

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

CRA-S-2041-SB-2016 (O&M)

Date of decision: 25.11.2017

Sarabjit Kaur @ Bholi @ Sanjeev Singh

... Appellant

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Jagjit Singh Chatrath, Advocate, Legal Aid counsel,
for the appellant.

Mr. Jagmohan Ghumman, DAG, Punjab.

ARVIND SINGH SANGWAN, J. (ORAL)

Challenge in this appeal is to the judgment of conviction and order of sentence dated 23.03.2016, vide which the appellant was convicted under Section 381 of IPC read with Section 419 of IPC, the appellant was sentenced to undergo rigorous imprisonment for a period of 3 ½ years with a fine of Rs.1,500/-.

This appeal has been filed through Legal Aid Counsel appointed by the High Court Legal Services Authority. The appeal was admitted on 25.05.2016 and sentence of the appellant was suspended on 15.11.2016 noticing that the appellant has undergone more than 01 year of actual sentence out of total sentence of 3 ½ years awarded by the trial Court.

The brief facts of the case are that on 15.05.2015, ASI Deep Singh while on patrol duty, receiving a telephonic call that the domestic servant employed at house No.855, Model Town, Kharar administered certain intoxicants mixed in a tea to the owner of the house and his family and has taken away bangles and ear rings which were worn by Swaran Kaur. ASI Deep Singh reached at the house of Gian Singh who recorded his statement that he had given an advertisement in a newspaper for employing a domestic helper and employed the accused -Sanjeev Singh as a servant on 11.05.2015 and on 14.05.2015, the accused reached the house of the complainant. After about half an hour the accused

prepared a tea for the complainant and his family and they became unconscious, when they again conscious on the next day morning, found that gold bangles and ear rings of the wife of the complainant were missing. The accused was arrested on 27.07.2015 and it was found that he has impersonated as a male but in fact she was female namely Sarabjit Kaur.

After recording the statement of witnesses, challan under Section 173 Cr.P.C. was submitted before the trial Court. The case was committed by the Court of Sessions vide committal order dated 08.10.2015 and charges under Section 381, 328, 419, 201 IPC were framed and the accused did not plead guilty and claimed trial.

After recording of the prosecution evidence, the trial Court vide its judgment dated 23.03.2016, held the appellant guilty of offences under Sections 419 and 381 of IPC. However, the appellant was acquitted under Sections 201 and 328 of IPC and she was ordered to sentence 3 ½ years rigorous imprisonment with fine of Rs.15,00/-.

Counsel for the appellant at the very outset submits that he do not want to challenge the conviction of the appellant. However, he submits that the sentence awarded by the trial Court may be reduced to already undergone by the appellant in view of the following mitigating circumstances:

(a) that it has come in the prosecution evidence that when the personal search of the appellant was made, a lady constable -Amandeep Kaur was present. However, she was never examined to prove this fact that she has conducted the personal search. With reference to the personal search memo Ex.PW-4/A, it is submitted that it is a printed format and it is not proved that it was prepared in her own handwriting.

(b) Counsel for the appellant further submits that search was done in violation of Section 100(3) of Cr.P.C. and the appellant is not a previous convict and after her sentence was suspended, she was not involved in any other subsequent case.

(c) The complainant could not produce any receipt of the jewellery and no MT strips of the intoxicants substance allegedly administered in the tea was recovered by the police.

(d) The appellant is a young lady and a first time offender and she has to look after her own family and some lenient view be taken with regard to the sentence awarded to the appellant.

In reply, learned State counsel, on instructions from sub-Inspector Karamjit Kaur, has submitted that as per custody certificate dated 15.09.2016 filed in Court, the appellant is not involved in any other case and when she was granted suspension of sentence on 15.11.2016, she has already undergone 1 years of actual sentence.

After hearing learned counsel for the parties, I find merit in the present submission made by counsel for the appellant qua the sentence awarded by the trial Court.

Since, the appellant is a lady; she is not a previous convict; is first time offender and has not misused the concession of bail, granted by this Court; she is not involved in any other subsequent case as per custody certificate, the sentence awarded by the trial Court i.e. 3 ½ years with fine of Rs.1,500/- is reduced to sentence undergone by the appellant.

With the aforesaid modification, this appeal is disposed of.

(ARVIND SINGH SANGWAN)
JUDGE

25.11.2017
Hemlata

Whether speaking/reasoned
Whether reportable

Yes / No
Yes / No