

CRA-S-1094-SB of 2004

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

CRA-S-1094-SB of 2004
Reserved on: 10.05.2017
Pronounced on: 22.05.2017

Fateh Singh

....Appellant

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Argued by: -

Ms. Charanjit Kaur, Legal Aid Counsel, for the appellant.
Mr. Sandeep K. Bansal, AAG, Punjab.

RAMENDRA JAIN, J.

By way of instant appeal, appellant- Fateh Singh has challenged the impugned judgment of conviction and order of sentence dated 22.03.2004 passed by the learned Additional Sessions Judge, Fatehgarh Sahib, convicting and sentencing him in the following terms: -

U/s 379 IPC To undergo rigorous imprisonment for two years and to pay a fine of ₹ 500/- and in default thereof, to further undergo rigorous imprisonment for 15 days.

U/s 353 IPC To undergo rigorous imprisonment for two years and to pay a fine of ₹ 500/- and in default thereof, to further undergo rigorous imprisonment for 15 days.

Both the sentences were ordered to run concurrently.

2. Aggrieved against his conviction and sentence, the appellant has preferred the instant appeal.

3. Briefly stated, on 11.07.2001 PHG Balwinder Singh suffered a statement before ASI Devinder Singh (PW-7) to the effect that on that day

CRA-S-1094-SB of 2004

he along with PHG Parkash Singh and SPO Jarnail Singh was on patrol duty in the area of ASI Gurbinder Pal Singh on private scooters. ASI Gurbinder Pal Singh directed complainant PHG Balwinder Singh and SPO Jarnail Singh to reach Brahman Majra Crossing while patrolling through the area of GT Road, Bus Stand and Railway Road. At about 2.30 A.M. when they reached near Teja Singh & Co. Petrol Pump, they noticed a person underneath a PRTC/PTL Bus, while another person was standing besides the bus and one more person was found standing near a truck bearing registration No.PUR-2791. The person, lying underneath the bus, broke the main pipe of diesel tank and pilfered diesel in a five litre plastic can and handed over the same to the person standing besides him, who poured the diesel in the diesel tank of the truck. They were doing all this hurriedly. On noticing the same, he went near them and asked their names. The person, lying underneath the truck, disclosed his name as Ajit Singh son of Kartar Singh, Caste Majbi Sikh, resident of Chuni Khurd, Police Station Bassi Pathana. The person standing besides him, disclosed his name as Dilbagh Singh son of Sher Singh, Jat, resident of Chuni Khurd and the person standing near the truck, who was pouring diesel from the plastic can into the truck, disclosed his name as Fateh Singh, Harijan, resident of Village Chuni Khurd. On asking about pilfering of diesel from PRTC bus, they could not furnish any satisfactory explanation. The complainant and SPO Jarnail Singh, therefore, asked them to accompany them to the Police Station. However, they replied that they would take their truck alongwith them. Ajit Singh started driving the truck towards Police Station while Dilbagh Singh and Fateh Singh sat beside him. SPO Jarnail Singh was following them on his scooter. When the truck reached near the gate of the Police Station, complainant asked the appellant and his accomplices to halt, but Ajit Singh

CRA-S-1094-SB of 2004

sped away the truck and threatened the complainant to kill and throw him in Bhakra Canal. Complainant raised alarm on which Dilbagh Singh and Fateh Singh grappled with him. When the truck was about 20-25 yards short of Bhakra Canal, towards Sirhind on GT Road, Ajit Singh suddenly lost control over the truck and the same went into the ditches on the left side of the road. All the said three persons managed to escape under the cover of darkness. In the meantime, SPO Jarnail Singh came there and both of them tried to locate the said three persons, but to no avail.

4. The above referred statement was sent to the Police Station on the basis of which, formal FIR Ex.P-1 was registered against against the aforesaid persons. Ajit Singh and Dilbagh Singh were arrested on 16.07.2001, while Fateh Singh was arrested on 12.08.2001. After completion of investigation, challan was presented against the aforementioned accused persons for their trial.

5. On being found a prima facie case against the accused persons, the trial Court framed charges against them under Sections 379/364/353/186 IPC, to which they pleaded not guilty and claimed trial.

6. The prosecution in support of its case examined as many as seven witnesses.

7. In their statements recorded under Section 313 Cr.P.C., the appellant and others denied the entire incriminating evidence brought on record by the prosecution against them and pleaded their false implication. In defence, Ajit Singh examined Paramjit Singh as DW-1.

8. On appraisal of evidence adduced by the prosecution on record and hearing learned counsel for both the sides, the learned trial Court

convicted the appellant and Dilbagh Singh as indicated in the earlier part of this judgment.

CRA-S-1094-SB of 2004

9. Learned counsel for the appellant contended that the judgment passed by the learned trial Court holding the appellant guilty of offence punishable under Section 379 and 353 IPC is not sustainable in the eyes of law being based on surmises and conjectures. Learned counsel for the appellant while placing reliance on the judgment of this Court in ***Jit Lal v. State of Haryana, 1995(3) R.C.R.(Criminal) 482*** further contended that all the witnesses cited by the prosecution are police officials and no independent witness has been joined by the prosecution. The appellant could not be convicted solely on the testimony of official witnesses. Learned counsel further contended that the possibility of false implication of the appellant and personal enmity cannot be ruled out as he was not apprehended at the spot. The case of the prosecution is that the appellant grappled with the complainant and the truck in question had fallen in the ditches. However, prosecution has failed to bring on record that the complainant suffered any injury and any damage was caused to the truck in question during the said incident. The case property was never produced in the Court. In the absence of the case property, it is highly improbable to believe that appellant had stolen the diesel. Learned counsel also contended that the appellant is not involved in any other case. He has already undergone sentence for one month. The age of the convict-appellant at the time of commission of alleged crime was around 25 years as is clear from his statement under Section 313 Cr.P.C. and hence, by this time he is around 40 years old. The appellant now is a well grown up and mature person having major children. Under Sections 379 and 353 IPC no minimum punishment is prescribed in the statute. The learned counsel for the

appellant has prayed that in the facts and circumstances of the case, the prosecution has miserably failed to prove the case beyond reasonable doubt

CRA-S-1094-SB of 2004

and the conviction and sentence of the appellant may be set aside.

10. On the other hand, learned counsel for the State vehemently opposed the contentions raised by learned counsel for the appellant and argued that the prosecution has proved its case beyond reasonable doubt inasmuch as the appellant was caught red-handed by PHG Balwinder Singh and SPO Jarnail Singh while stealing diesel from the PRTC bus. The appellant and his accomplices abducted PHG Balwinder Singh with an intention to kill him. The statement of the complainant PW-4 PHG Balwinder Singh has been fully supported by PW-5 SPO Jarnail Singh. Therefore, the appellant has rightly been convicted by the learned trial Court.

11. I have given my thoughtful consideration to the contentions raised by learned counsel for the appellant and the learned State counsel and re-appraised the evidence on the record.

12. So far as first argument raised by learned counsel for the appellant that no independent witness was associated at the time of apprehending the appellant and his accomplices, is concerned, undisputedly the occurrence had taken place in the wee hours on 11.07.2001 at 2.00 A.M., therefore, the availability of any independent witness at that point of time from public was highly improbable. In the instant case, both the witnesses, namely PHG Balwinder Singh PW-4 and SPO Jarnail Singh PW-5 had caught the appellant red-handed while pilfering diesel from the PRTC bus, therefore, the testimony of these official witnesses is not doubtful merely because of their official status. There is no evidence available on the record which could show that complainant had implicated the accused falsely. Even there

is no such suggestion put to any of the prosecution witnesses as to whether there was any previous enmity between them and the accused persons. In

CRA-S-1094-SB of 2004

the facts and circumstances of the case, the testimony of the official witnesses cannot at all be discarded in the absence of any corroboration from independent witness.

13. The conduct of the appellants can also be gauged from the fact that when the appellant and his accomplices were asked to take the truck to the Police Station, they managed to escape by running the truck from the spot. A perusal of the testimony of PW-5 SPO Jarnail Singh, who was following the truck in question under the instructions of PW4-PHG Balwinder Singh, shows that he has also supported the case of the prosecution.

14. The contention of the learned counsel for the appellant that the prosecution has failed to prove its case that the appellant and his accomplices had grappled with the complainant as no MLR etc. has been proved on record, cannot be accepted. The Court is of the view that the receipt of injury is not *sine qua non* for attracting Section 353 IPC. It is merely use of criminal force with a view to prevent a public servant from discharging his duty or to deter him from discharging the same which is sufficient to attract Section 353 IPC. In such circumstances, the findings recorded by the learned trial Court in maintaining the conviction under Sections 353 and 379 IPC are upheld.

15. However, considering the overall facts and circumstances of the case and the fact that appellant has faced a protracted trial for about 16 years; he is the first offender, he has not misused the concession of bail, this Court is of the view that no useful purpose will be served by keeping the appellant in the company of hardcore criminals. Hence, in the fitness of

things, it would be appropriate to release him on probation to ameliorate himself. Accordingly, while maintaining the conviction of the appellant, I

CRA-S-1094-SB of 2004

direct that the appellant be released on probation for a period of one year on furnishing of probation bond and one surety bond to the satisfaction of the learned Trial Court. Fine, if already deposited, will be treated as cost of proceedings. During the period of probation, appellant shall continue to maintain good behaviour, keep peace and in case of breach of any conditions of the bond, he will be liable to serve the remaining part of the sentence awarded by the trial Court as and when called for.

16. With the observations made above, present appeal is disposed of.

May 22, 2017
R.S.

(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No