

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

**CRA-S-3035-SB-2015
Date of decision :21.11.2017**

Rajua

..... Appellant

Versus

State of Punjab

..... Respondent

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

Present : Mr. Sanyam Malhotra, Advocate as
Legal Aid counsel for the appellant.

Ms. Samina Dhir, DAG, Punjab.

H.S. MADAAN, J. (Oral)

CRM-35661-2017

Learned counsel for the State has filed custody certificate mentioning the period of imprisonment undergone by the applicant-appellant. The same is taken on record.

Learned counsel for the applicant-appellant submits that he does not press the application for suspension of sentence of imprisonment of the applicant-appellant and he is ready with arguments in the main appeal.

In view of above, CRM stands disposed of being not pressed.

In view of the oral request made by learned counsel for the applicant-appellant, let the main appeal be taken up on board.

CRA-S-3035-SB-2015

This appeal is directed against judgment dated 15.09.2014 passed by Additional Sessions Judge, Faridkot vide which she has convicted accused Rajua an accused in FIR No.292 dated 16.11.2012 for offences under Sections 457, 380, 411, 413 IPC registered with Police station City Faridkot and had sentenced him as under:-

“To undergo rigorous imprisonment for a period of two years for offence under Section 411 IPC.

To undergo rigorous imprisonment for a period of five years and to pay fine of ₹10,000/-. In default of payment of fine to further undergo rigorous imprisonment for one year more for offence under Section 413 IPC.”

Both the sentences were ordered to run concurrently.

Briefly stated facts of the case as per prosecution version are that FIR in this case was recorded on the statement of Gurdeep Singh son of Nidhan Singh on 16.11.2012 stating therein that he has been running an electronic goods shop under the name and style of Electronic Point near Raj Mahal, Thakur Dwara, which is proprietorship concern of his wife Narinderjit Kaur; that on 09.11.2012 he had closed his shop at 8:00 p.m and left home, on the next day in the morning i.e. 10.11.2012 when he came to his shop he found that all the articles at the counter as well as inside the shop were lying scattered; that he went upstairs and observed that the net-mesh of the ventilator of bathroom was cut and the articles inside the room

were lying here and there; that he found the almirah and the boxes opened and on looking around, it was found that silver glasses and jewellery were missing; that two mobile phones kept at counter and change / currency worth ₹2,500/- were also missing. Formal FIR was registered, the matter was investigated. Complainant – Gurdeep Singh in his supplementary statement gave details of other articles including LED and LCD of Panasonic company which had been stolen. Accused was arrested in this case and some of the stolen articles were recovered from his possession. He had suffered a disclosure statement and got recovered two mobile phones.

After completion of investigation and other formalities, he was challaned. On presentation of challan in the Court, copies of documents were supplied to the accused free of cost as envisaged under Section 207 Cr.P.C. Thereafter case was committed to the Court of Sessions Judge, Faridkot, from where it was assigned to Additional Sessions Judge, Faridkot.

Learned Additional Sessions Judge, Faridkot finding prima facie case punishable under Sections 411, 413, 380 and 457 IPC, was made out against the accused and he was charge-sheeted accordingly, to which he pleaded not guilty and claimed trial.

During course of prosecution evidence, it examined as many as six witnesses i.e. HC Kiranpal Singh PW-1, Gurdeep Singh PW-2, Balkar Singh PW-3, Guirpereet Singh PW-4, Naginder Singh PW-5 and Boota Singh PW-6.

With that the prosecution evidence got concluded.

Statement of accused was recorded under Section 313 Cr.P.C.

in which all the incriminating circumstances appearing against accused were put to him, but he denied the allegations contending that he is innocent and has been falsely implicated in the present case.

Accused did not lead any evidence in defence.

After hearing arguments, the trial Court convicted the accused for offences under Sections 411 and 413 IPC mentioned above, whereas he was acquitted of the remaining charges.

Feeling aggrieved against the impugned judgment, he has filed the appeal before this Court, which has been admitted and recovery of fine has been stayed during the pendency of the appeal.

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

At the very outset, learned counsel for the appellant submitted that he does not challenge the impugned judgment on the point of conviction and his submissions would be confined as regards the quantum of sentence. He has contended that the accused-convict is married and his family is dependant upon him for their financial needs and the appellant has already undergone substantial period of imprisonment, therefore a lenient view in the matter be taken and sentence awarded to him be reduced.

On the other hand learned State counsel submits that the sentence imposed should not be interfered and rather should be confirmed. A perusal of the custody certificate of the appellant submitted by the State counsel goes to show that the he has already undergone four years, six months and ten days of actual sentence out of total of five years.

After hearing the rival contentions, I find that ends of justice

would be properly met if appellant – Rajua is sentenced to imprisonment already undergone by him while in custody in the present case, whereas the part of conviction relating to payment of fine is kept as intact. Therefore, the impugned judgment is upheld as regards conviction part qua appellant – Rajua.

However, as far as sentence part is concerned the same is modified and he is sentenced to imprisonment already undergone by him in this case i.e. actual sentence of 04 years, 06 months and 10 days. Whereas the sentence regarding payment of fine of ₹10,000/- in default of payment of fine to undergo rigorous imprisonment for one year remains intact.

With such modification appeal qua appellant – Rajua stands disposed of. He be released from the custody on deposit of fine if not required in any other case.

Intimation in this regard be sent to the quarter concerned.

(H.S. MADAN)
JUDGE

21.11.2017
Gaurav Sorot

1. Whether reportable? **No**
2. Whether speaking / reasoned? **Yes**