

**CRR No.873 of 2013 (O&M)**  
**Date of Decision: 16.05.2017**

room got up and went towards the room. One clean shaven person came out of the room and another clean shaven person was sitting near the open kitchen and he stood up. Electric bulb was on. The complainant raised *lalkara* and also identified them. Both of them fled away by climbing over the wall. Those persons were identified to be Gurmail Singh and Baljinder Singh. The complainant along with his wife went inside the room and saw that there was a hole in the roof of the room and iron box was lying open. On checking valuables were found missing including the gold ornaments and mobile phones. Currency notes worth Rs.10,000/- were also found missing. In the morning Panchayat was held. With these allegations, the FIR was registered.

[3]. The police on due investigation filed the report under Section 173 Cr.P.C. Thereafter the accused were chargesheeted on finding *prima facie* case against them under Sections 457, 380, 411 IPC. Accused pleaded not guilty and claimed trial.

[4]. The prosecution led evidence. Complainant was examined as PW-1. Jeet Singh was examined as PW-2. ASI Balbir Singh was examined as PW-3, who had investigated the case. Bashir Singh was examined as PW-4. Thereafter evidence of the prosecution was closed by order of the Court.

[5]. Statements of the accused were recorded under Section 313 Cr.P.C and all the incriminating material was put to the accused in their statements, to which they pleaded innocence. The accused also led evidence in defence by examining Tarsem Singh as DW-1 and thereafter closed the evidence.

[6]. Trial Court after appreciating the material on record, convicted the accused/respondent Nos.1 and 2 for the offences under Sections 457 and 380 IPC and sentenced them to undergo rigorous imprisonment for a period of 2 years along with fine of Rs.500/- each of the offence along with default clause vide judgment of conviction and order of sentence dated 10.03.2012.

[7]. Feeling aggrieved against the aforesaid judgment of conviction and order of sentence, the accused respondent Nos.1 and 2 filed separate appeals before the Sessions Judge, Faridkot. Complainant also filed appeal on quantum of sentence as well as on account of not recording any conviction under Section 411 IPC. All the appeals were clubbed together by the lower Appellate Court. The appeals filed by respondent Nos.1 and 2 were accepted, whereas appeal filed by the petitioner/complainant was rejected. The judgment dated 08.01.2013 passed by the lower Appellate Court consequently

entailed in acquittal of respondent Nos.1 and 2.

[8]. The present revision petition has been preferred for setting aside the judgment dated 08.01.2013 passed in three different appeals filed by the parties.

[9]. Perusal of judgment passed by the lower Appellate Court reveals that lower Appellate Court has taken note of three factors i.e. delay in lodging the FIR, non-corroboration of version of the complainant by any other evidence and non-examination of the Investigating Officer.

[10]. Learned counsel for the petitioner submitted that even if, the testimony of PW-3 Balbir Singh is construed to be not an Investigating Officer, still in the light of the documents having been proved by this witness, the non-examination of the Investigating Officer had no effect on the trial and was not fatal to the prosecution as his non-appearance/non-examination was not vital on the issues of registration of case proving the Police proceedings on the aspect of preparation of the site plan. Non-examination of the Investigating Officer is not vital to the prosecution especially when no prejudice is likely to be caused to the accused when material was available on record and no contradictions have been brought out in the context of testimony of PW-3 Balbir Singh. Therefore, non-examination of the

Investigating Officer was of no consequence under the circumstances particularly, when no prejudice was caused to the accused. On the aforesaid submission, learned counsel relied upon **Lahu Kamlakar Patil and Anr. vs. State of Maharashtra, 2013(1) RCR (Criminal) 393.**

[11]. I have considered the submission made by learned counsel for the parties.

[12]. From the evidence on record, it appears that the theft in the house of the complainant took place in the intervening night of 21/22.05.2009, whereas FIR was registered on 24.05.2009. Complainant Sukchain Singh while appearing as PW-1 stated that he informed the Sarpanch promptly in respect of the incident, but the Sarpanch did not accompany him. His statement Ex.PA was recorded by the Investigating Officer on 24.05.2009. Thereafter, police took the accused Gurmail Singh and also recovered one small box (Dabbi) which was kept in a yellow purse from the area of village near a motor after removing the brick-bats etc. Box was containing currency notes of Rs.5,000/-, one mobilephone, one pair of tops, one ring, two pairs of ear ring and one more mobilephone etc. The articles were taken in police possession. The complainant was cross-examined, but his testimony could not be shattered.

[13]. Version of PW-2 Jeet Singh was duly corroborated by PW-4 Bashir Singh in respect of recovery of articles as well as recovery of remaining case property. According to testimony of PW-2 Jeet Singh, who testified that the accused were roaming around the house of the complainant and later on he learnt that they have committed the offence.

[14]. The recoveries were effected during course of investigation from the possession of the accused and were duly witnessed by the witnesses. ASI Balbir Singh PW-3 was the Investigating Officer and this witness has proved number of documents viz. Ex.PA statement of the complainant, Ex.PA/1 the police proceedings, Ex.PW-3/A FIR and Ex.PW-3/B site plan etc. This witness was cross-examined and his testimony could not be shattered.

[15]. The accused were arrested on 24.05.2009. The Investigating Officer ASI Jagsir Singh arrested the accused and the said ASI has not been examined. Though ASI Balbir Singh PW-3 was witness to the disclosure statement made by the accused, which ultimately led to the recoveries as well, but the lower Appellate Court due to non-examination of the Investigating Officer proceeded to hold that in view of non-examination of the Investigating Officer, it will not be safe to place sole reliance upon the independent witness ASI Bashir

Singh PW-4. Testimony of DW-1 Tarsem Singh was relied to form an opinion that there was political rivalry in the village. ASI Balbir Singh PW-3 was proved to close confidant of the complainant party. In view of aforesaid, non-examination of ASI Jagsir Singh (Investigating Officer) was taken to be a ground for disbelieving the prosecution story and ultimately the accused were acquitted.

[16]. Perusal of the impugned judgment further reveals that the lower Appellate Court has not adverted to the evidence of PW-3 ASI Balbir Singh while recording the finding *qua* non-examination of ASI Jagsir Singh. It appears that while deciding the appeals, the lower Appellate Court has not taken into consideration the statement of PW-3 ASI Balbir Singh while forming an opinion with regard to the non-examination of ASI Jagsir Singh. Though the factum of appearance of ASI Balbir Singh as PW-3 has been noticed in para No.5 of the impugned judgment, but thereafter the lower Appellate Court has not adverted to any finding recorded on the basis of statement of PW-3 ASI Balbir Singh, who was an important witness inasmuch as that he was the Investigating Officer, who had proved number of documents viz. statement of the complainant Ex.PA, police proceedings Ex.PA/1, FIR Ex.PW-3/A and site plan Ex.PW-3/B. The testimony of this witness has gone unrebutted

despite cross-examination in which nothing incriminatory could come in favour of the complainant.

[17]. In my considered opinion, the judgment dated 08.01.2013 passed by the lower Appellate Court is non-speaking as regards non-examination of the Investigating Officer in the light of material on record in respect of explanation given for lodging the FIR after two days and the recoveries effected after due disclosure statement made by the accused in the presence of witnesses. The factum of delay and corroboration of the prosecution story needs to be redressed by the lower Appellate Court in the light of testimony of PW-3 ASI Balbir Singh, who is non else but an Investigating Officer of the case.

[18]. In the light of aforesaid facts, the present petition is remanded back to the lower Appellate Court for fresh decision strictly on merits after considering material available on record. However, it is made clear that the lower Appellate Court shall not be influenced by any of the observation made by this Court in preceding part of the order.

[19]. Petition stands disposed of.

May 16, 2017

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**(RAJ MOHAN SINGH)**  
**JUDGE**

**Whether speaking/reasoned**

**Yes/No**

**Whether reportable**

**Yes/No**