

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

**1. CRA-S-2350-SB-2004**

Satinder Kumar

.....Appellant

Versus

State of Punjab

.....Respondent

**2. CRA-S-2529-SB-2004**

Baljinder Kumar alias Basinder Kumar and another

.....Appellants

Versus

State of Punjab

.....Respondent

**Date of decision: 09.11.2017**

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**CORAM : HON'BLE MR.JUSTICE H.S. MADAAN**

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**Present:** Mrs. Naveen Malik, Advocate  
for the appellant **CRA-S-2350-SB-2004.**

Mr. Rujhan Dhawan, Advocate

for the appellant in **CRA-S-2529-SB-2004**.

Mr. Kirat Singh Sidhu, DAG, Punjab.

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**H.S. MADAAN, J.**

Vide this judgment I propose to dispose of two appeals i.e. **CRA-S-2350-SB-2004** filed by Satinder Kumar and **CRA-S-2529-SB-2004** filed by Baljinder Kumar alias Basinder Kumar & Satpal all of them being accused in FIR No.224 dated 02.08.2002 under Sections 399/411 IPC, Police Station Sadar Rajpura, who were convicted by Additional Sessions Judge (Ad-Hoc) Patiala vide judgment of conviction and order of sentence dated 22.11.2004 and were sentenced as follows:-

| <i>Accused</i> | <i>Under Section</i> | <i>Imprisonment</i>        | <i>Fine</i>              | <i>In default</i>      |
|----------------|----------------------|----------------------------|--------------------------|------------------------|
| Satpal         | 399 IPC<br>411 IPC   | Seven Years<br>Three Years | Rs.1,000/-<br>Rs.3,000/- | One year<br>Six months |
| Satinder Kumar | 399 IPC<br>411 IPC   | Seven Years<br>Three Years | Rs.1,000/-<br>Rs.3,000/- | One year<br>Six months |
| Basinder Kumar | 399 IPC              | Seven Years                | Rs.1,000/-               | One year               |

The substantive sentences were ordered to run concurrently.

These accused – convicts pray that appeals filed by them be accepted and the judgment of their convictions and order of sentences be

set aside and they be acquitted of the charge framed against them.

Briefly stated the facts of the case as per prosecution story are that on 02.08.2002 a police party from Police Station Sadar Rajpura headed by SI William Jesi (hereinafter to be referred as the 'Investigating Officer') was on duty in connection with patrolling and checking of bad elements; that the police party was traveling in an official vehicle bearing No.PB-11-C-7030 and was present at bus stop Jansua, there the Investigating Officer received a secret information that Satpal son of Gian Singh, Satinder Kumar alias Sunny and Basinder Kumar son of Ram Chand and Rashid accused along with another person had assembled near drain of village Jansua and they were sitting in car of Satinder Kumar having registration No.CH01-D-7345 make Maruti; that they were having stolen / looted articles and were planning to commit dacoity / theft, the information was also to the effect that earlier on the intervening night of 28 / 29.06.2002 such persons had committed occurrence of similar nature at Chandigarh and were having cash in their possession and further if a raid was conducted they could be caught red handed along with weapons. The information being reliable one the Investigating Officer sent ruqa to police station which formed basis for registration of the FIR. Then a raid was accordingly conducted at the disclosed place. On seeing the police party the accused who had assembled there started running away. However two of them namely Satpal and Satinder Kumar were apprehended whereas remaining three managed to escape after crossing

the drain; that from possession of accused Satpal a bag was recovered which contained an iron rod, cutter and a scissor, those articles were taken into police possession vide memo Ex.PI, Maruti car bearing No.CH01-D-7345 was standing nearby which was searched and its RC was recovered therefrom, the car along with RC were taken into possession vide Ex.P4, personal search of accused Satpal was conducted which resulted in recovery of ₹10,000/- from his right pocket and ₹5,000/- from left pocket, that both the accused were interrogated, during the course of interrogation accused - Satpal suffered a disclosure statement that on intervening night of 28 / 29.07.2002 he along with Satinder Kumar and Basinder Kumar and Rashid had robbed Haryana Co-operative Agricultural and Rural Development Bank of Sector 22, Chandigarh and ₹2,80,000/- had fallen to his share, from that amount, he had bought one deck, two speakers, one VCD, Television and ₹2,65,000/- were lying in steel *drum* in his house at Ram Darbar, U.T. Chandigarh and he could get the said articles recovered. Disclosure statement was reduced into writing.

Thereafter accused Satinder Kumar was interrogated, who also suffered a disclosure statement to the similar effect stating that ₹20,000/- which had come to his share had been got concealed in his room at Ram Darbar in the box of double bed and he could got recovered the same. Disclosure statement was reduced into writing.

On 03.08.2002 accused - Satpal while in police custody led the police party to his room at Ram Darbar Chandigarh and got

₹2,65,000/- recovered from the disclosed place along with other articles, which were taken into police possession vide recovery memo, site plan of recovery was prepared.

Then accused Satinder Kumar while in police custody led the police party in pursuance of his disclosure statement and got recovered currency notes of ₹20,000/- from the disclosed place which were taken into possession.

On 08.08.2002 the Investigating Officer received information against accused Rashid that he was standing at Jansua bus stand and could be apprehended. Accordingly accused Rashid was nabbed from that place and he was interrogated, during course of which he suffered a disclosure statement that he had kept concealed ₹10,000/- in the brief case which he could get recovered the same, accordingly that amount was taken into possession.

On 29.08.2009, the Investigating Officer obtained the production warrants of accused Basinder Kumar, who was apprehended by the Chandigarh Police and arrested the accused on 27.08.2002 with the permission of the Court. Accused Basinder Kumar was interrogated who disclosed about the concealment of ₹10,000/-, that amount was recovered and taken into police possession.

After completion of investigation and other formalities challan against the accused was prepared and filed in the Court of Illaqa Magistrate. The Illaqa Magistrate supplied copies of documents relied

upon in the challan to the accused free of cost.

Finding a prima facie case under Sections 399 / 411 IPC against the accused, they were charge-sheeted accordingly, to which they pleaded not guilty and claimed trial. Thereafter the case was fixed for prosecution evidence.

During the course of prosecution evidence, prosecution examined as many as six witnesses i.e. SI Sadhu Ram a recovery witness PW-1; SI Narinder Singh another recovery witness PW-2; HC Joginder Singh PW-3; Kunwarpal who proved the receipt issued to Satpal PW-4; ASI Bhag Singh PW-5, SI Willam Jeji PW-6. With that the prosecution evidence got concluded.

Statements of accused were recorded under Section 313 Cr.P.C. in which all the incriminating circumstances appearing against them were put to them, but they denied the allegations and pleaded their innocence and false involvement in this case.

In addition to that accused Satpal and Satinder Kumar pleaded as below:-

*“On 31.07.2002, the police party took my sister and my father from our house and police tortured them and gave electric shock to my father. Till today, my father is under tension. I inquired from my nearest police post but they refused to give any information about my sister and father. Later on, I came to know from my landlord that Rajpura police had taken them*

*when I contacted the Rajpura police and inquired about the matter but they arrested me and detained me illegally and falsely implicated me in this case”*

*“I had gone to Zirakpur for repair of my car on 31.07.2002. Around 9 am six police men of Punjab Police came to my house at Chandigarh, and started making enquiry against me. They threatened my wife and children. When my wife told that I had gone to Zirakpur, the police men got my wife and children sit in the jeep and proceeded towards Zirakpur. After leaving my car I had gone to have lunch at Dhaba. The police after tracing my car took it with them. When I came back the police gathered there said that Punjab Police had picked the car. I contacted the market Paradhan, he from his phone number 870630 rang to Zirakpur Police Chowki. They refused to have any knowledge and told us to contact Rajpura Police Station. We went to Rajpura Police Station. My wife and children were also there. The police Incharge let my wife and children go, then beat me very badly and told me to admit the case. When I showed my innocence. After keeping me in illegal detention falsely implicated me in the said case on 02.08.2002.”*

During their defence evidence the accused examined DW-1

Smt. Usha Rawat wife of accused Satinder Kumar, who stated that her

husband Satinder Kumar is a car driver; DW-2 Tahira deposed regarding innocence of accused Rashid Khan so did DW-3 Nazia. With that the defence evidence got concluded.

The trial Court had formulated the follows points for determination:-

- “i. Whether the offence of making the preparation to commit the decoity is established against all the four accused out of which only two were arrested at the spot namely Satpal and Satinder Kumar.*
- ii. Whether the subsequent recovery of material amount of money establishes the offence against the accused if so against which of the accused for offence under Section 399 and 411 of the IPC.*
- iii. Whether the said offence does co-inside with each other.*
- iv. Whether the testimony of official witnesses is reliable as recovery of the stolen property was effected from Chandigarh area without seeking of the permission of the concerned Police Station.*
- v. Whether the evidence defence version sought by accused is probable if so qua which accused.”*

After hearing arguments, trial Court convicted and sentenced the accused as mentioned above.

Feeling aggrieved the accused – convicts have preferred the instant appeals and prayed that the appeals filed by them be accepted and the impugned judgment be set aside and they be acquitted of the charge framed against them.

I have heard learned counsel for the parties, besides going through the record.

Here the accused have been convicted and sentenced for the offences under Sections 399 and 411 of IPC. For ready reference, both the provisions are reproduced as under:

*399. Making preparation to commit dacoity.—Whoever makes, any preparation for committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.*

*411. Dishonestly receiving stolen property.—Whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.*

Coming to Section 399 IPC, according to the prosecution story on getting secret information SI William Jesi had conducted raid at the disclosed place and Satpal & Satinder Kumar were apprehended, whereas three others were managed to escape after crossing the drain. From the possession of accused Satpal, a bag was recovered containing an iron rod,

cutter and scissors and a Maruti car bearing registration No.CH01-D-7345 along with its registration certificate was also recovered. Personal search of accused Satpal resulted in total recovery of currency notes worth Rs.15,000/- , whereas from Satinder Kumar currency notes worth Rs.20,000/- had been recovered. Satpal had also got recovered another sum of Rs.2,65,000/-. Now it is to be seen whether assembly of five persons at a deserted place being in possession of currency notes and some tools fulfil the necessary ingredients of offence under Section 399 IPC, the answer can certainly be not in affirmative. Things would have been different, if such persons had been found in possession of weapons and some person might have overheard them planning to commit dacoity, or if some articles subject matter of theft, robbery, dacoity or regarding which some criminal offence had been committed had been recovered from them. Merely because currency notes had been recovered from their possession cannot result in slapping of criminal liability upon them.

As per prosecution story the notes were allegedly taken away during robbery at Haryana Cooperative Agriculture and Rural Development Bank, Sector 22, Chandigarh, which is said to have taken place on the intervening night of 28/29.6.2002 as admitted by the accused before the Police. But then any such admission made by the accused while in police custody is hit by Section 25 of the Evidence Act and cannot be taken into consideration. Furthermore, no officer or official from Haryana Cooperative Agriculture and Rural Development Bank, Sector 22, Chandigarh appeared in the Court to make statement in that regard. There is nothing on record to

show that currency notes recovered from such accused were subject matter of the robbery in the bank. The distinctive numbers of currency notes looted have not been got tallied with the currency notes recovered from the possession of accused. As such it cannot be presumed that the currency notes got recovered from the possession of accused were subject matter of the robbery committed at Haryana Cooperative Agriculture and Rural Development Bank, Sector 22, Chandigarh on the intervening night of 28/29.6.2002 or that those were tainted with crime. An iron rod, cutter and scissors are in the form of hand tools and these articles are normally present in a household and one thus come in possession thereof in day to day life. It cannot be said to be peculiar articles kept by criminals only in the commission of crime. Therefore, there is nothing to show that accused were making preparation to commit dacoity and offence under Section 399 IPC is not made out.

As regards offence under Section 411 IPC, which deals with dishonestly receiving or retaining stolen property, as already discussed the prosecution has not been able to prove on record that the currency notes recovered from the possession of accused were subject matter of any theft or constitute a stolen property. Under the circumstances of the case, no presumption can possibly be drawn that the accused knew or had reason to believe the recovered currency notes to be stolen property. Therefore, ingredients of offence under Section 411 IPC are not fulfilled.

The trial Court clearly fell in error in convicting and sentencing the accused for offences under Section 399 and 411 IPC. The judgment passed by the trial Court is not sustainable. It suffers from various legal infirmities. The prosecution had failed to prove its charge against the accused beyond shadow of reasonable doubt. Therefore, the judgment of conviction and order of sentence passed by the trial Court are set aside by way of acceptance of appeal and the accused/appellants Satinder Kumar, Baljinder Kumar @ Basinder Kumar and Satpal are acquitted of the charges framed against them. Resultantly, both the appeals stands allowed.

Appellant Baljinder Kumar @ Basinder Kumar(one of the appellant in CRA-S-2529-SB-2004) is stated to be in jail in this case. So he is ordered to be released immediately, if not required in any other case.

Necessary information be sent to the quarter concerned.

**09.11.2017**  
Gaurav Sorot / Brij

**( H.S. MADAAN)**  
**JUDGE**

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|----|------------------------------|-----------------|
| 1. | Whether reportable?          | <b>Yes / No</b> |
| 2. | Whether reasoned / speaking? | <b>Yes / No</b> |