

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

**Neutral Citation No.: 2023:PHHC:077289
CRM-A-937-2022 (O&M)
Date of Decision: 24.05.2023**

State of Haryana

.....Petitioner

Vs.

Shubham @ Shubhi and Others

.....Respondents

CORAM: - HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: - Mr. Randhir Singh, Addl. AG, Haryana.

DEEPAK GUPTA, J.

State of Haryana is in this appeal against the judgment dated 08.02.2022 passed by the Court of Learned Sessions Judge, Kurukshetra, whereby the respondents-accused have been acquitted of the charges in sessions case No.113 of 2019 [CNR No.HRKU01-005887-2019] arising out of FIR No.23 dated 23.02.2019 registered at Police Station Babain, District Kurukshetra under Sections 341, 395, 397, 201, 120-B, 379-B IPC & Section 25 of Arms Act.

2. The appeal is accompanied by an application to condone the delay of 144 days.

3. It is contended that after the impugned judgment dated 08.02.2022, District Attorney Kurukshetra sent memo dated 24.02.2022 to the District Magistrate Kurukshetra with his comments that it is a fit case for filing appeal. District Magistrate forwarded the said comments along with the copy of the judgment to the office of Advocate-General

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Haryana vide letter dated 28.03.2022. However, it is on 31.08.2022 that letter was received from the office of Advocate-General Haryana with the direction to file the appeal before the High Court and thereafter, the appeal was drafted without any delay. It is contended that this delay of 144 days has been caused due to official lengthy process.

4. It is evident from the own contention of the appellant that though the record including police file and the impugned judgment were sent to the office of Advocate-General by the District Magistrate, Kurukshetra vide letter dated 28.03.2022 but the office of District Advocate-General took a period of more than 5 months in conveying its direction to file the appeal. Delay caused due to official lengthy procedure is not sufficient to condone the delay. This Court finds no justification so as to condone the delay and so, the application deserve to be dismissed and on this ground itself appeal is liable to be dismissed being barred by time.

5. Even otherwise, if the appeal is considered on merits, this Court finds no reason to interfere in the well-reasoned judgment recorded by the Trial Court.

6. As per prosecution case, occurrence took place on 22.02.2019 at about 11:30 p.m., when complainant Anil Kumar was going to his house at Village Mangoli Jattan from Barara in his car No.HR-26-AR-0072. It was alleged that he was waylaid by two boys, who came on a motorcycle from the nearby sugarcane fields and when the complainant asked the reason to block him, one of the boy fired upon him which passed near his ear. He alighted from the car and the other

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boy attacked him with iron rod. Two more boys came there having sharp edged weapons and caused injuries on different parts of his body. The assailants were demanding key of the car and money. The fifth boy grappled and took him in the field of sugarcane. After snatching the key of the car and causing injuries, all the assailants fled away towards Babain side along with the motorcycle. Documents of the complainant and three mobile phones make Vivo 11 Pro, Samsung J2 and Nokia were also in the car. It was further stated by the complainant in the complaint made to the police that he could not identify the assailants due to darkness. He went to the house of one Salinder @ Kala and disclosed entire incident to him, who brought him to the house of his brother and then shifted him to the hospital for treatment.

7. During investigation, one of the mobile make Samsung was found in the fields near the place of occurrence on 28.02.2019. During investigation, on the basis of secret information accused Shubham and one S. Child in conflict with law-in short (CCL) were arrested. Accused Akash, Amit Thakur, Nitesh, P. (CCL) and R. (CCL) were arrested during 04.03.2019 to 07.03.2019. On the basis of disclosure statements suffered by the accused, Binda used in the crime, 6 ATMs, one pass book and cheque book were recovered from Amit Thakur. One motorcycle used in the crime and one snatched mobile phone make Vivo were recovered from R. (CCL). Arms license and insurance policy of the snatched car were recovered from accused Nitesh. Driving license of the complainant, his PAN card and one motorcycle used in the crime were recovered from P. (CCL). After completion of investigation, challan was

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filed to prosecute accused Shubham @ Shubhi, Akash @ Shubi, Nitesh @ Nishu and Amit Thakur; whereas, S, P and R being CCL, report qua them was forwarded to Juvenile Justice Board.

8. After commitment by the learned Magistrate, challaned accused were charged under Sections 120-B, 341, 379-B and 201 of the IPC, to which they pleaded not guilty and claimed trial. During trial, one of the accused Amit Thakur expired and so, proceedings against him were dropped vide order dated 29.08.2019.

9. To prove the charges, prosecution examined 17 witnesses. Statements of the accused were recorded under Section 313 Cr.P.C. wherein they controverted the incriminating circumstances appearing against them and pleaded their false implication. However no evidence in defence was adduced by them. After hearing both the sides learned Trial Court gave the finding of acquittal.

10 It is contended by the appellant-State that Trial Court has acquitted the accused-respondents mainly on the basis of assumptions and presumptions, failing to appreciate that the case involved the offences of dacoity and snatching and that accused are professionals in nature, who in pre-planned had targetted the victim. The statement of complainant has been wrongly disbelieved. The facts disclosed by the accused were corroborated by the recovery of the incriminating material and thus there was clinching evidence against them. The recoveries have been wrongly discarded on the ground that no independent witness was associated to prove the authenticity. With all these submissions, prayer is made for setting aside the acquittal and to convict and punish the

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respondent-accused as per law.

11. After hearing the learned State counsel and perusing the impugned judgment of the Trial Court, this Court finds no merit in the appeal.

12. Learned Trial Court after hearing the contentions of both the sides and by appreciating the evidence brought on record by the prosecution, has returned the following findings in the impugned judgment:-

“13. As per case of prosecution on 22.2.2019 complainant-Anil Kumar, who is working as Reader to DSP, Barara, was going back to his house situated in village Mangoli Jatan from his office in his car no, HR- 26AR-0072. At about 11:30 P.M. he had just crossed house of Surinder @ kala that two boys came on a motorcycle and stopped his car. He asked them the reason for doing so on which one of the boy fired a shot at him which passed near his ear. He came out of car and again asked the boys for stopping his car. However one boy attacked him with iron rod and the second boy caused injuries on his left arm with iron rod. In the meantime, two more boys came on a motor-cycle, out of which, one attacked him with sharp edged weapon which hit on his left palm and second blow hit on his right ear and head. The second boy gave iron rod blow on head of complainant. They also caused injuries on his face and nose. While attacking they were asking for cash and keys of the car. Complainant stated that the fifth boy came and caught hold him and then accused took him to nearby fields where after beating him they took out keys of the car and fled towards village Babain side. They also took away their motor-cycles. According to complainant apart from his official and personal document there were three mobile phones in car which were taken by the accused. Complainant stated that the accused were in the age group of 20/25 years and they were speaking in a local dialect and he could not recognize them on account of darkness.

14. It is further case of prosecution that on 03.03.2019, on

secret information, police arrested Shubham and S. (CCL), who were present behind Karan ITI near tubewell. Shubham suffered disclosure statement, Ex.P25 admitting his involvement in crime along with co-accused. Similarly, other accused were arrested and they also suffered disclosure statements and got recovered broken number plates of car, weapons and motor-cycle used in crime, mobile phones and documents of complainant. Accused Shubham, S. (CCL) and Akash also got recovered car of the complainant from Avaradhan canal. According to accused, they had conspired to kill Sahil Pandit who was inimical towards accused Amit Thakur and for this purpose, they needed a car which was snatched by them from complainant.

15. *In order to prove its case, prosecution examined complainant Anil Kumar, who stepped into witness box as PW7 and stated that on 22.02.2019, he was going to his house after completing duty. At about 11.30 P.M. when he reached near residence of Salinder resident of village Mangoli Jatan, two boys came on a motor-cycle and parked the same in front of his car. He asked the reason for doing so but one of them fired upon him. Thereafter, he alighted from the car and again asked them the reason for stopping his car, on which one of the accused attacked him with an iron rod which hit on his left arm. Thereafter, two more boys came on motor-cycle from behind the car. Out of them one attacked him with sharp edged weapon which hit on his left palm, head and right ear, The other boy also attacked him with iron rod on his head. They also inflicted injuries on his mouth and nose. He further stated that one another boy also came there and took him towards sugarcane fields, where accused inflicted injuries and snatched keys and took away car towards side of village Babain. They also took their motor-cycle with them. According to PW7 Anil Kumar, his documents i.e. 6 ATM cards, arms licence, driving licence, registration certificate, PAN card and three mobile phones were also lying in the car. He stated that accused were talking in local language and were in age group of 20/25 years. Thereafter, he reached near house of Salinder and narrated the entire incident to him. He took him to his (PW7) home from where his brother took him to hospital, where police came and recorded his statement. According to complainant, accused present in the court were the assailants. However, in the*

considered opinion of this court that the statement of complainant does not inspire confidence regarding identity of the accused and also seems to be not free from suspicion. According to complainant, two accused came and parked their motor-cycle in front of his car. When he asked them reason for doing so, one of the accused fired shot upon him, which passed through his ear. Thereafter, he alighted from the car and again asked him reason for stopping his car, on which he was attacked by the accused. However, a perusal of recovery memo, Ex.P32 would show that after recovery of car from Avardhan canal, police examined and inspected the same but there was no mark of bullet on the car. It was month of February, 2019 and at about 11.30 P.M. one can easily presume that it might be a cold night and normally in such a weather one drive car after closing the window panes. If the version of the complainant is accepted that accused had fired shot upon him then in that eventuality, the bullet might have struck in the car. Further it is not believable that after being attacked by fire arm, instead of immediately trying to escape from spot, the complainant would have alighted from the car. These facts create a doubt in the prosecution story.

16. *Moreover in complaint, Ex.P4 complainant has stated that he could not recognize the accused due to darkness. He has also not mentioned physical description of any of the accused in complaint, Ex.P4. He also admitted that accused were not known to him prior to occurrence and no test identification parade of accused was got conducted by police in accordance with law. He further admitted that on the day of occurrence, there was total darkness. No doubt in his cross-examination, PW7 Anil Kumar has stated that there was light of the car but he admitted that there was darkness. Since the accused were not previously known to complainant who attacked him suddenly, therefore, it is doubtful whether he was in a position to recognize and identify them in headlights of car. PW10 HC Satnam Singh admitted that no body including investigating officer, SHO and other police official did not know about the name, description and places of any of accused.*

17. *According to PW7 Anil Kumar complainant, two boys came on a motor-cycle, who stopped his car and caused injuries to him. Thereafter, two more boys came on a motor-cycle who also caused*

injuries to him. After that one boy came and caught him from behind and accused took him to a sugarcane field, where after beating, they snatched keys of car and cash from him and fled away. However, police has filed challan against seven persons, out of which accused Amit Thakur expired during pendency of trial. Though, as per prosecution version, accused Akash helped co-accused in disposing of car in Avardhan canal and he also removed and had broken number plates of car, however, the complainant also identified him as assailant in court. As the accused Akash was not present at the spot, there was no reason for complainant to identify him as the assailant. The complainant stepped into witness box as PW10 in Sessions Case No.145 of 2019 in which S., P. and R., children in conflict with law are facing trial and deposed that S. was not one of the assailant. He was declared hostile and was cross-examined by learned Public Prosecutor, however, he stated that S. (CCL) was not the assailant. It means S. (CCL) was also not present at spot at the time of occurrence, whereas as per prosecution version, he actively participated and got recovered binda used by him in crime. The complainant had identified accused Nitesh, Shubham and Akash in court, however, on being asked he failed to point out towards Nitesh and Shubham. Even if he was not knowing their names but he could have easily referred to the role played by them in the occurrence.

18. *Further, though, according to PW7, there was darkness but he stated that there was light of headlights of the car. According to complainant, two boys came on a motor-cycle and got stopped his car and if he has identified the accused, he could have easily tell at least who were the two boys who stopped his car as he might have seen them in the headlight of the car. However, he categorically stated that he cannot tell what was done by any of the accused. All these facts goes to show that prosecution has failed to establish the identity of accused facing trial being assailants.*

19. *Proceeding further, PW16 SI Gulab Singh stated that on 03.03.2019, on receipt of secret information that accused Shubham and S. (CCL) were present behind Karan ITI near tubewell, he reached there. On noticing police party, they tried to run away but were apprehended by them. On enquiry, they disclosed their names as*

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Shubham and S. (CCL). First of all accused Shubham on being interrogated suffered disclosure statement, Ex.P25 admitting his involvement in crime and he further disclosed that snatched car was thrown in Averdhan canal at Ladwa Road. Thereafter, S. (CCL) was interrogated who suffered disclosure statement, Ex.P22. After that in pursuance of aforesaid disclosure statements, PW16 SI Gulab Singh proceeded in search of accused and when they reached near vegetable market, Ladwa, on pointing of accused Shubham and S. (CCL), they arrested a boy who disclosed his name as Akash @ Subi. On being interrogated, he suffered disclosure statement, Ex.P24. In pursuance of their disclosure statements, on 04.03.2019 accused Shubham got recovered gandasi, Ex.MO24 and S. (CCL) got recovered iron rod, whereas on 05.03.2019 accused Akash got recovered four pieces of broken number plate Ex.MO25 to Ex.MO28 of car No.HR-26AR-0072. Thereafter, on pointing of accused Shubham, S. (CCL) and Akash, car of complainant bearing registration No.HR-26AR-0072 was recovered and taken out from Averdhan canal, which was taken into police possession vide recovery memo, Ex. P32. On the next day i.e., on 06.03.2019, accused Shubham was taken to Amritsar. However, when police party reached at Jalandhar bye pass, he resiled partly from his previous disclosure statement and suffered fresh disclosure statement, Ex.P34, in pursuance of which, he got recovered registration certificate of car, ExM011 which was taken into possession vide recovery memo, Ex P35.

20 *PW17 SI Sharanjit Singh stated that on 07.03.2019, one Amit Kumar produced Nitesh and P. (child in conflict with law) and Amit Thakur before him. Amit Thakur suffered disclosure statement, Ex.P21 admitting his involvement in crime and disclosed that he could get the binda recovered from the forest of village Khairi and bank passbook and cheque books from house of his maternal aunt at village Baltana. Accused Nitesh and P. (CCL) also suffered disclosure statements and offered to get recovered the concealed articles. On 08.03.2019 accused Amit, Nitesh and P. (CCL) got demarcated place of occurrence vide memo, Ex.P23.*

21. *Thereafter, Amit, Nitesh and P. were taken out from lock up and they led police party to forest of Khairi. Amit got recovered one*

wooden binda which was taken into possession vide memo, Ex P38. After that accused Amit partly resiled from his previous disclosure statement and suffered fresh disclosure statement, Ex.P39 and disclosed that bank passbooks, cheque books, ATM cards had been kept concealed at his house near vegetable market, Ladwa. Thereafter, P. child in conflict with law also suffered fresh disclosure statement regarding having concealed DL, PAN card and motor-cycle used in crime at his house at Ravidass Majri, Ladwa. Accused Nitesh also partly resiled from his previous disclosure statement and suffered fresh disclosure statement, Ex.P40 disclosing that arm license and insurance policy of the snatched car had been kept concealed by him at his house in village Morthala instead of the place as disclosed by him in his previous disclosure statement. In pursuance of his disclosure statement, Nitesh led the police party to his residential house and got recovered arm licence and insurance policy of snatched car No.HR-26AR-0072 in the name of complainant Anil Kumar from an iron almirah, which was taken into police possession vide recovery memo, Ex.P41. Thereafter, P. child in conflict with law got recovered driving licence, Ex.MO09, PAN card and motor-cycle. Accused Amit got recovered six ATM Cards, Ex.MO18 to Ex.MO23, one passbook and one cheque book of PNB, one passbook of Punjab and Sindh Bank, one passbook and one cheque book of HDFC bank, one passbook of SBI, Ex.MO12 to Ex.MO17, which were taken into possession vide recovery memo, Ex.P43.

22. Though, testimony of PW16 SI Gulab Singh and PW17 SI Sharanjeet found corroboration from statement of PW10 HC Satnam Singh, PW11 HC Satvinder Singh and PW13 HC Randeep Singh, however, a careful analysis of evidence would show that the prosecution are regarding recoveries is also doubtful and is not free from suspicion According to PW16 SI Gulab Singh on 03.03.2019, he arrested Shubham Kumar, S.(CCL) from near tubewell behind Karan ITI and thereafter on their pointing accused Akash @ Subi was also arrested. However, testimony of PW16 S1 Gulab Singh and PW11 HC Satvinder Singh shows that not only recoveries but there is also doubt about the manner of arrest of aforesaid accused. PW16 81 Gulab Singh stated that on 03.03.2019, on receipt of secret information, he reached near tubewell behind Karan ITI where two boys were sitting, who on

noticing police party tried to flee away but were apprehended. On enquiry, they disclosed their names as Shubham and S, (CCL). However, PW11 HC Satvinder Singh simply stated that on 03.03.2019, he joined investigation with SI Gulab Singh and on secret information, S.(CCL), was arrested from the area of forest of Khairi and and interrogated. Then he stated that on the same day accused Akash was arrested near vegetable market, Ladwa, who also suffered disclosure statement and admitted his involvement in crime. He further stated that on the same day accused Shubham was arrested from the forest in the area of Khairi. PW11 HC Satvinder Singh has not stated that Shubham and S.(CCL) were arrested together and they had also tried to flee away as stated by PW16 SI Gulab Singh. Similarly, though according to PW16 SI Gulab Singh, accused Akash was apprehended from vegetable market Ladwa on pointing of accused Shubham and S (CCL), however, PW11 HC Satvinder Singh in his cross-examination stated that he along with SI Gulab Singh went to vegetable market Ladwa where Akash was apprehended. He has not stated that accused Shubham and S.(CCL) were also with them at that time. He stated that Akash was not known to him. He was also not aware of house of accused Akash. He stated that he cannot tell who identified accused Akash from the residents of that area. He further stated that investigating officer had noted down the facts narrated by accused Akash but that statement is not on judicial file.

23. Now coming to recovery of car no. HR-26AR-0072 of complainant, PW16 stated that in pursuance of their disclosure statements, accused Shubham, S.(CCL) and Akash took the police party to Avaradhan canal. Accused Akash got recovered four pieces of number plates, Ex.MO25 to Ex.MO28 of car which were taken into possession vide recovery memo, Ex.P30. PW16 SI Gulab Singh stated that one diver namely Karan was called who entered in the water of Avaradhan canal and found car lying there. Thereafter, he arranged one hydra machine operator Sachin which took out the car from canal which was taken into possession vide recovery memo, Ex.P32. As per prosecution version, after snatching car accused parked the same in forest of village Khairi, however, when they came to know that the car was of a police official, then fearing that they may not be apprehended, they

took the same and had thrown the car in Avardhan canal. Admittedly, accused were not known to complainant, thus in these circumstances, if they had not to use the car for the purpose for which they are stated to have snatched the same, there was no necessity for them to take the car from area of Khairi forest and then to throw the same in Avardhan canal. There was no reason for them to take the risk of being apprehended while disposing of the car in the canal. They could have simply left the car abandoned at the place where it was parked by them. The accused have snatched car of a police official and could have easily presumed that police might be on high alert and in case they took out the car for disposing of the same they could be caught. Further, though according to PW16 SI Gulab Singh one diver Karan and one hydra machine operator Sachin were called to take out the car from canal, however, their statements under section 161 Cr.P.C. were not recorded by the police. Even statement of Tehsildar, Indri, who had sent the diver was also not recorded. No videography or photographs were taken when the car was taken out from canal water. Thus, link evidence is also missing in this case.

24. *Now as far as recovery of mobile phones are concerned, according to complainant, his three mobile phones make Nokia, Samsung and Vivo were lying when the car was snatched from him. He stated that on 28.02.2019, he produced one mobile phone make Samsung J2 along with two SIM cards before the police as the said mobile phone was found by one labourer of Ravinder Kumar during harvesting of sugarcane in fields of Gurdial Singh. The mobile phone had been taken into possession by the police vide memo, Ex.P18. PW15 SI/SHO Bhushan Dass stated that said mobile phone was found by one Ram Kumar Mahto from the fields which he handed over to Ravinder Kumar. In his cross-examination, he stated that he had not recorded statement of Ram Kumar Mehto. This fact again makes the prosecution story doubtful.*

25. *Proceeding further, accused Shubham is stated to have got recovered registration certificate, Ex.MO11 of the car, P. (CCL) got recovered driving licence and PAN card of complainant and accused Amit Thakur (since deceased) got recovered bank passbooks Ex.MO12 to Ex.MO17 and cheque books, Ex.MO18 to Ex.MO23 of complainant.*

Nitesh got recovered arms licence, Ex.MO9 and insurance policy, Ex.MO10. If the accused on knowing the fact that complainant is a police official and had thrown the car in Avaradhan canal so that they may not be apprehended, it is not believable that they would have kept registration certificate, insurance policy, pass books, ATM cards, cheque books, Driving Licence, PAN card of the complainant. Otherwise also, PW17 SI Sharanjeet Singh stated that accused Amit Thakur, P. (CCL) and Nitesh were interrogated by him in presence of HC Satnam and HC Dalbir Singh and they suffered their disclosure statements. However, PW10 HC Satnam Singh in his cross-examination admitted that he had only signed the aforesaid disclosure statements being witness. He even denied knowing who was other witness at the time of disclosure statement and recovery. This fact makes the prosecution case regarding suffering of disclosure statements by accused totally doubtful.

26. *Further, in his examination in chief, complainant has stated that 6 ATM cards, arm licence, driving licence, registration certificate, PAN card etc. along with three mobile phones make Vivo, Samsung and Nokia were lying in the car. But in complaint, Ex.P4, he stated that there were some personal documents, official documents and three mobile phones make Vivo, Samsung and Nokia in the car. If some official documents were lying in the car, the prosecution could have produced the record of the same. Some zimni must have been recorded or order must have been passed regarding loss of official record. However, there is nothing on record to show or suggest as to which of the official documents were lying in car which were taken by accused. PW7 has also not specifically stated about ATM cards, arms licence etc. It is a matter of common knowledge and experience that generally ATM cards, driving licence and PAN card etc. are kept by a person in his purse, whereas registration certificate and insurance policy are kept in the vehicle. It is not case of complainant that his purse was also snatched by the accused.*

27. *Moreover, the incident had taken place on 22.02.2019 and the accused were arrested in between 03.03.2019 to 09.03.2019. There is nothing on record to show or suggest that the complainant has informed the banks about loss of his ATM cards, passbook, cheque*

book and had instructed bank qua their use. Similarly, arms licence and insurance policy of the car of complainant was of no use for the accused and thus, there was no reason for the accused Nitesh to keep these articles so as to create evidence against him. Accused Akash is stated to have got recovered broken number plates, Ex.MO25 to Ex.MO28 of the car from bushes near Avardhan canal. When the accused were throwing away car, they could have also thrown the number plates in the canal itself.

28. *A perusal of ATM card, Ex.MOP18 to Ex.MO23 shows that ATM card issued by State bank of India and Oriental Bank of Commerce are in the name of Anil Kumar, out of which ATM Card issued by State Bank of India had already expired in the month of May, 2018, whereas, it is not clear to whom the rest of ATM cards belong to. Similarly, one passbook of account bearing no.50100118659717 of HDFC Bank, Ex.MO13 was in the name of one Jagjit Kaur, last entry in which was carried out on 21.02.2019 i.e. one day prior to occurrence. Passbook of account no.6396000100019979 of Punjab National Bank, Ex.MO15 is also in the name of Jagjit Kaur daughter of Rajinder Singh, last entry in which was carried out on 10.07.2018. Another passbook bearing account no.1488 of Punjab & Sindh Bank, Ex.MO12 is again in the name of Jagjit Kaur daughter of Rajinder Singh, last entry in which is dated 12.12.2011. Cheque book, Ex.MO14 has been issued in the name of Jagjit Kaur qua aforesaid account in which there are three blank cheques which are signed by Jagjit Kaur. Ex.MO16, i.e. cheque book of HDFC Bank is again having two blank signed cheques of Jagjit Kaur. Passbook, Ex.MO17 pertaining to account No.30624306404 is in the name of Gurpreet Singh Chahal and Nirmal Singh Chahal. There is nothing on record to show or suggest relationship of Anil Kumar complainant with Jagjit Kaur or other persons. Since cheque book Ex.MO14 and Ex.MO16 bears signatures of Jagjit Kaur on blank cheques, she must be close acquaintance of complainant. However, there is nothing on record to show or suggest their relationship. Even there is no statement of these persons to show that they had handed over their passbooks and cheque books to Anil Kumar complainant.*

29. *PW16 SI Gulab Singh stated that on 14.03.2019,*

pursuance of his disclosure statement accused Shubham led the police party to forest of village Khairi and got recovered a gandasi, which was taken into possession vide recovery memo, Ex.P27 after preparing rough sketch, Ex.P26. In his cross-examination, he stated that the length of handle of gandasi was about 30 inches and the same was made of wood and the width of the said handle is about 4 inches. He stated that length and width of wooden handle of gandasi was mentioned in rough sketch, however, after going through sketch, Ex.P26, he admitted that there is no mention of length and width of the handle and blade and even it is not mentioned that handle is made of wood. Further, he stated that he cannot tell by which scale the length and width of binda/handle and blade of gandasi was measured by him.

30. *PW2 HC Lakhan Singh in his cross-examination admitted that in his statement recorded under section 161 Cr.P.C., the investigating officer has recorded that one gandasi was recovered from accused Akash but stated that it was wrongly recorded by the investigating officer as no gandasi was recovered from Akash. He further stated that he had intimated investigating officer on that day also that no gandasi had recovered from accused Akash and it should be connected but till today it has not been done by the investigating officer or any other person.*

31. *PW17 SI Sharanjeet Singh stated that accused Amit Thakur (since deceased) in pursuance of his disclosure statement got recovered wooden binda from bushes in forest of Khairi which was taken into possession vide recovery memo, Ex.P38 after preparing its sketch which is Ex.P37 on record. He stated that on measurement, the wooden binda was found of 2 feet 26 inches in length and circumference of binda was 11 inches from top and 12 inches from bottom. In his cross-examination, he stated that wooden binda recovered from Amit Thakur was made of kikkar wood and it was 2 feet 2 inches in length and its width was 12 inches, however, when case property i.e, binda was shown to the witness, he stated that the width of the same is not 12 inches. These facts make the recovery of gandasi from accused Shubham and binda from accused Amit Thakur (since deceased) doubtful.*

32. *Further, despite availability, no independent witness was*

joined at the time of effecting arrest of accused and during investigation as admitted by PW16 SI Gulab Singh and PW17 SI Sharanjeet Singh. They admitted that they did not call anybody to join the investigation. No doubt, it is true that in the absence of corroboration through an independent source, the evidence of the official witnesses, cannot be disbelieved and distrusted, blind-foldedly, if the same is found to be credit-worthy. However, when the identity of accused has not been established beyond doubt and recovery of pieces of broken number plate of car, weapons of offence, ATM cards, passbooks and cheque books etc. is also not free from suspicion, non-examination of independent witnesses assumes significance and certainly a doubt in case on the prosecution story. In this view of the matter, non corroboration of evidence of official witnesses through an independent source certainly makes the case of prosecution doubtful.

33. *In view of above discussion, this court is of the opinion that the prosecution has failed to prove the charges against the accused beyond shadow of reasonable doubt and therefore, by extending benefit of doubt, accused are hereby acquitted of the charges framed against them.”*

13. Having gone through the reasoning given by the Trial Court, this Court finds that the evidence produced by the prosecution has been rightly appreciated and that accused-respondents have been rightly given the benefit of doubt. Complainant Anil Kumar in his police complaint having specifically told that due to darkness, as the occurrence took place at about 11:30 p.m. he could not identify the assailants, therefore, his statement made before the Trial Court, identifying the accused Shubham @ Shubhi, Akash @ Shubhi and Nitesh @ Nishu (present petitioners) was absolutely not believable. Learned Trial Court has rightly discarded his statement due to inherent improbabilities. Similarly, the recoveries allegedly effected pursuant to the disclosure statements suffered by the petitioners, were not proved to be connected with crime.

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Even otherwise, the said recoveries were not above the shadow of doubt.

14. In view of the aforesaid discussion, it is held that there is no merit in this appeal, which even otherwise also deserves to be dismissed being barred by limitation.

Dismissed.

May 24, 2023

Neetika Tuteja

(DEEPAK GUPTA)
JUDGE

Whether Speaking/reasoned
Whether Reportable

Yes/No
Yes/No