
(2010) 06 UK CK 0047
In the Uttarakhand High Court

Jai Prakash, Rahul Singh Negi, Raju Pal and Sanjay Kumar	APPELLANT
Vs	
State of Uttarakhand	RESPONDENT

Date of Decision : 02-06-2010

Acts Referred:

Arms Act, 1959 — Section 25, 4
Criminal Procedure Code, 1973 (CrPC) — Section 223, 313, 374
Penal Code, 1860 (IPC) — Section 147, 148, 149, 307, 364

Citation : (2010) 06 UK CK 0047

Hon'ble Judges : Dharam Veer, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Dharam Veer, J.—All these appeals, preferred by the appellants u/s 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as Cr.P.C.), is directed against the common judgment and order dated 31.5.2007 passed by the Special Judge (Gangsters Act)/Sessions Judge, Nainital in consolidated Special Sessions Trial No. 46/2005, State v. Mohan Singh Paliwal, Special Sessions Trial No. 53/2005, State v. Mohan Singh Paliwal, Special Sessions Trial No. 36/2005, State v. Jai Prakash, Special Sessions Trial No. 55/2005, State v. Raju Pal, Special Sessions Trial No. 56/2005, State v. Jai Prakash, Special Sessions Trial No. 57/2005, State v. Sanjay Kumar and Special Sessions Trial No. 58/2005, State v. Rahul Singh Negi @ Rocky. Vide the aforesaid impugned judgment and order dated 31.5.2007, learned Special Judge (Gangsters Act)/Special Judge, Nainital has convicted each of the accused appellants, viz. Jai Prakash, Rahul Singh Negi @ Rocky, Raju Pal and Sanjay Kumar u/s 2/3 of U.P. Gangsters and Anti Social Activities (Prevention) Act, 1986 (for short, Gangsters Act) and sentenced each of the accused appellants to undergo three years" R.I. along with fine of Rs. 10,000/- each, in default to undergo three months" simple imprisonment. Each of the accused appellants has further been convicted under Sections 147, 365, 397 and 412 of Indian Penal Code, 1860 (for short, IPC) and each of them has been sentenced to undergo seven years" R.I. u/s 397 IPC along with fine of Rs.

50,000/-, in default to undergo one year's simple imprisonment; two years" R.I. u/s 147 IPC; seven years" R.I. u/s 365 IPC along with fine of Rs. 25,000/- each and in default to undergo six months" simple imprisonment and seven years" R.I. u/s 412 IPC along with fine of Rs. 25,000/- each, in default to undergo six months" simple imprisonment. Accused appellants Raju Pal, Jai Prakash and Sanjay Kumar have also been convicted u/s 25 of the Arms Act, 1959 and each of them has been sentenced to undergo three year's R.I. along with fine of Rs. 10,000/- each. Accused appellant Rahul Singh Negi @ Rocky has been convicted u/s 4/25 of the Arms Act along with fine of Rs. 10,000/-. It has further been directed that in default of payment of fine awarded for the offence punishable under Arms Act, each of the accused appellants shall undergo three months" simple imprisonment. All the sentences have been directed to run concurrently.

2. Since all these appeals relate to one and common incident and trials thereof have been decided by the trial court by a consolidated judgment, therefore, these appeals are being decided by this Court vide this common judgment and order.

3. One accused, viz., Mohan Singh Paliwal died during the pendency of trial and hence, trial against him was abated by the trial court vide order dated 18.7.2006.

4. The case of prosecution, in brief, is that on 9.8.2005 JS Bhandari (PW1), Branch Manager, Kamola Branch, Bank of Baroda lodged a written report Ex. Ka-1 with PS Kaladhungi with the averments that on that day at about 12.30 pm, three miscreants entered inside his branch. At that time, he was talking to Block Development Officer, Kotabag and his subordinates. One of the miscreants came near him and said "hands up" by pointing the pistol. At the same time, two other miscreants passed behind him and gone towards the cabin of Cashier. One miscreant covered the Daftary and another miscreant entered inside the cabin of Cashier and asked him to stand-up by saying "hands up" and after putting the pistol on the neck of Cashier, he looted all the cash from the drawer and gave it to his another associate who was outside the cabin and was covering the Daftary. At the same time, the fourth miscreant covered the customers outside the cabin. At the time of leaving the bank, these miscreants disconnected the telephone by cutting the telephone wire. They also looted Rs. 4000/- from the pocket of Daleep Singh, Daftary. They also snatched the purse of Cashier, Block Development Officer, ADO Sri Mewari and also looted the mobile phone from the BDO and thereafter went outside the bank. Soon after leaving the miscreants, the alarm was raised. When the complainant came outside, he came to know that one more miscreant, who was an associate of these dacoits had covered the Painter (PW4 Sandeep Kumar) who was working outside the bank. That Painter told him that all the miscreants had gone towards Naya Gaon by a vehicle. Thereafter the complainant informed Kaladhungi police station and subsequently to Nainital Police Department from a nearby PCO. He also informed the higher authorities of the bank. After comparing all the cash, he found that those miscreants had looted Rs. 2,41,405/-. With these averments, PW1 JS Bhandari

lodged the report Ex. Ka-1 with PS Kaladhungi on 9.8.2005 at 1.05 pm also stating therein that he could identify all the miscreants. On the basis of this report, chick FIR Ex. Ka-12 was prepared by PW7 Head Moharrir Madho Ram. Necessary entries were also made in the GD by him. Copy of GD is Ex. Ka-13. The investigation of this case was entrusted to PW3 Station Officer Ravi Tyagi. Subsequently, the investigation was transferred to PW9 Om Prakash Rajpoot.

5. On the same date i.e. on 9.8.2005, another FIR Ex. Ka-10 was lodged by PW6 Nadir Miyan with PS Kaladhungi at 8.15 pm with the averments that on the previous day i.e. on 8.8.2005 at 1.30 pm, accused appellant Rahul Singh Negi @ Rocky booked his car bearing registration No. DL-6CD-7916 for Rudrapur in Rs. 400/-. He was accompanied by Mohan Paliwal, Jai Prakash, Sanjay Kumar and Raju Pal. As soon as the said car reached in the forest area about 5 kms from Haldwani, these miscreants pointed a tamancha on his head and forced him to stop the car. They asked him to do whatever they direct and threatened that if would not do so, he would be killed. He was handcuffed and his mouth was also tied with a clothe and thereafter he was made to sit on the rear seat of the car. Mohan Paliwal drove the car to forest and spent the night in the forest. Thereafter on the next day i.e. on 9.8.2005 at about 12.30 pm, after looting the bank at Kamola Dhamola, they drove the said car to the forest outside Kotabagh, where Raju Pal fired on him with intention to kill him but he managed to escape and informed the nearby police chowki at Kotabagh. Earlier in the day, they had also planned to commit dacoity in a bank at Bajpur at 11 am on that day, but due to presence of police in the said bank, they dropped their idea. On the basis of this report, chick FIR Ex. Ka-16 was prepared by PW7 Head Moharrir Madho Ram. He also made the necessary entries in the GD, copy of which is Ex. Ka-17. Since this incident related to PS Kotwali Haldwani, therefore, the investigation of this case was transferred to PS Kotwali Haldwani.

6. After receiving the information about this incident of bank dacoity, Circle Officer CD Pant (PW8) reached at the Kamola branch of Bank of Baroda. Station Officer Ravi Tyagi (PW3), the I.O. of the case was also present there along with police force. SSP Alok Sharma also reached there. SSP was giving the directions for the search of dacoits. When they were at the triangle of Naya Gaon, Constable Rajendra Singh informed on mobile from the Kotabag police chowki that the driver of the vehicle used in the crime and who was with those bank dacoits had come there and told that those bank dacoits were in Kotabag. The driver somehow managed to escape from them. The driver named himself as Nadir (PW6) and further told that his Maruti Car No. DL-6CD-7916 had broke down in the way. On this information, they came at Kotabag as per the directions of SSP and met Constable Rajendra Singh and driver Nadir in the market, who told that the bank dacoits were staying in the hotel of Rana situated in the main market and they had also divided the looted amount among them. On this, two police parties were formed to cover the bank dacoits. First party was being led by CO, CD Pant and second party was being led by SSP Alok Sharma. As per the plan, when the police parties reached near the hotel of Rana, the bank dacoits

became aware of the police and they started to flee towards the forest. They were chased by the police parties. The bank dacoits fired on the police parties with intention to kill them. For the safety of police party, Constable Chandan Singh, Gunner of CO, CD Pant fired twice on the bank dacoits and one bullet hit one of the miscreants. Being perturbed and nervous by this, the miscreants started running away but they were chased by the police party and after using the necessary force, they were arrested. They disclosed their names as Mohan Paliwal, Raju Pal, Jai Prakash, Sanjay Kumar and Rahul Negi @ Rocky. From the possession of Mohan Paliwal (trial against whom was abated), one tamanach of 12 bore loaded with a khoka was recovered and from the right pocket of his pant, two live cartridges and from the left pocket of his paint, one bundle each of Rs. 500 and Rs. 100 notes having the seal of Bank of Baroda were recovered. From the possession of Raju Pal, one tamancha of 315 bore loaded with one live cartridge was recovered. Rs. 45000/- were also recovered from both the pockets of his pant. From the possession of third miscreant Jai Prakash, one tamancha of 315 bore with one loaded cartridge. Rs. 45000/- were also recovered from both the pockets of his pant. From the possession of fourth miscreant Sanjay Kumar, one tamancha of 315 bore with one loaded cartridge was recovered. Rs. 45000/- were also recovered from inside his shirt. From the possession of fifth miscreant Rahul Singh Negi @ Rocky, one iron khukhri was recovered. One bag was also recovered from him and from inside the said bag, Rs. 43,365/- were recovered. From the said bag, one purse containing the name chit of Rajendra Singh Adhikari, Gram Panchayat Development Officer, Kotabag containing three notes of Rs. 50/- and five notes of Rs. 10/- as well as driving license of Rajendra Singh was recovered. Another purse containing some papers and one note of Rs. 100, Rs. 50, Rs. 20 and Rs. 10 each, total Rs. 180/- along with driving license of Rahul Singh Negi was also recovered from the said bag. Driving license of Alam Singh Mewari was also recovered from the said bag. All the five accused confessed their guilt and they were arrested at about 3.45 pm. The right leg of accused appellant Rahul Singh Negi was found to be injured on account of hitting the bullet which the police had fired in self-defence. He was given the first aid on the spot. All the recovered articles were sealed on the spot and specimen of seal were also prepared. Being notorious criminals, all the accused were made "baparda". They had made an organized gang for the illegal monetary benefits of the members of gang and used to spread terror and committed bank dacoity on the point of arms. Driver Nadir (PW6), who was abducted by the aforesaid miscreants was sent along with Head Constable Sunder Singh for the recovery of the vehicle used in the said crime. A fard Ex. Ka-5 with these averments was prepared by Head Constable Lal Singh Kera on the dictation of CO, CD Pant (PW8). The said Maruti Car was recovered and it was towed away by the police with the help of another vehicle to the Kaladhungi police station.

7. The investigation of this case was entrusted to Station Officer Ravi Tyagi (PW3), who during the course of investigation inspected the place of occurrence and prepared the site plan Ex. Ka-6. He also prepared the site plan Ex. Ka-7 of

the place where the accused appellants were arrested by the police. Sanction of District Magistrate, Nainital to prosecute the accused appellants Raju Pal, Jai Prakash and Sanjay Kumar u/s 25 of the Act were also obtained which are Ex. Ka-21, Ka-22 and Ka-23 respectively. Site plan of the place where the Maruti Car of PW6 Nadir was parked is Ex. Ka-27, site plan where the said car was taken over by the accused persons from PW6 Nadir after making him handcuffed is Ex. Ka-28 and the site plan of the place from where the said car was recovered is Ex. Ka-29. During the course of investigation, the I.O. recorded the statements of the witnesses and after completing the investigation, he filed the chargesheet Ex. Ka-18 against the accused appellants u/s 395/397/412 IPC. He also filed separate chargesheet Ex. Ka-19 u/s 147/148/149/307 IPC and Section 2/3 of the Gangsters Act. Separate chargesheets under the Arms Act were also filed against the accused appellants. Chargesheet Ex. Ka-20 u/s 4/25 of the Arms Act against the accused appellant Rahul Singh Negi @ Rocky, chargesheet Ex. Ka-24 u/s 25 of the Arms Act against the accused appellant Raju Pal, chargesheet Ex. Ka-25 u/s 25 of the Arms Act against the accused appellant Jai Prakash and chargesheet Ex. Ka-26 u/s 25 of the Arms Act against the accused appellant Sanjay Kumar were filed by the I.O. All the chagesheets were submitted in the trial court.

8. On 1.3.2006, all the trials being part of the same transaction were consolidated and ordered to be tried jointly as per the provisions of Section 223 CrPC and Special Sessions Trial No. 46/2005 was made the leading case.

9. Learned Special Judge (Gangsters Act)/II FTC, Nainital framed the charges on 16.3.2006 against each of the accused appellants and the co-accused Mohan Paliwal (trial against whom was abated) under Sections 147, 365, 307, 397, 412 IPC and Section 2/3 of the Gangsters Act. On the same day, charge under the Arms Act was also framed against each of the accused appellants. The charge were read over and explained to each of the accused appellants, who pleaded not guilty and claimed to be tried.

10. To prove its case, the prosecution has examined PW1 JS Bhandari, the complainant; PW2 Pooran Chand Pandey, an eyewitness; PW3 Station Officer Ravi Tyagi, the I.O. of the case; PW4 Sandeep Kumar, Painter & an eyewitness; PW5 Leela Dhar, Special Executive Magistrate, who conducted the identification parade in sub-jail, Haldwani; PW6 Nadir Miyan, the driver of the Maruti car used in the said crime and who also informed the police about the whereabouts of the accused; PW7 Madho Ram, Head Moharrir who prepared the chick FIRs and made the necessary entries in the GD; PW8 Circle Officer CD Pant, who was leading one of the police party and was also present at the time of arrest of the accused and at the time of recovery of looted money & articles; PW9 Om Prakash Rajpoot, to whom the investigation was transferred from PW3 Ravi Tyagi; PW10 SS Samant, SO and the I.O. of the case reported by PW6 Nadir Miyan and PW11 Dr. US Adhikari, who had medically examined PW6 Nadir Miyan on 10.8.2005 and prepared the medical report Ex. Ka-31.

11. Thereafter, statements of each of the accused appellants were recorded u/s

313 of Cr.P.C. The oral and documentary evidence were put to them in question form, who denied the allegations made against them and stated that they have been falsely implicated in the case. However, they did not produce any documentary or oral evidence in defence.

12. After hearing learned Counsel for the parties and appreciating the evidence on record, the learned Special Judge (Gangsters Act)/Sessions Judge, Nainital vide his common judgment and order dated 31.5.2007 convicted and sentenced to each of the accused appellants as discussed above. Against the aforesaid judgment and order dated 31.5.2007, the accused appellants have preferred the present appeal.

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

14. To prove its case, the prosecution has examined PW1 JS Bhandari, Branch Manager who has reiterated the version made by him in the report Ex. Ka-1 lodged by him with PS Kaladhungi. He has also stated that he had identified the accused appellants in sub-jail, Haldwani when the identification parade was held on 5.10.2005 as he had seen them at the time of dacoity in the bank on 9.8.2005 and in between this period, he had not seen the accused persons anywhere.

15. PW2 Pooran Chand Pandey has stated that on 9.8.2005, he was posted as Head Cashier in the Kamola Branch of Bank of Baroda and on that day, Branch Manager JS Bhandari (PW1) and Daleep Singh, Daftary were also working with him in the said branch. Before the said incident, the Branch Manager JS Bhandari was talking to BDO and three other persons and two customers were also sitting. At about 12.30 pm, four miscreants entered inside the bank. One of them, said to the Branch Manager "Hands up" and positioned himself there. Two miscreants came from the back side of his cash counter. Out of these two miscreants, one covered Daleep Singh, Daftary while second miscreant entered inside his cabin and asked him to remain hands up! All the four miscreants were armed with pistols. Fourth miscreants covered the customers outside the counter. The miscreant who entered inside his cabin pointed a pistol on his head and looted all the cash amount from the drawer and gave it to his another companion who was with him at the back side of the cabin. The miscreants also looted his purse, rupees four thousand from Daleep Singh, purses and mobile of BDO and his subordinates. At the time of leaving, the miscreants disconnected the telephone line and broke the telephone set. When the miscreants left the bank, the Branch Manager immediately rang up the siren. This witness has further stated that when he came out the branch after leaving the miscreants, he came to know that fifth associate of the miscreants covered the Painter (PW4 Sandeep Kumar) who was painting near the board gate and this fifth miscreant was the last person to leave the place of occurrence. The Painter told that the miscreants had gone by a Maruti Car towards Naya Gaon. The Branch Manager JS Bhandari (PW1) informed about this incident to PS Kaladhungi and other authorities. Thereafter cash was

compared in the branch and Rs. 2,41,405/- were found to be short, which were in the denomination of 2 notes of Rs. 1000/-, 151 notes of Rs. 500/-, 1063 notes of Rs. 100/-, 1082 notes of Rs. 50/-, 107 notes of Rs. 20, 79 notes of Rs. 10/- and 115 notes of Rs. 5/-. The Branch Manager wrote the report in the bank and thereafter lodged the same with the police station. This witness has further stated that on 5.10.2005, he had gone to sub-jail, Haldwani for the identification of the accused, where he identified all the accused and identification memo was also prepared there on which he had also signed. He has further stated that he had not seen the accused persons between the date of occurrence and the date of identification parade. This witness has also identified all the accused persons in the trial court and described the specific roles performed by each of them at the time of dacoity. He stated that co-accused Mohan Paliwal (trial against whom was abated) had pointed the gun on the Branch Manager while accused appellant Rahul Singh Negi had come to his cabin and looted the cash money, accused appellant Jai Prakash covered the Daftary while accused appellant Raju Pal covered the customers and accused appellant Sanjay Kumar remained near the Painter outside the bank. One sealed bundle related to accused appellant Jai Prakash was opened in the trial court which contained four packets of Rs. 100/- and one packet of Rs. 50/-. All these packets except one packet of Rs. 100/- were having the slip of Bank of Baroda. This witness after comparing slip and the details of notes has stated that all these notes were issued to his branch from Bank of Baroda, Haldwani. In the same manner, this witness has identified all the notes related to accused appellants Raju Pal, Rahul Negi and Sanjay Kumar and the co-accused Mohan Paliwal (trial against whom was abated) which were looted from the bank. This witness has also proved the copy of receipt and payment register as Ex. Ka-4. Despite searching lengthy cross-examination, the defence Counsel has failed to elicit any material to shatter and discredit the testimony of this witness. His statement is reliable, believable and inspire the confidence.

16. PW3 Ravi Tyagi has stated that on 9.8.2005, he was posted as Station Officer in PS Kaladhungi. On that day, at about 12.39 pm, PW1 JS Bhandari had telephonically informed him about the said dacoity in his branch by five armed dacoits. On this information, he came at the said branch along with the police force. Branch Manager and the Cashier of the branch also returned to the branch after lodging the report. Circle Officer, Ramnagar and SSP also came at the place of occurrence along with the police force. He has further stated that he started the investigation immediately on the spot. On the directions of higher authorities, they came towards the triangle of Naya Gaon at about 3 pm in search of the looted cash and articles and the accused persons. Constable Rajendra Singh from Kotabag police chowki informed on mobile that the driver of the vehicle which was used in the said crime had come to that police chowki and told him that the bank dacoits were located in Kotabag. Thereafter they went to Kotabag where Constable Rajendra Singh met them and told that those bank dacoits were staying in the hotel of Rana. Driver Nadir (PW6) was also with him. Thereafter two police parties were formed on the directions of SSP. One party was being led

by CO, CD Pant (PW8) while second party was being led by SSP Alok Sharma. When the police parties reached near the said hotel, the dacoits became alert having come to know about the presence of police and ran away from the said hotel towards the forest. They were chased by the police parties. The dacoits fired from the tamancha. Thereafter Chandan Singh, the Gunner of CO, CD Pant fired twice from his carbine on the miscreants and one bullet hit one of the miscreants, which created panic amongst the miscreants and all of them were arrested by the police at about 3.45 pm on the same day of incident. They disclosed their names as Mohan Paliwal (co-accused trial against whom was abated) and Raju Pal, Jai Prakash, Sanjay Kumar and Rahul Singh Negi @ Rocky i.e. the accused appellants. From the possession of Mohan Paliwal, one tamancha of 12 bore loaded with a khoka was recovered and from the right pocket of his pant, two live cartridges and from the left pocket of his pant, one bundle of Rs. 500 note and Rs. 100 note each i.e. total Rs. 60,000/- were recovered. From the possession of Raju Pal, one tamancha of 315 bore loaded with one live cartridge was recovered. Four bundles of Rs. 100 note and one bundle of Rs. 50 note i.e. total Rs. 45000/- were also recovered from both the right pocket of his pant. From the possession of third miscreant Jai Prakash, one tamancha of 315 bore with one loaded cartridge. Four bundles of Rs. 100 note and one bundle of Rs. 50 note i.e. total Rs. 45000/- were also recovered from both the pockets of his pant. From the possession of fourth miscreant Sanjay Kumar, one tamancha of 315 bore with one loaded cartridge was recovered. One bundle of Rs. 100 note and seven bundles of Rs. 50 note i.e. total Rs. 45000/- were also recovered from inside his shirt. From the possession of fifth miscreant Rahul Singh Negi @ Rocky, one iron khukhri was recovered. One bag was also recovered from him and from inside the said bag, Rs. 43,365/- were recovered which were in the denomination of Rs. 1000, Rs. 500, Rs. 100, Rs. 50, Rs. 20, Rs. 10 and Rs. 5. From the said bag, one purse containing the name chit of Rajendra Singh Adhikari, Gram Panchayat Development Officer, Kotabag having Rs. 200/- inside it and the driving license of Rajendra Singh were recovered. Another purse of red colour containing some papers and Rs. 180/- along with driving license of Rahul Singh Negi was also recovered from the said bag. Some clothes of daily use and driving license of Alam Singh Mewari were also recovered from the said bag. All the five accused confessed their guilt and they were arrested at about 3.45 pm on the same day. Thereafter fard Ex. Ka-5 was prepared on the spot. This witness has identified the tamancha, one khokha cartridge and two live cartridges recovered from co-accused Mohan Paliwal as Ex. 1 to Ex. 4 respectively. He also identified one tamancha and one cartridge recovered from accused appellant Raju Pal as Ex. 5 and Ex. 6 respectively, one tamancha and one cartridge recovered from accused appellant Jai Prakash as Ex. 7 and Ex. 8 respectively, one tamancha and one cartridge recovered from the accused appellant Sanjay Kumar as Ex. 9 and Ex. 10 respectively and khukhri as Ex. 11 which was recovered from the accused appellant Rahul Singh Negi. He has also identified the bundles of note recovered from the accused appellant and the co-accused as Ex. 12 to Ex. 38 and driving license of Rahul Singh Negi as Ex. 39,

driving license of Mewari as Ex. 40 and purse of Rajendra Singh as Ex. 41. This witness has identified the khokha cartridge recovered from the place of arrest as Ex. 42. This witness has also proved the site plans Ex. Ka-6 and Ka-7 which are of the place of dacoity and place of arrest respectively. Despite lengthy cross-examination by the defence Counsel, this witness could not be shaken in his cross-examination.

17. PW4 Sandeep Kumar has stated that on the date of incident i.e. on 9.8.2005 at about 12.30 pm, he was writing the board of Kamola Branch of Bank of Baroda. One Maruti car came from Ramnagar side and stopped towards Haldwani side at a distance of 10-12 steps in front of the said bank. Five persons came out from the said car. Four of them went inside the bank while the fifth person stood near him. He heard the noises of "hands up" coming from inside the bank. The person who was standing near him took out a khukhri and told him not to move else he would be killed. After sometime, those four persons came out from the bank. They were armed with tamanchas and one person was also holding a bag. All the five persons boarded in the same car and went towards Naya Gaon. Thereafter Branch Manager rang up the siren and everybody came outside the bank. This witness informed them that all the five miscreants had gone towards Naya Gaon in the said car. Branch Manager telephoned from the nearby PCO. After sometime, bank officials had gone to lodge the report in the police station. This witness had identified the faces of all the accused persons. He identified the accused appellant Sanjay Kumar in the trial court and said that he was the same person who was standing near him. He also identified the remaining four accused persons and said that they were the same persons who went inside the bank and came out after sometime. This witness had also identified all the accused in the sub-jail, Haldwani during the identification parade and said that he had never seen them before the said incident and thereafter till the identification parade. This witness has proved the memo of identification parade as Ex. Ka-8. Despite lengthy cross-examination by the defence Counsel, this witness could not be shaken.

18. PW5 Leeladhar Ruwali has stated that on 5.10.2005 he was posted as Special Executive Magistrate, Nainital. On that day, he carried out the identification parade of all accused appellants and the co-accused one by one in the sub-jail, Haldwani by PW1 JS Bhandari, PW2 Pooran Chand Pandey, Daleep Singh and PW4 Sandeep Kumar. Every accused person was made to stand amongst ten persons in the line which were of the similar built to that of the accused persons. All the specific signs of identification of the accused persons were hidden and they were covered up to the chest by a blanket. He has proved the performa No. 55 as Ex. Ka-9.

19. PW6 Nadir Miyan has stated that in the year 2005, he was the driver in the Nainital District of Maruti 800 bearing registration No. DL-6CD-7916. Farukh was the owner of the said car. On 8.8.2005 he reached Bhotia Parao Taxi Stand at about 1.30 pm. Five people came to him. Three of them sat inside the car who

were brought by taxi driver Shabu. Rs. 300/- was agreed upon for dropping them to Rudrapur. Two people boarded on the said car at Kaladhungi triangle. Thereafter they proceeded towards Rudrapur. After traveling 4-5 kilometres, these people asked him to stop the car on the pretext that they wanted to urinate. As soon as he stopped the car, co-accused Mohan Paliwal (trial against whom was abated) came towards the driving seat and pointed a tamancha on his head and asked him to act as per his directions, else he would be killed. Thereafter he was made handcuffed and was forced to sit on the rear seat. Mohan Paliwal started to drive the car. When he asked as to why they were doing so, then he was beaten by Paliwal and Rocky by fists. Thereafter this witness lost his consciousness. He regained his consciousness on the kaccha rasta (uneven and rough road) in the remote of Rudrapur. Thereafter they had taken the car towards a dam and spent the night in the forest. On the next morning, they returned to the dam. At about, 10-10.30 am, they came at a bank in Bajpur. They wanted to commit dacoity in the said bank but left this idea when two policemen arrived there in a bike. Thereafter they proceeded towards Kamoal Bank where they reached at 12.30 pm. He was handcuffed and was forced to sit in the said car. Four accused went inside the bank while the fifth was keeping a vigil on the painter outside the bank. After 5-7 minutes they returned to the car and untied his legs and hands. Thereafter they pointed tamacha on his head and he was forced to drive the car. He was asked to move the car very fast else he would be shot. They were having money when they came out from the bank. They divided the said money in the car amongst themselves. In the way, Chamber-Y of the car which contained the engine oil broke down and thereafter these miscreants parked the car inside the forest and he was also forced to come out from the car. All these five miscreants brought him 20-25 steps above on the hill. Accused appellant Raju Pal fired on him but he escaped narrowly and ran away from the said place and reached at Kotabag police chowki at about 3 pm and informed about the said incident to the policemen. Policemen conveyed the information of the said incident from the mobile phone. After 20-25 minutes, some other policemen came at the said police chowki and brought him to the market where all the five accused persons were trying to escape by running away from there. They were chased by the policemen and subsequently they were also arrested. Looted cash and arms were recovered from the accused persons, which were sealed on the spot. When they were being chased by the policemen, the accused persons had also fired on the policemen. Police had also answered the fire in which one accused person became injured. Thereafter he went along with a policeman at the place where his car was parked. That policeman brought the said car to Kaladhungi police station by towing it with the help of his vehicle. He was also medically examined. This witness has proved the report as Ex. Ka-10 which was lodged by him. This witness also could not be shaken despite lengthy cross-examination by the defence counsel.

20. PW7 Madho Ram has stated that on 9.8.2005 he was posted as Head Moharrir in PS Kaladhungi. On that day, at about 12.39 pm, Branch Manager of

Kamola Branch of Bank of Baroda had informed in the police station on telephone about the said incident of dacoity. He entered this information in the GD Rapat No. 18, which is Ex. Ka-11 and vide this GD Rapat No., the police party went to the place of occurrence. He has further stated that on the same day he had prepared the chick FIR Ex. Ka-12 on the basis of report lodged by PW1 JS Bhandari. He also made the necessary entries in the GD, copies of which are Ex. Ka-13, Ka-14 and Ka-15. He has also prepared the chick FIR Ex. Ka-16 on the basis of the report lodged by PW6 Nadir Miyan. He also made the necessary entries in the GD, copy of which is Ex. Ka-17.

21. PW8 CD Pant, Circle Officer has corroborated the statement made by PW3 Station Officer Ravi Tyagi, the I.O. of the case and also an eyewitness of the arrest of the accused persons.

22. PW9 Om Prakash Rajpoot has stated that on 14.9.2005 he was posted as SI in Kotwali Almora. He taken over the investigation of this case from PW3 Ravi Tyagi on the orders of IGP, Kumaon vide his letter dated 29.8.2005. After completing the investigation, he filed the chargesheet Ex. Ka-18 against the accused appellants and the co-accused (trial against whom was abated). He also filed the chargesheet Ex. Ka-19 against the accused appellants and the co-accused u/s 147, 148, 149, 307 IPC and Section 2/3 of the Gangsters Act. He filed the chargesheet Ex. Ka-20 u/s 4/25 of the Arms Act against the accused appellant Rahul Singh Negi @ Rocky. He also filed the chargesheet u/s 25 of the Arms Act against the accused appellants Raju Pal, Jai Prakash and Sanjay Kumar, which are Ex. Ka-24, Ka-25 and Ka-26 respectively. He had also taken the prior sanction of the DM, Nainital to prosecute the accused appellants Raju Pal, Jai Prakash and Sanjay Kumar and proved these permission letters as Ex. Ka-21, Ka-22 and Ka-23 respectively.

23. PW10 Surendra Singh Samant has stated that on 10.8.2005, he was posted as In-charge of Transport Nagar Chowki of PS Haldwani. The investigation of the Case Crime No. nil of 2005 u/s 147, 364, 307 IPC after being registered as PS Kaladhungi was sent for investigation to PS Haldwani and the investigation of this case was entrusted to him. During the course of investigation, he inspected the place of occurrence and place of recovery of the car bearing registration No. DL-6CD-7916 and prepared the site plans Ex. Ka-27, Ka-28 and Ka-29. He recorded the statements of the witnesses and after completing the investigation, he filed the chargesheet Ex. Ka-30 against the accused appellants and the co-accused (trial against whom was abated).

24. PW11 Dr. US Adhikari has stated that on 10.8.2005, he had medically examined PW6 Nadir Miyan at E.M.O. Base Hospital, Haldwani and thereafter prepared the medical report Ex. Ka-31. He had noted three injuries on the body of Nadir Miyan. All the injuries were simple in nature and were 1 to 1 1/2 days old. These injuries could have been inflicted by some blunt object like fists and kicks.

25. Thereafter, statements of each of the accused appellants were recorded u/s 313 of Cr.P.C. The oral and documentary evidence were put to them in question form, who denied the allegations made against them and stated that they have been falsely implicated in the case. However, they did not produce any documentary or oral evidence in defence.

26. Learned Counsel for all the accused appellants argued that they do not want to challenge the conviction of the accused appellants and the substantive sentences imposed on each of the accused appellants. They only submitted that the fine imposed on each of the accused appellants is on the higher side and looking to their poor economic condition, the same requires to be modified appropriately.

27. Even otherwise, the conviction of each of the accused appellants is proved beyond reasonable doubt in view of the reasons being assigned hereunder:

(i) That PW1 JS Bhandari, Branch Manager, Kamola Branch, Bank of Baroda has given an eyewitness account of the incident of bank dacoity. He has stated that on 9.8.2005 at about 12.30 pm, three miscreants entered inside his branch. At that time, he was talking to Block Development Officer, Kotabag and his subordinates. One of the miscreants came near him and said "hands up" by pointing a pistol. At the same time, two other miscreants passed behind him and gone towards the cabin of Cashier. One miscreant covered the Daftary and another miscreant entered inside the cabin of Cashier and asked him to stand-up by saying "hands up" and after putting the pistol on the neck of Cashier, he looted all the cash from the drawer and gave it to his another associate who was outside the cabin and was covering the Daftary. At the same time, the fourth miscreant covered the customers in front of the cabin. At the time of leaving the bank, these miscreants disconnected the telephone by cutting the telephone wire. They also looted Rs. 4000/- from the pocket of Daleep Singh, Daftary. They also snatched the purse of Cashier, Block Development Officer, ADO Sri Mewari and also took the mobile phone from the BDO and went outside the bank. Soon after leaving the miscreants, the alarm was raised. When the complainant came outside, he came to know that one more miscreant, who was an associate of these dacoits had covered the Painter Sandeep Kumar (PW4), who was working outside the bank. That Painter told him that the miscreants had gone towards Naya Gaon by a vehicle. Thereafter the complainant informed Kaladhungi police station and thereafter to Nainital Police Department from a nearby PCO. He also informed to the higher authorities of the bank. After comparing all the cash, he found that those miscreants had looted Rs. 2,41,405/-. This witness has identified all the accused appellants in sub-jail, Haldwani when the identification parade was held on 5.10.2005 as he had seen them at the time of dacoity in the bank on 9.8.2005 and in between this period, he had not seen the accused persons anywhere.

(ii) That the statement of PW1 JS Bhandari finds corroboration from the statements of other two eyewitnesses i.e. PW2 Pooran Chand Pandey, Cashier

and PW4 Sandeep Kumar, Painter. They could not be shaken in their cross-examination. These witnesses have also identified the accused appellants in sub-jail, Haldwani when the identification parade was held on 5.10.2005 and stated that they had seen the accused appellants at the time of dacoity in the bank on 9.8.2005 and in between this period, they had not seen the accused appellants anywhere.

(iii) That PW3 Ravi Tyagi is the witness of recovery and had also carried out the investigation until it was transferred to PW9 Om Prakash Rajpoot. This witness has stated that on 9.8.2005, at about 12.39 pm, PW1 JS Bhandari had telephonically informed him about the said dacoity committed in his branch by the accused appellants and the co-accused (trial against whom was abated). On this information, he came at the said branch along with the police force. Circle Officer, Ramnagar and SSP also came at the place of occurrence along with the police force. On the directions of higher authorities, they came towards the triangle of Naya Gaon at about 3 pm in search of the looted cash and articles and the accused persons. Constable Rajendra Singh from Kotabag police chowki informed on mobile that the driver of the vehicle which was used in the said crime had come to that police chowki and told him that the bank dacoits were located in Kotabag. Thereafter they went to Kotabag where Constable Rajendra Singh met them and told that those bank dacoits were staying in the hotel of Rana. Driver Nadir (PW6) was also with him. Thereafter two police parties were formed on the directions of SSP. One party was being led by CO, CD Pant (PW8) while second party was being led by SSP Alok Sharma. When the police parties reached near the said hotel, the dacoits having come to knew about them, ran away from the said hotel towards the forest. They were chased by the police parties. The dacoits fired from the tamancha. Thereafter Chandan Singh, the Gunner of CO, CD Pant fired twice from his carbine on the miscreants and one bullet hit one of the miscreants, which created panic amongst the miscreants and all of them were arrested by the police at about 3.45 pm on the same day. From the possession of co-accused Mohan Paliwal, one tamanacha of 12 bore loaded with a khoka was recovered and from the right pocket of his pant, two live cartridges and from the left pocket of his pant, one bundle of Rs. 500 note and Rs. 100 note each i.e. total Rs. 60,000/- were recovered. From the possession of Raju Pal, one tamancha of 315 bore loaded with one live cartridge was recovered. Four bundles of Rs. 100 note and one bundle of Rs. 50 note i.e. total Rs. 45000/- were also recovered from both the right pocket of his pant. From the possession of third miscreant Jai Prakash, one tamancha of 315 bore with one loaded cartridge. Four bundles of Rs. 100 note and one bundle of Rs. 50 note i.e. total Rs. 45000/- were also recovered from both the pockets of his pant. From the possession of fourth miscreant Sanjay Kumar, one tamancha of 315 bore with one loaded cartridge was recovered. One bundle of Rs. 100 note and seven bundles of Rs. 50 note i.e. total Rs. 45000/- were also recovered from inside his shirt. From the possession of fifth miscreant Rahul Negi @ Rocky, one iron khukhri was recovered. One bag was also recovered from him and from inside

the said bag, Rs. 43,365/- were recovered which were in the denomination of Rs. 1000, Rs. 500, Rs. 100, Rs. 50, Rs. 20, Rs. 10 and Rs. 5. From the said bag, one purse containing the name chit of Rajendra Singh Adhikari, Gram Panchayat Development Officer, Kotabag having Rs. 200/- inside it and the driving license of Rajendra Singh were recovered. Another purse of red colour containing some papers and Rs. 180/- along with driving license of Rahul Negi was also recovered from the said bag. Some clothes of daily use and driving license of Alam Singh Mewari was also recovered from the said bag. All the five accused confessed their guilt and they were arrested at about 3.45 pm. Thereafter fard Ex. Ka-5 was prepared on the spot. This witness has identified the tamancha, one khokha cartridge and two live cartridges recovered from co-accused Mohan Paliwal as Ex. 1 to Ex. 4 respectively. He also identified one tamancha and one cartridge recovered from accused appellant Raju Pal as Ex. 5 and Ex. 6 respectively, one tamancha and one cartridge recovered from accused appellant Jai Prakash as Ex. 7 and Ex. 8 respectively, one tamancha and one cartridge recovered from the accused appellant Sanjay Kumar as Ex. 9 and Ex. 10 respectively and khukhri as Ex. 11 which was recovered from the accused appellant Rahul Singh Negi. He has also identified the bundles of note recovered from the accused appellant and the co-accused as Ex. 12 to Ex. 38 and driving license of Rahul Singh Negi as Ex. 39, driving license of Mewari as Ex. 40 and purse of Rajendra Singh as Ex. 41. This witness has identified the khokha cartridge recovered from the place of arrest as Ex. 42. Despite lengthy cross-examination by the defence Counsel, this witness could not be shaken in his cross- examination. Statement of this witness is reliable, believable and inspire the confidence.

(iv) That the statement of PW3 Ravi Tyagi is fully corroborated by the statement of PW8 Circle Officer, CD Pant, who was cross-examined at length by the defence Counsel but nothing has come out in his testimony which may create any doubt about his deposition.

(v) That PW6 Nadir Miyan is the independent and an injured witness of this case who has witnessed this incident from the very beginning till the end. He was the driver of Maruti car used in the crime and has supported the prosecution case in toto. This witness has stated that in the year 2005, he was the driver in the Nainital District of Maruti 800 car bearing registration No. DL-6CD-7916. Farukh was the owner of the said car. On 8.8.2005 he reached Bhotia Parao Taxi Stand at about 1.30 pm, where five people came to him. Three of them sat inside the car who were brought by taxi driver Shabu. Rs. 300/- was agreed upon for dropping them to Rudrapur. Two people boarded on the said car at Kaladhungi triangle. Thereafter they proceeded towards Rudrapur. After travelling 4-5 kilometres, these people asked him to stop the car on the pretext that they wanted to urinate. As soon as he stopped the car, co-accused Mohan Paliwal (trial against whom was abated) came towards the driving seat and pointed a tamancha on his head and asked him to act as per his directions, else he would be killed. Thereafter he was made handcuffed and was forced to sit on the rear seat. Co-accused Mohan Paliwal started to drive the car. When he asked as to

why they were doing so, then he was beaten by Mohan Paliwal and Rocky by fists. Thereafter this witness lost his consciousness. He regained his consciousness on the kaccha rasta (uneven and rough road) in the remote of Rudrapur. Thereafter they had taken the car towards a dam and spent the night in the forest. On the next morning, they returned to the dam. At about, 10-10.30 am, they came at a bank in Bajpur. They wanted to commit dacoity in the said bank but left this idea when two policemen arrived there in a bike. Thereafter they proceeded towards Kamoal Bank where they reached at 12.30 pm. He was handcuffed and was forced to sit in the said car. Four accused went inside the bank while the fifth was keeping a vigil on the painter outside the bank. After 5-7 minutes they returned to the car and untied his legs and hands. Thereafter they pointed tamacha on his head and he was forced to drive the car. He was asked to move the car very fast else he would be shot. They were having money when they came out from the bank. They divided the said money in the car amongst themselves. In the way, Chamber-Y of the car which contained the engine oil broke down and thereafter these miscreants parked the car inside the forest and he was also forced to come out from the car. All these five miscreants brought him 20-25 steps above on the hill. Accused appellant Raju Pal fired on him but he escaped narrowly and ran away from the said place and reached at the Kotabag police chowki at about 3 pm and informed about the said incident to the policemen. Policemen conveyed the information of the said incident from the mobile phone. After 20-25 minutes, some other policemen came at the said police chowki and brought him to the market where all the five accused persons were trying to escape by running away from there. They were chased by the policemen and subsequently they were also arrested. Money and arms were recovered from the accused persons, which was sealed on the spot. When they were being chased by the policemen, the accused persons had also fired on the policemen. Police had also answered the fire in which one accused person became injured. Thereafter he went along with a policeman at the place where his car was parked. That policeman brought the said car to Kaladhungi police station by towing it from his vehicle. He was also medically examined. He also could not be shaken despite lengthy cross-examination by the defence counsel.

(vi) That statement of PW6 Nadir Miyan finds corroboration from the statement of PW11 Dr. US Adhikari, who had medically examined him on 10.8.2005 and has further stated that these injuries could be caused by some blunt object like fists and kicks and was one to one and half day's old.

(vii) That PW5 Leeladhar Ruwali, Special Executive Magistrate, Nainital, who had carried out the identification parade of all accused appellants and the co-accused one by one in the sub-jail, Haldwani by PW1 JS Bhandari, PW2 Pooran Chand Pandey, Daleep Singh and PW4 Sandeep Kumar. He has stated that every accused person was made to stand amongst ten persons in the line which were of the similar built. All the specific signs of identification of the accused persons were hidden and they were covered up to the chest by a blanket. He has proved the performa No. 55 as Ex. Ka-9 and stated that all the accused appellants and

the co-accused were identified by PW1 JS Bhandari, PW2 Pooran Chand Pandey, Daleep Singh and PW4 Sandeep Kumar.

(viii) That the incident took place at 12.30 pm on 9.8.2005 and the incident was immediately telephonically conveyed to PS Kaladhungi and thereafter the FIR was also lodged at 1.05 pm and the distance of the police station from the place of occurrence is about 9 kms. Therefore, FIR was promptly lodged.

(ix) That the dacoity was committed in the bank between 12.30 to 12.40 pm on 9.8.2005 and the all the accused persons were arrested by the police on the same day at 3.45 pm and all the looted cash and articles were immediately recovered from their possession at the place of arrest itself. Thus, the prosecution story is proved beyond any shadow of doubt.

(x) That it is also well-proved that the accused appellants and the co-accused (trial against whom was abated) collectively formed a "gang" as defined u/s 2(b) of the Gangsters Act with the object of gaining undue temporal, pecuniary, material and other advantages by violence, or threat or show of violence, or intimidation, or coercion, or otherwise with the object of disturbing public order and indulged themselves in antisocial activities which are punishable u/s 3 of the Gangsters Act.

28. In view of my foregoing discussion of evidence and for the reasons recorded above, prosecution has successfully proved its case against the accused appellants beyond reasonable doubt for the offences punishable u/s 2/3 of the Gangsters Act and Section 147, 365, 397, 412 IPC. Case against the accused appellants Jai Prakash, Raju Pal and Sanjay Kumar is also proved beyond reasonable doubt for the offence punishable u/s 25 of the Arms Act and against the accused appellant Rahul Singh Negi @ Rocky u/s 4/25 of the Arms Act. Therefore, learned trial court has rightly recorded the conviction of each of the accused appellant for the aforesaid offences.

29. Learned Counsel for the accused appellants argued that the fine imposed on each of the accused appellants are on the higher side. It was further submitted on behalf the accused appellants that the accused appellants are very young youths who are illiterate, very poor and belong to the lower strata of society. He further submitted that all the looted amount and articles were recovered on the very date of incident and nobody received any grievous injury in the said incident and the injuries sustained by PW6 Nadir Miyan were simple in nature and the accused appellants are in jail since the date of incident and, therefore, the fine imposed on each of accused appellants are on the excessive side and the same may be appropriately reduced keeping these factors in view. I find substance in the submission of learned Counsel for the accused appellants.

30. Keeping the above factors in mind, I am of the view that the fine imposed on each of the accused appellants u/s 2/3 of the Gangsters Act, Section 365, 397, 412 IPC and Section 4/25 and Section 25 of the Arms Act are on the excessive side and the same needs to be reduced appropriately to meet the ends of justice,

which are being reduced as below:

(a) Section 2/3 of the Gangsters Act: Each of the accused appellants has been convicted under this Section and each of them has been sentenced to undergo three years R.I. along with fine of Rs. 10,000/-, in default to undergo three months simple imprisonment. The conviction and sentence of three years RI under this Section awarded to each of the accused appellants is maintained. However, amount of fine i.e. Rs. 10,000/- is reduced to Rs. 5000/- each.

(b) Section 147 IPC: Each of the accused appellants has been convicted under this Section and each of them has been sentenced to undergo two years" R.I. The conviction and sentence is maintained.

(c) Section 365 IPC: Each of the accused appellants has been convicted under this Section and each of them has been sentenced to undergo seven years" R.I. along with fine of Rs. 25,000/-, in default to undergo six months simple imprisonment. The conviction and sentence of seven years" RI under this Section awarded to each of the accused appellants is maintained. However, amount of fine i.e. Rs. 25,000/- is reduced to Rs. 3000/- each.

(d) Section 397 IPC: Each of the accused appellants has been convicted under this Section and each of them has been sentenced to undergo seven years" R.I. along with fine of Rs. 50,000/-, in default to undergo one year"s simple imprisonment. The conviction and sentence of seven years" RI under this Section awarded to each of the accused appellants is maintained. However, amount of fine i.e. Rs. 50,000/- is reduced to Rs. 3000/- each.

(e) Section 412 IPC: Each of the accused appellants has been convicted under this Section and each of them has been sentenced to undergo seven years" R.I. along with fine of Rs. 25,000/-, in default to undergo six months simple imprisonment. The conviction and sentence of seven years" RI under this Section awarded to each of the accused appellants is maintained. However, amount of fine i.e. Rs. 25,000/- is reduced to Rs. 3000/- each.

(f) Section 25 Arms Act: Accused appellants Jai Prakash, Raju Pal and Sanjay Kumar have been convicted under this Section and each of them has been sentenced to undergo three years" R.I. along with fine of Rs. 10,000/, in default to undergo three months simple imprisonment. The conviction and sentence of three years" RI under this Section awarded to aforesaid accused appellants is maintained. However, amount of fine i.e. Rs. 10,000/- is reduced to Rs. 1000/- each.

(g) Section 4/25 Arms Act: Accused appellant Rahul Singh Negi @ Rocky has been convicted under this Section and is sentenced to undergo three years" R.I. along with fine of Rs. 10,000/, in default to undergo three months simple imprisonment. The conviction and sentence of three years" RI under this Section awarded to aforesaid accused appellant is maintained. However, amount of fine i.e. Rs. 10,000/- is reduced to Rs. 1000/-.

31. Thus, the amount of fine awarded to each of the accused appellants is modified as indicated above and it is further directed that in case of default of payment of fine, the defaulter accused appellant shall undergo three months' rigorous imprisonment under each of the aforesaid Sections which shall run concurrently.

32. In the result, the appeal is partly allowed. The conviction recorded against each of the accused appellants vide common judgment and order dated 31.5.2007 passed by the Special Judge (Gangsters Act)/Sessions Judge, Nainital in consolidated Special Sessions Trial No. 46/2005, State v. Mohan Singh Paliwal, Special Sessions Trial No. 53/2005, State v. Mohan Singh Paliwal, Special Sessions Trial No. 36/2005, State v. Jai Prakash, Special Sessions Trial No. 55/2005, State v. Raju Pal, Special Sessions Trial No. 56/2005, State v. Jai Prakash, Special Sessions Trial No. 57/2005, State v. Sanjay Kumar and Special Sessions Trial No. 58/2005, State v. Rahul Singh Negi @ Rocky is hereby upheld. However, the sentences awarded to each of the accused appellants is modified to the extent as indicated in preceding paragraphs of this judgment and order and the impugned judgment and order of the trial court is modified accordingly. The substantive sentences shall run concurrently and the sentence awarded to each of the accused appellants in default of payment of fine shall also run concurrently. Accused appellants are in jail. They shall serve out the aforesaid sentence. However, the period during which they remained in jail during investigation, trial and appeal shall be adjusted as per rules after verifying the same from the records.

33. A copy of this judgment and order be sent to the trial court. Let the trial court record be also sent back.