

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-D-148-DBA-2004 (O&M)

Date of Reserve: 13.10.2025

Date of Pronouncement: 03.11.2025.

State of Haryana

....Appellant.

Versus

Jai Bhagwan and others

...Respondents.

CORAM: HON'BLE MR. JUSTICE N.S. SHEKHAWAT
HON'BLE MRS. JUSTICE SUKHVINDER KAUR

.....

Argued by: Mr. Rajinder Kumar Banku, Sr. DAG Haryana with
Mr. Rajiv Sidhu Sr. DAG, Haryana.

Mr. Satish Jain, Advocate
for respondents No.1 to 5.

Sukhvinder Kaur, J.

1. The appellant-State has preferred the instant appeal against judgment dated 13.05.2003, passed by learned Additional Sessions Judge, Fast Track Court, Gurgaon, vide which respondents-accused have been acquitted.

2. Factual Scenario, as per prosecution version is that on 04.05.2000, on receipt of VT message from control room, ASI Gajender Kumar reached the place of occurrence and found large number of public had gathered there and came to know that injured S.K. Kohli and Nanak Chand had been taken to Kalyani Hospital, Gurgaon. The police party reached the said hospital and after taking fitness certificate from the doctor,

recorded statement of injured S.K. Kohli, who stated that he was working as General Manager, in Rochees Beer Company, Nimrana, Rajasthan. While returning from Delhi in car bearing registration No.RJ-14C/3827, when he along with his owner Nanak Dass reached near Shani Temple, National Highway No.8, Gurgaon, the offending jeep came from back side and stopped after over taking them. He further stated that 3-4 youngsters came out from the said jeep and asked him and Nanak Dass to alight from their car and when they alighted from their car, one of the assailant took suit case from their car, which was containing Rs.2,700/- and a diary along with spectacles of the complainant. The assailants snatched bag of Nanak Dass, which was containing a gun licence and Rs.7,000/- along with chain etc. and caused beatings to them. Driver Lakshman Singh also sustained injuries in the same incident. On the basis of the said statement FIR was registered. Medico legal reports of injured persons were collected and rough site plan of the place of occurrence was prepared. The assailants could not be traced out. On 26.06.2000 accused Jai Bhagwan @ Manjli @ Jonny was arrested in some other case and during interrogation he suffered disclosure statement regarding commission of offence by him and the co-accused in this case. After arrest, he was interrogated but he refused for Test Identification Parade and on the basis of his disclosure statement he got recovered visiting cards, mobile papers from his village Behampur Khatola.

3. Accused Paramjeet, Sanjay @ Dharampal, Naresh and Chaman @ Badri Parshad, were arrested on 04.07.2000 and they also refused to join Test Identification Parade. When they were interrogated, on the basis of their disclosure statements, the said accused got recovered said articles. The jeep was also recovered on 17.08.2000. After getting opinion from the

doctor on 19.08.2000, injury No.4 sustained by the complainant was opined to be grievous in nature. Scaled site plan was prepared and after completion of necessary investigation and other formalities, challan was presented against the accused.

4. After having found a prima facie case, charges for offences punishable under Sections 395, 397 ad 412 of IPC were framed against the accused, to which they pleaded not guilty and claimed trial.

6. In order to prove its case, the prosecution has examined PW1- Satish Kumar Kohli (complainant), PW2-Banwari Lal, PW3-Neki Ram, PW4-Sarwan Kumar, Draftsman, PW5-Devender Kumar, PW7-HC Naresh Kumar, PW8-ASI Daya Ram, PW9-DSP Fateh Singh, PW10-Smt. Vivek Bharti, ACJM, Gurugram, PW11- Sh. Virender Malik, JMIC, Gurugram, PW12-Nanak Dass Moolrajni and PW13-ASI Gajinder Kumar.

7. Statements of accused under Section 313 Cr.P.C. were recorded in which, all incriminating evidence was put to them, which they denied and pleaded innocence. In their defence evidence, the accused examined DW1- SI Gajender Kumar, DW2-Jaibir and DW3-Mahender Singh and also tendered into evidence some documents.

8. After considering the evidence on record, learned trial Court acquitted the accused of the offences for which they had been charge-sheeted, vide judgment dated 13.05.2003.

9. Aggrieved of the said decision, present appeal has been filed by the appellant-State challenging acquittal of the accused/ respondents.

10. Learned counsel for the appellant-State opened up his arguments while contending that the trial Court has not appreciated that after their arrest, all the accused were given the offer to join the

identification parade to which they categorically refused and thus adverse inference is to be withdrawn against them. The recoveries in the present case had also been effected as per the disclosure statements suffered by the accused persons, which strengthens their involvement in the offence in the present case. He further contended that the injuries suffered by complainant and Nanak Dass also proved the guilt of the accused. The trial Court has erroneously disbelieved the testimony of PW12-Nanak Dass. The discrepancies in the statements of the prosecution witnesses are not material in nature and does not go to the roots of the prosecution case. The official witnesses have also proved the case of the prosecution which has been wrongly disbelieved by the trial Court and has prayed that present appeal be allowed, impugned judgment dated 13.05.2003 be set aside and accused be convicted for the offences as charge sheeted and be punished in accordance with law.

11. We have heard learned counsel for the appellant-State and have also perused the record.

12. The perusal of the prosecution evidence on record reveals that PW1-Satish Kumar Kohli is the most material witness of the prosecution, who is also the complainant in the present FIR. He has not supported the prosecution version at all. He stated that neither he nor Nanak Dass was joined by the police in the investigation. He denied his signatures over recovery memo of suit case and other articles, prepared by the police on 08.07.2000 and further deposed that nothing was recovered by the police in his presence from Paramjeet, Sanjay @ Dharampal and Naresh accused. He did not identify the accused and stated that 3-4 boys had come out of Marshal jeep and after committing the offence of dacoity, beating them they

ran away with cash and other articles. In his cross-examination, he stated that it was darkness at the time of the alleged occurrence and he could not see the faces of the culprits and any version regarding identification or identity of the culprits, if there is any in Ex.PA, might had been added by the police.

13. PW2-Banwari Lal and PW3-Neki Ram also did not support the prosecution version on the material points. PW2-Banwari Lal also stated that the police never joined him in the investigation. PW3-Neki Ram stated that he had never given any jeep to Jai Bhagwan accused for being taken to Karnal from Mahindra and Mahindra Yards, Khandsa.

14. PW5-Devender Kumar, was allegedly joined in the investigation by ASI Gajender Kumar on 03.07.2000, when Jai Bhagwan accused was interrogated and who after suffering a disclosure statement got recovered mobile, purse etc. The aforesaid independent witness did not support the version of the prosecution making these alleged recoveries doubtful.

15. PW12-Nanak Dass also failed to tell the names of the accused persons. He stated that it was moonlit night and occurrence took place at about 12 o'clock during the night. It is in complete contradiction to PW1-Satish Kumar complainant, who stated that it was darkness at the time of the alleged occurrence and he could not see the faces of the culprits. However, during his cross-examination, this witness stated that recovery was not effected in his presence and he had not come to the police station to identify the articles recovered by the police. He never visited any police post, any police station or Court before he made statement before the Court on 09.05.2000. So, in view of above, it is of no consequence, even if PW12-

Nanak Dass, stated that he could identify the accused persons, as identification in the Court for the first time is not material.

16. The perusal of testimony of this witness further reveals that he has tried to put forth an improved version while appearing in the Court. In his examination-in-chief, he stated that the accused persons had snatched his locket made of gold and containing a diamond, whereas his statement recorded under Section 161 Cr.P.C. is silent in this respect. The trial Court has thus rightly held that sole statement of PW12-Nanak Dass is not enough to prove guilt of the accused persons beyond the shadow of reasonable doubt especially when this witness identified the accused persons for the first time in the Court. When PW1 has categorically denied that the alleged recoveries were made in his presence and he had signed the recovery memos Ex.PB, Ex.PC and Ex.PD and no independent witness had been joined by the police at the time of the alleged recoveries, then the alleged recoveries are not free from suspicion.

17. Trial Court rightly did not draw adverse inference regarding refusal of the accused persons to join the identification parade as they refused to join the identification parade on the ground that they had already been shown to the witnesses.

18. Thus the trial Court rightly has reached at the conclusion that the prosecution witnesses were not successful in bringing home guilt to the accused beyond the shadow of reasonable doubt. The accused have been rightly acquitted by giving them the benefit of doubt.

19. In view of the above, the appeal being bereft of any merit is dismissed and impugned judgment dated 13.05.2003 passed by learned trial Court is upheld.

20. Pending applications, if any, also stand disposed of.

(SUKHVINDER KAUR)
JUDGE

(N.S. SHEKHAWAT)
JUDGE

03.11.2025.

Komal

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