



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

- (1)

CRA-S-432-SB-2011 (O&M)

Amarjeet

Versus

State of Haryana

..... Appellant

..... Respondent
- (2)

CRA-S-156-SB-2011 (O&M)

Sonu @ Samunder

Versus

State of Haryana

..... Appellant

..... Respondent
- (3)

CRA-S-554-SB-2011 (O&M)

Des Raj

Versus

State of Haryana

..... Appellant

..... Respondent
- (4)

CRA-S-614-SB-2011 (O&M)

Subhash

Versus

State of Haryana

..... Appellant

..... Respondent



(5)

CRA-S-746-SB-2011 (O&M)

Dalsher

..... Appellant

Versus

State of Haryana

..... Respondent

Date of Decision: 05.02.2025

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Mr. Umesh Kumar Kanwar, Advocate (*Amicus Curiae*)
for the appellant in CRA-S-432-SB-2011.

Mr. Ravinder Hooda, Advocate for the appellant
in CRA-S-156-SB-2011.

Mr. Vishal Garg Narwana, Mr. Aman Mittal, Mr. Vikas Barala,
Mr. Rahul Gupta, Mr. Vazir Mor, Mr. Nitin Bansal &
Mr. Girender Singh, Advocates for the appellant
in CRA-S-554-SB-2011.

Mr. Sankalp Gehlawat, Advocate (*Amicus Curiae*)
for the appellant in CRA-S-614-SB-2011.

Mr. Ajay Poonia, Advocate (*Amicus Curiae*)
for the appellant in CRA-S-746-SB-2011.

Mr. Kiran Pal Singh, AAG, Haryana for the respondent.

MAHABIR SINGH SINDHU, J.

This common order shall dispose off above five appeals, being
identical on facts and law.

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(2) Present appeal(s) have been filed against the impugned judgment of conviction and order of sentence dated 17.12.2010 & 20.12.2010, respectively, passed by learned Additional Sessions Judge, Hisar (*hereinafter referred as ‘trial Court’*), whereby the appellants were convicted and sentenced in the following manner:-

<i>Sr. No.</i>	<i>Names of accused</i>	<i>Conviction under Section(s)</i>	<i>Sentence</i>	<i>Fine in ₹</i>	<i>Default stipulation</i>
<i>1.</i>	<i>(i) Amarjeet (ii) Sonu @ Samunder (iii) Des Raj (iv) Subhash (v) Dalsher</i>	<i>395 IPC</i>	<i>Rigorous imprisonment for 10 years</i>	<i>10,000/-</i>	<i>Rigorous imprisonment for 01 year</i>

(3) Prosecution was initiated on the basis of written complaint dated 26.08.2009 (Ex.P-3), given by Amarjeet, Salesman (PW-2) to Parhlad Singh, Sub Inspector/S.H.O., Police Station Sadar, Hansi, District Hisar, alleging that he is working as Salesman at Dhull Diesel Petrol Pump on Mundhal-Hansi Road, Village Bandaheri. On 26.08.2009 at about 05:00 p.m., when he, along with one Ram Avtar, was on duty at Petrol Pump, one Indica Car bearing registration No.HR-10-E-2808 came there. All five occupants, aged about 22 years, alighted from the said Car; snatched cash amount of ₹ 50,000/- (approximately) and then entered in a room. One of the assailants was armed with a Pistol; whereas others were having wooden *Dandas (Mogras)*. Thereafter, they gave beatings and fled away from the spot towards Mundhal in the said Car. Complainant informed the police telephonically about the incident.

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Upon this, Parhlad Singh, Sub Inspector/SHO, Police Station Sadar, Hansi (PW-6), along with other police officials, who was present at Jind Mor in order to proceed to Village Gaganheri in connection with another FIR, received a telephonic message from his Police Station that dacoity had been committed at Petrol Pump of Village Bandaheri. When Parhlad Singh along with other police officials reached at the spot; they came to know that complainant had proceeded towards Police Post Mundhal. Thereafter, Parhlad Singh, S.I. reached at Police Post Mundhal; where ASI Rajmal (PW-4), EHC Rajesh, Constables Surender, Dalbir & Jassa Ram met him and informed about the arrest of two appellants/accused, namely, Des Raj & Amarjeet, who had been apprehended at a *Naka*/Barrier of Village Mundal and three other accused fled away in the said Car. Cash amount of ₹ 19,100/- was recovered from appellant-Amarjeet; whereas cash amount of ₹ 20,000/- and a toy pistol were recovered from appellant-Des Raj, which were taken into possession by S.I. Parhlad, vide separate recovery Memos (Ex.P-8 & Ex.P-9, respectively). Complainant, who was also present at Police Post Mundhal, gave his application (Ex.P-3) and also identified both the apprehended appellants-Des Raj & Amarjeet, who along with other co-accused had committed dacoity at the Petrol Pump.

(3.1) On the aforesaid application (Ex.P-3), S.I. Parhlad Singh made endorsement and sent the same to Police Station Sadar, Hansi through EHC Surender for registration of a case and upon which, formal FIR No.284 dated 26.08.2009 (Ex.P-10), under Section 395 of the Indian Penal Code, 1860 (*for*



short 'IPC') was registered at Police Station Sadar Hansi, District Hisar by ASI Wazir Singh.

(3.2) On the same day i.e. 26.08.2009, during investigation, the vehicle, used in the commission of crime, was found abandoned near Tigrana *Mor*, District Bhiwani and the same was taken into police possession vide recovery Memo (Ex.P-21). Rough Site Plan of place of apprehension of appellant(s) Amarjeet & Des Raj and that of place of incident were also prepared as Ex.P-20 & Ex.P-24, respectively, on the day of occurrence.

(3.3) On 27.08.2009, both the appellants-Des Raj & Amarjeet suffered disclosure (Ex.P-12 & Ex.P-13, respectively) and they disclosed the names of their accomplices as Subhash, Sonu & Dalsher (appellants).

(3.4) Appellant-Dalsher was arrested on 28.08.2009 and suffered disclosure on 29.08.2009 (Ex.P-16) and thereafter, got recovered Registration Certificate of the Indica Car as well as his own Driving License, which were taken into possession vide Memo (Ex.P-18).

(3.5) Appellant-Sonu @ Samunder was arrested on 29.08.2009 and suffered disclosure on 30.08.2009 (Ex.P-17) and thereafter, got recovered ₹ 1500/- out of robbed amount of ₹ 1850/- received by him vide recovery Memo (Ex.P-19).

(3.6) Appellant-Subhash was arrested on 14.09.2009 and suffered disclosure on 15.09.2009 (Ex.P-5) and thereafter, got recovered ₹ 1400/- & *Danda* vide recovery memo (Ex.P-25).



(3.7) After completion of investigation, final report under Section 173 of the Code of Criminal Procedure, 1973 (*for short 'Cr.P.C.'*) was submitted on 15.10.2009 before the Court of learned Judicial Magistrate 1st Class, Hansi (*for short 'JMIC'*). As the offences were triable by the Court of Session, therefore, the case was committed to the Court of learned Sessions Judge by learned JMIC vide order dated 05.11.2009 and which was assigned to learned trial Court.

(3.8) After taking into consideration the material available on record, learned trial Court, vide order dated 15.01.2010, charge-sheeted all the appellants for commission of offence punishable under Section 395 IPC, to which, appellants pleaded not guilty and claimed trial.

(3.9) In order to prove its case, prosecution examined 07 witnesses, which are as under:-

<i>PW-1</i>	<i>Ram Pal Patwari;</i>
<i>PW-2</i>	<i>Amarjeet, de facto complainant;</i>
<i>PW-3</i>	<i>Ram Avtar;</i>
<i>PW-4</i>	<i>ASI Rajmal;</i>
<i>PW-5</i>	<i>ASI Wazir Singh;</i>
<i>PW-6</i>	<i>S.I. Parhlad Singh, Investigating Officer;</i>
<i>PW-7</i>	<i>ASI Kailash Chander</i>

(3.10) Prosecution also produced the following documentary evidence in support of their case:-

<i>Ex.P-1</i>	<i>Police application;</i>
<i>Ex.P-2</i>	<i>Scaled Site Plan;</i>
<i>Ex.P-3</i>	<i>Complaint made by Amarjeet, Salesman;</i>

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- Ex.P-4 Supplementary statement dated 27.08.2009 of de facto complainant;*
- Ex.P-5 Disclosure of appellant-Subhash;*
- Ex.P-6 Another supplementary statement of de facto complainant;*
- Ex.P-7 Statement u/s 161 Cr.P.C. of Ram Avtar, Salesman;*
- Ex.P-8 Recovery Memo of ₹ 19,100/- from appellant- Amarjeet;*
- Ex.P-9 Recovery Memo of ₹ 20,000/- & a Toy Pistol from appellant-Des Raj;*
- Ex.P-10 F.I.R.;*
- Ex.P-11 Endorsement on complaint;*
- Ex.P-12 Disclosure of appellant-Amarjeet;*
- Ex.P-13 Disclosure of appellant-Des Raj;*
- Ex.P-14 Arrest Memo of appellant-Dalsher;*
- Ex.P-15 Arrest Memo of appellant-Sonu;*
- Ex.P-16 Disclosure of appellant-Dalsher;*
- Ex.P-17 Disclosure of appellant-Sonu;*
- Ex.P-18 Recovery Memo of R.C. of Indica Car & D.L. of appellant-Dalsher;*
- Ex.P-19 Recovery Memo of ₹ 1500/- at the instance of appellant-Sonu @ Samunder;*
- Ex.P-20 Demarcation Memos of recovery of DL, RC by appellant-Dalsher; ₹ 20,000/- & a Toy Pistol by appellant-Des Raj;*
- Ex.P-21 Demarcation Memo of recovery of ₹ 1500/- from appellant-Sonu;*
- Ex.P-22 Arrest Memo of appellant-Amarjeet;*

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Ex.P-23 Arrest Memo of appellant- Des Raj;

Ex.P-24 Demarcation Memos of the place of occurrence and place of recovery of Indica Car;

Ex.P-25 Recovery Memo of ₹ 1400/- & a Danda by appellant-Subhash;

Ex.P-26 Demarcation Memo of recovery of ₹ 1400/- & a Danda by appellant-Subhash.

(3.11) Learned Public Prosecutor closed the prosecution evidence vide his statement dated 09.10.2010.

(3.12) After recording the prosecution evidence, entire incriminating material was put to the appellants under Section 313 Cr.P.C., but they claimed to be innocent being falsely implicated by the police. However, no defence evidence was led by the appellant(s) and closed the same through their joint statement on 11.12.2010.

(3.13) After taking into consideration the entire material available on record and upon hearing both sides, learned trial Court held the appellants guilty for the offence punishable under Section 395 IPC and sentenced all of them in the terms, mentioned in para No.2 of this order. Hence, the present appeal.

(4) It is contended on behalf of the appellant(s) that there is no evidence available on record to prove the charges against them, but learned trial Court has recorded the findings of guilt merely on the basis of surmises and

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conjectures. Also contended that occurrence is alleged to have taken place on 26.08.2009 at 05:00 p.m., whereas FIR was registered on the same day at 09:30 p.m. i.e. after a delay of 4 ½ hours, after due deliberations and connivance with the police. Further contended that appellants were not identified by the complainant as well as co-employee/eye-witness-Ram Avtar, in their testimonies before learned trial Court; nor any 'Test Identification Parade' was conducted. Again contended that aforesaid material witnesses i.e. PW-2/Amarjeet & PW-3/Ram Avtar were declared hostile during their examination-in-chief. Vehemently contended that during cross-examination of PW-2 specifically admitted that his signatures on Ex.P-3 (complaint) were obtained on blank papers and did not state anything incriminating against the appellants. Further contended that PW-3 Ram Avtar specifically deposed that at the time of occurrence, he was not present at the Petrol Pump and did not see anything; nor identified any of the appellants. Still further contended that Bharat, owner of the said Petrol Pump, being most material, was not joined during investigation by the police. Also contended that owner of the alleged Indica Car, which was lying abandoned, was also not associated and no DDR regarding recovery of said Car was entered in the Police Station. Further contended that alleged case property was never produced before learned trial Court by the police. Yet again contended that evidence regarding recovery of Indica Car, cash amount, Toy Pistol, Danda/Mogra, R.C. & D.L. from the appellant(s) is also bereft of credibility as no independent witness(es) were

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joined at the time of recovery(ies). Lastly contended that there are material contradictions in the testimonies of prosecution witnesses and as such, the entire story has become doubtful.

(5) *Per contra*, learned State Counsel, on instructions, submitted that there is sufficient material on record to prove the charges against the appellants; thus, they have rightly been convicted and sentenced by learned trial Court.

(6) Heard both sides and perused the paper-book.

(7) Records reveal that initially, after registration of FIR No.284 dated 26.08.2009, Investigating Officer Parhlad Singh, Sub Inspector/SHO, Police Station Sadar, Hansi (PW-6) recorded the statements of the witnesses under Section 161 Cr.P.C.; prepared Rough Site Plan as well as got prepared Scaled Site Plan from PW-Ram Pal, Patwari.

(7.1) PW-1 Ram Pal, Patwari deposed that he prepared Scaled Site Plan (Ex.P-2) on the application (Ex.P-1), moved by the police before Tehsildar.

During cross-examination, he deposed that the said Scaled Site Plan was prepared on the demarcation of ASI Kailash Chander (PW-7).

(7.2) PW-2 Amarjeet (*de facto* complainant) deposed that on 26.08.2009, he was working as Salesman on Dhull Diesel Petrol Pump, Mudhal Road, Hansi. On that day, at about 5 p.m., some unidentifiable persons, whose faces were muffled with clothes, intruded in the Petrol Pump and overpowered them. They also snatched cash amount from them and he did not identify any of the appellant(s)/accused as the assailants, who had robbed cash amount from

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them. Also deposed that he never identified any of the assailants or gave description of make or registration number of any vehicle to the police.

During cross-examination, this witness stated that he did not make any statement that one of the assailants was having pistol and others were armed with maces. Also stated that he cannot identify the assailants on seeing them as their faces were muffled. Again stated that the police had obtained his signatures on blank papers and he was not aware about the contents written thereon. Further stated that he never joined the investigation in this case.

(7.3) PW-3 Ram Avtar, co-employee of complainant, deposed that on the date of occurrence, he was not present at the Petrol Pump and did not see any of the appellant(s)/accused; hence, cannot identify either of them. Also deposed that later on, he came to know that some persons, with muffled faces, had robbed the cash amount from his co-employee/complainant.

During cross-examination, this witness specifically stated that he has heard the contents of Ex.P-7; but he never made such statement to the police. Again stated that he had seen his signatures at point 'B' of Ex.P-5, which is disclosure of appellant-Subhash; but police obtained his signatures on some blank papers after the incident and he never joined investigation of this case. This witness was confronted with the contents of statements (Ex.P-7 & Ex.P-8); but he did not say anything incriminating against the appellant(s).

(7.4) PW-4 ASI Rajmal deposed that he was posted in Police Post Mundhal; an information on 26.08.2009 was received about the commission of

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dacoity of cash amount at Petrol Pump at Bandaheri at about 5:15/5:30 p.m. This witness also deposed that he along with other police officials laid a Nakabandi at T-Point Mundhal Chowk; where an Indica Car of White Colour, bearing registration No.HR-10-E-2808 was seen coming from Hisar-Hansi side. Further deposed that on his signal, Car stopped and two boys alighted therefrom, who were nabbed; whereas remaining three occupants of the Car managed to escape with the Car towards Bhiwani side. Specifically deposed that the names of apprehending boys were Amarjeet & Des Raj from whom amounts of ₹ 19,100/- and ₹ 20,000/- with a toy pistol were recovered, respectively. Also deposed that Parhlad Singh, SHO reached at the spot and this witness produced both the aforesaid accused and case property before him.

During cross-examination, this witness stated that he cannot tell that who disclosed him about the robbery/dacoity. Also stated that no DDR was recorded in the Police Post Mundhal regarding this incident. Again stated that despite availability of one motorcycle, they never chased Indica Car; nor they fired any shot in the air/on the tyre of Indica Car to stop them. Further stated that he apprehended appellant-Amarjeet; whereas appellant-Des Raj was nabbed by EHC Rajesh.

(7.5) PW-5 ASI Wazir Singh deposed that on 26.08.2009, he was posted at Police Station Sadar, Hansi. On that day, upon receipt of *ruqa* (Ex.P-3) from S.I. Parhlad Singh, he recorded formal FIR (Ex.P-10) without any addition or omission and made an Endorsement as Ex.P-11. Also deposed that appellant-

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Amarjeet was interrogated on 27.8.2009, who suffered disclosure statement (Ex.P-12), confessing that he along with co-accused/appellants, namely, Des Raj, Sonu, Dalsher & Subhash had looted Dhull Petrol Pump. On the same day, appellant-Des Raj suffered disclosure (Ex.P-13) in identical manner of having committed the dacoity at Dhull Petrol Pump with his co-accused. Further deposed that on 28.8.2009, he arrested appellant(s)-Dalsher & Sonu @ Samundar, vide arrest Memos (Ex.P-14 & Ex.P-15, respectively). On 29.8.2009, appellant-Dalsher suffered disclosure, admitting his guilt and that he had kept concealed R.C. of Indica Car bearing registration No.HR-10E-2808 at his house and he could get the same recovered. Appellant-Sonu @ Samundar suffered disclosure (Ex.P-17) that he had robbed ₹ 1850/- and out of which, ₹ 350/- have been spent and remaining ₹ 1500/- had been kept concealed by him in the upper storey of his house. Appellant-Dalsher got recovered R.C. of Indica Car, which was taken in possession vide recovery Memo (Ex.P18). Appellant-Sonu @ Samundar got recovered ₹ 1500/- in pursuance of his disclosure statement, which were taken into possession vide Memo (Ex.P-19).

During cross-examination, this witness stated that no independent person was joined during the interrogation of appellants-Amarjeet & Des Raj. Also stated that he did not try to contact Bharat, registered owner of the Indica Car. Further stated that though appellant(s) Amarjeet & Des Raj were interrogated by him; their disclosures were also recorded; but no recovery was effected from them. Again stated that disclosure of appellant-Dalsher was not

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got attested by Malak Raj, who produced him in the Police Station. This witness lastly stated that appellant-Sonu was produced by his uncle-Ram Mehar.

(7.6) PW-6, namely, Sub Inspector Parhlad Singh deposed that on 26.8.2009, he was working as S.H.O., Police Station, Sadar, Hansi. Also deposed that on the said day i.e. 26.8.2009, he received telephonic message from Police Station Sadar, Hisar that incident of dacoity of cash amount took place at Dhul Petrol Pump Bandhaheeri. He along with other police officials reached at Dhull Petrol Pump in Govt. vehicle No. HR-39A-2734. Thereafter he reached Police Post Mundhal, where he found ASI Raj Mal, EHC Rajesh and complainant Amarjeet etc. Complainant-Amarjeet presented application (Ex.P-3), upon which, he made endorsement (Ex.P-25). ASI produced before him two accused, namely, Des Raj along with toy pistol and cash of ₹ 20,000/- and Amarjeet with cash amount of ₹ 19,100/-. Also deposed that he prepared Rough Site Plan of the place of apprehension of both the accused as Ex.P-20. He searched for Indica Car, which was recovered from Tigrana Mor, District Bhiwani and it was taken in possession, vide Ex.P-21. Appellant(s)-Des Raj & Amarjeet were arrested, vide memos (Ex.P-22 & Ex.P-23). Thereafter, he reached at Dhull Petrol Pump, where he prepared Rough Site Plan (Ex.P-24), and also recorded statement of witnesses under Section 161 Cr.P.C. Again deposed that he deposited the case property with MHC, Police Station Sadar, Hansi and lodged the appellants in police lock up and thereafter, the investigation was handed over to ASI Wazir Singh. Lastly deposed that on

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completion of investigation on 15.10.2009, he prepared report under Section 173 Cr.P.C., which bears his signatures.

During cross-examination, this witness stated that he received complaint (Ex.P-3) at about 06:30 p.m. in Police Post Mundhal, which was already written by complainant-Amarjeet. Again stated that he did not take any record of Dhull Petrol Pump about the sale on that date and how much cash was with them. Further stated that no DDR was got recorded about the recovery of Indica Car at Tigrana Mor in Police Station Sadar, Bhiwani.

(7.7) PW-7 ASI Kailash Chander deposed that he remained associated in the investigation of this case with S.I. Parhlad Singh on 26.8.2009. Also deposed that the police party had recovered Indica Car No. HR-10E-2808, found abandoned at Tigrana Mor, which was taken in possession vide Ex.P-21. Its front glass was found smashed. Appellant-Subhash was produced before him, who was joined and arrested in this case. On 15.9.2009, appellant-Subhash suffered disclosure (Ex. P-5) and disclosed that out of robbed amount, only ₹ 1400/- were left with him, which was concealed by him in bushes. Further deposed that appellant-Subhash had also kept concealed *danda* at the same place. On the same day, appellant-Subhash led the police party and got recovered ₹ 1400/- & *danda* from the bushes, situated near City Railway Station, Bhiwani, which were taken into possession vide Ex.P-25. Rough Site Plan (Ex.P-26) of the place of recovery was prepared by him. Lastly deposed

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that on 15.10.2009, he recorded statements of Subhash, Draftsman & Dharampal, Patwari.

During cross-examination, this witness stated that the place from where Indica Car was recovered falls under the jurisdiction of Police Station Sadar, Bhiwani; but I.O. did not intimate the said Police Station about the same. This witness also deposed that he conducted Test Identification Parade of appellant/accused-Subhash on 15.09.2009; but no other resembling person was brought for the identification, except him. Further deposed that at that time, Magistrate was not called and no separate memo regarding Test Identification Parade was prepared. Again deposed that there is overwriting on the date changing from 14.09.2009 to 15.09.2009 at Ex.P-5 (disclosure of appellant-Subhash). Yet again deposed that when they proceeded for recovery of ₹ 1400/- & *danda* to Bhiwani on 15.09.2009, he did not send any intimation the Police Station concerned; nor made any entry in the Police Station, Sadar, Hansi. Further deposed that he did not call any official from the Railway Department to join the recovery proceedings. Lastly deposed that neither the serial numbers of currency notes of aforesaid recovery of ₹ 1400/- were got identified from complainant; nor they were noted down or any sealed parcel was prepared for the same.

(8) Although, as per testimony of PW-7, Test Identification Parade of appellant-Subhash had been conducted; but the same was not in consonance with the Rule 26.32 of the Punjab Police Rules, 1934 (as applicable to Haryana)

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[for short 'PPR']. Even no Test Identification Parade of other appellant(s) had been conducted by the police; nor they were identified by the complainant during trial.

(9) In such like cases, it is obligatory for the police to conduct Test Identification Parade as soon as possible after arrest of the suspect and Rule 26.32 of PPR reads as under:-

“26.32 Identification of suspect

- (1) The following rules shall be strictly observed in confronting arrested suspect with the witnesses, who claim to be able to identify them.*
- (a) The suspects, who are to be subjected to an identification parade, shall be informed about it at the time of their arrest to enable them to take necessary precautions by way of keeping their faces covered and a request shall be made to the Magistrate to record a note in the remand papers regarding such precautions having been taken by them so as to eliminate any subsequent objection by the suspects that they had been shown to the witnesses before the identification parade was held. The proceedings shall be conducted by a Magistrate or, if no Magistrate is available and the case is of great urgency then, by Sarpanch who may summon one or two independent and literate if possible, persons or reliable characters, not interested in the case to assist him and to certify that the identification has been conduct under conditions precluding collusion. Such proceedings shall not be conducted by a Police Officer. The Police Officer concerned before inviting a Sarpanch to conduct the proceedings must ensure that the Sarpanch is not biased*

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or interested in or against accused or suspect and that he understands the rules of the proceedings. Every effort should be made to secure the presence of a Magistrate and services of Sarpanch only secured when absolutely necessary. In the absence of a Sarpanch, a Lambardar may be invited to do the needful.

- (b) Arrangements shall be made, whether the proceedings are being held inside a jail or elsewhere, to ensure that the identifying witnesses shall be kept separate from each other and at such a distance from the place of identification as shall render it impossible for them to see the suspect, or any of the persons concerned in the proceedings, until they are called up to make their identification.*
- (c) Identification shall be carried out as soon as possible after the arrest of the suspects.*
- (d) The suspects shall be placed among other persons similarly dressed and of the same religion and social status, in the proportion of 8 or 9 such persons to one suspect. Each witness shall then be brought up separately to attempt his identification. Care shall be taken that the remaining witnesses are still kept out of sight and hearing and that no opportunity is permitted for communications to pass between witnesses who have been called up and those who have not. If it is desired, through fear of revenge or for other adequate reasons, that witnesses shall not be seen by the suspects, arrangements shall be made for the former, when called up to stand being a*

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screen or be otherwise placed so that can see clearly without being seen.

- (e) The results of the tests shall be recorded by the Magistrate or other person conducting the test in Form 26.32(I)(e) as each witness views the suspect. On conclusion, the Magistrate or the Sarpanch or the Lambardar and the witnesses, if any, shall sign the form and certify that the test has been carried out correctly and that no collusion between the police and witnesses of among the witnesses themselves was possible. It is advisable that, whenever possible, an independent and reliable person, un-connected with the Police, should be present throughout the proceedings at the place where the witnesses are kept, and should be required to devote his attention to the prevention of collusion. It is important that once the arrangements for the proceedings have been undertaken, no police officer whatsoever shall have any access whatever either to the suspects or to the witnesses.*
- (2) Proceedings of the nature described above are extra-judicial. It is not the duty of the officer conducting them or of the independent witnesses to record statements or cross examine either suspects or identifying witnesses, but they should be requested to question the latter as to the circumstances in which they saw the suspect whom they claim to identify, and to record the answer in column 4 of the form. While every precaution shall be taken to prevent collusion, the identifying witnesses must be given a fair chance, and conditions must not be imposed, which would make it impossible for a person honestly capable of making an identification to do so. In*

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this connection attention is invited to paragraph 814 of the Punjab Jail Manual, which strictly prohibits the alteration in any way of the personal appearance of unconvicted prisoners, so as to make it difficult to recognise them.”

(10) Apart that, PW-6, during cross-examination, acknowledged that Executive Magistrate was not called at the time of Test Identification Parade of appellant-Subhash. Hence, in the absence of identification of the appellant(s), a serious doubt is created about their presence at the time of alleged occurrence.

(11) Still further, prosecution is claiming that place of occurrence was duly identified by the appellant(s), but it is clearly discernible from records that place was already in the knowledge of police; therefore, no credence can be given to such an exercise.

(12) Above all, there are serious infirmities in the prosecution case, which make it wholly doubtful and the same can be noticed as under:-

- (i) alleged incident had taken place on 26.08.2009 at around 05:00 p.m.; whereas FIR was registered at 09:30 p.m. i.e. after unexplained delay of more than 4 ½ hours, despite the fact that Police Station was situated at a distance of 23 Kms. on N.H. No.9.
- (ii) after registration of the FIR, *de facto* complainant was never joined during investigation and there is no explanation in this regard.
- (iii) as per prosecution case, *de facto* complainant initially identified two appellants, namely, Amarjeet & Des Raj on the date of alleged occurrence; but during his examination-

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in-chief as well as cross-examination, he specifically stated that assailants were with muffled faces. Moreover, he did not identify either of them and his signatures were obtained by the police on blank papers. This witness also stated that even after declaring him hostile, nothing beneficial to the prosecution case could be elicited despite lengthy cross-examination at the instance of Public Prosecutor.

- (iv) PW-3 Ram Avtar (co-employee of complainant) in his deposition specifically stated that he was not present at the time of alleged occurrence; nor he saw any accused.
- (v) neither the owner of Petrol Pump; nor registered owner of the Indica Car; or any other person from public was joined during investigation.
- (vi) PW-5 ASI Wazir Singh deposed that appellant(s)-Dalsher & Sonu @ Samunder were produced by Malak Raj & Ram Mehar, respectively; but during investigation, they were never joined by police for the reasons best known to them. Thus, withholding of the best evidence by prosecution is a serious infirmity, which again makes the case doubtful.
- (vii) neither at the time of alleged recovery of toy pistol; nor when respective cash amount(s) were recovered, any independent person was joined by the police.
- (viii) learned State Counsel has produced the Custody Certificates of the appellant(s) and which indicates that except present case, they are not involved in any other criminal activity up till now.
- (ix) no doubt, alleged case property i.e. cash amount had been released on *Superdari* to the complainant; but the same was never produced before learned trial Court. Consequently,



PW-6 & PW-7, in their testimonies, candidly acknowledged that no specific mark of identification was put on the alleged currency notes; thus, again, it is a major flaw in the prosecution case.

(13) In view of the facts and circumstances, discussed hereinabove, this Court is of the opinion that prosecution has failed to prove the charges against appellant(s) beyond reasonable doubt and they are entitled for the benefit of doubt.

(14) Consequently, there is no option, but to allow the appeals.

(15) Resultantly, all the appeals are allowed.

(16) Impugned judgment of conviction and order of sentence dated 17.12.2010 & 20.12.2010, respectively, passed by learned trial Court, are set aside and appellants stand acquitted of the charges.

(17) Since the sentence of the appellant(s), namely, Amarjeet, Sonu @ Samunder, Des Raj, Subhash & Dalsher have already been suspended, vide orders dated 09.12.2011, 25.08.2011, 05.03.2012, 09.12.2011 & 09.12.2011, respectively; therefore, their bail bonds as well as surety bonds stand discharged and case properties, if any, be returned as per law, forthwith.

Pending application(s), if any, shall also stand disposed off.

5th February, 2025
Gagan

(MAHABIR SINGH SINDHU)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>