

(2009) 08 UK CK 0013

Uttarakhand High Court

Case No: None

Jaman Singh and Another

APPELLANT

Vs

The State

RESPONDENT

Date of Decision: Aug. 19, 2009**Acts Referred:**

- Arms Act, 1959 - Section 25, 4
- Criminal Procedure Code, 1973 (CrPC) - Section 207, 313, 374
- Penal Code, 1860 (IPC) - Section 120B, 392, 397, 412

Hon'ble Judges: Dharam Veer, J**Bench:** Single Bench**Final Decision:** Dismissed

Judgement

Dharam Veer, J.

This criminal appeal, preferred u/s 374(2) of The Code of Criminal Procedure, 1973 (hereinafter to be referred as Cr.P.C.), is directed against the judgment and order dated 03-09-1996 passed by III Addl. Sessions Judge, Nainital in S.T. No. 85/1985, State v. Bihari Singh and Ors., S.T. No. 139 of 1985, State v. Jaman Singh and S.T. No. 19 of 1987 State v. Bihari Singh, whereby the learned III Addl. Sessions Judge has convicted the appellant/accused Bihari Singh u/s 392 of The Indian Penal Code, 1860 (hereinafter to be referred as I.P.C.) and sentenced him to four years" rigorous imprisonment with fine of Rs. 1,000/- and in default, further five months" simple imprisonment was awarded. He was further convicted u/s 25 of the Arms Act, 1959 (hereinafter to be referred as the Act) and was sentenced to one year"s R.I. Both the sentences were directed to run concurrently. However, his sentence in case of default of payment of fine was directed to run separately.

2. Appellant-accused Jaman Singh was convicted u/s 392 IPC and was sentenced to four years" R.I. with fine of Rs. 500/- and in case of default of fine, further five months" S.I. was awarded. He was further convicted u/s 4/25 of the Act and was

sentenced to six months" R.I. Both the above sentences were directed to run concurrently. However, the sentence in case of default of payment of fine was directed to run separately.

3. Both the appellants-accused were acquitted by the trial court for the offences punishable u/s 397 IPC and 412 IPC. Co-accused Ganga Singh was also acquitted by the trial court for the offence punishable u/s 120B IPC.

4. I have heard learned Counsel for the parties and perused the entire material available on record.

5. In brief, the prosecution case is that complainant Kishan Singh Burgaly (P.W.3) lodged an FIR stating therein that on 1.12.1984 when he was coming to Okhalkanda from Nainital State Bank in Bus No. UTG-864 after taking the salary of employees of school, at about 3 PM, in a forest in between Airithan and Jadapani ahead of Dhanachuli Band, two persons, out of them one put the Tamancha on his head and directed him to give the bag. While the second person snatched the bag from his hand in which Rs. 49,000/- were kept which were in the denomination of four bundles of Rs. 100/- each, one bundle of Rs. 50/-, one bundle of Rs. 20/-, one bundle of Rs. 10/- and two bundles of Rs. 5/- each. Besides this, one register and keys were also there in the bag. The complainant further stated that he could identify those persons if they would be produced before him. He further stated that the bus had stopped on the whistle of conductor. With the same averments, the FIR (Ex.Ka-1) was lodged by P.W.3 Kishan Singh Burgali on 1.12.1984 at 4:00 P.M. at P.S. Mukteshwar, Distt. Nainital. On the basis of FIR, Constable Clerk Virendra Singh Negi (P.W.5) prepared the Chik FIR, i.e. Ex.Ka-7. He also made entry in the G.D., copy of which is Ex.Ka-8. Investigation of this case was initially entrusted to S.O. J.D. Arya. Appellant-accused Bihari was arrested during investigation and from his possession, one country made pistol of 12 Bore and two live cartridges were recovered on 11.12.1984 which were taken into possession and Fard Ex.Ka-2 was prepared. On the same day on the pointing out of the appellant-accused Bihari Singh, Rs. 29,000/- were recovered from his house which were taken into possession and Fard Ex.Ka-3 was prepared. On the same day, appellant-accused Jaman Singh was arrested and from his possession a knife was recovered and Fard Ex.Ka-5 was prepared. Subsequently, on the pointing out of appellant-accused Jaman Singh, an amount of Rs. 16,680/- was recovered from his house and Fard Ex.Ka-4 was prepared. Appellant/accused Bihari was taken on police remand by the order of CJM, Nainital and on his pointing out, a bag and a register was recovered of which Fard Ex.Ka-6 was prepared. Regarding the recovery made from the appellant-accused Bihari, the entry was made in the G.D., the copy of which is Ex.Ka-9. Ex.Ka-11 is the letter sent by Principal, Govt. Inter College, Okhalkanda addressed to District Inspector of Schools, Nainital by which the direction was sought about the above-said incident. Ex.Ka-12 is the certificate issued by Principal, Govt. Inter College, Okhalkanda certifying the absence of co-accused Ganga Singh (acquitted by trial court) from

30.11.1984 to 3.12.1984. Ex.Ka-17 is the identification memo of the appellants-accused. The I.O. during investigation inspected the place of occurrence and prepared the site plan, i.e. Ex.Ka-24. Ex.Ka-25 is the site plan of the place from where the money amounting to Rs. 29,000/- and two bunches of keys were recovered on the pointing out of the appellant-accused Bihari Singh. Ex.Ka-26 is the site plan of the place from where the amount of Rs. 16,680/- was recovered on the pointing out of the appellant-accused Jaman Singh. Ex.Ka-27 is the site plan of the place from where the bag (in which the money and keys were there) was recovered on the pointing out of appellant-accused Bihari Singh. During investigation, the I.O. recorded the statements of witnesses and on completion of investigation, filed the charge sheet against the appellants-accused u/s 392/397 IPC, i.e. Ex.Ka-23. Ex.Ka-13 is the Chik FIR prepared by Constable Raghuvir Singh (P.W.11) about the case lodged by S.O. J.D. Arya at P.S. Haldwani on 11.12.1984 at 5:00 P.M. u/s 25 of the Act against the appellant-accused Bihari. Ex.Ka.14 is the Chik FIR prepared by Constable Clerk Raghuvir Singh (P.W.11) lodged by S.O. J.D. Arya on the same date and time against the appellant-accused Jamman Singh u/s 4/25 of the Act. Ex.Ka-15 is the carbon copy of G.D. prepared by P.W.11 Raghuvir Singh about the registration of the case against the appellant-accused Bihari u/s 25 of the Act and also against the appellant-accused Jaman Singh u/s 4/25 of the Act and further for admitting the accused in the Jail Baparda along with the recovery made in 5 bundles. Ex.Ka-18 is the site plan prepared by S.I. Shyam Singh Negi (P.W.13), also an I.O. of the case, where the appellant-accused Jaman Singh was arrested u/s 4/25 of the Act. Ex.Ka-20 is also the site plan prepared by the I.O. whereby the appellant-accused Bihari Singh was arrested Under Section 25 of the Act about the appellant-accused Bihari Singh. Ex.Ka-21 is the sanction for prosecution granted by the District Magistrate, Nainital on 21.1.1985 against the appellant-accused Bihari Singh. Ex.Ka-19 is the charge sheet filed by the I.O. after completion of investigation against the appellant-accused Jaman Singh u/s 4/25 of the Act. Likewise, Ex.Ka-22 is the charge sheet filed against the appellant-accused Bihari Singh u/s 25 of the Act after completion of investigation.

6. After receiving the charge sheet, learned CJM, Nainital committed the case to the court of Sessions on 4.4.1985 after giving necessary copies to the appellants/accused as provided u/s 207 Cr.P.C. The case was transferred to Additional Sessions Judge by Sessions Judge for disposal according to law.

7. On 16.10.1985, learned I Addl. Sessions Judge, Nainital framed the charges against the appellants/accused Bihari Singh and Jaman Singh u/s 392 IPC and u/s 392 r/w Section 397 IPC. The charges were read over and explained to appellants/accused, who pleaded not guilty and claimed to be tried. On the same day, charge against the co-accused Ganga Singh (acquitted by trial court) u/s 120B IPC. The charge also read over and explained to him who pleaded not guilty and claimed to be tried. Charge u/s 412 IPC was further framed against the appellant-accused Bihari Singh by I Addl. Sessions Judge on the same day. This

charge was also read over and explained to him who pleaded not guilty and claimed to be tried. Against the appellant-accused Jaman Singh, charge u/s 412 IPC and also u/s 4/25 of the Act was also been framed on the same day. These charges were also read over and explained to him who too pleaded not guilty and claimed to be tried. Charge u/s 25 of the Act was also framed against the appellant-accused Bihari Singh. The charge was also read over and explained to him who also pleaded not guilty and claimed to be tried.

8. To prove its case, the prosecution has examined P.W.1 Bhagwan Singh, driver of the bus, P.W.2 Daya Kishan, conductor of the bus, P.W.3 Kishan Singh Burgali, victim and complainant, P.W.4 Mahipal Singh, witness of recovery of money and weapon, P.W.5 Constable Virendra Singh, who prepared Chik FIR and made entry in G.D., P.W.6 Devi Singh, Principal, P.W.7 Smt. Kamla Chandola, Cashier in the Govt. Inter College, P.W.8 Constable Sauraj Singh, P.W.9 Constable Vijay Pal Singh, P.W.10 Constable Mam Singh, P.W.11 Constable Raghuvir Singh, P.W.12 Pradeep Bhatnagar, SDM who conducted the identification parade, P.W.13 S.I. S.S. Negi, IO of the case and P.W.14 S.S.I. N.D. Tewari.

9. After that the statements of the appellant/accused was recorded u/s 313 Cr.P.C. The oral and documentary evidence was put to each of them in question form, who denied the allegations made against each of them. However, they did not produce any oral or documentary evidence in defence.

10. After hearing learned Counsel for the parties and appreciating the entire material available on record, learned III Addl. Sessions Judge, Nainital vide judgment and order dated 3.9.1996 convicted and sentenced the appellants/accused as discussed above. Feeling aggrieved by the aforesaid judgment and order, the accused/appellants have preferred the present appeal.

11. To prove its case, the prosecution has examined P.W.1 Bhagwan Singh who stated that on the date of incident, he was the driver of Bus No. UTG-864 and was driving the bus from Nainital to Patkot. Daya Kishan was the conductor in that bus. On that day at about 3 P.M. when the bus reached in between Airikhan and Jadapani, then on the whistle of conductor, he stopped the bus. One person who was sitting in the bus directed Kishan Singh Burgali, who was a teacher in Okhalkanda, to give the bag to him on which Burgali gave the bag. Then the second person fired in the air. Thereafter, both of them ran towards the forest. Thereafter, Kishan Singh Burgali (P.W.3) informed that in the bag, Rs. 49,000/- were kept. Then he drove the bus at P.S. Mukteshwar. One Patwari was also sitting in the bus. After two months of the incident, he went to Haldwani Jail to identify the hooligans where he identified the appellants-accused Bihari Singh and Jaman Singh. Firstly he saw the accused persons on the date of incident and secondly he saw them on the date of identification and in between that period he did not see them. This witness was cross-examined at length by the defence Counsel but nothing has come out in his statement which may create any doubt in his statement. The statement of this

witness is reliable and believable.

12. P.W.2 is Daya Kishan Bhatt, who was the conductor of the bus. He also corroborated the evidence of P.W.1 Bhagwan Singh. However, in the identification he had identified only the appellant-accused Jaman Singh.

13. P.W.3 is Kishan Singh Burgali who stated that in the year 1984, he was the Assistant Teacher at Govt. Inter College, Okhalkanda. On 29.11.1984 he had come along with Smt. Kamla Chandola, Cashier of the college to collect the salary of November, 1984 at Nainital. On 30.11.1984 at 5 PM, the bills were passed from Nainital Treasury and he had brought a leather bag and Treasury Register along with him. He identified the Bag Ex.2 and Treasury Bill Register Ex.3. On 1.12.1984 he along with Kamla Chandola received Rs. 49,117.03 from State Bank of India, Mallital Branch and kept this money in Bag Ex.2 and came at Tallital Bus Station. He also purchased revenue stamps of Rs. 8/- from the post-office. Kamla Chandola stayed at Nainital because she felt ill and she gave him the cash bag Ex.2 with cash and Treasury Register Ex.3 along with two bunches of keys which he kept them in the bag, those bunches are Ex.4 and Ex.5. On the same day he started his journey through bus No. UTG 864 along with cash bag. Driver Bhagwan Singh was driving the bus and Daya Kishan was the conductor in that bus. At about 3 p.m., when the bus reached in the forest in between Aidithan and Jadapani ahead of Dhanachuli Band, then bus was stopped on the whistle of conductor and one hooligan came in front of him while another hooligan put the Tamancha on his temporal region and directed him to give bag. Then the second hooligan snatched from his bag in which Rs. 49,000/- cash and two bunches of keys and register were kept. Thereafter both the hooligans came down from bus and one of them fired in air and then they ran away after taking the cash bag. One of the hooligans was wearing brown cap (Ex.1) and one Patwari and 15-16 other passengers were also traveling in the bus. Thereafter, he went to the P.S. Mukteshwar and the lodged the report, i.e. Ex.Ka-1. He further stated that the cash which was received from the bank was in the denomination of 4 bundles of Rs. 100/- each, one bundle of Rs. 50/-, one bundle of Rs. 20/, one bundle of Rs. 10/- and two bundles of Rs. 5/- each. The cap, worn by the accused, who was armed with Tamancha, was also recovered by the I.O. i.e. Ex.1. On 11.12.1984, he along with the I.O. had gone at Golapar in a Jeep. S.I. Tewari of P.S. Tallital and 2-3 constables were also accompanying them. On the way, an informant informed them that out of those two persons who looted the bus on 1.12.1984, one of the persons belonged to Village Padampur who is coming on the way. At that time, two persons Kamal Singh and Mahipal Singh were going towards Haldwani. At about 1 P.M., one person was arrested by the police who was identified by him as one of the hooligans who looted him and that hooligan disclosed his name as Bihari Singh. On the search made by the police, a Tamancha of 12 Bore and two cartridges of 12 bore was recovered from him. The I.O. recovered those articles and prepared the Fard, i.e. Ex.Ka-2. Appellant-accused Bihari Singh confessed his guilt and said that looted amount can be recovered from his house. He along with police had gone

in the house of appellant-accused Bihari from where he got recovered Rs. 29,000/- in cash and two bunches of keys to I.O. Appellant-accused Bihari further stated that this money had come in his share from the looted amount and also told that this plan was made by his brother Ganga Singh (acquitted by trial court). For recovering the money and bunches of keys, the Fard was prepared on the spot, i.e. Ex.Ka-3. Two bunches of keys were marked as Ex.4 and Ex.5, which were recovered from the appellant-accused Bihari Singh. He also identified the money recovered from the house of appellant-accused Bihari Singh on his pointing out in the denomination of 2 bundles of Rs. 100/- each amounting to Rs. 20,000/-, 60 loose notes of Rs. 100/- each amounting to Rs. 6,000/-, 20 notes of Rs. 50/- each amounting to Rs. 1,000/-, one bundle of Rs. 10/- amounting to Rs. 1,000/- and 2 bundles of Rs. 5/- each amounting to Rs. 1,000/-. Two bundles of notes of Rs. 100/- were marked as Ex.6 and Ex.7, bundle of 60 loose notes of Rs. 100/- was marked as Ex.8, bundle of 20 notes of Rs. 50/- was marked as Ex.9, bundle of 100 notes of Rs. 10/- each as Ex.10 while two bundles of Rs. 5/- each were marked as Ex.11 and 12. Appellant-accused Bihari Singh was made Baparda on the spot. From that place, appellant-accused Bihari Singh took them near the house of appellant-accused Jaman Singh who was standing at the door of his house. While pointing towards the Jaman Singh, appellant-accused Bihari Singh said that Jaman Singh is the person who accompanied him in the aforesaid robbery. Then at about 3 P.M., appellant-accused Jaman Singh was also arrested and on his search, a knife was recovered from his possession which was sealed on the spot, that knife is Ex.13. Appellant-accused Jaman Singh also confessed his guilt before him and other persons and stated that the looted amount he can give from inside his house. Thereafter, from his house, he got recovered Rs. 16,680/- and said that this money he along with Bihari Singh had robbed from Master Burgali (this witness) on 1.12.1984 and said that this is the same money which came into his share and rest of the money he had spent. The money recovered was sealed on the spot which was identified by this witness in the court in the denomination of a bundle of Rs. 100/- each amounting to Rs. 10,000/-, 30 notes of Rs. 100/- each amounting to Rs. 3,000/-, 34 notes of Rs. 50/- each amounting to Rs. 1,700/-, 99 notes of Rs. 20/- each amounting to Rs. 1,980/-, recovered money in total Rs. 16,680/- which was recovered from the house of appellant-accused Jaman Singh. Bundle of notes of Rs. 100/- was marked as Ex.14, bundle of 30 loose notes of Rs. 100/- was marked as Ex.15, bundle of 34 notes of Rs. 50/- each was marked as Ex.16 and bundle of 99 notes of Rs. 20/- each was marked as Ex.17. The money recovered was sealed on the spot and the Fard Ex.Ka-4 was prepared. Appellant-accused Jaman Singh was made baparda on the spot. He further stated that the I.O. also prepared the Fard for recovery of knife from the possession of appellant-accused Jaman Singh, i.e. Ex.Ka.5. On 13.12.1984 he went on the place of occurrence along with I.O. and on the pointing out of the appellants-accused, a bag was recovered downwards the road in the forest in which treasury register was there, the bag is Ex.2 and treasury register is Ex.3. The I.O. also prepared the Fard for recovering the Bag, i.e. Ex.Ka.6. He also identified the Tamancha Ex.18 and two

cartridges Ex.19 and Ex.20 recovered from the possession of appellant-accused Bihari Singh. This witness was cross-examined at length by the defence Counsel but he could not be shaken in his testimony. The statement of this witness is reliable and believable.

14. P.W.4 is Mahipal Singh who stated that on 11.12.1984 he along with Kamal Singh was coming from Golapar forest to Haldwani. On the way, the police party met them in a jeep and Kishan Singh Burgaly was also sitting in that jeep. The police party told them to help in arresting a hooligan. After 25-30 minutes, appellant-accused Bihari came who was arrested by the police. On the search of appellant-accused Bihari, one Tamancha Ex.18 and two cartridges Ex.19 and Ex.20 were recovered, which were sealed on the spot and Fard Ex.Ka-2 was prepared on the spot and he also signed on that Fard. On the spot, appellant-accused Bihari confessed that out of the amount robbed from Kishan Singh Burgali at Aidikhan, his share along with share of Ganga Singh has been kept at his house and some of the money was spent by him. Appellant-accused Bihari further stated that the plan of this robbery was made by him along with Jaman Singh & Ganga Singh. Appellant-accused Bihari also assured that the amount of loot about his share and share of Ganga Singh can be got recovered from his house. Thereafter, appellant-accused Bihari Singh took him and police party at his house from where he got recovered Rs. 29,000/- in the bundles of notes of Rs. 100, 50, 10 and 5, those bundles were marked as Ex.6 to Ex.12. Fard of recovery was also prepared on the spot, i.e. Ex.Ka-3. Thereafter, on the assurance of appellant-accused Bihari Singh, police party had gone in the house of appellant-accused Jaman Singh where Jaman Singh was arrested, on whose personal search a knife was recovered i.e. Ex.13. Appellant-accused Jaman Singh also stated that the amount looted by him can be recovered from inside his house and out of that, some money he has spent. Appellant-accused Jaman Singh also got recovered Rs. 16,680/- from his house to the police which he robbed from Master Burgaly near Aidikhan. The money recovered was in the bundles of Rs. 100, 50 and 20 which were marked as Ex.14 to Ex.17. Fard of recovery of money was also been prepared, i.e. Ex.Ka-4 and he also proved the same. Appellants-accused were made baparda on the spot. This witness was cross-examined at length by the defence Counsel but nothing has come out in his statement which could create any doubt in his statement. The statement of this witness is reliable and believable.

15. P.W.5 is Constable Virendra Singh who has proved the Chik FIR (Ex.Ka-7) prepared by him on the basis of the report (Ex.Ka-1). The entry in this regard was also made in the G.D., the copy of which is Ex.Ka-8. He also made entry in G.D. regarding admitting the appellants-accused Bihari Singh and Jaman Singh being baparda in the jail, i.e. Ex.Ka-9. On 14.12.1984, appellants-accused were sent for jail baparda and entry in this regard was also made in the G.D. by him, the photocopy of which is Ex.Ka-10. Till when the appellants-accused remained in jail of P.S. Mukteshwar, they were remained baparda and nobody was allowed to see them.

16. P.W.6 is Devi Singh, Principal who stated that from 7.8.1984 to 30.6.1988, he was posted as Principal at Govt. Inter College, Okhalkanda. In November and December, 1984, Smt. Kamla Chandola was posted as Cashier in that school who used to go Nainital every month to get the salary of staff. On 29.11.1984, Smt. Kamla Chandola was sent to get the salary of November and other bills at Nainital along with Kishan Singh Burgali, who was the Assistant Teacher. On 2.12.1984 Kishan Singh Burgali informed him that the cash of salary, which he received from bank, was robbed by the armed robbers in between Aidikhan and Jadapani. He was further informed that Rs. 49,117.03 was drawn out of which Rs. 49,000/- was robbed and rest of Rs. 117/- was deposited in the office by Kishan Singh Burgali. The information about this incident was given by him to District Inspector of Schools and also to other concerned departments, i.e. Ex.Ka-11. Co-accused Ganga Singh was a student of Class XII in his school and as per the attendance register, co-accused Ganga Singh remained continuously absent from 30.11.1984 till 3.12.1984 and for that the information was given by him to the police, i.e. Ex.Ka-12. This witness was also cross-examined at length by the defence Counsel but nothing has come out in his statement which may create any doubt in his statement. The statement of this witness is reliable and believable.

17. P.W.7 is Smt. Kamla Chandola who stated that on 29.11.1984 she along with Kishan Singh Burgali, Assistant Teacher had come to Nainital for taking the salary. Devi Singh, Principal had also come who had to attend a meeting. She had brought a Treasury Register, Bill, safe and bunch of keys of Almiras in a bag. On 30.11.1984 at about 5 p.m. bill was passed. On 1.12.1984, an amount of Rs. 49,117.05 was withdrawn from State Bank of India, Mallital. Out of them, Rs. 49,000/- were kept in the bag Ex.2 and rest of Rs. 117.05 were kept by Kishan Singh Burgali in his pocket because he had to purchase the tickets. From there, they came at Tallital and purchase revenue stamps. Since she fell ill, therefore, she could not accompany Kishan Singh Burgali for Okhalkanda. However, she had given bunches of keys Ex.4 and Ex.5, Treasury Register Ex.3 to Kishan Singh Burgali which was kept by him in the bag. This witness was also cross-examined at length by the defence Counsel but nothing has come out in her statement which may create any doubt in her deposition. The statement of this witness is reliable and believable.

18. P.W.8 is Constable Sauraj Singh who filed the affidavit and stated that from 11.12.1984 and 12.12.1984 he was posted as Constable at P.S. Haldwani. ON 11.12.1984, his duty was at P.S. Hawalat Haldwani from 9 PM to 12 AM as Constable and in the Hawalat, two accused baparda and one other person were locked and on the gate of Hawalat, a blanket curtain was there. On 12.12.1984, his duty was at Hawalat at P.S. Haldwani from 6 AM to 9 AM and inside the Hawalat, two accused baparda were locked and on the door, curtain of blanket was there. The entry thereof finds mention in G.D. No. 70 time 9 PM and G.D. No. 9 time 6 AM. He further stated that on both the days when he was on duty, both the appellants-accused remained baparda and curtain of blanket remained there and nobody was allowed

to talk or see the accused persons.

19. P.W.9 is Constable Vijay Pal Singh who also filed the affidavit and stated that on 12.12.1984 he was posted as Constable at P.S. Haldwani. On that day at 12:20 hours, he along with Constable Ganesh Rai had taken the accused Baparda and one other accused in the court of CJM Nainital from Haldwani Hawalat for taking remand. Till when the accused persons were in their possession, they remained baparda and nobody was allowed to see or talk to them.

20. P.W.10 is Constable Mam Singh who stated that on 11.12.1984, he was posted in P.S. Haldwani and he was on Pehra duty on that day from 18 hours to 21 hours. During his duty hours, appellant-accused Bihari Singh remained baparda. On 11.12.1984, he was on Pehra duty from 12 AM to 3 AM and during that period, appellant-accused Bihari remained baparda. On 12.12.1984 his duty was from 9 AM to 12 PM and during that period also, the accused remained baparda. After 12 AM, Pehra duty was assigned to Constable Ramvir Singh and during that period also, the accused remained baparda.

21. P.W.11 is Constable Raghuvir Singh who has stated that on 11.12.1984 he was posted as Constable Clerk at P.S. Haldwani. On that day at 5 PM, S.O. J.D.Arya and other police personnel came at P.S. Haldwani and admitted the appellants-accused Bihari Singh and Jaman Singh at P.S. Haldwani being Baparda along with five sealed bundles and Fards Ex.Ka-2 and Ka-5. On the basis of Fard Ex.Ka-2, he prepared Chik FIR u/s 25 of the Act against the appellant-accused Bihari Singh and on the basis of Fard Ex.Ka-5, he prepared Chik FIR against the appellant-accused Jaman Singh u/s 4/25 of the Act. He also made entry in the G.D., the carbon copy of which is Ex.Ka-15. Appellants-accused were admitted in the male Hawalat being baparda and a curtain of blanket was also affixed and both the accused persons were directed to hide themselves and remained as baparda. On 12.12.1984 at 12:20 P.M. through G.D. No. 36, appellants/accused Bihari Singh and Jaman Singh were sent to the court of CJM, Nainital being baparda for taking remand. The entry in this regard was made in the G.D. by Constable Clerk Jagdish Chandra, i.e. Ex.Ka-16.

22. P.W.12 is Pradeep Bhatnagar who stated that on 1.2.1985 he was posted as SDM, Haldwani. On that day he conducted the identification parade of the appellants-accused. At the time of identification, he prepared identification memo Ex.Ka-17.

23. P.W.13 is S.I. Shyam Singh Negi who stated that on 11.12.1984 he was entrusted the investigation of Crime No. 750/84 u/s 4/25 of the Act State v. Jaman Singh. During investigation, he recorded the statements of witnesses and inspected the place of occurrence and prepared the site plan, i.e. Ex.Ka-18. After completing the investigation, he filed the charge sheet against the appellant-accused Jaman Singh, i.e. Ex.Ka-19. On 11.12.1984 itself, he was also entrusted the investigation of Crime No. 749/84 u/s 25 of the Act, State v. Bihari Singh. In this case also he inspected the

place of occurrence and prepared the site plan, i.e. Ex.Ka-20. During investigation, he also recorded the statements of witnesses in this crime and on completing the investigation, he filed the charge sheet against the appellant-accused Bihari Singh, i.e. Ex.Ka-22.

24. P.W.14 is SSI Narayan Dutt Tewari who stated that on 11.12.1984, he was posted as SSI at P.S. Mallital, Nainital. On that day he along with S.O. J.D. Arya, S.O. of P.S. Mukteshwar, other police force along with complainant Kishan Singh Burgali was busy in search of the accused in Case Crime No. 20/84 u/s 392/397 IPC. As soon as they reached in the culvert on the road from Chorgaliya to village Daulatpur, then the informant informed that the hooligans who robbed the Kishan Singh Burgali, one of the hooligans is resident of village Padampur and in a short passage of time, he is coming on the same way. On this information, S.O. J.D. Arya took Mahipal and Kamal Singh with him and told them the reason to take them with him. At about 1:10 P.M. on the pointing out of the informant, one person was seen coming who was arrested there who disclosed his name Bihari Singh (appellant-accused). On his personal search, a Tamancha of 12 bore and two live cartridges were recovered, which were sealed on the spot and Fard Ex.Ka.2 was prepared by him on the dictation of S.O. J.D. Arya. Appellant-accused Bihari Singh also confessed his guilt and stated that the money which came in his share in the robbery of 1.12.1984 committed by him and Jaman Singh can be recovered from his house. After that the police party reached in the house of appellant-accused Bihari Singh at village Padampur and from his house, appellant-accused got recovered Rs. 29,000/- and two bunches of keys and also told that these are the same keys and money which he and Jaman Singh had robbed from the complainant Kishan Singh Burgaly. Appellant-accused Bihari Singh further stated that out of the money which came in his share, he has spent some of the money and rest of the money he got recovered to the police. The recovered money as well as bunches of keys was sealed on the spot and Fard Ex.Ka-3 was prepared by him on the dictation of J.D. Arya, S.O. On Fards Ex.Ka-2 and Ka-3, appellant-accused Bihari Singh had signed before him. Thereafter on the assurance of appellant-accused Bihari Singh, who was made baparda on the spot, the police party and other accompanying persons reached at the house of appellant-accused Jaman Singh. At about 3 p.m., appellant-accused Jaman Singh was arrested by the police on the pointing out of the appellant-accused Bihari Singh and on his search, a knife was recovered. Appellant-accused Jaman Singh also confessed the robbery committed by him along with the appellant-accused Bihari Singh on 1.12.1984 and also said that the robbed amount can be recovered by him from his house. On the spot, Fard of recovery of knife was prepared by him on the dictation of J.D. Arya, S.O., i.e. Ex.Ka-5. Subsequently thereafter, the appellant-accused Jaman Singh got recovered an amount of Rs. 16,680/- from his house and also said that this was the money came in his share and some of the amount he has spent. Fard of recovery of money was also prepared by him, i.e. Ex.Ka.4. Appellants-accused were made Baparda on the spot and thereafter

they came in the police station.

25. After that the statements of the appellant/accused was recorded u/s 313 Cr.P.C. The oral and documentary evidence was put to each of them in question form, who denied the allegations made against each of them. However, they did not produce any oral or documentary evidence in defence.

26. Sri R.S. Sammal, learned Counsel for the appellants-accused argued that as per the evidence discussed above, the prosecution has not proved its case against the appellants-accused beyond reasonable doubt.

27. I do not find any force in the argument put forth by Counsel for the appellants-accused for the following reasons:

A. That as per the evidence discussed above, P.W.3 Kishan Singh Burgaly, who is the complainant and victim of the case, has stated in his evidence that in the year 1984, he was the Assistant Teacher at Govt. Inter College, Okhalkanda. On 29.11.1984 he had come along with Smt. Kamla Chandola, Cashier of the college to get the salary of November, 1984 at Nainital. On 30.11.1984 at 5 PM, the bills were passed from Nainital Treasury and he had brought a leather bag and Treasury Register along with him. He identified the Bag Ex.2 and Treasury Bill Register Ex.3. On 1.12.1984 he along with Kamla Chandola received Rs. 49,117.03 from State Bank of India, Mallital Branch and kept this money in Bag Ex.2 and came at Tallital Bus Station. He also purchased revenue stamps of Rs. 8/- from the post-office. Kamla Chandola stayed at Nainital because she felt ill and the cash bag Ex.2 with cash and Treasury Register Ex.3 along with two bunches of keys which he kept them in the bag, those bunches are Ex.4 and Ex.5. On the same day he started his journey through bus No. UTG 864 along with cash bag. Driver Bhagwan Singh was driving the bus and Daya Kishan was the conductor in that bus. At about 3 p.m., when the bus reached in the forest in between Aidithan and Jadapani ahead of Dhanachuli Band, then bus was stopped on the whistle of conductor and one hooligan came in front of him while another hooligan put the Tamancha on his temporal region and directed him to give bag. Then the second hooligan snatched from his bag in which Rs. 49,000/- cash and two bunches of keys and register were kept. Thereafter both the hooligans came down from bus and one of them fired in air and then they ran away after taking the cash bag. One of the hooligans was wearing brown cap (Ex.1) and one Patwari and 15-16 other passengers were also traveling. Thereafter, he went to the P.S. Mukteshwar and the lodged the report, i.e. Ex.Ka.1. He further stated that the cash, which was received from the bank, was in the denomination of 4 bundles of Rs. 100/- each, one bundle of Rs. 50/-, one bundle of Rs. 20/-, one bundle of Rs. 10/- and two bundles of Rs. 5/- each. The cap, which was worn by the accused who was armed with Tamancha, was also recovered by the I.O. i.e. Ex.1 from the place of occurrence. On 11.12.1984, he along with the I.O. had gone at Golapar in a Jeep. S.I. Tewari of P.S. Mallital (Nainital) and 2-3 constables were also accompanying them. On the way, an informant informed them that out of two persons who looted the bus on

1.12.19984, one of the persons belonged to Village Padampur also coming on that way. At that time, two persons Kamal Singh and Mahipal Singh were going towards Haldwani. At about 1 P.M., one person was arrested by the police who was identified by him as one of the hooligans who looted him and that hooligan disclosed his name as Bihari Singh. On the search by the police, a Tamancha of 12 Bore and two cartridges of 12 bore was recovered from him. The I.O. recovered those articles and prepared a Fard, i.e. Ex.Ka-2. Appellant-accused Bihari Singh confessed his guilt and said that looted amount can be got recovered from his house. Then he along with police had gone in the house of appellant-accused Bihari from where he got recovered Rs. 29,000/- in cash and two bunches of keys to I.O. Appellant-accused Bihari further stated that this money had come in his share from the looted amount and also told that this plan was made by his brother Ganga Singh (acquitted by trial court). For recovering the money and bunches of keys, the I.O. prepared the Fard on the spot, i.e. Ex.Ka-3. Two bunches of keys were marked as Ex.4 and Ex.5, which were recovered from the appellant-accused Bihari Singh. He also identified the money recovered from the house of appellant-accused Bihari Singh on his pointing out in the denomination of 2 bundles of Rs. 100/- each amounting to Rs. 20,000/-, 60 loose notes of Rs. 100/- each amounting to Rs. 6,000/-, 20 notes of Rs. 50/- each amounting to Rs. 1,000/-, one bundle of Rs. 10/-amounting to Rs. 1,000/- and 2 bundles of Rs. 5/-each amounting to Rs. 1,000/. Two bundles of notes of Rs. 100/- were marked as Ex.6 and Ex.7, bundle of 60 loose notes of Rs. 100/- were marked as Ex.8, bundle of 20 notes of Rs. 50/- was marked as Ex.9, bundle of 100 notes of Rs. 10/- each as Ex.10 while two bundles of Rs. 5/- each were marked as Ex.11 and 12. Appellant-accused Bihari Singh was made Baparda on the spot. From that place, appellant-accused Bihari Singh took them near the house of appellant-accused Jaman Singh who was standing at the door of his house. While pointing towards the Jaman Singh, appellant-accused Bihari Singh said that Jaman Singh is the person who accompanied him in the aforesaid robbery. Then at about 3 P.M., appellant-accused Jaman Singh was also arrested and on his search, a knife was recovered from his possession which was sealed on the spot, that knife is Ex.13. Appellant-accused Jaman Singh also confessed his guilt before him and other persons and stated that the looted amount he can got recovered from inside his house. Thereafter, from his house, he got recovered Rs. 16,680/- and said that this money he along with Bihari Singh had robbed from Master Burgali on 1.12.1984 and said that this is the same money which came into his share and rest of the money he had spent. The money recovered was sealed on the spot which was identified by this witness in the court in the denomination of a bundle of Rs. 100/- each amounting to Rs. 10,000/-, 30 notes of Rs. 100/-each amounting to Rs. 3,000/-, 34 notes of Rs. 50/-each amounting to Rs. 1,700/-, 99 notes of Rs. 20/-each amounting to Rs. 1,980/-, in total Rs. 16,680/- which was recovered from the house of appellant-accused Jaman Singh. Bundle of notes of Rs. 100/- was marked as Ex.14, bundle of 30 loose notes of Rs. 100/- was marked as Ex.15, bundle of 34 notes of Rs. 50/- each was marked as Ex.16 and bundle of 99 notes of Rs. 20/- each was marked as Ex.17. The

money recovered was sealed on the spot by the I.O. and the Fard Ex.Ka-4 was prepared. Appellant-accused Jaman Singh was made baparda on the spot. He further stated that the I.O. also prepared the Fard for recovery of knife from the possession of appellant-accused Jaman Singh, i.e. Ex.Ka.5. On 13.12.1984 he went on the place of occurrence along with I.O. and on the pointing out of the appellants-accused, a bag was recovered below the road in the forest in which treasury register was there, the bag is Ex.2 and treasury register is Ex.3. The I.O. also prepared the Fard for recovering the Bag, i.e. Ex.Ka-6. He also identified the Tamancha Ex.18 and two cartridges Ex.19 and Ex.20 recovered from the possession of appellant-accused Bihari Singh. The statement of P.W.3 Kishan Singh Burgaly is reliable, believable and natural and inspires implicit confidence. The same also gets corroborated from the evidence of P.W.1 Bhagwan Singh, P.W.2 Daya Kishan Bhatt, P.W.4 Mahipal Singh, P.W.6 Devi Singh, P.W.7 Smt. Kamla Chandola and P.W.14 SSI N.D. Tewari.

B. That when the appellants-accused Bihari Singh and Jaman Singh were arrested, both of them confessed their guilt before P.W.4 Mahipal Singh, Kamal Singh, P.W.3 Kishan Singh Burgali and P.W.14 N.D. Tewari. P.W.4 Mahipal Singh is the independent eyewitness of the case while Kishan Singh Burgali is also the eyewitness of the case. P.W.14 is N.D. Tewari, who was posted as SSI, before whom also the extra-judicial confession was made by the appellants-accused.

C. That in the identification parade conducted by P.W. 12 Pradeep Bhatnagar, SDM, P.W.1 Bhagwan Singh identified both the appellants-accused while P.W.2 Daya Kishan identified the appellant-accused Jaman Singh. The identification of the appellants-accused also finds mention in identification memo Ex.Ka-17.

D. That at the time when the appellants-accused were arrested, they were made Baparda on the spot and they were admitted in the jail Baparda. P.W.8 Constable Sauraj Singh, P.W.9 Constable Vijay Pal Singh and P.W.10 Constable Mam Singh have also stated in their evidence that till when they were on duty, the appellants-accused were kept Baparda under a blanket curtain and no body was allowed to see or talk to them.

E. That with regard to the recovery u/s 25 of the Act from the possession of appellant-accused Bihari Singh of one Tamancha of 12 bore and two live cartridges of 12 bore, Fard Ex.Ka-2 was prepared. Likewise, about the recovery of a knife from the possession of appellant-accused Jaman Singh, the Fard u/s 4/25 of the Act was also prepared, i.e. Ex.Ka-5. District Magistrate, Nainital also accorded his sanction on 21.1.1985 for prosecuting the appellant-accused Bihari Singh u/s 25 of the Act, that sanction is Ex.Ka-21. As such, the offence punishable under the Arms Act, 1959 is also clearly proved against the appellants-accused beyond reasonable doubt.

28. In view of the above-said detailed discussion, the prosecution has fully proved its case against the appellant/accused beyond reasonable doubt for the offence

punishable u/s 392 IPC and also against the appellant-accused Bihari Singh u/s 4/25 of the Act and against the appellant-accused Jaman Singh Under Section 4/25 of the Act and trial court was justified in convicting the appellants-accused accordingly.

29. Learned Counsel for the appellants-accused lastly argued that a lenient view about the sentence of the appellants-accused may be taken. Looking to the entire facts and circumstances of the case and considering the gravity of offence committed by the appellants-accused that in a broad day time, appellants-accused committed robbery thereby robbed the salary of employees of college amounting to Rs. 49,000/-, this fact itself shows that the offence was a heinous one. The trial court, while awarding the sentence against the appellants-accused, already took a lenient view against them in awarding lesser punishment looking to the gravity of offence. Therefore, the appellants-accused do not deserve any leniency in the matter.

30. In view of the above-said facts and circumstances of the case, I am of the considered view that the trial court was correct and justified in convicting and sentencing the appellant/accused as discussed above and I concur the view taken by the trial court in convicting and sentencing the appellant/accused as discussed above.

31. For the reasons recorded above, the appeal is devoid of merits and is accordingly dismissed. The judgment and order dated 3.9.1996 passed by III Addl. Sessions Judge, Nainital in S.T. No. 85/85, State v. Bihari Singh and Ors., S.T. No. 139/85, State v. Jaman Singh and S.T. No. 19/1987, State v. Bihari Singh, is affirmed. The appellants are on bail. Their bail is cancelled. Let him be taken into custody forthwith in order to serve out the sentence as awarded against each of them. The period already served out by the appellants-accused in jail during the period of investigation, trial or appeal, shall be adjusted after verifying from records.

32. Let a copy of this order be sent back to the trial court concerned for compliance of the order forthwith.