

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

1. CRA-S-1005-SB of 2010 (O & M)
Date of decision : 5.2.2015

Nadim Mohd.Appellant

v.

State of HaryanaRespondent

2. CRA-S-577-SB of 2009 (O & M)

Ravi Kant @ RinkuAppellant

v.

State of HaryanaRespondent

3. CRA-S-1200-SB of 2009 (O & M)

Chand KhanAppellant

v.

State of HaryanaRespondent

CORAM : HON'BLE MRS. JUSTICE RAJ RAHUL GARG

Present : Mr. J.S. Hooda, Advocate, for appellant Nadim Mohd.
Ms. Aditi Girdhar, Amicus Curiae, counsel for appellant Ravi Kant
@ Rinku
Mr. Parveen Kataria, Advocate, for appellant Chand Khan

Ms. Kirti Singh, DAG, Haryana

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the digest? Yes/No

Raj Rahul Garg, J.

This order shall dispose of three appeals bearing No. CRA-S-1005-SB-2010, CRA-S-577-SB-2009 and CRA-S-1200-SB-2009 as all these appeals arise out of one judgment.

The appellants were charge sheeted for committing an offence punishable under Section 412 IPC for dishonestly retaining silver jewellery and Nokia mobile phone belonging to Puran Lal, complainant, knowing or having reason to believe that the same were obtained after commission of dacoity. To the charge, the appellants pleaded not guilty and claimed trial.

After taking prosecution evidence and recording statements of the accused under Section 313 Cr.P.C. and after hearing learned counsel for the parties and State, the learned trial Court held the appellants guilty for committing an offence punishable under Section 412 IPC vide judgment dated 24.12.2008 and sentenced to rigorous imprisonment for 7 years and to pay a fine of ₹ 5000/-each with default clause to undergo rigorous imprisonment for 6 months vide order of even date.

The case against the appellants is this that on 12.4.2008 ASI Mohd. Iliyas, CIA Staff, Palwal, received secret information against the appellants while he along with other police officials was present at Bamnikhera-Phoolwari Bus stand, in connection with the patrolling and detection of crime. The information was to the effect that 2-3 days ago, Puran Lal, goldsmith, was robbed on Akbarpur G.T. Road near Chhatta, (UP) and jewellery along with mobile phone from his possession were looted by Ravi Kant, Nadim Mohd. and Chand Khan. All the aforesaid persons were going to Delhi to sell those robbed articles on that day by car, bearing Registration No. DL-4CF-2872. The secret informer

also informed the police that the appellants were coming from the side of village Phoolwari and in case, naka is laid, they can be apprehended. Upon this information, raiding party was formed. Naka was laid at Phoolwari turn. After some time, the aforesaid car was seen coming from village Phoolwari side. On getting signal to stop the car from the police, the driver of the car tried to run away along with vehicle. However, all of them were apprehended with the help of police officials. On enquiry, the car driver gave his name as Ravi Kant. The persons who were sitting in the rear seat, gave their names as Nadim and Chand Khan. Both of them were having a bag in between them. On search of the bag, silver jewellery along with mobile phone make Nokia 2610 were recovered. "Puran Lal Soni Palwal" was written on the bag. On counting of silver articles, it was found that those were 61 tagris, 113 pajebis (anklets). On weighment, the silver jewellery came to 17.172 Kgs. The aforesaid recovered silver jewellery as well as Nokia mobile phone were taken into police possession vide memo Ex.PA. HC Rambir and EHC Hakmuddin signed it as witnesses. Car was also taken into police possession vide the same recovery memo. Site plan Ex.PF of the place of recovery was prepared with correct marginal notes. Ruka Ex.PG was sent to the police station for registration of the case whereupon, formal FIR was recorded. Statements of witnesses were recorded. Accused were arrested. Case property was deposited in the malkhana.

On 13.4.2008, Puran Lal, goldsmith, was called telephonically to Police Station CIA. The recovered articles were got identified from the complainant Puran Lal vide memo Ex.PD, which bears the signature of Puran Lal and HC Rambir as witnesses. Bill regarding purchase of jewellery Ex.P1 and that of Nokia phone Ex.P2 were produced before the police and the same

were taken into police possession vide memo Ex.PE. On 26.4.2008 scaled site plan of the spot was got prepared by Sarwan Kumar, Draftsman. The scaled site plan is Ex.PF. After completion of necessary investigation, the appellants were challaned in this case.

The appellants have assailed the aforementioned impugned judgment of conviction dated 24.12.2008 and order on sentence of the even date by way of filing three appeals separately.

I have heard Mr. J.S. Hooda, Advocate, for appellant Nadim Mohd., Ms. Aditi Girdhar, Amicus Curiae, counsel for appellant Ravi Kant @ Rinku, Mr. Parveen Kataria, Advocate, for appellant Chand Khan and Ms. Kirti Singh, DAG, Haryana for the State and have appraised the entire material coming on record.

In order to prove offence under Section 412 IPC, the prosecution has to establish beyond reasonable doubt that the case property was the subject matter of dacoity, which the appellants had received either by way of commission of dacoity or from a person, whom he knows or has reason to believe to belong or to have belonged to a gang of dacoits.

It was argued by learned counsel for the appellants that for convicting the appellants for the offence under Section 412 IPC, it has to be shown that the case property is the subject matter of dacoity. The offence of dacoity is said to have committed by 5 or more persons. Unless the number is five or more, the offence of dacoity cannot be said to have committed. In this regard, learned counsel for the appellants have drawn my attention towards copy of the FIR No. 91/2008 under Section 392 IPC pertaining to Police Station Kot Chhatta, Mathura (Ex.PF). As per Mohd. Iliyas, Investigating Officer,

PW5, secret information was to the effect that about 2-3 days ago, Puran Lal, goldsmith, was robbed on Akbarpur G.T. Road, near Chhatta and jewellery and his mobile phone were looted by Ravi Kant, Nadim and Chand Khan. Puran Lal, PW3, categorically stated that on 8.4.2008 at about 6.30 P.M., he had gone to Mathura by Santro car. After purchasing silver ornaments from Mathura, he was coming back and when they had travelled for about 20-25 Kilometers and reached near Sanjay Engineering College, 3-4 persons appeared before their car and got stopped their car and thereafter, they robbed him and had also made good their escape along with their Santro car. Ex.PF, FIR speaks about the aforesaid incident. Puran Lal son of Chandagi Ram is the complainant in that case. That FIR was registered for committing of an offence punishable under Section 392 IPC. In this FIR and even when PW3 appeared as witness in this case stated that 3-4 persons were involved in the incident of robbing him of silver jewellery and Nokia mobile phone. Nowhere it was said that the robbers were 5 or more. Even the FIR itself is regarding offence of robbery and not of dacoity. Under these circumstances, the essential ingredients of Section 412 IPC are not fulfilled and thus, no offence under Section 412 IPC can be said to be made out and thus, in this regard the contention of learned counsel for the appellants carries weight.

It was next argued by learned counsel for the appellants that this case is nothing but planted one. Documents; Ex.DA and Ex.DB shows that the recovery in the case, registered on the basis of Ex.PF, was effected on 11.6.2008 whereas this case pertains to the recovery allegedly effected on 12.4.2008. If the recovery was effected in this case on 12.4.2008 then the showing of recovery in the original case dated 11.6.2008 makes both the cases doubtful. It

was further argued that in the ruka Ex.PG, details of ornaments, recovered from the possession of the accused, does not find mention though, subsequently, in the recovery memo Ex.PA, it was mentioned that 61 pieces of tagris and 113 pajebis (anklets) were recovered yet Ex.P1 again, does not give the details of silver ornaments purchased by Puran Lal. Even the receipt is of the firm of the complainant and this very document goes to show that M/s Puran Lal Raj Kumar Saraf of Main Bazar, Palwal, had sold silver ornaments, weighing 17.172 Kgs., to his own partner i.e. Puran Lal. As such, this receipt is of no meaning and clearly shows that the entire prosecution case is nothing but a made up affair.

The above argument of learned counsel for the appellants also carries weight. PW3, Puran Lal, deposed that on 8.4.2008 he had gone to Mathura from Palwal for purchasing silver ornaments and after purchasing the same, while he was returning, then he was robbed by the occupants of a car. The complainant failed to place on record any receipt or bill showing the purchase of silver ornaments by him from Mathura. Ex.P1 is the bill pertaining to M/s Puran Lal Raj Kumar Saraf, Main Bazar, Palwal, which apparently is a firm of the complainant. So, the complainant has produced the bill of his own firm which does not show that he, in fact, purchased silver ornaments from Mathura. Even bill is dated 4.4.2008 and incident is dated 9.4.2008 in which silver jewellery of complainant was robbed. Thus, bill Ex.P1 does not match the incident. Had silver jewellery been purchased on 9.4.2008 then bill would have been of that date. Only then the incident of robbery could have taken place. Secondly, the details of the ornaments does not find mention in Ex.P1. Had Puran Lal actually purchased silver ornaments from Mathura and obtained bill

or cash memo in that connection, the same could well be placed on record. Non- production of the same, further creates doubt regarding genuineness of the prosecution case.

Besides above, Puran Lal did not identify the case property at the time of its recovery. As per Investigating Officer, PW5, the silver ornaments and Nokia mobile phone were recovered from the possession of the appellants on 12.4.2008. Puran Lal, goldsmith, was telephonically called in Police Station CIA on 13.4.2008. PW 5 deposed that, at that time the recovered articles were got identified from complainant Puran Lal, vide memo Ex.PD. If we peruse memo Ex.PD, there is over writing in the date, which clearly shows the mind of Investigating Officer as to if the date to be put is 12.4.2008 or 13.4.2008. Apart from it, there is no material on the file to show that after recovery of silver ornaments, those were made into parcels and sealed. There is also no material on the file to show that before getting the case property identified from Puran Lal, it was mixed in the ornaments of the like nature and then Puran Lal identified the silver ornaments as belonging to him. There was also no special mark of identification on the silver ornaments as stated by PW 5, Investigating Officer of the case. He also deposed that the silver jewellery of the nature of the case property and Nokia mobile phone are easily available in the local market.

Under these circumstances, the identification of the silver ornaments as belonging to Puran Lal, by Puran Lal, cannot be said to be done in accordance with law. As such, in this case, the ownership of stolen articles remains unproved on the file. In the absence of the same, no offence under Section 412 IPC can be said to be committed by the appellants.

It was next argued by learned counsel for the appellants that in this case, no independent person was joined in the investigations. HC Rambir, PW1, deposed that several public persons had passed through the said naka but all of them had expressed their inability to join the investigation. PW5, Mohammad Iliyas also deposed that none from the public was joined in the investigation as none was ready to join the investigation despite requests and he cannot tell the names of those who have refused to tell their names. He further stated that he did not initiate any action against any of them. As such, when the public witnesses were available and if those were not joined in the investigation nor any action was taken by the Investigating Officer against them, this fact itself makes the prosecution case doubtful. Had the independent witnesses joined in the investigation, they would have disclosed the prosecution case. Under the facts & circumstances of the present case, it was incumbent upon the Investigating Officer to join the independent witnesses in the investigation.

Of course, now-a-days, no one wants to help the Investigating Officer in conducting of investigation. People by and large, do not wish to stand as witness, may be for the reason they do not want to earn enmity of the other side or they do not want themselves to be put to any kind of hardship. Joining of independent witnesses in the investigation, if available, is very much desired by the law yet only on account of non joining of independent witnesses, the otherwise fully proved prosecution case, cannot be brushed aside. The present case is not the one which is said to be fully proved case. In the case in hand, had prosecution joined independent witness, the genuineness of the prosecution case would have become known. As such, for non-joining of independent witness, when available, also makes the prosecution case doubtful.

No other point was urged before me.

For the aforesaid reasons as the prosecution has failed to bring home the guilt of the accused beyond reasonable doubt, therefore, by allowing the present appeals and setting aside the impugned judgment of conviction dated 24.12.2008 and order on sentence of the even date, recorded by the learned trial Court, the appellants are acquitted of the charge of which they were facing trial. Their bail bonds stands discharged. Amount of fine, if any deposited, be refunded to the appellants.

(RAJ RAHUL GARG)
JUDGE

5.2.2015
Ashwani