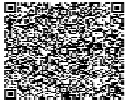


2025:PHHC:024828



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

Date of Decision:-20.02.2025

CRA-S-1655-SB-2008(O&M)

Kishore & Anr.

.....Appellants.

Vs.

State of Haryana.

.....Respondent.

2.

CRA-S-1394-SB-2008(O&M)

Vinod.

.....Appellant.

Vs.

State of Haryana.

.....Respondent.

CORAM:- HON’BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Ajit Sihag, Advocate for the appellant no.1-Kishore
(in CRA-S-1655-SB-2008).

Mr. Prashant Sethi, Advocate for the appellant no.2-Rajesh @
Nanar (in CRA-S-1655-SB-2008).

Ms. Shubhreet Kaur, Advocate, Amicus Curiae
for the appellant (in CRA-S-1394-SB-2008).

Mr. Viney Phogat, Deputy Advocate General, Haryana.

JASJIT SINGH BEDI, J.

By this common order I shall dispose of both the
aforementioned appeals as the same have arisen out of one and the same

FIR.

2. The aforementioned appeals have been preferred against the judgment dated 12/13.06.2008 passed by Additional Sessions Judge, (Fast Track Court) Hisar, whereby the accused/appellants named above were convicted of the charges framed against them.

3. The FIR in the present case came to be registered on 13.05.2006. The judgment of conviction was passed on 12/13.06.2008 by the Additional Sessions Judge (Fast Track Court), Hisar. The instant appeals were filed on 11.08.2008 and 05.08.2008 and have come up for final hearing now i.e. after a period of 18 years from the date of registration of the FIR.

4. In brief, the prosecution case is that on 13.5.06 when at about 3 P.M ASI Om Parkash along with HC Nafe Singh and EHC Rajiv was going towards Sector-16 in connection with patrol duty, he met complainant Swarup Chand S/o Rulia Ram R/o H.No. 92, Sec.-13, Hisar, who got recorded his statement to the effect that he was a resident of above said address. On that day around 12.30 P.M, he, alongwith his wife Smt. Bhagwanti, his daughter in law and grand son Punnit were present in the house. After five minutes of his daughter in law returning to the home, after bringing his grand daughter Meenu from Vidhya Devi Jindal, School, three young men aged about 20-21 years armed with a pistol entered the house and while aiming the pistol at him asked them to handover their belongings to them. In the meantime, his servant-Bahadur came there. At pistol point, the accused snatched two gold bangles and gold earrings of his wife, two gold bangles and a gold ring of his daughter-in-law and threatened them to handover the cash. When he told that he was not possessing any cash, they pushed him and all the family members alongwith their servant in the

bathroom and locked them. The accused also took away their phone make Samsung having No. 9896027555 and fled away. The accused were slim and of dark complexion and were talking in the Haryanvi dialect. The complainant reported that he could identify the accused if produced before him. On the basis of the statement, the present case was registered. The matter was investigated. The statement of the witnesses were recorded. After completion of investigation, the police filed the report under Section 173(2) Cr.PC.

5. Finding a prima facie case against the accused under Sections 397 IPC, they were charge sheeted accordingly to which they pleaded not guilty and claimed trial.

6. In order to prove its case, the prosecution examined witnesses, Inspector/SHO Rampal as PW-1, Swarup Chand as PW-2, Usha Rani as PW-3, Kashmiri Lal as PW-4, Om Parkash ASI as PW-5 and HC Jeet Singh Sub Inspector as PW-6. Witness Bhgwanti and ASI Karan Singh were given up.

Swarup Chand, (PW2), deposed that on 13.5.2006 at about 1.30 P.M he alongwith his wife Bhagwanti, his daughter-in-law and his grand son Punit was present at his house. Three young persons entered his house. One of them was having pistol and they dragged him and snatched his purse containing Rs. 350/-. They also snatched belongings of his wife and daughter in law at gun point. After that they put them in the bathroom and locked. The witness identified the accused present in the Court and proved his statement Ex. P-1.

Usha Rani, (PW3), deposed that on 13.5.2006 at about 1.30 P.M she alongwith her mother in law and children were present at their home.

She had just brought her children from school. Three persons entered the

house. They were having pistol in their hand. They snatched her gold karas and ring and pushed her mother-in-law and snatched her gold karas and gold earrings and asked to handover the cash but they told that they were not having any cash. The accused forcibly took them to the bathroom and also took away their mobile phone. The witness identified the accused present in the Court.

Jeet Singh, Sub Inspector (PW6), deposed that on 24.8.2006 he was posted at CI Staff Hisar. On that day he interrogated accused Vinod and Kishore. On interrogation accused Vinod disclosed that on 13.5.2006 he alongwith accused Kishore went to house No. 92 Sec. 13 and looted two ladies on pistol point. He disclosed that they looted two gold karas, one pair of gold earrings, one gold chain, one gold ring and two gold karas. At the time of the loot they were three persons i.e. he, Kishore and Rajesh. He further disclosed that he got two gold karas and one gold ring as his share which he had kept concealed at Mangali Kutiya, near a temple by wrapping in a polythene and could get the same recovered. Disclosure statement Ex. P2 was attested by Kashmiri Lal and ASI Karan Singh and signed by Vinod. Thereafter, accused Kishore disclosed that on 13.5.2006 he along with accused Vinod and Rajesh went to H.No. 92 Sec. 13, Hisar and looted two ladies on pistol point and he got two gold karas as his share, which he had kept concealed near village Kanwari after wrapping the same in polythene and could get the same recovered. Disclosure statement EX. P-3 was reduced into writing, which was attested by the witnesses and signed by accused. In pursuance of disclosure statement Ex. P-2 accused Vinod got recovered two gold karas, one gold ring weighing 55 gms from a place near Mangli Kutiya Chowk temple. The Karas and ring were identified by Kashmiri Lal as his properties. The Recovered jewellery was converted into

sealed parcel duly sealed with the seal of JS and taken into police possession vide recovery memo Ex. P5. The witness deposed that in pursuance of disclosure statement Ex. P3 accused Kishore got recovered two gold karas weighing 70 gms, which were converted into sealed parcel, duly sealed of the seal of JS and taken into police possession vide recovery memo Ex. P6. Recovered karas were identified by Kashmir Lal as his properties. The witness further deposed that on 29.8.06 he interrogated accused Rajesh and he disclosed that on 13.5.06 he alongwith Kishore and Vinod looted two ladies on pistol point in Sec. 13 Hisar and he got one gold chain and earrings as his share and he had kept concealed the same near village Dhansu, near railway crossing and he can get the same recovered. Disclosure statement was reduced into writing, which is Ex. P4 and attested by witnesses and signed by accused. In pursuance of disclosure statement Ex. P4 accused Rajesh got recovered one gold chain and one pair of earring weighing 35 gms. Recovered articles were converted into sealed parcel, sealed with the seal of JS and taken into possession vide recovery memo Ex. P7. Recovered articles were identified by Kashmir Lal. The witness proved rough site plans of place of recovery Ex P10, Ex. P11 and Ex. P12 The case property was deposited with the MHC, P.S.Civil Line, Hisar.

Kashmiri Lal, (PW4) is the recovery witness and deposed in the lines of PW-6. He also identified the accused in court.

Om Parkash, ASI (PW5), deposed that on 13.5.2006 he was posted at P.S. Civil Line, Hisar. On that day he along with HC Vazir Singh and EHC Sanjeev was present at Scetor-16 Hisar. Meanwhile, he received a telephonic message from Civil Line, Hisar to reach sector 13 H.No. 92. When they reached there, they met Swarup Chand and recorded his statement Ex. P1. He put his signature on Ex. P-1, made endorsement Ex. P-

8, and sent ruqa through EHC Sanjeev Kumar for registration of the case, on which formal FIR was registered. Thereafter, he went to place of occurrence and prepared rough site plan Ex. P-9 with correct marginal notes. He recorded the statements of Bhagwanti, Usha Rani and Rajiv Bhadur.

Rampal (PW1), deposed that on 16.9.2006 he was posted as Inspector/SHO at P.S.Civil Line, Hisar. On completion of investigation of this case, he prepared report under Section 173 Cr.P.C. which bears his signature. This is the whole of the prosecution evidence.

7. Based on the evidence led, the accused/appellants came to be convicted and sentenced by the Additional Sessions Judge (Fast Track Court), Hisar vide judgment and order of sentence dated 12/13/06/2008 as under:-

Offence Section	under	Sentence RI/SI	Fine	RI/SI in default of payment of fine
397 IPC		RI for 10 Years each	Rs.5000/- each	SI for 01 Year each

8. The accused/appellants have filed the aforementioned appeals impugning the said judgment of conviction.

9. During the pendency of the instant appeals, the sentence of the accused/appellants was suspended vide order dated 24.08.2010.

10. The Counsel for the accused/appellants contend that there is delay of around three hours in lodging the FIR, which has not been explained on record. The unexplained delay in lodging the FIR itself shows that a false case has been registered. No test identification parade of the accused was conducted. Hence, the identification of the accused for the first time in the Court carries no value. There is discrepancy in the testimony of the witnesses.regarding the time of recovery and number of pistols. As per Swarup Chand, (PW2), one of the accused was having a pistol but as per Usha Rani (PW3), all the accused were having pistols. Moreover, story of

snatching of Rs. 350/- from Rampal (Pw1) has been introduced later on. Witness PW-1 has admitted in his cross-examination that his signature was obtained by the police on blank papers. All this shows that the accused have been falsely implicated in this case. Important witnesses namely Bhagwanti and Rajesh Bhadur were given up by the prosecution which has caused prejudice to the accused. The counsel further contend that the place from where the looted articles were recovered were accessible to the general public. Thus, it cannot be said that the alleged recovery was effected from the exclusive possession of accused. No independent witness was joined while effecting recovery. Further, as per PW4, all the recovery memos were attested by him but it is not so. Thus, all these facts show that accused have been falsely implicated in this case.

11. The Counsel for the State on the other hand has filed custody certificates dated 17.02.2025 as per which the appellant-Kishore has undergone actual custody of 08 years 07 months 05 days, appellant-Rajesh has undergone actual custody of 06 years 05 months and 14 days and appellant-Vinod has undergone actual custody of 08 years 04 months and 16 days out of their awarded sentence of 10 years. He contends that the offences stand established beyond reasonable doubt. The accused were duly identified during the course of the trial. Recoveries of various articles were effected from them which have been identified as belonging to the complainant party. The prosecution had absolutely no motive to falsely implicate the accused. All the accused were habitual offenders with multiple cases either pending against them or in which they had been convicted. Therefore, the present appeals were liable to be dismissed.

12. I have heard Counsel for the parties.

13. The material witnesses regarding the robbery are Swarup Chand

(PW2) and Usha Rani (Pw3). Swarup Chand (PW2), deposed in categorical terms that about one and a half years ago at about 1:30 P.M he alongwith his wife Bhagwanti, his daughter in law and grand son Punnit was present at his house. Three young persons came to the house. One of them was having pistol and they dragged him out and snatched his purse containing Rs.350/-. They also snatched the belongings of his wife and daughter in law on gun point. Thereafter, they pushed them in the bathroom and locked it. The witness also identified the accused as offenders. This witness has furnished all necessary details of the occurrence. The mere fact that in the cross-examination the witness deposed that he could not see properly and that police took his signature on blank paper is of no consequence. In fact, on further cross-examination the witness has denied the suggestion that he could not identify the accused and that no such occurrence took place. He also denied that the accused present in the Court were not those persons. Pertinently as per this witness the accused dragged him out and snatched his purse and they also snatched belongings of his wife and daughter in law on gun point and thereafter locked them in the bathroom. Thus, it was not in a case where the witness had a glimpse of the accused for a moment from some distance. It was a case where the accused remained with the victims for a considerable long period of time and thus the witness had ample opportunity to identify the accused. The statement of the witness to the effect that police took his signature on blank papers is also not of much help to the defence in view of the overwhelming evidence on record.

14. The version of the witness finds corroboration on all material points from the testimony of his daughter in law, Usha Rani (PW3) who is also a victim of the occurrence. This witness also deposed categorically that on 13.5.06 at about 1.30 P.M when she along with her mother in law, father

in law and children were present at their house and she had just brought her children from school, three persons entered into the house. They were armed. They snatched her gold karas and ring and pushed her mother in law and snatched her gold karas and gold earrings and asked them to hand over the cash and when they said that they were not having cash, the accused forcibly took them to the bathroom. The accused also took away their mobile phone. The witness identified the accused as the offenders. Thus the witness has given a vivid account of the occurrence. Both the witnesses have implicated the accused. There is no motive on the part of the witnesses to falsely implicate the accused. Based on the testimony of these witnesses it can be safely held that the accused were involved in the occurrence in question. The discrepancies pointed out by Id. counsel for the accused are minor in nature and would not affect the prosecution case.

15. Similarly, the argument regarding non conducting of a test identification parade of the accused also does not hold much water. The purpose of a prior test identification, is to test and strengthen the trustworthiness of the evidence of the witnesses given in the Court. Thus, it is considered a safe rule of prudence to generally look for corroboration of the testimony of witnesses in Court. However, in a case when the Court is satisfied by the deposition of a particular witness on whose testimony it can safely rely without corroboration, it may accept the evidence of the identification in court even without insisting upon corroboration by way of holding of a test identification parade. Therefore, failure to hold a test identification parade would not make inadmissible the evidence of identification in Court. In the instant case, as already discussed, the witnesses had an opportunity of seeing the accused not for a few minutes but for some length of time, in broad day light. Thus, failure on the part of the

IO to get the identification parade conducted, is of little consequence. Reliance may be placed on the judgments of the Hon’ble Supreme Court in Mahabir Vs. State of Delhi 2008(3) RCR (Criminal) 5 and Ravi Kapur Vs. State of Rajasthan Criminal Appeal No.1838 of 2009 Decided on 16.08.2012.

16. So far as delay in the registration of the FIR is concerned, the alleged occurrence took place at around 1.30 P.M, when the accused entered into the house of the victims. They committed robbery and locked the complainant party in the bathroom. Thereafter the matter was reported to the police and FIR was recorded at 3.15 P.M. Thus, there is no delay in lodging the FIR.

17. In view of the above discussion, I find no merit in both the appeals and the same stand dismissed.

(JASJIT SINGH BEDI)
JUDGE

February 20, 2025
Vinay

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