

**(2006) 01 P&H CK 0222**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Criminal Revision No. 301 of 1992

Anil Kumar

APPELLANT

Vs

State of Punjab

RESPONDENT

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**Date of Decision:** Jan. 24, 2006

**Acts Referred:**

- Arms Act, 1959 - Section 25
- Penal Code, 1860 (IPC) - Section 393

**Citation:** (2006) 2 RCR(Criminal) 517

**Hon'ble Judges:** Mehtab S. Gill, J

**Bench:** Single Bench

**Advocate:** P.S. Hundal, for the Appellant; M.S. Sidhu, D.A.G., Punjab, for the Respondent

**Final Decision:** Allowed

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**Judgement**

Mehtab S. Gill, J.

This is a revision against the judgment of the Additional Sessions Judge, Kapurthala dated 10.2.1992 whereby he concurred with the judgment of the Chief Judicial Magistrate, Kapurthala dated 12.4.1991 who had convicted Anil Kumar appellant-petitioner u/s 393 IPC and accused Ramesh Kumar u/s 393 IPC and u/s 25 of the Arms Act. Both were released on probation u/s 4(1) of the Probation of Offenders Act, 1958 and were directed to furnish surety bonds of Rs. 1000/- with one surety in the Hike amount each.

2. Brief facts of this case are that on 18.3.1989 at about 11 A.M. Varinder Kumar along with his wife Madhu Bala and mother Ram Piari were present in their house located in the grain market, Kapurthala. Accused Ramesh Kumar and appellant-petitioner Anil Kumar went to their house. They entered the house of Varinder Kumar to check the electric meter. One of them was having something like a pistol with him. He threatened the inmates of the house that he would kill them, if they raise a hue and cry. The other person tried to snatch away the golden bangles

from the wrist of the mother of the complainant. Accused took away one HMT wrist watch from Varinder Kumar and tried to run away, but were apprehended by Jagdish Lal Sarpanch and Raghwinder Kumar. They disclosed their names as Ramesh Kumar and Anil Kumar. FIR Ex.PB/B was recorded on the basis of the statement Ex.PA made by Varinder Kumar. On the personal search of the accused, one HMT wrist watch and one dagger was recovered. These articles were taken into possession vide recovery memo Ex.PB. A toy pistol was also recovered from appellant-petitioner Anil Kumar.

3. Prosecution to prove its case brought into the witness box Varinder Kumar complainant as PW1, Madhu Bala as PW2 and S.I. Ram Parkash as PW3.

4. Learned counsel for the State has argued that Varinder Kumar PW1 and Madhu Bala PW2 had identified appellant-petitioner Anil Kumar and his co-accused Ramesh Kumar. The HMT wrist watch, which was snatched, was recovered on the personal search of the appellant-petitioner. An attempt was made to rob Ram Piari, mother of the complainant of her gold bangles.

5. Learned counsel for the appellant-petitioner has argued that the trial Court shifted the onus on to the appellant-petitioners to prove their innocence. The trial Court has stated, that no explanation was given by the accused as to why they were apprehended by the police, the police did not have any enmity against the accused, thus, the case of the prosecution is not proved. This is a travesty of justice. Onus was on the prosecution to prove its case. Statements made by Varinder Kumar complainant PW1 and Madhu Bala PW2 go uncorroborated.

6. I have heard the learned counsel for the parties and perused the record with their assistance.

7. Varinder Kumar complainant PW1 has stated that the accused present in Court were not the persons, who entered his house for committing robbery and went further and stated that he is unable to identify appellant-petitioner Anil Kumar and his co-accused Ramesh Kumar. Madhu Bala PW2 has also stated that she could not identify appellant-petitioner Anil Kumar and his co-accused Ramesh Kumar at the time of trial. Apart from these two witnesses, no witness came into the witness box. It is the case of the prosecution, that Jagdish Lal Sarpanch came to the spot and apprehended both appellant-petitioner Anil Kumar and his co-accused Ramesh Kumar. Jagdish Lal Sarpanch was not examined by the prosecution. S.I. Ram Parkash PW3 the Investigating Officer has stated that he recovered one HMT wrist watch and one dagger from one of the intruders. He also has not name appellant-petitioner Anil Kumar.

8. Both Varinder Kumar PW1 and Madhu Bala PW2 have not supported the prosecution case. I do not find any merit in the prosecution version. Revision is allowed. Appellant-petitioner Anil Kumar is acquitted of the charges.

Petition allowed.