

CRR-3336-2009 (O & M)

2025:PHHC:006103



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

(205-2)

Date of Decision: 16.01.2025

1. CRR-3336-2009 (O&M)

Kabeer and anr.Petitioners

Versus

State of Haryana . . .Respondents

2. CRR-3305-2009 (O&M)

ShamsherPetitioner

Versus

State of Haryana ...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Sarfraj Hussain, Advocate,
for the petitioners (CRR-3336-2009)
and Mr. Satish Chaudhary, Advocate
for the petitioner (in CRR-3305-2009).

Mr. Viney Phogat, DAG, Haryana.

JASJIT SINGH BEDI, J. (Oral)

This order shall dispose of two criminal revisions i.e. **CRR-3336-2009** preferred by the accused-petitioners No.1 and 2, namely, Kabeer



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and Israil and **CRR-3305-2009** preferred by the accused-petitioner/Shamsher against the judgment dated 10.11.2009 passed by the Additional Sessions Judge, Fast Track Court, Nuh whereby the appeal filed against the judgment of conviction and order of sentence dated 27/29.08.2008 passed by the Sub Divisional Judicial Magistrate, Mobile Court, Punhana has been dismissed.

2. The FIR in the present cases came to be registered on 05.01.2002. The judgment of conviction and order of sentence was passed on 27/29.08.2008. The appeal against the aforesaid judgment of conviction and order of sentence came to be dismissed on 10.11.2009 by the Additional Sessions Judge, Fast Track Court, Nuh. The aforesaid two revision petitions filed on 22.12.2009 and 18.12.2009 respectively preferred against the aforesaid judgments of conviction and order of sentence have come up for final hearing now i.e. after a period of 22 years from the date of registration of the FIR.

3. For the sake of convenience, the facts being are taken from CRR-3336-2009.

4. The brief facts of the prosecution case are that on 5.1.2002 at 9.30 AM, the police party headed by Sukhdev Singh ASI was at Police Post Pinangwan, when Habeeb approached him and recorded his statement to the effect that he was a resident of Devla and working as a milk man supplying milk to Nirmal Dairy. On the preceeding day, 04.01.2002 at about 7.30 PM



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he was carrying Rs.50,000/- in cash on his motor cycle No.HR-27-6246 and when he reached the bridge near Rehpuva. He was stopped by man with a muffled face at about 8.30 PM. In the meanwhile, two other persons with muffled face, brandished a pistol at him threatened to shoot him in case he raised a noise. The person armed with lathi gave a lathi blow on his forehead and the third one took out Rs.50,000/- from his pocket and wallet containing his photo and other papers. On seeing a four wheeler coming on the road they fled away into the fields. The accused-petitioners were aged 25-30 years and due to fog he could not see them and went back to his village. He and his brother verified the facts and were convinced that the robbery had been committed by Shamsher, Kabeer and Israil of the same village. On the basis of the statement, the FIR was registered and the investigation began.

5. During investigation, the site plan was prepared; recovery memos were prepared; accused-petitioners were arrested; statements of prosecution witnesses under Section 161 of Cr.P.C. were recorded and after completion of all other usual formalities of investigation, the accused-petitioners was sent up for trial and charges were framed under Section 394 IPC.

6. In order to prove its case, prosecution examined PW-1 Habeeb who being the complainant had given the exact detail of the manner in which the incident had taken place. He had given the exact details of the



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incident and proved the complaint Ex.PA. PW2-Sukhdev Singh retired SI being the investigating officer proved the recovery memo of the watch Ex.PW2/C jamatalashi Ex.PW2/C to Ex. PW2/G, recovery memo of the motor cycle under Section 102 Cr.P.C. disclosure statement of Israil Ex.PW2/J, disclosure statement of Kabeer Ex.PW2/K. He also proved the disclosure statement of Israil, Shamsheer and Kabeer, PW2/L, Ex.PW2/M and Ex. PW2/N and the recovery memo Ex. PW2/O, site plan of recovery Ex. PW2/P, recovery memo of lathi Ex.PW2/Q, Naksa Ex.PW2/R, recovery memo of pistol Ex. PW2/N, recovery memo of pistol and cartridge Ex.PW2/S, outline sketch Ex.PW2/T and site plan of the recovery Ex.PW2/U. PW-3 Amar Singh constable also proved the disclosure statement of Shamsheer, Israil and Kabeer being the attesting witness thereof. No other witness was examined.

7. After closure of the prosecution evidence, the statements of the accused-petitioners were recorded separately under Section 313 Cr.P.C. wherein the entire incriminating evidence was put to them. They denied allegations leveled against them and pleaded that they had been falsely implicated in this case.

8. Based on the evidence led, the accused-petitioners came to be convicted and sentenced by the court of the Sub Divisional Judicial Magistrate, Mobile Court vide judgment of conviction and order of sentence dated 27/29.08.2008 as under:-



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Offence under Section	Sentence RI/SI	Fine	RI/SI in default of payment of fine
394 IPC	RI for 01 year	Rs.1000/-	RI for 02 months

In addition, the accused-petitioners were ordered to deposit a sum of Rs.15,000/- each (Rs.45,000/- in total) as compensation to be paid to the victim on account of injuries suffered by him, failing which, they were to be sentenced to undergo rigorous imprisonment for a period of 10 days.

9. The accused-petitioners preferred an appeal which came to be dismissed by the Court of the Additional Sessions Judge, Fast Track Court, Nuh, vide judgment dated 10.11.2009.

10. The aforementioned judgments are under challenge in the present petition.

12. During the pendency of the instant revision petitions, the sentences of imprisonment of the accused-petitioners were suspended vide separate orders dated 22.02.2010 in their respective petitions.

13. The learned counsels for the petitioners contend that there is a considerable delay in the registration of the FIR. They contend that as per the prosecution case, all the accused-petitioners were in muffled faces and there was heavy fog. Therefore, their identification could not have taken place. The finding of the Trial Court that the accused-petitioners were recognised from their voices is not the prosecution case emanating from the FIR. They contend that there was absolutely no evidence that the complainant was carrying Rs.50,000/-. In fact, no recovery whatsoever



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was effected from any of the accused-petitioners. They had been falsely implicated on account of the party-factions in the village. In the alternative, it is prayed that as the occurrence was of the year 2002 and the accused-petitioners had clean antecedents, they be released on probation or their sentences be reduced to the period already undergone by them.

14. The Counsel for the State, on the other hand, has filed separate custody certificates dated 15.01.2025 of the accused-petitioners, which are taken on record. As per the said custody certificates, the accused-petitioners, namely, Kabeer, Israil and Shamsher have undergone 05 months and 16 days, 05 months and 18 days and 05 months and 09 days respectively out of their substantive sentences. He contends that the offence stands established beyond reasonable doubt. The witnesses have deposed in support of the prosecution and there are no discrepancies in their statements. The recovery of a *lathi*, purse, pistol and cartridges were effected from one of the accused during the investigation of another case. As the offence stood established beyond reasonable doubt, the present petitions were liable to be dismissed. As regards the reduction of sentence, he contends that the nature of the offence committed by the accused-petitioners did not entitle them to the concession of either probation or reduction of their sentences.

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



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16. The prosecution case has been duly proved by the complainant Habeeb appearing as PW1, who has proved the exact date and time of the incident. He has given the detail of the incident in which the incident took place and has categorically implicated accused Kabeer, Israil and Shamsher while proving the complaint Ex.PA. PW2 Sukhdev Singh being the investigating Officer has also proved the case of the prosecution and various steps taken during the investigation. This witness has not only proved the disclosure statement of the accused-petitioners as Ex.PW2/I, Ex.PW2/J and Ex.PW2/K. He also got the recovery effected on the basis of the said disclosure statement of the said witness Ex. PQ and Ex. PS. Further, he has also proved the site plan of the place from where the recoveries were effected Ex. PW2/I, Ex.PW2/R and Ex.PW2/U. Further, PW3-Amar Singh has also corroborated the testimony of the investigating officer while appearing the disclosure statement Ex. PW2/I, Ex.PW2/J and Ex.PW2/K. Thus, I am of the considered view that there can be no doubt that the accused-petitioners committed robbery and even the weapons of offence were recovered from them.

There is no merit in the contention that the accused-petitioners deserve benefit of doubt as no cash was recovered from them. It has been mentioned in their disclosure statements that they had already spent the money which fell in their share and had got the recovery of the weapons of offence effected.



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This Court also does not find any merit in the contention of the learned counsels to the effect that since in the complaint it is mentioned that the accused-petitioners at the time of commission of offence had muffled their faces, there was no scope of their identification by the complainant. The complainant stated that the accused-petitioners were of the same village and therefore, apparently would have been identified from their voices as well. In fact, the promptness with which the FIR was recorded, does not leave any doubt regarding any false implication of the accused-petitioners.

17. In view of the above discussion, no fault can be found with the well-reasoned judgments of the Trial Court dated 27/29.08.2008 and the Lower Appellate Court dated 10.11.2009, Therefore, the present petitions stand dismissed.

18. As regards imposition of sentence, admittedly, the FIR was registered in the year 2002 and as many as 22 years have passed ever since then. A perusal of the custody certificates of the accused-petitioners would show that they do not have any criminal antecedents and are first time offenders. Therefore, the sentence of the accused-petitioners is reduced to the period already undergone by them i.e. Kabeer (05 months and 16 days), Israil (05 months and 18 days) and Shamsher (05 months and 09 days) subject to their depositing Rs.25,000/- each with the Spinal Rehab Centre,

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Chandigarh Plot No.1, Madhya Marg, Sector 28-A, Chandigarh, 0172-4610311.

19. The present revision petitions stand disposed of in the above terms.

(JASJIT SINGH BEDI)
JUDGE

January 16, 2025
sukhpreet

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No