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

- (1)

CRA-S-353-SB-2013 (O&M)

Monu

Versus

State of Haryana

..... Appellant

..... Respondent
- (2)

CRA-S-3233-SB-2012 (O&M)

Baba @ Sonu

Versus

State of Haryana

..... Appellant

..... Respondent
- (3)

CRA-S-3252-SB-2012 (O&M)

Rohit

Versus

State of Haryana

..... Appellant

..... Respondent
- (4)

CRA-S-3470-SB-2012 (O&M)

Krishan

Versus

State of Haryana

..... Appellant

..... Respondent



(5) **CRA-S-3542-SB-2012 (O&M)**

Avtar

..... Appellant

Versus

State of Haryana

..... Respondent

(6) **CRA-S-172-SB-2013 (O&M)**

Soni @ Sonu

..... Appellant

Versus

State of Haryana

..... Respondent

Reserved on : 22.01.2025

Pronounced on: 28.01.2025

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Argued by:- Mr. Nitin Jain, Advocate (Legal Aid Counsel) &
Ms. Vanshika Sharma, Advocate for the appellant
in CRA-S-353-SB-2013.

Mr. Anmol Partap Singh Mann, Advocate
for the appellant in CRA-S-3233-SB-2012.

Mr. Rajesh Bansal, Mr. Naveen Nandal, Mr. Ajay Bansal &
Mr. Jaswant Singh, Advocates
for the appellant in CRA-S-3252-SB-2012.

Mr. Ajay Ghangas, Mr. Ankit Singla & Mr. Shivdeep,
Advocates for the appellant(s) in CRA-S-3470-SB-2012,
CRA-S-3542-SB-2012 & CRA-S-172-2013.

Mr. Rahul Gautam & Mr. Sachin Jangra, Advocates for
Dr. Pankaj Nanhera, Advocate for the appellant
in CRA-S-3470-SB-2012.

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Mr. Joginder Pal Ratra, Advocate (*Amicus Curiae*)
for the appellant(s) in CRA-S-3252-SB-2012 &
CRA-S-3470-SB-2012.

Mr. Amish Sharma, Advocate (*Amicus Curiae*)
for the appellant(s) in CRA-S-3542-SB-2012 &
CRA-S-172-SB-2013.

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

MAHABIR SINGH SINDHU, J.

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

(2) Present appeal(s) have been filed against the impugned judgment of conviction and order of sentence dated 11.10.2012, passed by learned Additional Sessions Judge, Panipat (*hereinafter referred as ‘trial Court’*), whereby the appellant(s) were convicted and sentenced in the following manner:-

<i>Sr. No.</i>	<i>Name of accused</i>	<i>Conviction under Section(s)</i>	<i>Sentence</i>	<i>Fine in ₹</i>	<i>Default stipulation</i>
<i>1.</i>	<i>Avtar</i>	<i>395 IPC</i>	<i>Rigorous imprisonment for 05 years</i>	<i>2000/-</i>	<i>Rigorous imprisonment for 06 months</i>
<i>2.</i>	<i>Krishan</i>	<i>395 IPC</i>	<i>Rigorous imprisonment for 05 years</i>	<i>2000/-</i>	<i>Rigorous imprisonment for 06 months</i>
		<i>397 IPC</i>	<i>Rigorous imprisonment for 07 years</i>	<i>NIL</i>	<i>NIL</i>

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		<i>25 of the Arms Act</i>	<i>Rigorous imprisonment for 01 year</i>	<i>1000/-</i>	<i>Rigorous imprisonment for 03 months</i>
3.	<i>Soni @ Sonu</i>	<i>395 IPC</i>	<i>Rigorous imprisonment for 05 years</i>	<i>2000/-</i>	<i>Rigorous imprisonment for 06 months</i>
4.	<i>Rohit</i>	<i>395 IPC</i>	<i>Rigorous imprisonment for 05 years</i>	<i>2000/-</i>	<i>Rigorous imprisonment for 06 months</i>
5.	<i>Monu</i>	<i>395 IPC</i>	<i>Rigorous imprisonment for 05 years</i>	<i>2000/-</i>	<i>Rigorous imprisonment for 06 months</i>
6.	<i>Baba @ Sonu</i>	<i>395 IPC</i>	<i>Rigorous imprisonment for 05 years</i>	<i>2000/-</i>	<i>Rigorous imprisonment for 06 months</i>

(3) Substantive sentences imposed against appellant-Krishan for the offences punishable under Sections 395 & 397 of the Indian Penal Code, 1860 (*for short 'IPC'*) and Section 25 of the Arms Act, 1959 (*for short 'Arms Act'*) were ordered to run concurrently.

(3.1) Also noteworthy that benefit of Section 428 of the Code of Criminal Procedure, 1973 (*for short 'Cr.P.C.'*) was extended to all the appellants/convicts and period, already undergone by them, was set off from the substantive sentence.

(4) Prosecution was initiated on the basis of written application dated 22.09.2011 (Ex.P-1), given by Manish (PW-2) to S.H.O., Police Station Chandni Bagh, Panipat, alleging that he is working as Peon in Suzuki Agency, New Anaj Mandi, Panipat. On 21.09.2011 at about 09:00 p.m., he was going to

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drop his friend-Avtar after borrowing Motorcycle bearing registration No.HR-06-N-8382 (Splendor Black Colour) from another friend-Rohit. When they reached at By-Pass turn of Sector 24, then 6-7 boys were seen sitting on the road and they got stopped their motorcycle. Thereafter, accused persons gagged complainant's mouth as well as pressed his neck. One assailant, who was having pistol, put the same at his stomach. They also gave beatings upon stomach and head of the complainant. One of the assailants snatched his mobile; whereas another one snatched ₹ 500/- from pocket of the complainant and after snatching the motorcycle, they fled away from the spot.

(4.1) On the basis of above information, ASI Raj Pal (PW-7) recorded the proceedings (Ex.P-9) and forwarded the same to Police Station through Head Constable Subhash (PW-8) for registration of a case. Upon which, formal FIR No.859 dated 22.09.2011, under Section 395 IPC was registered at Police Station Chandnibagh, District Panipat. During investigation, Rough Site Plan dated 22.06.2011 (*sic* – 22.09.2011) (Ex.P-10) of the place of occurrence was prepared.

(4.2) On 23.09.2011, ASI Raj Pal (PW-7) received a secret information that accused/appellants, who were involved in the commission of offence, are sitting outside Ram Phal Sweet House. Then, after raiding the Sweet Shop, appellant(s)-Rohit, Krishan, Baba @ Sonu and Avtar were arrested by ASI Raj Pal. During interrogation, appellant-Krishan suffered disclosure statement (Ex.P-11), *inter alia*, stating that he could get the weapon of offence recovered

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from nearby wall of Government School of Village Ugra Kheri. Likewise, appellant(s)-Rohit, Avtar and Baba @ Sonu suffered separate disclosure statements (Ex.P-12 to Ex.P-14, respectively), stating that they can get the place of occurrence demarcated. In pursuance of their disclosures, above four appellants demarcated the place of occurrence, vide Memo (Ex.P-15).

(4.3) On 24.09.2011, appellant-Krishan got recovered a country made pistol (.315 bore) from the disclosed place, wrapped in a polythene, vide recovery Memo (Ex.P-17). Rough Sketch of the Pistol (Ex.P-16) was prepared. Appellant-Krishan also got demarcated the place of recovery vide Memo (Ex.P-18) and the Site Plan (Ex.P-19) thereof.

(4.4) On the same day i.e. 24.09.2011, one Mahipal had produced appellant(s)-Monu & Soni @ Sonu and they were formally arrested by the Investigating Officer.

(4.5) On 25.09.2011, both the aforesaid appellants were interrogated and during investigation, appellant-Monu suffered disclosure (Ex.P-20) and offered to get demarcated the place of occurrence. Likewise, appellant-Soni @ Sonu suffered disclosure (Ex.P-21) and offered to get recover the robbed motorcycle. In pursuance thereof, appellant-Soni @ Sonu got recovered the motorcycle from the disclosed place, which was seized by ASI Raj Pal (PW-7), vide recovery memo (Ex.P-22). The memo (Ex.P-23) of demarcation of the place of recovery of motorcycle was also prepared. Thereafter, both the appellants got demarcated the place of occurrence vide memo (Ex.P-24). Rough Site plan

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(Ex.P-25) of the place of recovery of motorcycle and Scaled Site Plan (Ex.P-26) were also prepared. Statements of witnesses under Section 161 Cr.P.C. were recorded.

(4.6) Sanction to prosecute appellant-Krishan for offence punishable under Section 25 of the Arms Act was obtained from District Magistrate, vide Sanction Order dated 21.11.2011 (Ex.P-8).

(4.7) After completion of investigation, final report under Section 173 Cr.P.C. was submitted before the Court of learned Judicial Magistrate 1st Class, Panipat (*for short 'JMIC'*). As the offences were triable by the Court of Sessions, therefore, the case was committed to the learned Sessions Court by learned JMIC vide order dated 13.12.2011 and which was assigned to learned trial Court.

(4.8) After taking into consideration the material available on record, learned trial Court charge-sheeted all the appellants for commission of offences punishable under Sections 395 IPC; whereas charges under Sections 397 IPC & 25 of the Arms Act were also framed against appellant-Krishan, to which, appellants pleaded not guilty and claimed trial.

(4.9) In order to prove its case, prosecution examined 11 witnesses, which are as under:-

PW-1 : Ishwar Singh, Sub Inspector (Retd.);

PW-2 : Manish, Complainant;

PW-3 : ASI Dharam Pal;

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PW-4 : Constable Shiv Parshad;

PW-5 : Constable/Armourer Sunil Kumar;

PW-6 : Sumer Singh, Reader to District Magistrate, Panipat;

PW-7 : ASI Raj Pal;

PW-8 : HC Subhash;

PW-9 : EHC Jagbir Singh;

PW-10 : HC Pamal;

PW-11 : Rohit

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

Ex.P-1 : Statement dated 22.09.2011 of complainant;

Ex.P-2 : FIR;

Ex.P-3 : Endorsement on the Tehrir;

Ex.P-4 : ASI Dharam Pal tendered his affidavit;

Ex.P-5 : Constable Shiv Parshad tendered his affidavit;

Ex.P-6 : Application of ASI Raj Pal to Armourer for test report;

Ex.P-7 : Report of Constable Sunil Kumar, Armourer;

Ex.P-8 : Sanction Order to prosecute appellant-Krishan for offence u/s 25 of the Arms Act;

Ex.P-9 : Police Proceedings;

Ex.P-10 : Rough Site Plan;

Ex.P-11 : Disclosure statement of appellant-Krishan;



- Ex.P-12 : Disclosure statement of appellant-Rohit;*
- Ex.P-13 : Disclosure statement of appellant-Avtar;*
- Ex.P-14 : Disclosure statement of appellant-Baba @ Sonu;*
- Ex.P-15 :Demarcation of the place of occurrence by
appellants-Krishan, Rohit, Avtar & Baba @ Sonu;*
- Ex.P-16 :Rough Sketch of the Pistol;*
- Ex.P-17 : Recovery Memo of the Pistol;*
- Ex.P-18 : Demarcation Memo of the place of recovery of
Pistol;*
- Ex.P-19 :Site Plan of the place of recovery of Pistol;*
- Ex.P-20 :Disclosure statement of appellant-Monu;*
- Ex.P-21 :Disclosure statement of appellant-Soni @ Sonu;*
- Ex.P-22 :Recovery Memo of Motorcycle;*
- Ex.P-23 : Memo of Demarcation of the place of recovery of
Motorcycle;*
- Ex.P-24 : Demarcation of place of occurrence by
appellants-Monu & Soni @ Sonu;*
- Ex.P-25 :Rough Site Plan of the place of recovery of
motorcycle;*
- Ex.P-26 : Scaled Site Plan of the place of occurrence;*

(4.11) Learned Public Prosecutor closed the prosecution evidence vide his statement dated 11.09.2012.

(4.12) 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

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evidence was led by the appellant(s) and closed the same through their joint statement on 06.10.2012.

(4.13) 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; appellant-Krishan was held guilty for the offences punishable under Section 397 IPC & Section 25 of the Arms Act as well and sentenced all of them in the terms, mentioned in para No.2 of this order. Hence, the present appeal.

(5) 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 conjectures. Also contended that occurrence is alleged to have taken place on 21.09.2011, whereas FIR was registered on 22.09.2011 after due deliberations and connivance with the police. Further contended that appellants were not identified by the complainant; nor any 'Test Identification Parade' was conducted; thus, mere identification of the accused during trial in Court would not be sufficient to establish their identity. Again contended that as per case of the prosecution itself, the alleged pistol was recovered from appellant-Krishan; whereas PW-2 Manish during cross-examination stated that it was accused Soni, who had put pistol upon his stomach. Yet again contended that no recovery was effected from appellant(s) Rohit, Avtar and Baba @ Sonu in pursuance to their disclosure; hence, the mere disclosure would not be

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admissible in evidence and would be hit by Sections 25 & 26 of the Evidence Act, 1872. Further contended that evidence regarding recovery of Motorcycle from accused Soni @ Sonu is also bereft of credibility as no independent witness was joined at the time of recovery. Also contended that owner of the Ram Phal Sweet House, being most material, was not joined during investigation and/or at the time of apprehending appellant(s)-Rohit, Krishan, Baba @ Sonu & Avtar by the police. Again contended that Mahipal, who produced appellant(s)-Monu & Soni @ Sonu, was also not joined during investigation. Lastly contended that there are material contradictions in the testimonies of prosecution witnesses and as such, the entire story has become doubtful.

(6) *Per contra*, learned State Counsel, on instructions, has opposed the above contentions and 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.

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

(8) Records reveal that initially, after registration of the FIR No.859 dated 22.09.2011, Investigating Officer (PW-7) recorded the statements of the witnesses under Section 161 Cr.P.C.; prepared Rough Site Plan as well as Scaled Site Plan dated 22.09.2011 & 05.10.2011, respectively.

(8.1) PW-1 Ishwar Singh, Sub Inspector (Retd.) deposed that he received Tehrir (Ex.P-1) through HC Subhash and on the basis of which, he

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recorded formal FIR (Ex.P-2). Thereafter, he made endorsement (Ex.P-3) on Tehrir (Ex.P-1) and sent the special report through Constable Shiv Kumar to the concerned officers.

(8.2) PW-2 Manish (complainant) deposed that on 21.09.2011 at about 08:00 p.m., he was going to drop his friend-Avtar to Village Ugrakheri. When they reached in Sector 24, then 5/6 boys attacked the complainant. One of them caught hold of him from neck; another gave slaps & fist blows on the stomach as well as head and one of them put his pistol on the stomach of complainant. Thereafter, they thrashed him and snatched away the motorcycle. While recording examination-in-chief, complainant identified the appellants/accused, present in the Court, who robbed him on 21.09.2011.

During cross-examination, this witness stated that appellant-Avtar (pillion rider) belongs to Village Ugrakheri; previously known to him and he was working in Suzuki Showroom, Panipat. Also stated that Avtar was his friend, who fled away from the spot and besides him, other accused are not known to him. Again stated that police did not ask him to join investigation; nor any Test Identification Parade of the convicts was conducted. Again stated that he did not raise any hue and cry as accused Soni had put pistol on his stomach. Also deposed that accused Avtar, who was pillion rider, forced him to follow the said route. Again deposed that Avtar had telephoned him at about 7:30 p.m. to arrange the Motorcycle.

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(8.3) PW-3 ASI Dharam Pal & PW-4 Constable Shiv Parshad tendered their respective affidavits (Ex.P-4 & Ex.P-5, respectively).

(8.4) PW-5 Constable/Armourer Sunil Kumar stated that he tested the pistol with the help of gauge and the same was found to be in working condition.

However, during cross-examination, this witness deposed that he had not tested the pistol by firing.

(8.5) PW-6 Sumer Singh, Reader to the District Magistrate, Panipat identified signatures of District Magistrate on the sanction order for prosecuting appellant-Krishan under Section 25 of the Arms Act.

But during cross-examination, this witness deposed that on 21.11.2011, he was not working as Reader and sanction order was not signed in his presence.

(8.6) PW-7 ASI Raj Pal (I.O.) deposed that on 22.09.2011, he along with other police officials was present for patrolling and on that day, he received a written information dated 22.09.2011 (Ex.P-1) from complainant-Manish (PW-2), upon which, he made endorsement (Ex.P-9) and forwarded the same to Police Station for registration of formal FIR. He visited the place of occurrence, prepared Rough Site Plan (Ex.P-10). On 23.09.2011, on receipt of secret information, he along with police party apprehended Rohit, Krishan, Baba @ Sonu and Avtar from Ram Phal Sweet Shop. This witness also proved the disclosure of the aforesaid accused; memo of demarcation relating to place

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of occurrence; Rough Sketch of the country made pistol. He also identified all the accused present in the Court.

It is noteworthy that during cross-examination, this witness fairly acknowledged that he did not join the Sweet Shop owner. No explanation is forthcoming as to why, despite availability, he was not joined in the investigation by the police. Also acknowledged that place from where recovery of pistol was effected is a public place and no independent witness was joined at that time; nor he summoned any respectable from the village to join the recovery proceedings. Again conceded that complainant never met him after giving complaint (Ex.P-1). Thus, it can be safely inferred that the investigation was not conducted in a fair manner; rather it is completely shoddy.

(8.7) PW-8 HC Subhash stated that on 22.09.2011, he was associated with the investigation of this case and after making endorsement, the I.O. handed over *Tehrir* to him for recording the FIR.

Again noteworthy that during cross-examination, this witness stated that no public person was joined at the time of recovery of motorcycle.

(8.8) PW-9 EHC Jagbir Singh, Draftsman, is a formal witness, who visited the place of occurrence and prepared scaled site plan (Ex.P-26), which bears his signatures.

(8.9) PW-10 HC Pamal stated that on 23.09.2011, he was present along with other police officials for patrolling. On that day, I.O. received secret information that accused, involved in the commission of offence, were sitting

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outside Ram Phal Sweet House. Also deposed that disclosure of accused bear his signatures as well as of HC Inder Singh. Again deposed that on 24.09.2011, appellant-Krishan got recovered country made pistol .315 bore and memo bears his signatures.

During cross-examination, this witness also conceded that I.O. did not call any Teacher or Principal of the Ugra Kheri School; nor respectable or Sarpanch of that Village at the time of recovery of Pistol. The recovery of Pistol, in these circumstances, also becomes doubtful.

(8.10) PW-11 Rohit deposed that he was associated with ASI Raj Pal in the investigation. On that day, accused Soni @ Sonu got recovered motorcycle as per his disclosure, which was seized vide memo (Ex.P-22). Accused also demarcated the place of recovery vide memo (Ex.P-23). This witness also deposed that both the memos bear his signatures.

(9) Concededly, no test identification parade was conducted by the police in the matter and the accused were identified by the complainant for the first time in the Court during their trial.

(10) Although, the disclosures of all the appellants were recorded by the police, but there is no recovery in pursuance of these disclosures; except pistol from Krishan and motorcycle from appellant-Soni @ Sonu. No doubt, the prosecution is claiming that place of occurrence was identified by the appellants after their disclosures, but the place of occurrence was already in the knowledge of

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the police, therefore, no much credence can be given to the identification of place of occurrence by the appellants.

(11) Apart that, there are other serious infirmities, which make the prosecution case wholly doubtful and the same would be as under:-

- (i) the alleged incident had taken place on 21.09.2011 at around 09:00 p.m.; whereas FIR was registered on 22.09.2011 at 09:20 p.m. i.e. after unexplained delay of more than 24 hours;
- (ii) after registration of the FIR, *de facto* complainant was never joined during investigation;
- (iii) as per prosecution case, *de facto* complainant claimed in his initial version that he can identify the accused if they are brought before him; but despite that, no Test Identification Parade was conducted by the police for the reasons best known to them.

It is worthwhile to mention here that in view of Rule 26.32 of the Punjab Police Rules, 1934 (as applicable in Haryana State), 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 the Rule 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*

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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 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.*

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- (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 behind a 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 or 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*

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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 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.”

- (iv)** as per the prosecution case, on the basis of secret information, appellant(s)-Rohit, Krishan, Baba @ Sonu & Avtar were apprehended from Ram Phal Sweet House; but neither the owner of the Shop; nor any other person from public was joined at the time of their arrest; nor it the case of prosecution that they tried to join some independent person at that time and/or that he refused the same.
- (v)** again it is claimed by the prosecution that appellant(s)-Monu & Soni @ Sonu were produced by one Mahipal; but during

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investigation, said Mahipal was never joined by the police; nor there is any explanation in this regard;

- (vi) neither at the time of alleged recovery of pistol; nor when motorcycle was recovered, any independent person was joined by the police despite availability;
- (vii) learned State Counsel has produced the Custody Certificates of the appellant(s) and except appellant-Monu, none of other appellants has been found to be involved in any other cases up till now;
- (viii) neither mobile phone; nor alleged amount of ₹ 500/- was recovered by the police;
- (ix) no independent person was joined during investigation for the reasons best known to the police.

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

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

(14) Resultantly, all the appeals are allowed.

(15) Impugned judgment of conviction and order of sentence dated 11.10.2012, passed by learned trial Court, are set aside and appellants stand acquitted of the charges.

(16) Since the sentence of the appellant(s), namely, Monu, Baba @ Sonu, Rohit, Krishan, Avtar & Soni @ Sonu, have already been suspended, vide orders dated 18.11.2015, 03.12.2013, 20.09.2013, 17.02.2014, 29.10.2013 & 24.09.2013,

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respectively; therefore, their bail bonds as well as surety bonds stand discharged and case property, if any, be returned as per law, forthwith.

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

28th January, 2025
Gagan

(MAHABIR SINGH SINDHU)
JUDGE

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