

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

**Reserved on: 11.11.2022
Pronounced on: 17.11.2022**

1. CRA-S-61-2020 (O & M)

MANOJ ALIAS MONU Appellant
Versus

STATE OF HARYANA Respondent

2. CRA-S-328-2020 (O & M)

PREM Appellant
Versus

STATE OF HARYANA Respondent

3. CRA-S-1415-2022

JONY Appellant
Versus

STATE OF HARYANA Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Mohan Singla, Advocate
for the applicant-appellant in CRA-S-61-2020.
Mr. Radhe Shyam Sharma, Advocate
for the applicant-appellant in CRA-S-328-2020.
Ms. Monika Jalota, Advocate
for the appellant in CRA-S-1415-2022.

Mr. P.P.Chahar, DAG, Haryana.

SURESHWAR THAKUR, J.

1. The instant appeals are directed against the verdict made on 01.10.2019 upon Sessions trial No. 18 of 2019, by the learned Sessions Judge, Fatehabad wherethrough in respect of charges drawn against the accused for offences punishable under Sections 201, 364, 392 of the IPC and under Section 25 of the Arms Act, 1959, he made a verdict of

conviction against the accused.

2. Moreover, through a separate sentencing order drawn on 01.10.2019, he imposed upon the convicts both sentence(s) of imprisonment besides of fine but in the hereinafter extracted manner :-

All the convicts are sentenced as under :-

Under Sections	Sentence	Fine	Sentence in default of payment of fine
364 read with Section 34 of the Indian Penal Code	Rigorous imprisonment for ten years	Rs. 50,000/-	Rigorous imprisonment for a period of two years.
392 read with Section 34 of Indian Penal Code	Rigorous imprisonment for a period of eight years.	Rs. 40,000/-	Rigorous imprisonment for a period of two years.

Convict Jony is further sentenced as under :-

Under Sections	Sentence	Fine	Sentence in default of payment of fine
25 of the Arms Act.	Rigorous imprisonment for three years	Rs. 10,000/-	Rigorous imprisonment for six months.

3. The convicts become aggrieved from the verdict of conviction (supra), and, also become aggrieved from the consequent therewith sentence(s) (supra), as became imposed upon them, by the learned Convicting Court, and, have chosen to assail them, through theirs' constituting the instant criminal appeals, bearing Nos. CRA-S-61-2020, CRA-S-328-2020 and CRA-S-1415-2022, before this Court.

4. Since all the criminal appeals (supra) arise from a common judgment, therefore, all are amenable for a common verdict becoming recorded thereons.

Factual Background

5. The prosecution case is rested upon the appeal FIR, to which Exhibit P4 is assigned. The informant Anil Kumar son of Om Parkash has made narrations therein that, on 29.12.2018, when he was going to village Kharadwal from village Kanoh in his vehicle Bolero bearing registration No. HR-23G/5223 to his relatives, then at about 6.30 PM, when he reached near Rajbah on Samain-Kharadwal road, then, three persons suddenly came on the road in front of his vehicle, and, forcibly stopped his vehicle. The moment the vehicle was stopped, one of them came towards the complainant and opened the door of the car and placed a knife on his neck and the other two persons came near him and asked him to hand over whatever he was having, otherwise he would be killed. One of them snatched his mobile phone J-2 having Sims No. 7015486048 and 9729154197 and Rs. 5500/- from his pocket and the other two persons forcibly removed two gold rings from his fingers. At that time, one of them said that he (complainant) should be killed but then another person said that the lights of a vehicle were being seen from the apposite side, therefore, it would not be proper to kill him there. Thereafter, the complainant was made to sit on the rear seat of the said vehicle by showing a kinfe. One of them stated that the complainant would be thrown in the canal after killing him. Thereafter, one of them drove at Talwara Jakhal turn, then upon finding an opportunity, the complainant jumped out of the vehicle and ran away after saving his life. The age of the above said three persons was about twenty five/thirty years and one of them was lame. The whereabouts of the said persons were not known to him. He could identify them if they appear before him. The complainant prayed that suitable action as per law should be taken against

the abovesaid three unknown persons who had snatched his vehicle, Rs.5500/-, two gold ear rings and one mobile phone and attempted to kill him.

Investigation Proceedings

6. On the basis of aforesaid statement of the complainant, case was registered. The investigations were done, and, the accused were arrested.

7. After completion of investigations by the investigating officer concerned, into the FIR (supra), he instituted an affirmative report under Section 173 Cr.P.C., before the learned Committal Judge concerned, against all the accused.

Committal Proceedings

8. Finding the offence under Section 364 IPC to be exclusively triable by the Court of Session, then the learned committing Court vide order dated 28.03.2019, committed the case to the Court of the learned Sessions Judge, Fatehabad.

Trial Court Proceedings

9. On finding a prima facie case, charges under Section 364 and under Section 392 read with Section 34 of the IPC became framed, against all the accused. Accused Jony was also charge sheeted under Section 25 of the Arms Act, 1959. The accused pleaded not guilty thereto, and, claimed trial.

10. In support of the prosecution case, the prosecution examined nine witnesses. After completion of recording of the depositions of the prosecution witnesses, the learned Additional Sessions Judge concerned, drew proceedings, under Section 313 of the Cr.P.C., but therein, the

accused claimed false implication, and, pleaded innocence. The accused did not lead any defence evidence.

11. After conclusion of the trial, as, entered upon the FIR (supra), by the learned Sessions Judge, Fatehabad, the latter proceeded to make the afore verdict of conviction, and, also made the consequent therewith sentences (supra), upon, the present appellants.

Submissions of the learned counsel for the convicts-appellants

12. The learned counsel appearing for the convicts-appellants has contended with much vigour before this Court, that the convicts have been falsely implicated by the complainant. To support the above submission, he draws the attention of this Court, to the factum of the complainant, in his cross examination admitting that he was made to sit on the rear of the Bolero vehicle. Moreover, he also alludes to the further narration therein qua on his left side, and, on his right side, rather the accused concerned becoming seated. Therefore, he contends qua the factum of the complainant, upon the slowing down of the vehicle, opening the door thereof, and, his fleeing to the site where the police had laid a nakka, and, who at the nakka point apprehended the accused alongwith the Bolero vehicle owned by the complainant, is but, a concocted and manipulated story. Therefore, he submits that no credence can be assigned to the said story, even though it has been corroborated by the complainant upon his stepping into the witness box as PW-7.

13. The learned counsel for the convicts-appellants further argues that the accused and the complainant were on friendly terms, and, they had prior to the relevant occurrence, which for reason (supra) is but concocted, had consumed liquor in a hotel, and, that only when the accused had

wrangled with the complainant, that he was led to concoct a case against the accused.

Submissions by the learned State counsel

14. On the other hand, the learned State counsel submits, that the impugned verdict of conviction and consequent therewith order of sentence, as made upon the convicts is merit-worthy, as it is based upon a fair and untainted appreciation of evidence, by the learned trial Judge. Thus, he argues that the same is required to be validated by this Court.

Reasons for rejecting the submissions of the learned counsel for the convicts-appellants.

15. Even if assuming that the initial submission, as addressed by the learned counsel for the convicts-appellants, does have a tinge of truth inasmuch as, with the complainant occupying the rear of his Bolero vehicle, and, on his left, and also on his right side, the accused concerned, becoming seated, as such, precluding him to even upon the slowing down of the vehicle, to after his opening the door of the vehicle, hence fling himself on to the road and thereupon flee to the naka point where the police naka was laid. However, the above purported falsity, does not convince this Court to conclude, that the prosecution has manufactured, a story against the accused, rather merely for falsely implicating them.

16. The primary reason for drawing the above conclusion rest(s) upon the factum, that the accused nursed a defence, that they were on friendly terms with the complainant, and that they had earlier to the ill fated occurrence rather consumed liquor with him at a hotel. Moreover they also contend, that only when they purportedly wrangled with the complainant, that the latter to wreak vendetta qua them, hence took to falsely implicate

the accused. However, since neither the accused nor the complainant became subjected to a breath analyzer test to sustain the above defence, nor also when the owner of the hotel concerned, where they too consumed liquor, in the company of the complainant, has been sighted as a defence witness, whereas, the above comprised the best evidence to sustain the above nursed defence. Resultantly the absence of adduction of the above best exculpatory evidence does completely forestall, the convicts to contend that they have been falsely implicated in the FIR.

The conclusions from dispelling the above argument and the analysis of the disclosure statement made respectively by the accused concerned and analysis of the consequent therewith recoveries.

17. During the course of investigation, convicts Prem Kumar, Jony and Manoj @ Monu respectively made signed disclosure statements, as become respectively enclosed in Exhibits P-25, P-26 and P-27. The signatures of the accused, as occur thereons are admitted, as they do not deny the existence of their valid signatures thereons nor they prove the said denial. Therefore, the effect of the convicts hence admitting the existence of their valid signatures on the above drawn disclosure statements, is that, the confession of guilt, as made therein by each of the convicts rather holding the requisite aura of creditworthiness. However, the confession of guilt as made by the convicts in the above drawn disclosure statements would become bald and simpliciter confession of guilt, and, would also attract the embargo encapsulated in Section 25 of the Indian Evidence Act, 1872, unless the convicts concerned had also ensured the makings of recoveries, at their respective instances, of the incriminatory items, as become narrated therein, to the investigating officer concerned. In the above regard, a perusal of the documentary evidence, which has been

proven by the prosecution witnesses concerned, reveals that in pursuance to Prem Kumar making a signed disclosure statement, as becomes embodied in Exhibit P-25, his causing the recovery of Rs. 1,000/-, and, of one mobile phone hence through recovery memo Exhibit P-32, to the investigating officer concerned. Moreover, accused Jony after making a signed disclosure statement, as becomes embodied in Exhibit P-26, did also evidently caused the recovery of one knife and of Rs. 1100/- through recovery memo Exhibit P-34, to the investigating officer concerned. In addition, convict Manoj after making a signed disclosure statement, as becomes embodied in Exhibit P-27, did also cause the recovery of Rs. 1100/-, through recovery memo Exhibit P-35, to the investigating officer concerned. The makings of the above recoveries has not been proven by convicts Prem Kumar, Jony and Manoj, to be either engineered or manufactured, by the investigating officer concerned, nor they have been able to adduce any evidence qua the above recoveries, as made at their respective instances, rather was of item(s) hence evidently owned by them. Thus, the valid recoveries as became effected to the investigating officer concerned, respectively by convicts Prem Kumar, Jony and Manoj, through the respectively drawn recovery memo(s) to which respectively Ex.P-32, P-34 and P-35 becomes assigned, does result in a firm conclusion, that the confession of guilt as made by the above convicts, in their respectively made signed disclosure statements, to which Exhibits P-25, P-26 and P-27 are assigned, does assume evidentiary vigour. The striking reason for forming the above conclusion, becomes embedded in the factum, that the confession of guilt, as becomes enclosed in Exhibit P-25, P-26 and P-27, when has resulted in consequent therewith recoveries being validly made,

does not hence become a bald or simpliciter of confession, to which the embargo constituted in Section 25 of the Indian Evidence Act, 1872 is attracted, rather the confession of guilt, as made by the convicts (supra) to the investigating officer concerned, during the phase of the latter holding them to police remand, does become admissible besides relevant. In nutshell, it comprises firm incriminatory evidence against the accused.

Identification Memo

18. The accused earlier to the ill fated occurrence were not known to the complainant. Therefore, it was but imperative for the investigating officer concerned to during the course of investigations, ensure that the complainant, makes a valid identification of the accused besides it was also thereafter important for the prosecution, to ensure that the complainant, upon his stepping into the witness box, through his identifying the accused in Court, hence corroborating the earlier thereto identification, as became made by him, of the accused concerned.

19. In the above regard, during the course of investigations being made into the FIR offences, the complainant, as revealed by the memo of identification, as becomes comprised in Exhibit P-7, hence proceeded to identify the accused. Moreover, during the course of his stepping into the witness box, he also then identified the accused as the persons who committed the FIR offences. Therefore, he has assuredly corroborated the identification, as was made by him of the accused, during the course of investigations being underway into the FIR offences. Resultantly the prosecution has proven the identity of the accused as incriminatory participants in the FIR offences. The firm reason for making the above conclusion arises from the factum, qua the accused not putting any

suggestions to the investigating officer concerned, qua Exhibit P-7 becoming falsely drawn nor putting any suggestions to him, that the identification as made through Exhibit P-7, was of persons other than the accused.

Effect of seizure of Bolero vehicle alongwith Registration Certificate from the accused by the police patrol at the nakka point.

20. What firmly cements the above made inference about the incriminatory participation of the accused in the FIR offences, becomes anchored upon the factum, that the police did at the nakka point apprehend the accused, while they were occupying the Bolero vehicle owned by the complainant. The accused have not been able to adduce any evidence suggestive that, the Bolero vehicle which belonged to the complainant rather was validly acquired by them through the drawing of documents whereafter they paid the apposite sale consideration to the complainant. Thus, absence of the above evidence results in a firm conclusion that they had unauthorizedly occupied the Bolero vehicle owned by the complainant. Therefore, the seizure of the Bolero vehicle through Exhibit P-9 as made at the nakka point, by the police, thus moves this Court to firmly conclude, that the identification, of the accused, as made by the complainant through identification memo, to which Exhibit P-7 is assigned, rather also acquiring corroboration from Exhibit P-9. Thus, the incriminatory participation of the accused in the charged offences becomes cogently established.

Principle of law

21. If the convicts are validly identified during the course of investigations, whereafter the apposite identifier does also identify them in Court. Thus, the identification or identity of the accused concerned becomes

formidably proven.

Final order by this Court

22. In consequence, there is no merit in the appeals, and, they are dismissed. The impugned verdict, and, consequent therewith sentence(s) (supra), as imposed upon the convicts, are affirmed and maintained.

23. The case property, if any, be dealt with in accordance with law after the expiry of period of limitation for the filing of an appeal, and, records be sent back to the trial court concerned.

24. Since the main case itself has been decided, hence, all the pending application(s), if any, also stand(s) disposed of.

November 17th, 2022

'kavneet singh'

**(SURESHWAR THAKUR)
JUDGE**

<i>Whether Speaking/reasoned</i>	<i>Yes / No</i>
<i>Whether Reportable</i>	<i>Yes / No</i>