

IN THE COURT OF SUNDEEP SINGH, ADDITIONAL SESSIONS JUDGE, PANIPAT. (UID No. HR0103).

Sessions Case No. 91-2024

CNR No. HRPP01-009713-2024

CIS No. SC-516-2024

Date of Institution: 13.12.2024

Date of Decision: 1.8.2026.

State Versus **Ashish @ Ashu** son of Shri Mahabir, resident of House no.378, Ward no.1, Garhi Jhijhara Road, Ganaur, District Sonapat, Haryana, at present Flat no.2116, Mansha Devi Apartment, Narela, Delhi, India.

...Accused.

FIR No.844 dated 27.12.2023

Under Sections: 29 of Arms Act, 1959.

Police Station: Chandni Bagh, Panipat.

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Case was committed by the Court of Ms. Rupa, the then Judicial Magistrate 1st Class, Panipat, vide order dated 5.12.2024.

Present: Sh. Ashwani, Public Prosecutor for the State.
Accused Ashish @ Ashu on bail assisted by Sh. Amit Kadian, Advocate.

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JUDGMENT:

The above named Accused has been sent to face trial for the offence punishable under section 29 of Arms Act, 1959.

FACTS LEADING TO FIR:

2. The case of the prosecution, briefly, is that on 27.12.2023 complainant Anmol Gaba filed a complaint in the Police Station alleging that he has a plastic granules factory at Shri Ram Road. On 26.12.2023, he left his factory at about 8.00 P.M. and in his absence Gulshan contractor was working on some labour job alongwith 4-5 labourers, who used to sleep in the factory. At about 4.00 A.M., Gulshan called him on his mobile phone and had told that at about 3.00 AM to 3.30 A.M., 3-4 boys forcibly entered into the factory and looted 13-14 plastic granule bags at **gun point**. he transported the bags in a Bolero pick up Car after **brandishing a pistol** at the labour.

On the basis of this complaint, present FIR was registered under sections 120-B, 392, 397, 395, 412 of IPC and 25(1-B)(a) of Arms Act, 1959.

INVESTIGATION:

3. During investigation, rough site plan of the place of occurrence was prepared. CCTV footage was obtained in a pen-drive. On secret

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information, accused Sahil, Rinku, Arjun and Ajay @ Bholu were arrested. Call Details Record (CDR) of the phones of the accused was obtained. During further investigation, accused Ashish @ Ashu was arrested on 25.9.2024 and was interrogated. His disclosure statement was recorded. On 14.11.2024, Sachin produced vehicle no.HR-69D-1922 make Pick Up Bolero and copy of RC which were taken into possession. Supplementary challan was prepared against accused Ashish @ Ashu.

CHARGE:

4. After supplying copies of challan to Accused free of cost, as envisaged under Section 207 Cr.P.C., the accused was **charge sheeted** under Section 29 of Arms Act, vide order dated 24.12.2024 passed by learned predecessor of this court to which he pleaded not guilty and claimed trial.

PROSECUTION EVIDENCE:

5. The prosecution has examined as many as Twenty-Five (25) witnesses in all and it would be appropriate to briefly refer to the evidence led by the prosecution before adverting to the arguments advanced in this case, which is as under:

PW1-ASI Jagbir Singh proved scaled site-plan Ex.P1.

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PW2-HC Pankaj Malkhana Mohrer stated that the case property was deposited with him in the Malkhana.

PW3-SI Sushil Kumar proved photographs Ex.P2 to Ex.P6 which were taken into possession vide memo Ex.P7. He also proved certificate under section 65-B of Indian Evidence Act Ex.P8.

PW4-Inspector Rakesh (Retired) has proved the final report under section 173 Cr.P.C.

PW5-Anmol Gaba (complainant) stated that a robbery had taken place in his factory and moved complaint Ex.P49. **He refused to identify the accused** stating that he were not the same persons who committed robbery in his factory. He proved the pen drive Ex.MO/1 which was taken into possession vide memo Ex.P50. He also proved his certificate under section 65-B of Indian Evidence Act Ex.P51. He was declared a **hostile witness**. In his cross-examination by learned Public Prosecutor, he **resiled** out of memos Ex.P37 and Ex.P47.

PW6-Gulshan stated that he informed his owner Anmol Gaba on mobile phone regarding robbery of 13-14 bags of plastic granules from the factory by 3-4 young boys and put the same in Bolero pick up Car. He has not identified the accused present in the court and stated that he are not those persons who committed the dacoity in the factory on the gun point because all were muffled faces. Hence, he was declared a **hostile witness**.

In his cross-examination by learned Public Prosecutor, he denied having compromised the matter with the accused outside the court.

PW7-Manoj stated that Gulshan informed the owner Anmol Gaba on mobile phone regarding robbery of 13-14 bags of plastic granules from the factory by 3-4 young boys and put the same in Bolero pick up Car. Thereafter, his owner came to the factory and verified the facts from him and labour persons. He has **not identified the accused** present in the court and stated that he are not those persons who committed the *dacoity* in the factory on the gun point because all were muffled faces. Hence, he was declared a **hostile witness**. In his cross-examination by learned Public Prosecutor, he denied having compromised the matter with the accused outside the court.

PW8-Rakesh Kumar, Reader to District Magistrate, Panipat proved sanction order Ex.P52.

In his cross-examination, he stated that he was not aware whether the District Magistrate perused the weapon personally or not.

PW9-Manoj son of Virender proved RC of Car bearing no.HR-10AF-5032 Ex.MO/1 which was taken into possession vide memo Ex.P53.

PW10-HC Ravinder, ERV, Armorer proved application Ex.P54 for mechanical examination of recovered weapon and he prepared his report Ex.P55.

PW11-SI Naresh Kumar proved application Ex.P49, formal FIR Ex.P56, endorsement Ex.P57, rough site plan Ex.P58, pen drive Ex.MO/1, certificate under section 65-B of Indian Evidence Act Ex.P51 which was taken into possession vide memo Ex.P50.

In his cross-examination, he stated that CCTV footage was not taken by him nor he prepared the visual report of the pen-drive handed over by the complainant to him.

PW12-EHC Ashok Kumar joined the Investigation Officer and proved arrest memos of accused Sahil, Arjun, Bholu and Rinku Ex.P9 to Ex.P12, respectively. He also proved rough sketch Ex.P17 of pistol recovered from accused Sahil and live cartridge which were taken into possession vide memo Ex.P18.

PW13-Ajit stated that he was the owner of Mahindra Pick Up bearing registration no.HR-69D-1922 and he used to rent out the same for money.

In his cross-examination, he stated that he never received any money from accused **Ashish** at any point of time nor any rent agreement was there.

PW14-Sachin stated that he had purchased Mahindra Pick Up bearing registration no.HR-69D-1922 in the year 2024 from car dealer and the registered owner of the Car was Ajit.

PW15-Rohit, Nodal Officer, Bharti Airtel Company, proved CAF Ex.P54, CDR Ex.P55 of mobile no.90340 09295 and CAF Ex.P56, ID Ex.P57, CDR Ex.P58 of mobile no.85698 21873. He also proved certificate under section 65-B of Indian Evidence Act Ex.P59 and forwarding letter Ex.P60.

PW16-Adesh, Nodal Officer, JIO Co., proved CAF Ex.P61, CDR Ex.P62 of mobile no.87084 96152 and certificate under section 65-B of Indian Evidence Act Ex.P63.

PW17-Hussain, Nodal Officer, Vodafone/Idea Co., proved request Ex.P64, CAF Ex.P65, CDR Ex.P66 of mobile numbers 80591 49262 and 80547 95354 and certificate under section 65-B of Indian Evidence Act Ex.P67.

PW18-HC Amit Kumar proved disclosure statement of accused Ashish @ Ashu Ex.P68.

PW19-SI Angrej Singh proved arrest memos of accused Sahil, Arjun, Bholu and Rinku Ex.P9 to Ex.P12, respectively. He also proved rough sketch Ex.P17 of pistol recovered from accused Sahil and live cartridge which were taken into possession vide memo Ex.P18. He also proved application Ex.P54 moved to Armorer for mechanical examination of country made pistol 32 bore and two live cartridges and obtained report Ex.P55. He also proved recovery memo Ex.P53 vide which RC of vehicle, copy of Aadhar card Mark-A and copy of PAN Card Mark-B were taken into possession.

He also proved disclosure statement of accused ***Ashish @ Ashu*** Ex.P68, recovery memo Ex.P69 of photocopy of RC of vehicle no.HR-69D-1922. He also proved recovery memo Ex.P70 of CDR of mobile numbers 90340 09295, 80591, 49262, 85698 21873 and 87084 96152 and certificate under section 65-B of Indian Evidence Act.

In his cross-examination, he stated that **no independent witness was joined** at the time of recording disclosure statements or at the time of effecting recoveries. He also stated that no respectable of the village, i.e., *Sarpanch*, Punch or *Lambardar* etc. were joined at the time of recovery and no specific marka was affixed on the case property.

PW20-EHC Ashok Kumar examined twice as he had already been examined as PW12.

PW21-Akash stated that robbery had taken place on 26.12.2023. He informed the owner about the same but he refused to identify the accused present in the court. He was declared a **hostile witness**. In his cross-examination by learned Public Prosecutor, he denied having compromised the matter with the accused outside the court.

PW22-ESI Joginder has tendered his affidavit Ex.PW22/A stating that on 14.12.2024, SI Angrej Singh had handed over Bolero Vehicle Jeep bearing no.HR-69D-1922 to him in the Malkhana.

PW23-Amit stated that SIM no.85698 21873 was registered in his name and the same was being used by his son Arjun.

PW24-Constable Anil proved CDR, CAF, IDs and certificate under section 65-B of Indian Evidence Act Ex.P54 to Ex.P67 which were taken into possession vide memo Ex.P70 by the Investigating Officer.

PW25-HC Ravinder examined twice as he had already been examined as PW10. In addition to his earlier testimony, he proved the case property Ex.MO/2 to Ex.MO/4.

No other witness has been examined by the prosecution.

6. Learned Public Prosecutor for the State gave up PWs Constable Yugal, HC Amit being unnecessary witnesses and has closed the prosecution

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evidence on 21.4.2026, vide his statement, recorded separately, in this regard.

STATEMENT OF ACCUSED:

7. In his statement recorded under Section 313 Cr.P.C., the Accused has claimed innocence and pleaded false implication. The Accused has not led any evidence in his defence.

OPENING STATEMENT OF THE PUBLIC PROSECUTOR:

8. Learned Public Prosecutor for the State has contended that the prosecution has proved its case beyond shadow of doubt by examining the EHC-Ashok Kumar as PW12, who remained associated with the Investigating Officer and Investigating Officer SI Angrej Singh as PW19, who proved the arrest memo and disclosure statement of accused ***Ashish @ Ashu***. Further, PW9-Rakesh Kumar, Reader has proved the sanction order Ex.P52. Therefore, there is no doubt about the offence having been committed by the accused. Therefore, the accused is liable to be convicted for the offence for which he has been charge sheeted.

DEFENCE ARGUMENTS:

9. Learned defence counsel, on the other hand, contended that there is no evidence on record to prove that accused Ashish @ Ashu had

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supplied any pistol to the co-accused. Only his disclosure statement has been proved by the IO, though **No recovery** has been effected from the accused.

Moreover, **no independent witness** had been joined at the time of interrogation of the accused. Though prosecution has relied upon sanction order Ex.P52, however, the same is not qua accused Ashish @ Ashu and rather pertains to accused Sahil. Hence, the accused deserves to be given benefit of doubt and acquitted accordingly.

DISCUSSION:

10. I have heard learned Public Prosecutor for the State as well as learned counsel for the Accused and have perused the record very carefully.

INCRIMINATING EVIDENCE:

11. Though it is the case of prosecution that accused Ashish @ Ashu had supplied pistol to co-accused, however, there is no material evidence on record to prove this fact. No witness has been examined to prove accused Ashish @ Ashu having supplied the pistol to the co-accused, except the police official witnesses. Hence, there is hardly any incriminating evidence against the accused. Thus, benefit of doubt deserves to be given to the accused.

No independent witness has been joined during the investigation and this fact has been admitted by PW12-EHC Ashok Kumar who remained associated in the investigation with Investigating Officer PW19-SI Angrej Singh and both these witnesses have categorically admitted in their cross-examination that no independent, panch, sarpanch or other witness was joined at the time of recording disclosure statement of the accused.

SANCTION ORDER:

12. Though prosecution has relied upon sanction order **Ex.P52**, however, perusal of the same shows that the same was issued against accused Sahil and not against the present accused. In such circumstances, Ex.P52 cannot be taken into consideration qua accused Ashish @ Ashu and the same is of no help to the prosecution.

DISCLOSURE STATEMENT:

13. The disclosure statement made in police custody are protected under sections 25, 26 and 27 of Indian Evidence Act cannot be said to be admissible piece of evidence. The factum of place of occurrence was very well within the knowledge of the police even as per the complaint. Therefore, the demarcation report based on the disclosure statement is inconsequential and inadmissible in evidence.

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My view supports from the observation in ***NARESH Vs. STATE OF HARYANA (2023) 10 SCC 134*** wherein it has been observed,

“Confessional statement of Accused admittedly recorded after his arrest, while in police custody. Hence such statement held inadmissible having regard to the provisions of Ss. 25,26 of the Evidence Act, because s. 25 in no uncertain terms makes it clear that no confession made to a police officer shall be proved as against the person Accused of any offence and further S.26 states that any such statement is inadmissible if given while in police custody.”

Thus merely on the basis of disclosure statement the accused cannot be held guilty of the offence he has been charged with.

BENEFIT OF DOUBT:

14. It is basic law that it is for the prosecution to prove the charges beyond any reasonable doubt. Further, the law is, “**graver the offence, stricter the proof**”. If the defence creates reasonable dent in the story of the prosecution, the **benefit** such dent **has to go to the Accused** and not to the prosecution.

Moreover, in MANAK CHAND @ MANI VS. THE STATE OF HARYANA reported as LQ/SC/2023/1169, it been observed by Hon'ble Supreme Court-

*“Courts must examine each evidence with open mind dispassionately as an Accused is to be presumed innocent till proved guilty. In our adversarial system of criminal jurisprudence, the guiding principle shall always be the **Blackstone ratio** which holds that **it is better that ten guilty persons escape than one innocent be punished.**”*

15. As a result of above discussion, in the present case also the Accused cannot possibly be indicted on the ambiguous evidence led by the prosecution which doesn't connect him to the offence in question. So, the accused deserves to be acquitted by giving the benefit of doubt.

16. As a result of above discussion, the Accused deserves to be acquitted by giving the benefit of doubt.

17. No other point has been urged.

CONCLUSION:

18. In view of the foregoing discussion, it is concluded that the prosecution has failed to prove its case beyond the shadow of doubt and thus, the Accused is entitled for benefit of doubt. Accordingly, extending

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the **benefit of doubt** to Accused Ashish @ Ashu **STANDS ACQUITTED** of the charge framed against him. Bail bond and surety bond of the accused stand discharged. The accused is directed to furnish personal bond as required under section 437-A Cr.P.C. The case property, if any, be disposed of as per rules after expiry of period for filing of appeal/revision or as per decision thereof. File be consigned to the record room, after due compliance.

Pronounced in open court.

1.8.2026.

(SPKamboj)
Stenographer Gr-I.

(Sundeep Singh)
Additional Sessions Judge,
Panipat, UID No.HR0103.

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