



2. The criminal appeal No.CRA-S-2403-SB-2004 has been instituted by the accused/appellants against the judgment dated 10.11.2004 passed by the Court of Additional Sessions Judge, Jhajjar in case arising out of FIR No.395 dated 26.10.1997 registered under Section 394/397 of IPC at Police Station Sadar Bahadurgarh vide which appellants Bijender Singh and Rajender @ Jinder (died during pendency of appeal on 23.03.2005) have been held guilty and convicted for the offences under Sections 394/397 of IPC and accused Bijender Singh has also been held guilty and convicted for the offence under Section 25 of Arms Act. They have been sentenced to undergo rigorous imprisonment for seven years besides payment of fine of Rs.2000/- each for the offence under Section 394 of IPC. In default of payment of fine, they have been ordered to undergo rigorous imprisonment for two months. They have also been sentenced to undergo rigorous imprisonment for a period of seven years besides payment of fine of Rs.5000/- each for the offence under Section 397 of IPC and in case of non payment of fine, they have been sentenced to undergo rigorous imprisonment for four months. Besides this, accused Bijender Singh has also been sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.500/- for the offence under Section 25 of Arms Act in FIR No.401 dated 02.11.1997, under Sections 25/54/59 of Arms Act at Police Station, Sadar, Bahadurgarh. In case of default payment of fine, he shall undergo rigorous imprisonment for one month. All the sentences have been ordered to run concurrently.



3. The criminal appeal No.CRA-S-258-SB-2006 has been preferred by appellant Satish @ Bablu against the judgment dated 17.01.2006 vide which he has been held guilty and convicted for the offences under Section 394/397 of IPC and he has been sentenced to undergo rigorous imprisonment for seven years besides payment of fine of Rs.2000/- for offence under Section 394 of IPC. In case of default of payment of fine, he has been ordered to undergo rigorous imprisonment for two months. He has also been sentenced to undergo rigorous imprisonment for seven years besides payment of fine of Rs.5000/- and in case of non payment of fine, he shall undergo rigorous imprisonment for four months. Both the sentences have been ordered to run concurrently.

4. The present case was registered on the basis of statement given to the police by Jagat Singh with the allegations that he has been employed as a driver on the car bearing No.DL-3CJ-2719. On 25.10.1997 at about 10:00 PM, he had gone to Indira Gandhi International Airport, Delhi to drop his employer and while returning, three young persons told him that their Maruti Car No.DL-3CK-1969 has gone out of order, in which they had come to drop their relative. They have to go to Bahadurgarh and hired his vehicle for dropping them at Bahadurgarh on payment of Rs.500/-. Two persons boarded his car while third one was standing near their car. After reaching near Bahadurgarh, they asked him to take the car towards the link road and when they travelled for about one kilometer in the northern direction and crossed some village, Maruti Car No.DL-3CK-1969 overtook and intercepted his car make Opel Astra



bearing No.DL-3CJ-2719 at about 1.30 AM. One of the passengers pointed a pistol on his temple and the second boy sitting on the rear seat caught hold of him from the collar of the shirt and they all dragged him out of the car and caused injuries to him on his forehead and chest. They snatched his purse, driving licence and took away the car from him. On the basis of this statement, formal FIR Ex.PQ was registered. The Investigating Officer visited the place of occurrence and prepared the rough site plan Ex.PR. On 27.10.1997, when police party was present at bus-stand Bahadurgarh, a secret information was received that one accused Bijender Singh is coming towards Haryana from Delhi in a car bearing No.DL-3CK-1969 make Maruti, which was used in committing the crime. In case, a naka is laid, he can be caught red-handed. Thereafter, a barricade was installed at Siddipur Drain Bridge and after some time, the said car came, which was stopped. The occupant of the car tried to run away but was apprehended and on inquiry, he told his name as Bijender Singh son of Sarup Singh, resident of Mandi, District Panipat. The car in question along with its registration certificate was taken into possession vide memo Ex.PH and he was arrested. On interrogation, he suffered disclosure statement Ex.P1 admitting snatching of Opel Astra car along with his co-accused namely Rajender @ Jinder and Satish. He also got recovered driving licence of complainant and currency notes of Rs.200/- which had been kept under the seat cover of the driver's seat, which were taken into possession vide memo Ex.PJ. The case property was deposited in the Malkhana on the same day. On 02.11.1997, accused



Bijender Singh suffered a disclosure statement regarding concealing of a pistol and three cartridges by him near leather factory situated near the canal on Rohtak-Bahadurgarh Road vide disclosure statement Ex.PK. Thereafter, he led the police party to the disclosed place and got recovered the pistol and cartridges which were converted into a parcels and sealed with seal 'SS', after preparing sketch of the pistol Ex.PL/1 and same were taken into possession vide memo Ex. PL.

5. The prosecution case further is that 02.11.1997, SI Satbir Singh, Police Station Sadar Sonapat, was present at bus stand of Village Rohat along with other police officials, when he received secret information to the effect that Satish @ Bablu resident of village Fatehpuri is in possession of snatched car No.DL-3CJ-2719 and he is trying to sell the same. Thereafter, a barricade was laid on Fatehpuri Road turn and after some time, said Satish @ Bablu came there in the said car and was apprehended. He could not produce the ownership record of the car and the car was taken into possession and separate FIR No.480 dated 02.11.1997 under Section 379/411 of IPC Police Station Sadar, Sonapat was registered against him. From his personal search, one country-made pistol was also recovered regarding which separate FIR under Section 25 of Arms Act was registered. On interrogation, he suffered disclosure statement to the effect that on 25.10.1997, he along with his co-accused Bijender Singh and Rajender @ Jinder had hired car No. DL-3CJ-2719 from Indira Gandhi International Airport, Delhi for going to Bahadurgarh on payment of Rs.500/- as fare and he as well as Rajender @ Jinder took



lift in the car while Bijender Singh followed them in the Maruti car and thereafter, the car was intercepted by Bijender Singh and after beating driver, they snatched his purse, wrist watch, driving licence as well as the car. Accused Satish was arrested in this case as well on 10.11.1997 and after completion of investigation, final report was presented against accused Bijender Singh and Satish @ Bablu for trial. Separately another challan was also presented against accused Bijender Singh in FIR No.401 dated 02.11.1997 under Section 25 of Arms Act at Police Station Sadar, Bahadurgarh and both the challans were committed to the Court of Sessions for trial vide order dated 03.06.1998 after supplying copies of challans and other documents to the accused.

6. On 10.07.2000, SI Hari Singh of Police Station Sadar, Bahadurgarh received message from Police Station, Meham that accused Rajender @ Jinder is being produced by the police at Meham Court and after seeking permission from the Judicial Magistrate, accused Rajender @ Jinder was joined in the investigation in the present case and arrested. On interrogation, he suffered disclosure statement admitting having committed the crime. His transit remand was obtained and he was produced before Judicial Magistrate, Bahadurgarh. An application Ex.PE was moved for getting his test identification parade conducted but he refused to participate in the test identification parade. On interrogation, he suffered disclosure statement Ex.PG and demarcated the place of occurrence vide memo Ex.PD. Thereafter, supplementary challan was presented against accused Rajender @ Jinder for trial.



7. After presentation of challan, the copies of challan and other documents were supplied to the accused free of cost as required under Section 207 of Cr.P.C. Thereafter, the case was committed to the Court of Sessions for trial vide order dated 20.02.2001.

8. After hearing learned Public Prosecutor and learned Defence counsel, all the accused were charge-sheeted for the commission of offences punishable under Sections 394/397 of IPC and accused namely Bijender Singh was separately charge-sheeted under Section 25 of Arms Act vide order dated 09.07.2001 by the trial Court to which accused pleaded not guilty and claimed trial.

9. In support of its case, the prosecution examined seventeen witnesses namely PW-1 Smt. Manisha Batra, PW-2 K.P.S. Narain, PW-3 Sudesh Kumar, HC, PW-4 C.B. Sheoran, Chief Judicial Magistrate, PW-5 S.I. Satbir Singh PW-6 Mahender Singh, PW-7 Ranjit Singh, PW-8 HC Karampal, PW-9 ASI Samunder Singh, PW-10 SI Sumer Singh, PW-11 Satya Parkash Kaushik, PW-12 Rattan Singh Armourer, PW-13 Rajender Singh, DSP, PW-14 Ram Gopal, ASI, PW-15 Surender Kumar clerk, PW-16 C.Jaisa Ram, PW-17 ASI Hari Singh.

10. Thereafter, statements of accused under Section 313 of Cr.P.C. were recorded and the entire incriminating material was put to them which was denied by them to be wrong and they pleaded false implication. However, no evidence in defence has been led by them.

11. After hearing learned Public Prosecutor and learned defence counsel and on going through the record, learned trial Court held



appellants guilty and convicted them for the offences as mentioned in opening paragraphs of the judgment.

12. Feeling aggrieved, the appeals in hand have been preferred.

13. I have heard learned counsel for the parties and have gone through the record.

14. After hearing learned counsel for the appellants and learned State counsel and on going through the material on file, I am of the considered opinion that the impugned judgments are liable to be set aside for the reasons discussed hereinafter.

15. As per prosecution case, three persons hired the car from its driver Jagat Singh from Indira Gandhi International Airport, Delhi for dropping them at Bahadurgarh on payment of Rs.500/- as fare. Two persons boarded the car and travelled with him up to Bahadurgarh and when they were going on a link road, third person travelling in a Maruti car intercepted their car. Thereafter, all the three persons had caused injuries to the driver/complainant Jagat Singh and snatched his car along with his purse and driving licence and ran away from the spot. However, the complainant namely Jagat Singh, who was author of the FIR and was the star witness of the prosecution has not been examined during trial on account of his death during pendency of the trial. He was the only person who could have deposed that it is the accused facing the trial, who had hired his vehicle and snatched the same from him on pistol point after causing injuries to him and in the absence of his testimony, it is not established that the car and his belongings were snatched from him by the



accused persons. In these circumstances, the identity of the accused is not at all established and on this score only, the prosecution case regarding snatching of car is bound to fail.

16. The prosecution case further as deposed by PW7 ASI Ranjit Singh, PW10 SI Sumer Singh and PW13 Inspector Rajender Singh is that on 27.10.1997, when they were present at bus stand Bahadurgarh, a secret information was received that accused Bijender Singh shall be coming from the side of Delhi in one Maruti car bearing No. DL-3CK-1969 which was used in committing the present crime. In case, a barricade is laid, he can be caught red-handed. Thereafter, a barricade was laid at Siddipur Drain Bridge and after some time, accused came in the aforesaid car and was stopped. He tried to run away after alighting from the vehicle but was apprehended and the car was taken into possession vide memo Ex.PH and accused was arrested. On interrogation, he suffered disclosure statement Ex.PI admitting having snatched the Opel Astra car from the complainant along with his co-accused namely Rajender @ Jinder and Satish @ Bablu. In pursuance thereof, he got recovered the driving licence of the complainant and a sum of Rs.200/- which had been kept under the seat cover of the driver's seat and same were taken into possession vide memo Ex.PJ.

17. However, they have admitted that it was a busy place and no public witness was joined. Once secret information had been received, the Investigating Officer should have joined public witnesses to lend credence to his actions but no explanation has been given as to why



public witnesses were not joined and as to why no action was taken against the persons, who had refused to join the investigation. Even otherwise, the car in question recovered from accused Bijender Singh was not the same car which had been snatched in the present case. Accused is allegedly shown to have got recovered the driving licence of the complainant. However, it is highly unbelievable that accused would have retained the driving licence of the victim with himself to create evidence against him. The driving licence was not such a valuable commodity that the accused would have retained it with himself. Even otherwise, the complainant has remained unexamined and on account of his non-examination, it is not established that his driving licence was snatched and the same was the stolen property which is sine qua non for proving the charge for retaining the stolen property.

18. PW9 ASI Samunder Singh and PW10 SI Sumer Singh have further deposed that when accused Bijender Singh was in police custody in the present case, he suffered disclosure statement on 02.11.1997 Ex.PK regarding concealment of a pistol and three live cartridges near leather factory situated near the canal on Rohtak-Bahadurgarh Road. Thereafter, he led the police party to the disclosed place and got recovered the pistol and three cartridges. The sketch of the pistol Ex.PL/1 was prepared and the pistol and cartridges were converted into a parcel and sealed with seal 'SS' and taken into possession vide memo Ex.PL. PW10 SI Sumer Singh further deposed that he moved application Ex.PN before the Armourer for testing the pistol and the cartridges and he tendered the same as Ex.P1



to Ex.P4.

19. However, PW10 has nowhere deposed that he had deposited the case property in the Malkhana. The pistol and cartridges were allegedly recovered on 02.11.1997 and the application Ex.PN was moved before the Armourer namely PW12 Rattan Singh on 20.11.1997. No evidence has been led by the prosecution to show as to where the case property remained from 02.11.1997 to 20.11.1997. Malkhana Moharrir has not been examined to prove that the case property was deposited with him by PW10 SI Sumer Singh for safe custody during this period and was again obtained from him on 20.11.1997 for producing it before the Armourer. Rather, the parcel was retained by PW10 SI Sumer Singh with him. The material link evidence regarding safe custody of the case property is thus missing and possibility of the parcel having been tampered with and case property having been replaced cannot be ruled out and its benefit has to go to the accused. No value thus can be attached to the report of the Armourer.

20. To prove that the pistol was in working condition and cartridges were live, prosecution has also examined PW12 namely Rattan Singh Armourer, who deposed that parcels were produced before him on 21.09.1997 for testing of pistol. However, the offence in question had not been committed even on 21.09.1997 and the occurrence in question had taken place on 26.10.1997 which raises doubt about the parcel having been produced before the Armourer. Even if, it is assumed that it was a case of slip of tongue, still it is not duly proved that the pistol was in



working condition. Though PW12 stated that he had examined the pistol and found the same to be in working condition and cartridges to be live vide his report EX.PN/1 yet, during cross-examination, he admitted that he had not test fired the pistol and had only tested it from its firing mechanism. In 1995 SCC (Cri) 815 – **Azad Singh Vs. State of Haryana**, it has been held by the Hon'ble Supreme Court that the prosecution has to establish that the arms and ammunition recovered from the accused was in working condition and since Armourer had not test fired the pistol, it was insufficient to hold that the weapon was in working condition and accused was acquitted. In 2014(1) RCR (Criminal) 24 – **Bhuptej Pal Singh Vs. State of Punjab**, it was held that since no bullet was test fired by the Armourer, it cannot be held that the revolver and cartridges were in working condition and the accused was acquitted. In the present case also, PW12, who is the Armourer has admitted that he had not test fired the pistol and had rather examined it mechanically only. On this score, it is thus not established that the pistol was in working condition and the cartridges were live as the same had not been test fired. On this account, charge under Section 25 of Arms Act is not proved.

21. So far as accused Satish @ Bablu is concerned, prosecution in order to prove its case against accused has examined PW5 namely SI Satbir Singh, who deposed that on 02.11.1997, he was posted in Crime Branch, Sonipat and on that day, he was present at bus stand of Village Rohat along with HC Hari Ram, HC Dharampal, Constable Raghubir Singh and Constable Satbir Singh, when he received secret information



that accused Satish @ Bablu is in possession of car No. DL-3CJ-2719 (snatched car) make Opel Astra and he will be passing by that place as he is searching for a customer to sell the car. Thereafter, a naka was laid at Fatehpuri Road turn and after some time, accused Satish @ Bablu came in car bearing No.DL-3CJ-2719, who was signalled to stop, on which, accused stopped the car but started running away after alighting from the car and he was apprehended.

22. However, he is the only witness examined by the prosecution to prove its case against accused Satish @ Bablu. The other members of the police party namely HC Hari Ram, HC Dharampal, Constable Raghbir Singh and Constable Satbir Singh have not been examined to corroborate his testimony. No doubt, the testimony of a solitary witness can be relied upon to convict a person but this principle holds good only if the same is without any blemish and inspires confidence but if there are other persons who had witnessed the occurrence, some of them should be examined to corroborate the testimony of the official witness. PW5 SI Satbir Singh himself allegedly apprehended accused Satish @ Bablu and he is thus certainly interested in the success of the case. He has admitted that many persons were passing by and he had tried to join them during investigation but they refused and in these circumstances, the solitary testimony of PW5 cannot be relied upon to lend credence to his actions unless and until his testimony is corroborated by some other witnesses, who were admittedly available. Besides this, the seizure memo vide which the car was taken into possession has not been tendered in



evidence to show that the said car was recovered from the possession of the accused. Further, as already discussed above, complainant has remained unexamined and on account of his non-examination, it is not established that any car was snatched or that the stolen property was recovered from the possession of accused Satish @ Bablu which is sine qua non for proving the charge of retaining the stolen property.

23. So far as evidence which has come against accused Rajender @ Jinder is concerned, PW16 namely Constable Jaisa Ram and PW17 namely ASI Hari Singh have deposed that on 10.07.2000, accused was produced in the Court at Meham and he was joined in the investigation after obtaining permission from the Magistrate and arrested. On interrogation, accused had suffered disclosure statement Ex.PQ admitting having committed the offence in question. Thereafter, he demarcated the place of occurrence vide memo Ex.PT. However, no stolen property has been recovered from his possession. The place of occurrence was already in the knowledge of the police as rough site plan of the place of occurrence had already been prepared and no new fact was thus discovered in pursuance of the disclosure statement and same is thus inadmissible in evidence. No value can be attached to demarcation memo Ex.PT as place of occurrence was already in the knowledge of the police and demarcation of the place of occurrence was rather a futile exercise on the part of the police.

24. Testimony of remaining witnesses is formal in nature. H.C. Suresh Kumar while appearing as PW3 has proved FIR No.480 dated



02.11.1997 under Sections 379/411 IPC at Police Station Sadar, Sonapat. S.I. Mahender Singh while appearing as PW6 has proved FIR Ex.PG/1 on receiving information Ex.PG. H.C. Karam Pal while appearing as PW8 has proved FIR Ex.PK on receiving information from SI Parveen Kumar through Constable Suresh Kumar. ASI Ram Gopal while appearing as PW14 deposed that he had partly investigated the case and recorded the statement of Naib Tehsildar Manjeet Singh, who has given him report of test identification parade.

25. As a result of aforesaid discussion, I am of the considered opinion that the evidence led by the prosecution is inherently weak. The identity of the accused is not at all established on account of non-examination of the complainant and on account of non-examination of the complainant, it is also not established that any such incident of snatching had taken place. The disclosure statements of the accused that they had committed the offence in question are inadmissible in evidence being self-inculpatory and could not have been used against the accused as has been done by the trial Court while convicting them. As such, the evidence on file has not been appreciated in the correct perspective and impugned judgments dated 10.11.2004 and 17.01.2006 are thus not sustainable. Accordingly, the appeals in hand are accepted and accused are acquitted of the charge under Section 394/397 of IPC and accused Bijender Singh is also acquitted of the charge under Section 25 of Arms Act. Accused along with their sureties are discharged from the bonds of appearance. Car in question be returned to the registered owner and the



superdarinama furnished, if any, stands cancelled. The pistol and cartridges in question be destroyed as per rules after the expiry of period of appeal, if any. Copy of this judgment be sent to the trial Court for information.

26. A photocopy of this judgment be placed on the file of other connected case, numbered above.

14.01.2026
Priyanka Thakur

(YASHVIR SINGH RATHOR)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No