

**IN THE HIGH COURT OF HIMACHAL PRADESH  
SHIMLA**

*Cr. Appeals No. 33/2011, 64/2011 and 204/2011.*

*Judgment reserved on 12.9.2011.*

*Date of decision: 30.9.2011*

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**Cr.A No. 33/2011.**

**Balbir Singh**

**.....Appellant**

**Versus**

**State of H.P.**

**.....Respondent**

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**Cr.A No. 64/2011.**

**Babloo @ Nona and others**

**.....Appellants.**

**Versus**

**State of H.P.**

**...Respondent.**

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**Cr.A No.204/2011.**

**Suraj**

**.....Appellant**

**Versus**

**State of H.P.**

**.....Respondent.**

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**Coram:**

**The Hon'ble Mr. Justice Surinder Singh, J.**

*Whether approved for reporting ?<sup>1</sup> yes*

**For the Appellant(s):**

**Mr. Rupinder Singh, Advocate in  
Cr. A No. 33 of 2011.**

**Mr. Naveen K. Bhardwaj,  
Advocate in Cr. A No. 64/2011**

**Mr. Sanjay Sharma, Advocate in  
Cr.A No. 204/2011.**

**For the respondent:**

**Mr. P.M. Negi, Dy. Advocate  
General.**

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<sup>1</sup> *Whether the reporters of Local Papers may be allowed to see the judgment ?. yes*

**Surinder Singh, J.**

Since the above titled appeals are arising from the judgment of conviction passed by the learned Sessions Judge in sessions trial No. 18-ST/7 of 2009 decided on 29.11.2010, thus taken up together for decision.

2. Appellants hereinafter referred to as 'the accused' faced trial sbefore the learned Sessions Judge under Sections 342, 458, 395 and 120-B Indian Penal Code arising from FIR No. 70 of 2010 dated 21.11.2010 registered in Police Station Shillai District Sirmaur, H.P., each of them were charge sheeted, tried and convicted for the offences aforesaid and sentenced as under:-

<b>Sr. No.</b>	<b>Sections</b>	<b>Sentence imposed.</b>
1.	342 Indian Penal Code	Simple imprisonment for a period of <u>six</u> month.
2.	Section 458 Indian Penal Code	Rigorous imprisonment for a period of <u>five</u> years and fine of ₹5000/- in default of payment of which to further undergo simple imprisonment for a period of <u>six</u> months.
3.	395 Indian Penal Code	Rigorous imprisonment for a period of <u>seven</u> years and to pay a fine of ₹10,000/-. In default of payment of fine to further undergo simple imprisonment for a period of <u>one</u> year.
4.	Section 120-B Indian Penal Code	Rigorous imprisonment for a period <u>two</u> years and to pay a fine of ₹ 5000/-. In default of

		<i>payment of fine, to further undergo simple imprisonment for a period of six months.</i>
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3. The aforesaid substantive sentences were ordered to run concurrently and accused persons were held entitled to the benefit of set-off under Section 428 of the Code of Criminal Procedure for the period of detention already undergone during the investigation and the trial of the case. The whole amount of fine, if realized, was ordered to be paid to the complainant PW11 Manso Devi and PW12 Chameli Devi in equal shares, besides disposal of the case property, as mentioned in para 19 of the judgment impugned.

4. Precisely, prosecution story as emerges from the evidence on record can be stated thus.

(i) PW10 Parma Nand was running a Kariyana shop on the road side in his village Timbi. He has been residing in the village with his wife Chameli, (PW12), Children and mother PW11 Manso Devi.

(ii) On 24.11.2008, PW10 Parma Nand had gone to the house of his sister in village Dharma leaving behind at his residence, his family members aforesaid. During the intervening night of

24/25.11.2008 around 1.30 a.m., two unknown persons shouted from outside for "lalajee" and demanded petrol. PW12 Chameli Devi wife of PW10 Parma Nand replied that they don't have petrol, then they asked her that they were to make payments to her husband. She told to come next day. Thereafter they demanded water, to which she provided through the door grill and took back the tumbler. Later three persons allegedly entered the room of PW11 Manso Devi. Two of them caught-hold of her from her arms and the third one from her hair and took her to the verandah outside. When she tried to raise hue and cry, she was threatened by them with dire consequences. On hearing commotion, her daughter-in-law PW12 Chameli came out. One of them put a knife on her neck and threatened to kill her if she would make any noise. Thereafter both of them were taken inside the room. The assailants had muffled their faces below their eyes. Manso Devi and Chameli both were confined in a room where the children were sleeping and room was bolted from outside. After some time, they entered again and tied their hands with Chuni. Thereafter they broke open the Almirah of one of the room and trunk in the third room and removed all

the jewellery, cash and clothes, one suit-case bed-sheets, CD player, remote control and Dish Receiver. The assailants were also joined by their other 2/3 accomplices.

(iii) After committing dacoity in their house, they went to the shop of PW10 Parma Nand. They broke open the lock of the shop and removed the shoes and cash lying in the shop. Thereafter they came down to the house of PW11 Manso Devi, prepared tea in the kitchen after taking the tea, they left the place and PW11 Manso Devi heard the sound of starting the vehicle.

(iv) After coming to know about the theft in their house, in the morning around 6/7 a.m. villagers visited their house, .

(v) PW10 Parma Nand was telephonically contacted by a co-villager and informed about the dacoity. He rushed back to his village and enquired about the incident from his family members. He noticed the Almirah kept in the room of his mother broken open. Gold and silver ornaments worth ₹20,000- were found stolen. Thereafter he inspected the wooden Almirah of his room. Its bolt was also found broken. Cash of ₹80,000/- was found missing, which was the sale proceeds of his Bolero vehicle

which was sold by him about 20 days prior to the alleged incident. He also found missing the four pair of shoes and cash lying in the Chest (*galla*) to the tune of ₹ 900/-. He further noticed that one coat and a pant (black colour suit) was also missing along with Dish receiver, remote control, suit-case and one bag which was gifted to him by the jeweller on the purchase of jewellery.

(vi) On 25.11.2008 PW21 S.I. Jeet Singh received a secret information about the dacoity in the village at the house of PW10 Parma Nand. By that time, the information was also sent by Parma Nand aforesaid to the police. On visiting the spot, police found a village crowd present there. He recorded the statement of PW11 under Section 154 of the Code of Criminal Procedure. On inspecting the room, he took into possession three small pouches and a small jewellery bag from one of the rooms vide memo Ext. PW11/C and also took into possession Godrej Almirah, lock of which was broken along with a small trunk, the lock thereof and its handle were found broken along with a wooden box were handed over to Manso Devi vide memo Ext. PW11/B. Photographs Ext. PW13/A-1 to Ext. PW13/A-10 and a C.D. Ext. PW13/A-11 were taken.

He also prepared the site plan Ext. PW22/A, of the place of incident.

(vii) Thereafter PW21 aforesaid was transferred and the case was handed over for further investigation to PW23 S.I. Hari Ram. On 25.12.2008, he recorded the statements under Section 161 of the Code of Criminal Procedure of Parma Nand, Chameli Devi and Manso Devi. On 26.12.2008, PW23 S.I. aforesaid interrogated eight accused persons who were arrested in connection with another FIR No. 71/2008 in a Bank dacoity case. Out of them, four accused, namely, Parmod Kumar, Balbir Singh, Ramesh Kumar and Banti [absconded/proclaimed offender] were found involved in the present case. Banti's challan was separated.

(viii) On 27.12.2008, he interrogated accused Parmod in the present case and applied for the production warrant in this FIR. On 6.1.2009 he was taken into custody in this case and recorded his formal arrest.

(ix) Accused Ramesh when taken into custody in this case stated to have made the disclosure statement Ext. PW1/C in the presence of PW1 Balbir Singh and Pritpal Singh to the effect that he had kept concealed two bed-sheets in his house

at Rajpura District Patiala (Pb.). Accused Balbir Singh is stated to have made the disclosure statement Ext. PW1/J in the presence of the same witnesses that he had kept concealed an attaché case in Borahar Khar. Accused Parmod made the disclosure statement Ext. PW1/D regarding identification of the place of the alleged occurrence.

(x) When PW 23 S.I. Hari Ram was interrogating accused Ramesh Kumar, PW10 Parma Nand identified shoes which were worn by him, as his own which were stolen from his shop. The memo Ext. PW1/F was prepared to this effect and Parma Nand signed it as an identifier.

(xi) Another pair of shoes was identified by PW10 Parma Nand which was worn by accused Parmod having been stolen from his shop and to this effect memo Ext. PW1/E was prepared.

(xii) Accused Parmod led the police party to the place of alleged occurrence at village Timbi and memo Ext. PW3/A was prepared to this effect.

(xiii) On 7.1.2009 accused Parmod Kumar gave another statement Ext. PW1/A disclosing that he had kept concealed a pant and a double bed-sheet near his house at Sector 51 Chandigarh. On



the same day, accused Balbir led the police party to the place of Boraha-khar and got recovered one Attaché Ext. P3 which was leveled "lakhani" and the recovery memo Ext. PW2/A was prepared in the presence of PW2 and PW3 witnesses which was identified by Parma Nand to be his own.

(xiv) On 8.1.2009 Ramesh Kumar got recovered two bet-sheets Ext. P10 and P11 vide memo Ext. PW5/C from his house at Rajpura which were identified to be her own by Manso Devi. Accused Parmod Kumar led the police party to his residence in Sector 51 Chandigarh and got recovered from the drain-hole bed-sheet Ext. P12 and Pant P13 which were taken into possession vide memo Ext. PW5/D and these articles were identified by Manso Devi to be her own.

(xv) On the basis of the production warrants, accused Suraj was transferred in this case. During his interrogation, he made the disclosure statement Ext. PW4/A in the presence of Laiq Ram and Tota Ram with respect to the fact that in connivance with his co-accused he had sold the ornaments in Sarafa Bazar Ambala on 13.1.2009. He led the police party to Ambala to the shop of Karwel Singh Jeweller and

identified PW6 Ram Swaroop to whom ornaments were sold. Memo Ext. PW23/E was prepared. On the interrogation of PW23 Ram Swaroop he disclosed that accused Suraj along with two ladies had also sold some gold and silver ornaments to him for consideration which was paid to him. He produced Payal Ext. P14 and Mangal Sutra Ext. P15 Hair Pin Ext. P16, Bangles Ext. P17, and Ear rings Ext. P18 to which PW10 Parma Nand and his mother PW11 Manso Devi identified to be their own and memo Ext. PW5/E was prepared to this effect.

(xvi) It is alleged that Ram Swaroop aforesaid had produced the gold coin Ext. P19 which was taken into possession vide memo Ext. PW5/F.

(xvii) On 16.1.2009 accused Suraj gave disclosure statement Ext. PW7/A with respect to the fact that he had kept concealed the jacket near the Dussehra Ground Ambala Cantt. in the presence of Ashwani (PW7) and Raja Ram witnesses. Pursuant to that, jacket Ext. P20 was taken into possession vide memo Ext. PW5/G to which PW10 Parma Nand identified to be his own.

5. On 9.9.2009 during investigation police took extracts of the Register where the entries of the

vehicle HP 17-B-0449 and a bag over which Atikant Jeweller Raja Market Main Bazar Patiala was printed, vide memo Ext. PW15/A from MHC Police Station Shillai.

6. On 17.2.2009 on production warrant, accused Babloo was transferred in this case and he made his disclosure statement Ext. PW1/H to the effect that he had kept concealed a knife under the bushes near village Timbi. On 18.2.2009, he led police party to the spot and got recovered knife Ext. P21 which was taken into possession vide memo Ext. PW123/G. He also identified the place of occurrence and memo Ext. PW23/J was prepared. However, on the same day, accused Babloo made disclosure statement Ext. PW9/B with respect to concealing of the Dish receiver (Ext. P4) and remote Ext. P5, at his residence. On 19.2.2009 he led the police party to the aforesaid place and got recovered from the box of his house the aforesaid articles which were taken into possession vide memo Ext. PW2/B to which PW10 Parma Nand identified to be his own.

7. On 1.3.2009, MHC Police Station Shillai produced a hand bag of Ankita Jeweller main Market Poanta Sahib which was got identified by

Manso Devi as her own vide memo Ext. PW23/L. On 8.3.2009 PW23 S.I. Hari Ram took into possession a Bolero vehicle along with documents vide memo Ext. PW19/A.

8. Accused Balbir Singh is the co-villager of the complainant. He was owning a vehicle which was being plied by him as a Taxi. The relations between PW10 Parma Nand and Balbir Singh were not cordial. It is alleged that he along with other co-accused had conspired to commit dacoity in the house of the complainant.

9. On the completion of the investigation, the challan was presented in the court for the trial of the accused persons.

10. Accused persons were accordingly charge sheeted. They pleaded not guilty and claimed trial.

11. To prove its case, prosecution examined its witnesses and accused persons were also examined under Section 313 of the Code of Criminal Procedure. The circumstances which were found attendant upon each of them were denied. According to accused Balbir Singh, he was implicated falsely in the present case. He also did

not make any disclosure statement nor got recovered any article as alleged. On some of the documents, his signatures were obtained by the police under pressure.

12. Accused persons were called upon to enter into their defence, but no evidence in defence was led.

13. At the end of the trial, they were accordingly convicted and sentenced as aforesaid.

14. Learned counsel for the accused persons Shri Naveen Bhardwaj and Shri Sanjay Sharma, Advocates vehemently argued that PW11 Manso Devi and PW12 Chameli Devi categorically stated that the faces of the intruders were muffled and they could not recognize them. Further, no identification parade was conducted and the recoveries of the alleged articles stand not connected with the accused persons. Therefore, neither it was a case of conspiracy nor of dacoity which could be said to have been proved against the accused persons beyond doubt. It is also argued that the jewellery items aforesaid alleged to have been recovered appear to be recently manufactured and the same could not be said to be 15 to 30 years old, as

alleged by the complainant. Thus these could also not be said to be of the complainant.

15. Shri Rupinder Thakur, learned counsel for accused Balbir forcefully argued that from the evidence on record it is apparent that the complainant party was not pulling on well because of the business rivalry with the said accused and further that he along with other co-villagers on coming to know about the dacoity in the house of the complainant, had visited the spot. Further that the said accused has no art and part in the alleged incident nor any recovery is attributable to him except the attaché case, which is proved to be a farce. Therefore, the conviction and sentence aforesaid is wrong and illegal.

16. On the other hand Shri P.M. Negi, learned Deputy Advocate General supported the impugned judgment of conviction and sentence and further argued that all the accused persons stand connected with the offences charged. They had also committed similar offence in the area in which they were arrested and during their interrogation, their involvement was found in the present FIR and not that they only got recovered stolen articles from

various different places but these were also identified by the complainant and her son to be their own. There is no explanation worth the name as to how the accused persons aforesaid acquired its possession.

17. I have given my thoughtful consideration to the rival contention of the parties and have meticulously and cautiously examined the evidence on record.

18. Admittedly except accused Balbir Singh, none of the accused persons were known to PW11 Manso Devi or PW12 Chameli Devi prior to the alleged incident. PW12 Chameli testified that she along with her mother-in-law (PW11) and her children were at home. During the mid night she heard some body saying that "*Lalaji petrol Chahiya*". On this, she replied from inside that they were not having petrol. Thereafter they told that they were to make the payment to Lalaji. She replied that the payment could be made next day. Again one of them asked for water for drinking. Then she went to the kitchen and without opening the gate, handed over the glass of water to the persons through the door grills. Another person was standing behind. It was mid night. On taking empty glass

back, she went inside the room. After few minutes she heard the cries of her mother-in-law. When she came out of the room, she was taken in one side of Varandah by two persons and one of them put a knife/dagger on the neck of PW12 and threatened her not to make a noise, lest she would be killed. Thereafter she along with her mother-in-law and children were confined in a room. Their hands were tied by Chunis and started looting their house. When they left the place, she heard the noise of the vehicle movement. Next morning villagers gathered there untied their hands and police was telephonically informed. Thereafter she made the inspection of her room and she found the bolt and lock of her wooden Alimarh broken and jewellery were missing. In the meantime, police had also arrived at the spot. They inspected the house as well as the shop from where the some pairs of shoes and currency notes were found missing and the locks of the door of the shop were also found broken. She also stated about missing of the jacket of her mother-in-law, sweater, pant and coat of her husband along with bed-sheets. She further stated that the attaché-case Ext. P3, remote control Ext. P4, Dish receiver Ext. P5, C.D player Ext. P6 and a



bag were found stolen. After about a month, she along with her mother-in-law was called upon by the police to the police Station. They got identified the stolen articles.

19. With respect to the incident, PW11 Manso Devi also categorically stated about the above facts. It stands proved from the aforesaid evidence as also the statement of PW10 Parma Nand that their house and the shop were burgled and the articles, as aforesaid were stolen from the shop as well as from the house.

20. Prosecution has come forward to prove the case on the basis of the recoveries against the accused persons and the statement of PW12 Chameli with respect to identifying accused Rakesh Kumar and Parmod Kumar, also by PW11 Manso qua Ramesh, Bablo and Parmod accused. Four of the accused persons, namely Ramesh Kumar, Parmod Kumar, Suraj and Babloo @ Nona were arrested in another Bank dacoity FIR. It was only during their interrogation that their involvement in the present case was found. As such custody was transferred in this case, as aforesaid.

21. Now, I shall discuss and take the case of accused persons one by one. To start with first of all I

shall take the case of accused Ramesh Kumar, the relevant evidence and whether the offence(s) charged stand proved against any of them?

**ACCUSED RAMESH KUMAR:**

22. PW23 S.I. Hari Ram stated that on 6.1.2009 he had interrogated Ramesh Kumar in the presence of PW1 Balbir Singh and Prit Pal Singh witness and he made a disclosure statement Ext. PW1/C to the effect that he had kept concealed two bed-sheets in his house Roshan Colony Rajpura (Pb.) to which he got it recovered. PW1 Balbir Singh stated that the said accused was interrogated by the police in his presence and testifies about the making of the aforesaid statement.

23. Pursuant to the above statement, accused led the police party to his residence to Rajpura, District Patiala (Pb.) and got recovered two bed-sheets (Ext. P10 and P11) from beneath his double bed in the presence of PW5 Raju Ram and Pala Ram which fact has been corroborated by said Shri Raju Ram. He also stated that these items were identified by Manso Devi which were taken into possession vide memo Ext. PW5/C. Surprisingly, no cross-examination was conducted on this aspect of the matter. Further, PW23 S.I. Hari Ram stated that when

accused Ramesh Kumar was being interrogated, witness Parma Nand identified the shoes (Ext. P2) which were worn by him to be his own having been stolen from his shop. To this effect, memo Ext. PW1/F was prepared in the presence of PW1 Babir Singh and Pritpal Singh. Though in cross-examination he stated that he did not identify the shoes Ext. P1 and P2 as there was no identification mark by which Parma Nand had identified the same but in his statement, Ramesh Kumar did not claim these shoes to be his own rather he denied its recovery, as alleged. Further, Ramesh Kumar Babloo and Parmod Kumar accused persons were identified by PW11 Manso Devi as stated by her in cross-examination regarding Ramesh and PW12 Chameli Devi during trial of case. In cross-examination, she stated that accused Ramesh along with two others were in the lock-up he recognized them but denied that police had pointed out towards them. She stated that it was Parmod accused who asked to provide water

24. The learned counsel for the accused submitted that such a identification even later during the trial is wrong and illegal in absence of proper test identification parade having been

conducted during investigation. I have also considered this argument.

25. In fact, the identification parades are not primarily meant for the Courts. They are only meant for investigation purposes. The object of a test identification parade is two fold, first is to enable the witnesses to satisfy themselves that the person whom they suspect is really the same who was seen by them in connection with the commission of the crime. Second, is to satisfy the investigating Authorities that the suspect, is the real person whom the witnesses had seen in connection with the said occurrence. **[please see State of Maharashtra versus Suresh JT 1999 (9) SC 513=(2000) 1 SCC471]**

26. In **Daya Singh versus State of Haryana: 2001 Cr.L.J. 1268**, the apex Court observed that it is to be borne in mind that purpose of test identification is to have corroboration to the evidence of eye witnesses in the form of earlier identification and that substantive evidence of a witness is the evidence in the Court. If that evidence is found to be reliable then absence of corroboration by T.I.P. in any way material. Further, where reasons for gaining an enduring impress of the identity on the mind and memory of the witnesses

are brought on record, it is no use to magnifying the theoretical possibilities and arrive at the conclusion- What in present day social environment infested by terrorism is really unimportant. In such cases, not holding of TIP is not fatal to the prosecution. Therefore, this argument raised by the learned counsel is rejected.

27. In the instant case, when Parmod Kumar had asked for water and PW12 provided water, she had an opportunity to see him clearly and she also pointed out during the trial that he was the same person along with Ramesh accused. PW3 Jalam Singh also testified that PW12 Chameli Devi had identified Parmod Kumar to whom she handed over the glass of water. Nothing material could be extracted in her (PW12) cross-examination. Even Ramesh accused stands fully connected with the alleged recoveries of bed-sheets (Ext. P10 & P11) and shoes Ext. P2 which were identified by PW10 Parma Nand and his mother Manso Devi and he did not claim these items to be his own.

#### **CASE OF ACCUSED PARMOD KUMAR.**

28. Accused Parmod Kumar is also connected with the recovery of bed-sheets and pant alleged to have been recovered from the

drain-hole of his residence at Chandigarh, pursuant to the disclosure statement Ext. PW1/A. He had special knowledge of the place where these articles were concealed by him. PW1 though stated that Parmod Kumar was interrogated in his presence but said statement is not signed by him. It was recorded in the presence of Jalam Singh (PW3) and Gulab Singh. According to Jalam Singh, accused was identified by PW12 Chameli Devi to whom she had handed over a glass of water and the memo Ext. PW3/A was executed in his presence. The second piece of evidence against him, as stated by PW 23 S.I. Hari Ram is that PW10 Parma Nand identified the shoes to which he was wearing during the interrogation. To this effect memo Ext. PW1/E was prepared. Though there was no specific mark by which PW10 is stated to have identified it. This recovery is stated to have been made in the presence of PW1 Balbir Singh. Parma Nand (PW10) corroborated above version. The said accused did not claim the shoes having been worn by him to be his own or purchased by him. However, the memo Ext. PW1/D with respect to identifying the house of the complainant is not proved but the recovery of bed-sheets and the identification of the accused

Parmod Kumar clearly connects him with the alleged crime.

**ACCUSED SURAJ.**

29. Prosecution relies upon the disclosure statement Ext. PW4/A vide which he is stated having handed over the ornaments by Smt. Ganga Devi D/o Rahul and Smt. Babli wife of accused Ramesh Kumar for selling it to the Jeweller at Ambala Cantt; and identified the said shop in the presence of PW4 Laiq Ram and Tota Ram. PW4 Laiq Ram stated that accused only stated in his presence that he along with Ganga Devi and Babli aforesaid went to Ambala but no such disclosure statement was made in his presence as what he had done. He was declared hostile by the prosecution but then admitted that accused Suraj made disclosure statement that he could identify the shop where the jewellery was sold. Thereafter his statement Ext. PW4/A was recorded. In cross-examination he specifically stated that he made the statement on his interrogation before the police. He further stated that he did not know Suraj accused prior to the said date but he identified him correctly during the trial of the case. The said witness stands confronted with the document aforesaid. Further I.O. PW23

categorically stated about making the disclosure statement aforesaid by the accused in the presence of the witnesses and it was pursuant to that he got identified the shop of Ram Swaroop (PW6). Said Shri Ram Swaroop also did not support the case prosecution. He was cross-examined by the learned Prosecutor. According to him, no one had sold any jewellery either of gold or silver but admitted in cross-examination conducted by the learned Public Prosecutor that accused Suraj told the police in his presence that he had sold the gold articles weighing 25 grams. He also admitted that he had given to the police jewellery Ext. P14 and Ext. P18 vide memo Ext. PW5/A along with gold coin Ext. P19 which was taken into possession vide memo Ext. PW5/F. He denied that the gold jewellery was melted by him. He also denied that the jewellery Ext. P14 to Ext. P19 handed over to the police on the intervention of Swarn Kar Sabha, Ambala Cantt. He stood confronted with his statement recorded under Section 161 of the Code of Criminal Procedure. In cross examination by the accused he stated that he was threatened by the police to implicate him in the case. With a view to save his skin, the bazaar people asked him to hand over the silver jewellery along



with gold coin to the police. He also stated that the said jewellery is new one which was kept by him for sale at his counter. PW10 Parma Nand and PW11 Manso Devi identified silver jewellery Ext. P14 to Ext. P19 to be their own. Parma Nand stated that the payal looks newly prepared but it was washed by the jeweler. Similarly bangles were also washed by him but were not newly prepared. He further clarified that all the articles of jewellery were washed and looked like new. Same is the statement of Manso Devi and no mark of his shop voucher or proof has been stated/proved by Ram Swaroop connecting it with his own stock kept for sale in the shop. Accused Suraj failed to offer any explanation to this effect thus he stands connected with the disposal of the case property in connivance with the accused persons. Though Smt. Ganga Devi and Babli were not made accused in the present case yet the role of Suraj being conspirator is also writ large and stands proved with the offences charged. Further PW10 also stated that accused Suraj also got identified the place of the commission of the offence and proved the memo Ext. PW10/A which remained un-assailed. It also stands established that he made a disclosure statement Ext. DW7/A under

Section 27 of the Evidence Act having kept concealed jacket in the bushes at Dussehra ground Ambala Cantt. to which he could recover. On 17.1.2009 he led police party to the said place and got recovered jacket Ext. P20, which was identified by PW10 Parmod Kumar and was taken into possession vide memo Ext. PW5/G which has been proved by PW5 Raju Ram witness. In cross-examination he could not be shattered. Thus he stands connected with the offences charged.

**ACCUSED BABLOO @ NONA.**

30. Ext. PW1/H is the disclosure statement made by accused Babloo on 17.2.2009 in the presence of PW1 Balbir Singh and PW10 Parma Nand recorded by PW23 S.I. Hari Ram with respect to recovery of knife Ext. P21 which was alleged to have been kept concealed under the bushes in village Timbi. PW10 Parma Nand did not state anything about the disclosure statement made by him. Pursuant to the aforesaid statement, knife is stated to have been recovered vide memo Ext. PW9/B in the presence of PW9 Sant Ram and Sunder Singh. According to him, recovery of the knife Ext. P21 by the accused was effected from below the road side from the bushes which was taken into possession by

the police and sketch map was also prepared and it was sealed. In cross-examination, he stated that knife was recovered from the place which was approximately at a distance of 200 meters away from the house of Manso Devi and 10 meters below the road. Further accused Babloo is stated to be connected with the recovery made pursuant to disclosure statement Ext. PW9/B in the presence of PW9 Sant Ram and Sunder Singh with respect to Dish receiver and Remote control.

31. Sant Ram supported the version of the disclosure statement with respect to the aforesaid articles and his statement to this effect was recorded which also bears thumb impression of the accused besides signatures of Sunder Singh. He was subjected to lengthy cross-examination. He stated that the interrogation of Babloo with respect to these items started after recovery of the knife from the bushes. It was got recovered vide memo Ext. PW2/B from a tin-box which was under the lock and key in the presence of Gulab Singh (PW2) and Pala which was identified to be his own by PW10 Parma Nand. This fact has also been testified by Gulab Singh aforesaid. Babloo got identified the place of occurrence. In cross-examination he stated that

there were number of persons present in the house at Patiala. He did not know their names. He also stated that Parma Nand had disclosed the identification mark of the Receiver and the Remote, though he did not remember what were the identification marks. He denied that no such recovery was effected. Thus, from the recovery aforesaid, accused Babloo stands connected with the offence charged for which he did not render any plausible explanation except his denial simplicitor. His identity also stood established by the statement of PW12 Chameli Devi having brandished and keeping the knife on her neck. She during the trial also pointed out him rightly. She categorically denied that she had named him at the instance of police.

**ACCSUED BALBIR SINGH.**

32. Balbir Singh is admittedly a co-villager of the complainant. He is stated to be connected with the recovery of only attaché case Ext. P3. As already stated above, in the morning along with the co-villagers admittedly he visited the place of complainant party. On 6.1.2009 he is alleged to have made the disclosure statement with respect to concealment of attaché case (Ext. P3) to which he

could recover, in the presence of PW1 Balbir Singh and Prit Pal Singh. Balbir Singh aforesaid stated that he did not know what was written by the police in the said memo. However, his signatures were obtained. He also did not remember if this document contained any statement of Balbir Singh accused. He denied that he was telling a lie regarding the said statement of Balbir Singh at the instance of his father PW2 Gulab Singh and Jalam Singh. The said attaché case was recovered vide memo Ext. PW2/A.

33. PW2 Gulab Singh stated that accused Balbir Singh led the police to Boharkhad in the area of Timbi and got recovered attaché case which was lying underneath the stones. It was sealed with seal impression "S". During the trial, he identified attaché case (Ext. P3) to be the same. But in cross-examination he stated that he did not know who brought the attaché case from the khad but he only saw it in the hands of Balbir Singh accused when he came to the road. It means that the said witness was not present on the spot from where the alleged recovery was said to have been made, whereas the recovery of the attaché case is denied by accused Balbir Singh aforesaid. Further there is an allegation

against him leveled by the complainant party that he was not having cordial relations with them because of business rivalry. The alleged recovery of attaché case is not proved beyond doubt. Therefore, in my opinion, he could not be connected with the offences charged, also for the reason that when the villagers had assembled next morning Balbir Singh accused was also present with them to express his sympathy as stated by PW11 Manso Devi. She also stated that she did not have any suspicion on him but he is alleged to have confessed to her for having broken her Almirah. This part of the statement was objected to. She also stated that he is from a upper caste though a co-villager. Had Balbir Singh been involved in the said incident, he would not have visited her house in the morning to express his sympathy and she would have named him in her statement under Section 154 of the Code of Criminal Procedure recorded by the police had been correct. Thus, the offences charged against him stand not proved. As such he is entitled to benefit of doubt.

34. On the dissemination of the above evidence dispassionately qua each accused persons I find that the charges stand proved against

all the accused/appellants except Balbir Singh as aforesaid. Whereas Babir Singh accused deserves to be acquitted by giving him the benefit of doubt, as such Criminal Appeal No. 64 of 2011 filed by Balbir, Ramesh Kumar and Parmod convicts and Criminal Appeal No. 204 of 2011 filed by Suraj are dismissed, their conviction and sentences are upheld; whereas Criminal Appeal No. 33 of 2011 filed by Balbir Singh is allowed. Consequently said Balbir Singh stand acquitted. He be released forthwith, if not required in any other case. Accordingly, the Registry of this Court shall send the release warrants qua Balbir Singh accused (Criminal Appeal No. 33 of 2011) in conformity with this judgment, as aforesaid. Disposed of.

**September 30, 2011**  
(cm)

**(Surinder Singh),**  
**Judge.**