

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

CRA-S-1201-SB-2003
Reserved on: 07.04.2025
Pronounced on: 29.04.2025

Suresh and another ...Appellant(s)

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Atul Lakhanpal, Sr. Advocate with
Mr. Arvindpal Singh Grover, Advocate
for appellant No.1 (appellant No.2 already expired).

Ms. Trishanjali Sharma, DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Section
206	26.10.1998	Tosham	364/392/397 IPC and 25/54/59 of Arms Act

Criminal Case before Sessions Court	28 of 1999 Date of decision: 05/06.05.2005
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1. Three accused, Mahavir, Suresh, and Jaibir, were prosecuted for the commission of offences punishable under Sections 364, 392, and 397 IPC, read with Section 25 of the Arms Act. During the pendency of the trial, the accused Jaibir A3 expired. Vide the above-captioned judgment, the learned trial Court convicted both the surviving accused, Mahavir A1 and Suresh A2. Aggrieved by the conviction, both convicts filed the present appeal. During the pendency of the appeal, even Mahavir A1 also expired.

2. Of the three accused (two convicts), only one, Suresh A2, is surviving, and as such, his appeal is being taken up for a hearing on merits. As per the custody certificate, Suresh's total custody, including pre-trial conviction, was 02 years, 03 months, and 27 days before his sentence was suspended.

3. On 26.10.1998, based on Panna Lal's information, the above captioned FIR was registered. The informant who at that time was aged 48 years informed the police that he had installed a stone crusher with the name of Shiv Shankar Stone Crusher and in

the evening between 4.30 PM to 5 PM, when he was returning from the crusher in his car, then three young persons on motorcycle stopped his car by showing pistol. After that, they made him get out of the driver's seat, meet him, and asked him to get into the rear seat. One person sat adjacent to him, and another person started driving, and a third person followed them on the bike. Subsequently, they took him to an isolated place where they took liquor and told him to give Rs. 50,000/- and take his case. They also snatched his gold chain, gold ring on which P was scribed, and Rs. 8,000/- cash which he was having. After that, they dropped him near a village. The informant also told the police about the facial description and clothes of those persons, but he did not know them. He also told them that they had taken the liquor, taken out the number plate, and buried it under the earth, and later on, they had gone towards the Hisar side. They also gave him money for travel expenses.

4. Based on this information, the police registered the FIR (Exhibit PN) captioned above. The police sent a message about forcibly taking away the car, and the car's number was also mentioned. The investigation commenced, and the police recorded the statement of informant Panna Lal.

5. After conducting the investigation, the police got inputs about the involvement of the accused and subsequently arrested them and put them to interrogation. After completing the investigation, they were prosecuted, and a police report under Section 173 CrPC was filed against all three of them. Learned Sessions Judge found a prima facie case and framed charges against them for commission of offences punishable under Sections 365 and 398 IPC, which are the offences of kidnapping or abducting with intent to secretly and wrongfully to confine person and attempting robbery or dacoity armed with weapons. The accused did not plead guilty and claimed a trial.

6. The informant testified as PW-9 Panna Lal. In the examination-in-chief, he reiterated his version as mentioned in the FIR above. In the examination-in-chief, the informant Panna Lal explicitly mentioned that the accused had snatched Rs.8,000/-, a gold ring, and a gold chain along with the car, and after that they demanded Rs.50,000/-. A similar allegation was also made in the FIR. However, after that, the police did not file any chargesheet for this offence. However, despite specific allegations of being robbed of Rs. 8,000/-, a gold chain, and a gold ring, no prosecution was launched for the commission of an offence under Section 392 IPC. Since no offence was framed for recovering the car, Rs. 8,000/-, gold ring and gold chain, as such, this Court at this stage cannot look into that aspect and would proceed only for the charges which were framed under Sections 398 and 365 IPC.

7. In the examination-in-chief, the complainant, PW-9 Panna Lal, informed that the car was released, which would show that it was duly recovered. The complainant, in his cross-examination, contradicted his previous version of the FIR, Ext P9, about the person who was driving the car.

8. PW-9 Panna Lal also testified that the motorcycle on which the accused had come and followed them had no number plate. On the next day of the FIR registration, the police showed photographs of Suresh. Subsequently, Jaivir was arrested in Fatehabad, and the police took the complainant to Fatehabad.

9. The most crucial point is the identification of the accused. The burden is on the prosecution to establish that the persons who were prosecuted were, in fact, the persons who had committed dacoity. In the examination-in-chief or anywhere else in his statement, complainant Panna Lal PW9 only stated that all three accused are present in the Court. He did not explicitly identify Suresh from those three, whose photograph was shown to him by the police. Regarding identity, PW9 Panna Lal stated in his cross-examination that on the next day or a day after that, the police had shown him a photograph of Suresh and subsequently had taken him to Fatehabad, where Jaivir was shown. Further, there was a contradiction about Suresh because in the cross-examination, where he was confronted about his previous statement, portion A to A of Ex. PN as per which it was mentioned that Suresh was driving the car, whereas it was not recorded. This is important for the reason that examination-in-chief when the informant along with one of the robbers was sitting on the back seat, they had addressed the driver of the car as Suresh, as such he got to know about name of Suresh from the conversation of the accused and for this reason such words should have been mentioned in Ex.PN, whereas the attention of the informant was drawn to portion A to A1, wherein those words were not recorded; however, later in the portion of B to B2, the name of Suresh Kumar was mentioned.

10. I have gone through the original Ex.PN annex in the Trial Court Record. This statement was a statement under Section 154 CrPC because it was signed by the informant. The informant said that the person sitting next to him addressed the driver as Suresh, sometimes as Suresh, sometimes as Boss, and sometimes as Toni.

11. Even as per the complainant's earliest version, the person who was driving the car was Suresh, but despite that, in the examination-in-chief, the informant only identified three persons in the car by stating that all the three accused present in Court were same. Since, three persons were unknown, and the complainant Panna Lal had

not explicitly pointed out Suresh as a driver of the car, it was incumbent upon the prosecution to have put a leading question about the driver of the car. The defence counsel did cross-examine the informant about this contradiction that in the initial portion of the statement PN he had not named Suresh as person who was driving the car but in the later portion, he had mentioned. Even if that portion is ignored, the relevant fact regarding the driver to be Suresh would be proved only when Suresh was identified in the Court by the informant Panna Lal, which was not done.

12. The Appellant Suresh (A2) was arraigned as an accused after the Investigator had shown his photograph to the complainant PW-9 Panna Lal, which thereafter also lead to the arrest of the other two co-accused. Once the foundation of identification of Suresh itself comes under the scanner because of the absence of relevant averments in the testimony of the complainant before the Court, certainly, the identification of the other two persons would be irrelevant. However, since they have already expired, this Court does not need to deal with their identification, and since Suresh is the only surviving convict, this Court has focused on the identification of Suresh.

13. To conclude the appreciation of evidence on the identification of the surviving convict Suresh (A2), it is not the prosecution's case that he was previously known to the complainant, PW-9 Panna Lal. The Investigator got leads which led to the suspicion of the petitioner, and after that, the Investigator showed the photographs of Suresh to the victim Panna Lal, who identified him as one of the assailants. The photograph was the material evidence. However, the prosecution neither tendered the photograph of Suresh in evidence nor proved it by showing it to the complainant Panna Lal during his testimony before the Court or through the Investigator. Thus, the basis of identification was the photograph, which was not brought into evidence, and no explanation was offered for such an omission. Further, the complainant did not explicitly identify the appellant Suresh, who could have been identified because he was stated to have driven the car. Thus, the evidence for the identification of A2 Suresh is not established and proved beyond a reasonable doubt.

14. Reference would also be required to be made to the testimony of the investigators. As per PW2-Inspector Shish Pal, the motorcycle in question was recovered from Rajesh Kumar, who is now not accused because he had expired during the pendency of the trial. Further live cartridges were recovered from Jaivir, who had also expired during the pendency of the appeal. Thus the recovery of motorcycle and live cartridges cannot be used against the surviving appellant-Suresh.

15. Next evidence is statement of PW4-Constable Bir Singh, in which he stated that accused Suresh was taken from Central Jail Hisar and in his presence, he had made disclosure statement but no recovery was effected, based on such disclosure statement, as such this statement without disclosure of any fact would be a confession which is hit by Section 25/26 of Indian Evidence Act (23 of BSA 2023) and no relevance can be made.

16. Police also got statement of PW5-ASI Ram Kumar who testified that appellant Suresh Kumar had made disclosure statement as PG and PH and no recovery was effected, as such evidence is also irrelevant.

17. As per the statement of PW6-HC Ramesh Kumar, Maruti Car which could have been the clinching evidence, was discovered based on the disclosure statement of PJ-accused Mahavir, who is dead, as such the said evidence cannot be read against the surviving appellant unless there is other linking evidence.

18. The prosecution produced in the witness box PW7 SI Maya Ram who was SHO concerned, who testified about arrest of accused-Mahavir and recovery of one Maruti Car on the disclosure statement made by him, as such the said evidence is irrelevant for the present appellant.

19. Last statement is of PW8 ASI Hans Raj, who stated that on receiving the information about the person being kidnapped, they searched for Panna Lal and after that when he met they recorded statement as PN and based on that statement, FIR PO was registered. Thus, statement is also not disclosing any evidence against the appellant.

20. The police had conducted identification of accused before JMIC Bhiwani. Accused Mahavir made a statement PQ/1 that he did not want to get identification done, as such denial of its identification of co-accused/Mahavir cannot be read as a factor against the present appellant which did not make any such statement of denial.

21. Lastly Jai Karan Singh PW12 had stated that after arrest of Jaivir, he was produced and he had interrogated Jaivir, who had expired. He also stated about recovery of motorcycle from Rajesh. Thus evidence pertains to Rajesh and Jaivir who have expired and as such the evidence which has come in the record from statement of inspector Karan Singh, does not point towards any evidence to connect the surviving appellant Suresh with the offence of said kidnapping or robbery.

22. Perusal of statement under Section 313 CrPC of accused Suresh mentions that

he had denied all the prosecution evidence. Perusal of statement of appellant Suresh under Section 313 CrPC points out that he took stand of total denial. Since he do not accept any circumstance of prosecution evidence, as such prosecution cannot take any advantage of any explanation or answers given by him.

23. The accused had examined Ashok Kumar as DW1. He denied about the contents written in Ex.PJ, PK & PN, but since there was no recovery from the present appellant, as such statement of DW is not relevant.

24. An analysis of entire prosecution evidence points out that only evidence which is collected against the present accused was that he was one of the three accused and was driving the car but in cross-examination the informant did not even point out towards the appellant as the person who was driving the car. Further he was nabbed. This becomes important because his initial arrest and identification was based on the photograph which was shown to Panna Lal by the investigator and the said photograph was also not the exhibit evidence to connect that person in photograph was infact Suresh Kumar. The said photograph was relevant to identify that person in the photograph was the appellant and nonetheless.

25. Thus, in the entirety of facts and circumstances, prosecution did not prove any iota of evidence against the appellant connecting him with the comission of robbery.

26. Perusal of the judgment passed by the trial Court points out that these factors were not taken into consideration by the trial Court.

27. Given above in the entirety of facts and circumstances and due to lack of evidence, appellant-Suresh is entitled to benefit of doubt. Resultantly, **present appeal is allowed**, judgment of conviction and order of sentence qua Suresh are quashed and set aside, he is acquitted from all charges and bails bonds are discharged. Pending applications, if any, disposed of.

(ANOOP CHITKARA)
JUDGE

29.04.2025

anju rani

Whether speaking/reasoned	:	Yes
Whether reportable	:	No