

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

Date of Decision: August 05, 2015
Criminal Appeal No. S-3213-SB-2010

Allaudin and another ... Appellants

Versus

State of Haryana ... Respondent

WITH
Criminal Appeal No. S-24-SB-2011

Alamgir and others ... Appellants

Versus

State of Haryana ... Respondent

Criminal Appeal No. S-112-SB-2011

Saliya and another ... Appellants

Versus

State of Haryana ... Respondent

AND
Criminal Appeal No. S-113-SB-2011

Jakir Hussain ... Appellant

Versus

State of Haryana ... Respondent

CORAM: HON'BLE MR. JUSTICE MAHAVIR S. CHAUHAN

Present: Shri Ajay Kansal Advocate, for the appellants (in Criminal Appeal No. S-3213-SB of 2010 & Criminal Appeal No. S-113-SB of 2011).

Shri Rahul Vats, Advocate, for the appellants (in Criminal Appeal No. S-24-SB of 2011).

Shri Vipul Jindal, Advocate, for the appellants (in Criminal Appeal No. S-112-SB of 2011).

Shri Vijesh Sharma, Deputy Advocate General, Haryana, for the respondent-State.

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

MAHAVIR S. CHAUHAN, J.

To assail judgment of conviction dated November 20, 2010/order of sentence dated November 22, 2010, whereby learned Additional Sessions Judge, Faridabad (here-in-after referred to as the 'trial court'), while convicting the appellants under Section 412 of the Indian Penal Code, 1860 (here-in-after referred to as the 'IPC'), has sentenced Alamgir, Jakir Hussain, Allaudin, Najrul, Muhammad Abbas, Miraj aka Tunda, Yasin aka Imran and Miraj aka Lambu to rigorous imprisonment for seven years with fine amounting to Rs. 10, 000/- and in default of payment of fine to further imprisonment for one year, each; and Saliya and Beauty to rigorous imprisonment for a term of five years with fine amounting to Rs. 7, 500/- and in default of payment of fine to further imprisonment for a term of nine months, each, and to seek their acquittal appellants have brought the instant four appeals which, in view of commonality of facts and circumstances and the law, are proposed to be disposed of by this common judgment being penned down in Criminal Appeal No. S-3213-SB of 2010, Allaudin and another versus State of Haryana.

Fact situation:

02. According to the prosecution, at or around 03.00 a.m. on August 28, 2008, when Complainant Mahender Parkash Sharma (PW1) and his wife

Kaushal Sharma were asleep in their bedroom, seven/eight persons, in the age group of twenty five/twenty six, with muffled faces, one having good and others mediocre physique, barged into the room. One of them was carrying a revolver, another a country made pistol (Katta) while others were wielding knives. After tying their hands and feet with a piece of cloth, they asked Mahender Parkash Sharma (PW1) and his wife Kaushal Sharma where had they kept the cash; snatched one gold chain, and one gold ring from Kaushal Sharma besides taking away two mobile phones, a pair of gold bangles, three ladies gold rings, a gold chain, a pair of gold ear tops, and cash amounting to Rs. 8000/-; and while leaving threatened them (Mahender Parkash Sharma and his wife Kaushal Sharma) against raising an alarm. Complainant and his wife, somehow, untied themselves and telephoned their neighbour Narender Singh Chauhan who called the police. On coming out of his home, complainant learnt that a similar occurrence had taken place in the house of N.R. Choudhary (PW2).

Investigation:

03. Assistant Sub Inspector Krishna Devi (PW20) (later promoted as Sub Inspector), on receipt of information of the occurrence reached the spot where Mahender Parkash Sharma made a written complaint, Exhibit PA, before her whereupon a formal First Information Report, Exhibit PA/2 (here-in-after referred to as the 'FIR') came to be recorded by ASI Kartar Singh at Police Station, SGM Nagar (Faridabad). Investigating Officer got the spot photographed; got chance prints lifted through Fingerprints Expert, SI Hukam Singh, and drew a visual site Plan (Exhibit PJJ) of the place of occurrence. During investigation, N.R. Choudhary (PW2) handed over to the Investigating Officer a written complaint (Exhibit PJ) stating that a

similar occurrence took place in his house also at or around 03.30 a.m. on August 28, 2008, as also a list of stolen articles. From near the place of occurrence Investigating Officer recovered two pairs of shoes (Exhibits P1 to P4) of unknown persons, as also bill of mobile phone make Samsung and two torn pieces of a white coloured sheet of cloth (Exhibits P5 and 6) which were used by the miscreants to tie the complainant and his wife.

04. Appellants were arrested. Weapons carried by them at the time of the two occurrences were recovered. On being interrogated, while in police custody, they suffered disclosure statements and pursuant thereto got recovered the stolen articles and cash. Kaushal Sharma wife of Mahender Parkash Sharma and Shivani Choudhary (PW3) identified the articles stolen from their houses.

05. On completion of investigation and attendant formalities, a report in terms of sub-section (2) of Section 173 of the Code of Criminal Procedure, 1973 (here-in-after referred to as 'the Code') was prepared and was presented before the learned jurisdictional Magistrate.

Proceedings before the trial court:

06. After the case was committed to the Court of Session, learned trial court appraised the report and its enclosures, heard the prosecution and the defence, formed an opinion that there were grounds for presuming that the appellants had committed an offence punishable under Sections 395, 397 and 412, IPC, Section 14 of the Foreigners Act, 1946 (here-in-after referred to as the '1946 Act') and Section 12 of the Passport Act, 1967 (here-in-after referred to as the '1967 Act') and accordingly charged the appellants who pleaded not guilty to the charge and claimed to be tried.

07. During trial, prosecution examined Mahender Parkash Sharma

(PW1), N.R. Choudhary (PW2) and Shivani Choudhary (PW3) in proof of the two occurrences and identification of the stolen articles besides examining SI Krishna Devi (PW20), ASI Subhash Chand (PW16), SI Balbir Singh (PW14), SI Bhim Singh (PW22), ASI Rajender Singh (PW4), ASI Satbir Singh (PW5), HC Mohammed Rafiq (PW6), Draughtsman Sharwan Kumar (PW7), ASI Ravinder Kumar (PW8), HC Bir Singh (PW9), HC Ashok Kumar (PW10), Constable Mukesh Kumar (PW11), ASI Babu Ram (PW12), HC Mukesh Kumar (PW13), Mahesh Mani (PW15), HC Harbir Singh (PW17), Constable Ranbir Singh (PW18), Constable Satinder (PW19), and Inspector Rakesh Kumar (PW21) in proof of various phases and facets of investigation.

08. The incriminating circumstances brought on record in the evidence of prosecution, when put to the appellants in terms of Section 313 of the Code, were denied by them and plea of their innocence and false implication was put up.

09. Fatima wife of appellant Miraj aka Tunda was examined by the defence as DW1 to state that appellant Miraj aka Tunda hailed from West Bengal and was picked up by Delhi Police from his residence.

10. Learned trial court, on hearing the prosecution and the defence, reached a conclusion that the prosecution was able to establish guilt of the appellants punishable under Section 412, IPC, alone and, accordingly, vide judgment dated November 20, 2010/order dated November 22, 2010 acquitted them of the offences punishable under Sections 395 and 397, IPC, Section 14 of the 1946 Act and Section 12 of the 1967 Act and convicted and sentenced them under Section 412, IPC, as here-in-before stated.

In criticism and defence of impugned judgment/order:

11. I have heard learned counsel for the parties besides examining the record of the case.

12. Learned counsel for the appellants have argued with utmost vigour that the appellants having been acquitted of the offences punishable under Sections 395 and 397, IPC, could not be convicted of the offence punishable under Section 412, IPC, necessary ingredient of this Section being dishonest retention of stolen property and finding of the learned trial court in this regard contradicts the finding returned while acquitting the appellants of the offences punishable under Sections 395 and 397, IPC. This contention is sought to be supported by referring to a judgment dated January 14, 2015 passed by this Court in **CRA-S-3153 of 2009, Allaudin aka Badal and others versus State of Haryana.**

13. Learned State counsel, on the contrary, has defended the impugned judgment/order saying that ingredients of Section 412, IPC, have been established beyond reasonable doubt and, therefore, the impugned judgment/order cannot be interfered with. Learned State counsel has also relied upon Illustration (a) appended to Section 114 of the Indian Evidence Act, 1872 (here-in-after referred to as the 'Evidence Act') to contend that recovery of stolen articles from possession of the appellants raises a presumption against them because they have failed to account for the same.

14. No other or further argument has been raised on either side.

Recovery of stolen articles:

15. True, the learned trial court has returned a very definite finding that the prosecution has not been able to prove guilt of the appellants punishable under Sections 395 and 397, IPC, and the State has chosen not to challenge that finding. But it is equally true that the appellants have also not

challenged finding of the learned trial court to the effect that stolen articles have been recovered at their instance pursuant to their disclosure statements, Exhibits PT/1 to PT/8, suffered by them under Section 27 of the Evidence Act, as per details given below:

Sr.No.	Article(s) recovered	Recovery Memo (Exhibit)	Recovered at the instance of	Identified by
01.	Gold ring & Mobile Phone	PU/1	Alamgir	Shivani Choudhary (PW3)
02.	Pair of gold ear tops	PU/2	Jakir Hussain	Wife of Mahender Parkash Sharma (PW1)
03.	Pair of gold ear tops	PU/5	Allaudin @ Badal	Shivani Choudhary (PW3)
04.	Pair of gold ear tops	PU/6	Najrul	Wife of Mahender Parkash Sharma (PW1)
05.	Pair of gold ear tops	PU/7	Mohd. Altaf @ Abbas	Wife of Mahender Parkash Sharma (PW1)
06.	Pair of gold ear tops	PU/4	Miraj @ Tunda	Wife of Mahender Parkash Sharma (PW1)
07.	Gold ring	PU	Yasin @ Imran	Shivani Choudhary (PW3)
08.	Pair of gold ear tops	PU/3	Miraj @ Lambu	Wife of Mahender Parkash Sharma (PW1)
09.	One Kara & one Kangan (Bracelets)	PU/8	Saliya	Shivani Choudhary (PW3)
10.	One bangle & one gold ring	PU/9	Beauty	Shivani Choudhary (PW3)

16. It will be worthwhile to have a short and swift glance at Section 27 of the Evidence Act. The Section says, “Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered may be proved.” The word

“*distinctly*”, which means “*directly*”, “*indubitably*”, “*strictly*”, “*unmistakably*”, has been advisedly used to limit and define the scope of the provable information. The phrase “*distinctly relates to the fact thereby discovered*” is the linchpin of the provision. This phrase refers to that part of the information supplied by the accused which is the direct and immediate cause of the discovery. The reason behind this partial lifting of the ban against non-admissibility of confessions and statements made to the police is that if a fact is actually discovered in consequence of information given by the accused, it affords some guarantee of truth of that part, and that part only, of the information which was the clear, immediate and proximate cause of the discovery. It is also fairly settled by now that the expression “*fact discovered*” includes not only the physical object produced, but also the place from which it is produced and the knowledge of the accused as to this (see *Palukuri Kotayya v. Emperor, AIR 1947 PC 67; Udai Bhan v. State of Uttar Pradesh, AIR 1962 SC 1116* and *Mohd. Inayatullah v. State of Maharashtra, (1976) 1 SCC 828AIR:1976 SC483:1976 SCC(Cri) 199;1976 CriLJ 481*). It, thus, comes out that the appellants had knowledge about the place(s) where the afore-stated articles were kept concealed by them. The recovered articles, undisputedly, were stolen articles and the appellants have not been able to account for the same. This makes necessary a reference to Section 114 of the Evidence Act and Illustration (a) appended thereto. The Section lays down, “The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.” Illustration (a) says, “The Court may presume that a man who is in possession of stolen

goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession.” It has been proved on record by Mahender Parkash (PW1) and N.R. Choudhary (PW2) that the articles referred to above were stolen from their respective houses. As afore-stated, these articles have been recovered at the instance of the appellants and their knowledge about the place(s) of concealment of these articles, perforce, leads to an inference that they were in possession thereof. This brings act of the appellants within the folds of Section 412, IPC, which says, “Whoever dishonestly receives or retains any stolen property, the possession whereof he knows or has reason to believe to have been transferred by the commission of dacoity, or dishonestly receives from a person, whom he knows or has reason to believe to belong or to have belonged to a gang of dacoits, property which he knows or has reason to believe to have been stolen, shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.”

17. Judgment cited on behalf of the appellants (*Allaudin alias Badal and others versus State of Haryana*) is of no help to them because in that case this Court came to a definite conclusion that there was no evidence available on record fastening the accused therein with the recovery of stolen articles. As afore-stated, facts of the case in hand are otherwise.

18. In view of the above, I do not see any reason to interfere with the finding of conviction recorded by the learned trial court.

Quantum of sentence:

19. Faced with the above, learned counsel for the appellants have submitted that the appellants, who are continuing in custody since their

arrest in September 2008, have no criminal history except for the instant case, are the only bread winners for their respective families except appellant Beauty, who is an unmarried girl, and as such deserve leniency as regards quantum of sentence. The submission merits consideration and is accepted.

Conclusion:

20. In view of what has been said and discussed in the foregoing paragraphs, substantive sentence awarded to the appellants is restricted to the period(s) already spent by them in custody. Sentence as regards fine and default clause, however, are maintained and with this modification in the order on quantum of sentence, the appeals fail and are dismissed.

[MAHAVIR S. CHAUHAN]
JUDGE

August 05, 2015
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