resorted the firing. He stated that he could not identify the person, who had fired the shot and run away with the cash. He admitted that there were 40/50 persons in the Bank at the time of incident and no test identification parade was conducted. The prosecution examined PW-5 Abhey Singh, HC, who was present at the time of interrogation of Virender and Ashok, accused. He stated that at the time of making of the disclosure statement and recovery of cash from Virender and Ashok, nobody from the general public was called by the Investigating Officer. Even several persons were present at the time of the alleged recovery, still nobody was associated. PW-6, Sujjan Singh, ASI had recorded the FIR Ex.P-36

on receipt of ruqa Ex.P-35 through Constable Sukhbir Singh. Still further, the prosecution examined Mahavir Singh, Branch Manager of the Bank as PW-7, and he had witnessed the entire occurrence. He supported the case of prosecution regarding the occurrence. However, he stated that he could not identify the persons, who had looted the Bank and caused injuries. He stated that the persons, who committed the crime, were not present in the Court. In his cross-examination, he admitted that in the FIR, he had not mentioned that bundle of currency notes of Central Cooperative Bank were stapled with any chit of the said Bank. Even the number of miscreants was given as three. He admitted that when the incident took place, by that time the transactions were going on and due to the said reason, the number of currency notes were not stapled with the chit of the Bank. The prosecution further examined PW-8, Om Parkash, Inspector, who prepared the challan under Section 173 Cr.P.C. The prosecution further examined PW-9 Jai Pal, a bank official, who had also sustained injury. But he could not recognize the persons, who had committed the crime. He could not identify the persons, who fired upon him. He stated that he had fallen down and the accused present in the Court were not the persons, who had entered the Bank. The prosecution further examined ASI Sarup Singh as PW-10, who reached at the spot on getting the information and sent the same for registration of the FIR. He also prepared rough site plan and five cartridges were also lifted by him from the spot. However, in cross-examination, he admitted that in all three persons were shown as involved in the said incident and they were not even specifically named. PW-11, Jafruddin is a formal witness. The prosecution examined PW-12 Hawa Singh, Constable, who is a witness to the disclosure statement made by Mahesh accused and the

recoveries made from him. The prosecution examined HC Ram Babu as PW-13, who remained associated with the investigation. Even the disclosure statements were made in his presence and the recoveries were also witnessed by him. He however, stated that all the currency notes were recovered from 11 accused were stamped by the Central Cooperative Bank, Hodal. In his cross-examination, he admitted that when the recoveries were made from the houses of the accused, no independent witness was joined while effecting the recoveries from the accused. Even none of the respectable persons from the village was called. He further admitted that the Bank notes were not got identified from the Bank Officers. The prosecution further examined PW-14 Dori Lal, who had taken the photographs at the time of occurrence and was a formal witness.

After the examination of various prosecution witnesses, the incriminating evidence led by the prosecution was put to the accused in the shape of questions and they all stated that they had been falsely implicated in the instant case. The accused opted not to lead any evidence and thereafter, the defence evidence was ordered to be closed by this Court.

Learned counsel for the accused submitted that they have been falsely implicated in the instant case. In fact, as per the prosecution case, three persons had entered the Bank and after their arrest, no test identification parade was held. Still further, the offence under Section 395/397 IPC is not made out against the appellants as only four persons were shown to be involved in the instant case. Still further, the recoveries had been planted on the appellants after a long delay and various small amounts are shown to have been recovered from the accused from there places. Still further, the entire case is based on the

testimonies of various police officials and even no public witness was joined in the course of investigation, even though they were available at the time of suffering of the disclosure statement by the accused as well as at the time of recovery of the currency from the present appellants. Still further, no witness had identified the appellants and the testimonies of various prosecution witnesses were self contradictory. Learned counsel for the appellants submitted that the investigation in the present case is tainted and the appellants have been falsely implicated in the instant case. Thus, all the learned counsel appearing for the appellants prayed for acquittal of the appellants.

On the other hand, learned State counsel has vehemently opposed the prayer made by the learned counsel for the appellants and contended that the impugned judgment is based on due appreciation of the evidence and the appeal may be dismissed. Learned counsel further contended that the accused had suffered their respective disclosure statements, while they were interrogated by the police and during the course of investigation, the recoveries have been made from the accused and the same were admissible in view of Section 27 of the Evidence Act. Still further, the accused were involved in the some other cases as well and there was a presumption that they had committed the crime and prayed for upholding the impugned judgment and the order by this Court.

I have heard learned counsel for the parties and perused the trial Court record carefully with their able assistance.

In the instant case, the criminal law was set into motion with the registration of the FIR on 20.05.2005 by the Police of Police Station, Hodal. During investigation, ASI Sarup Singh found evidence against Tara @ Kalwa and Mahabir S/o Ram Sawroop and they were arrested on 10.06.2005 and were

produced in the Court. However, after sometime, it was found that they were innocent and by moving the application, they were got discharged from the Court. After sometime, the investigation of the case was entrusted to Ajit Singh, SI, CIA, Palwal. On 16.06.2005, Naresh Kumar, S.O., Police Station, Kosi telephonically informed Ajit Singh, SI that Devender, Santosh, Gopal, Pappu, Gainda Lal, Bir Singh and Kaushal had confessed in a case under Sections 399, 402 IPC that they had also committed the decoity at the Cooperative Bank, Hodal on 20.05.2005. On getting the information from U.P. Police, ASI Rohtash Kumar, CIA, Palwal moved an application and Devender, Pappu, Gopal, Bir Singh, Gainda Lal and Santosh were taken on production warrant from the jail at Mathura on 29.07.2005 and were formally arrested by ASI Rohtash Kumar. ASI Rohtash Kumar was examined as PW-1. In fact, he interrogated the accused from 29.07.2005 to 04.08.2005, but no recovery could be effected from any of the accused. Ultimately, on 04.08.2005, all of a sudden, Pappu, Gainda Lal, Ashok, Devender, Gopal and Bir Singh suffered their respective disclosure statements and certain amounts and motorcycles are shown to have been recovered from these accused. Even these recoveries were made all of a sudden and on the same day, from different and distant places. Still further, as per PW-13 HC Ram Babu, all the notes, which were recovered from the accused bore the stamps of the Central Cooperative Bank. In fact, the currency notes were looted from the Central Cooperative Bank and the complainant Mahavir Singh, Branch Manager of the Central Cooperative Bank, Hodal was examined as PW-7. PW-7 Mahavir Singh clearly stated that he had not mentioned in the FIR that the bundle of currency notes of the Central Cooperative Bank was stapled with any chit of the said Bank. Still further, he

admitted that when the incident took place by that time the transactions were going on and for that reason, the currency notes were not stapled with the chit of the Bank. When the Bank officials had not stapled the currency notes with any chit of the Bank, it is not understandable as to how the police recovered the bank notes, which were bearing the stamps of the Central Cooperative Bank. Still further, it has been stated that on 04.08.2005, all the accused, namely, Pappy, Gainda Lal, Ashok, Devender, Gopal, Bir Singh had suffered their respective disclosure statements and all the recoveries are shown to have been made from five different places i.e. from Mathura (U.P.), Dakoia (Hodal), Haryana and from Hidiyatpur (U.P.). It is unbelievable that the same persons visited different places on the same day in two different States to make the recoveries and as such, there is a big question mark on the recovery of the currency notes from the accused.

Still further, after the FIR was registered, the investigation could not make any headway. Ultimately, on 16.06.2005, Ajit Singh, SI, CIA, Palwal got a telephonic call from Naresh Kumar, S.O., Police Station Kosi (U.P.) that the accused had confessed the present criminal in a case registered against them in Police Station Kosi (U.P.). On getting the said information, ASI Rohtash Kumar, PW-1 arrested the accused on 29.07.2005. ASI Rohtash Kumar, PW-1 admitted in his cross-examination that he received disclosure statements from U.P. Police and on the basis of the same, he presumed that the above said accused had committed the offence under this FIR also. Even the disclosure statements suffered in U.P. were also made by eight accused and one Santosh also. However, Santosh was found innocent and was accordingly discharged.

Neither in the final report under Section 173 Cr.P.C. nor in any of the

testimonies, prosecution has not mentioned any reason for holding Santosh innocent, when he had also confessed on similar lines with the present appellants. Still further, ASI Rohtash Kumar, PW-1 admitted that regarding the disclosure statements before the U.P. police, he could not tell anything and he was informed in this regard by Naveen Sehgal, Incharge, CIA, Palwal and accordingly, he arrested the accused on 29.07.2005. In fact, it appears that the accused were arrested only on the basis of suspicion and without any legal evidence. Since the accused had suffered disclosure statements before U.P. Police, the police of CIA, Palwal also presumed them to be involved in the present case as well and they were ordered to be arrested on 29.07.2005. Even on 29.07.2005, they were arrested and on the same day, the police recorded the disclosure statement of Devender, without even verifying the facts of the case. Still further, PW-1, ASI Rohtash Kumar, also admitted that he was not aware that earlier Tara @ Kaluwa and Mahavir Singh were arrested in this case on 10.06.2005 and they were ordered to be discharged later on. This clearly shows that the official, who arrested the accused on 29.07.2005, had not even read the police file and he proceeded on the assumption that the accused were involved in the crime.

Still further, the police recorded the disclosure statements of all the accused on 04.08.2005. As per the Investigating Officer, the interrogation continued from 29.07.2005 to 04.08.2005. However, nobody disclosed anything prior to 04.08.2005. On 04.08.2005, the interrogation commenced in CIA Staff from 8.15 a.m. to 12 O' Clock in the day time. All the accused suffered their respective disclosure statements on the same day and the recoveries were also shown from five different places on the same day. However, no person from

the public was associated even at the time of the said interrogation and suffering of disclosure statements by the accused. The police visited different places to effect the recovery of various amounts, but admittedly, no person from the general public was associated at the time of recovery. Even various amounts are shown to have been recovered from all the appellants, but no other incriminating evidence was recovered from them. Even no weapons of offence were recovered and there was no expert opinion of any kind on record. Apart from that, it was shown that a motorcycle was recovered from Virender and another motorcycle was recovered from Ashok in pursuance to their respective disclosure statements. Again, there was nothing on record to show that the said motorcycles were used in the commission of crime. Still further, the occurrence was witnessed by several persons and it is not the case of the prosecution that the accused were having muffled faces, still no steps were taken to hold test identification parade after the arrest of the accused. Thus, in view of the above, it can be safely concluded that the investigation in the case was tainted, biased and the accused were arrested in the instant case only because of the fact that they had suffered a disclosure statement before U.P. Police with regard to their involvement in the present case.

It has been held by the Hon'ble Supreme Court of India in ***Criminal Appeal No. 1599 of 2010***, titled as ***“Babubhai Vs. State of Gujarat and others”*** as follows:-

“ 25. The investigation into a criminal offence must be free from objectionable features or infirmities which may legitimately lead to a grievance on the part of the accused that investigation was unfair and carried out with an ulterior motive. It is also the duty

of the Investigating Officer to conduct the investigation avoiding any kind of mischief and harassment to any of the accused. The Investigating Officer should be fair and conscious so as to rule out any possibility of fabrication of evidence and his impartial conduct must dispel any suspicion as to its genuineness. The Investigating Officer "is not to bolster up a prosecution case with such evidence as may enable the court to record conviction but to bring out the real unvarnished truth". (Vide R.P. Kapur v. State of Punjab AIR 1960 Supreme R.P. Kapur v. State of Punjab AIR 1960 Supreme Court 866; Court 866; Jamuna Chaudhary & Ors. v. State of Bihar AIR Jamuna Chaudhary & Ors. v. State of Bihar AIR 1974 Supreme Court 1822; 1974 Supreme Court 1822; and Mahmood v. State of U.P. AIR Mahmood v. State of U.P. AIR 1976 Supreme Court 69). 1976 Supreme Court 69).

26. In State of Bihar v. P.P. Sharma 1991(2) S.C.T. 397 , State of Bihar v. P.P. Sharma 1991(2) S.C.T. 397 , this Court has held as under :

"Investigation is a delicate painstaking and dextrous process. Ethical conduct is absolutely essential for investigative professionalism.Therefore, before countenancing such allegations of mala fides or bias it is salutary and an onerous duty and responsibility of the court, not only to insist upon making specific and definite allegations of personal animosity against the Investigating Officer at the start of the investigation but also must insist to establish and prove them from the facts and circumstances to the satisfaction of the court.Malice in law could be inferred from doing of wrongful act intentionally without any just cause or excuse or without there being reasonable relation to the purpose of the exercise of statutory power....The word 'personal liberty' (under Article 21 of the Constitution) is of the widest amplitude covering

variety of rights which goes to constitute personal liberty of a citizen. Its deprivation shall be only as per procedure prescribed in the Code and the Evidence Act conformable to the mandate of the Supreme Law, the Constitution. The investigator must be alive to the mandate of Article 21 and is not empowered to trample upon the personal liberty arbitrarily..... An Investigating Officer who is not sensitive to the constitutional mandates may be prone to trample upon the personal liberty of a person when he is actuated by mala fides."

27. In Navinchandra N. Majithia v. State of Meghalaya & Ors. Navinchandra N. Majithia v. State of Meghalaya & Ors. 2000(4) RCR (Criminal) 476 , 2000(4) RCR (Criminal) 476 , this Court considered a large number of its earlier judgments to the effect that investigating agencies are guardians of the liberty of innocent citizens. Therefore, a heavy responsibility devolves on them of seeing that innocent persons are not charged on an irresponsible and false implication. There cannot be any kind of interference or influence on the investigating agency and no one should be put through the harassment of a criminal trial unless there are good and substantial reasons for holding it. Criminal Procedure Code does not recognise private investigating agency, though there is no bar for any person to hire a private agency and get the matter investigated at his own risk and cost. But such an investigation cannot be treated as investigation made under law, nor can the evidence collected in such private investigation be presented by Public Prosecutor in any criminal trial. Therefore, the court emphasised on independence of the investigating agency and deprecated any kind of interference observing as under :

"The above discussion was made for emphasising the need for official investigation to be totally extricated from any extraneous influence..... All complaints shall

be investigated with equal alacrity and with equal fairness irrespective of the financial capacity of the person lodging the complaint.....A vitiated investigation is the precursor for miscarriage of criminal justice. of criminal justice."

(Emphasis added)

28. *In Nirmal Singh Kahlon (supra), this Court held that a concept of fair investigation and fair trial are concomitant to preservation of the fundamental right of the accused under Article 21 of the Constitution of India.*

29. *In Manu Sharma v. State (NCT of Delhi) (2010) 6 SCC 1, Manu Sharma v. State (NCT of Delhi) (2010) 6 SCC 1, one of us (Hon'ble P. Sathasivam, J.) has elaborately dealt with the requirement of fair investigation observing as under :- "..... The criminal justice administration system in India places human rights and dignity for human life at a much higher pedestal. In our jurisprudence an accused is presumed to be innocent till proved guilty, the alleged accused is entitled to fairness and true investigation and fair trial and the prosecution is expected to play balanced role in the trial of a crime. The investigation should be judicious, fair, transparent and expeditious to ensure compliance with the basic rule of law. These are the fundamental canons of our criminal jurisprudence and they are quite in conformity with the constitutional mandate contained in Articles 20 and 21 of the Constitution of India....*

It is not only the responsibility of the investigating agency but as well as that of the courts to ensure that investigation is fair and does not in any way hamper the freedom of an individual except in accordance with law. Equally enforceable canon of the criminal law is that the high responsibility lies upon the investigating agency not to conduct an investigation in tainted and unfair manner. The investigation should not prima facie be indicative of

a biased mind and every effort should be made to bring the guilty to law as nobody stands above law de hors his position and influence in the society....

The Court is not to accept the report which is contra legem (sic) to conduct judicious and fair investigation....

The investigation should be conducted in a manner so as to draw a just balance between citizen's right under Articles 19 and 21 and expansive power of the police to make investigation.....".

Learned counsel for the appellants vehemently argued that in the instant case, none of the bank officials and the other eye-witnesses had identified the accused and have been wrongly convicted by the learned trial Court. The prosecution examined PW-2 Jogender and eye-witness to the occurrence and he clearly stated that the accused present in the Court, were not those persons, who had entered in the Bank as they were keeping their faces muffled. Two persons had entered the Bank and the 6/7 persons present in the dock of the Court were not among those miscreants. Similarly, Madan Lal, Cashier had suffered an injury and was injured eye-witness. Even he did not identify the appellants in his testimony and stated that no test identification parade was ever conducted by the Investigating Agency. Similarly, PW-4 Nahar Singh was another eye-witness, who could not identify the person, who had committed the crime. He also stated that no test identification parade was conducted. Still further, the prosecution examined PW-7 Mahavir Singh, Branch Manager of the Bank/complainant and he also stated that he had seen those persons while running from the Bank, but he could not identify the accused present in the Court. Rather, he stated that those persons who had committed the crime were not present in the Court. Similarly, Jai Pal, an injured eye-

witness could not identify the person, who had fired on him. He clearly stated that the accused present in the Court were not persons, who had entered the bank. Thus, it is apparent that none of the witness, who was present at the place of occurrence and had identified the accused in the Court. Even the police failed to conduct any test identification parade.

Learned trial Court also noticed the said fact in the impugned judgment, still convicted the appellants wrongly. The learned trial Court observed that the incident was witnessed by PW-2 Joginder, PW-3 Madan Lal, PW-4 Nahar Singh, PW-7 Mahavir Singh and PW-9 Jai Pal and the occurrence stood fully proved on record by way of cogent and convincing evidence of the eye-witnesses as well as from the link evidence brought out on record. In fact, the said finding by the learned trial Court is contrary to the depositions made by the said witnesses. Even the learned trial Court also observed in the next paragraph itself that none of the eye-witnesses could identify the accused. Consequently, the findings recorded by the learned trial court are not only contrary to evidence on record, but are also self contradictory and legally unsustainable.

The learned trial court laid much emphasis on the disclosure statements suffered by the accused and the consequent recovery of various amounts from the accused. The learned trial Court held that in pursuance of disclosure statements, there was discovery of fact and consequently, the said disclosure statements were fully admissible in evidence. In fact, the said findings of learned trial Court are also liable to be rejected. In fact, no recovery of any incriminating evidence/fact was made in pursuance of various disclosure statements suffered by the accused. Even the currency notes, which were

recovered by the police in pursuance of the disclosure statements were found to be stamped by the Bank. Whereas Mahavir Singh, Branch Manager of the Bank clearly stated that the amount, which was looted from the Bank was not stamped because at the time of the occurrence, the transactions were going on and the currency notes were not stapled with the chit of the Bank. Still further, it is unbelievable that the accused were holding such small amounts after several months of the looting incident. Thus, the evidence with regard to the recovery of various amounts from the accused was inadmissible in evidence and the appellants have been wrongly convicted on the basis of the same.

Apart from that, there were other discrepancies in the prosecution evidence. As per the prosecution version, the persons, who had entered the Bank to commit the crime, were three in number and one person was waiting outside. Thus apparently, the FIR was initially registered against four un-known persons. However, in the instant case, seven persons have been prosecuted by the prosecution. Even the prosecution failed to explain as to what was the specific role of each of the accused and also failed to assign any reason as to why seven persons were prosecuted, when the offence was allegedly committed by four persons only. Still further, it was shown that firing was done at the time of commission of the alleged crime and the cartridges were recovered from the spot. However, no weapon of offence was recovered from any of the accused. Still further, as per the prosecution, two persons namely, Jai Pal and Joginder had suffered injuries. However, no doctor was examined by the prosecution to prove the said injuries suffered by the injured. Even the entire investigation was conducted by the police for several days and various disclosure statements of the accused were recorded from time to time during several days of their

interrogation. However, while recording the disclosure statements, no independent witness was ever associated during the entire process. Even the recoveries were made from five different places and no independent witness was joined while effecting the recoveries from the accused, despite availability of independent witnesses. All these factors render the prosecution case to be doubtful.

In view of the above discussion, I hold that the findings recorded by the learned trial Court are contrary to the evidence on record and the settled canons of law. By extending benefit of doubt to all the appellants, they are ordered to be acquitted and the impugned judgment dated 11.09.2007 and order of sentence dated 14.09.2007, passed by the learned Additional Sessions Judge, Faridabad are ordered to be set aside. The appellants/accused may be released, if confined in jail and not required in any other case.

Pending application, if any, is also disposed off, accordingly.

Case property, if any, be dealt with, and destroyed after the expiry of period of limitation. The trial court record be sent back.

30.11.2022
hemlata

(N.S.SHEKHAWAT)
JUDGE

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