

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

(i) **Criminal Appeal S-2157-SB of 2006**
Date of Decision: September 7, 2018

Sham Singh and anotherAppellants
Versus

State of Haryana Respondent

(ii) **Criminal Appeal S-2290-SB of 2006**

Rajbir @ Gadar Appellant

Versus

State of Haryana Respondent

CORAM : HON'BLE MR. JUSTICE T.P.S.MANN

Present : Mr. B.S. Bairagi, Advocate
for the appellants.

Mr. Kapil Aggarwal, Addl. A.G., Haryana.

T.P.S.MANN, J. (Oral)

Five accused, namely, Sham Singh, Rajbir @ Gadar, Hans Raj, Satnam and Zile Singh were tried for committing the offences punishable under Sections 457, 380, 436 and 411 IPC. Vide impugned judgment and order dated 3/6.10.2006, learned Additional Sessions Judge, Hisar, acquitted them of the charges

under Sections 457, 380 and 436 IPC. However, they were convicted under Section 411 IPC and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.2,000/- each and in default of payment of fine, to undergo further simple imprisonment for two months. The period already spent by them in jail was directed to be set off against their substantive sentence of imprisonment.

Aggrieved of their conviction and sentence, Sham Singh and Hans Raj filed the present appeal, i.e. Criminal Appeal S-2157-SB of 2006 whereas Rajbir @ Gadar filed connected appeal, i.e. Criminal Appeal S-2290-SB of 2006. However, no appeal was filed by Satnam and Zile Singh.

As both the aforementioned appeals arise out of the same judgment of conviction and sentence, they are being disposed of by a common judgment.

According to the prosecution, on 3.8.2002 complainant Mohar Singh made a statement before the police on the basis of which FIR No. 114 dated 3.8.2002 under Sections 457, 380 and 436 IPC was recorded. The said statement when translated into English reads as under:-

“ That I am resident of village Bhairi Akbarpur. I am an agriculturist by profession. I have installed a disc in one room of my house. On 14.9.2001, I had gone to

my relations due to some personal work. None was present at my house on that day and the house was duly locked. I came back on 15.9.2001 and found that lock on the door of my house was broken. I also noticed smoke in the windows. I peeped inside and saw that my V.C.R. Panasonic, one TV Samsung 20", one remote control and stabilizer, some video cassettes and about Rs.200/- or 300/- were stolen. Some clothes, implements of disc and one table were found in a burnt condition. I tried to search for the culprits and now I am sure that my articles were stolen by Rajbir @ Gadar son of Ruli Ram, Sham Singh son of Mewa Singh, Satnam Singh son of Prem Singh, Zile Singh @ Gogna son of Ranjit and Hans Raj son of Hari Singh, all Harijans, residents of Bhairi Akbarpur. They had broken the lock of my house and committed theft and burnt some of the articles”.

During the investigation of the case, the police took into possession burnt articles. All the five accused were arrested on 6.8.2002 and on the basis of their respective disclosure statements, various articles which had been stolen, were recovered. Offence under Section 411 IPC was added to the FIR.

Upon completion of investigation and commitment of the case, all the accused were charged for the aforementioned offences, to which, they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined

seven witnesses.

PW1 Subhash Chand Draftsman deposed that he visited the spot and prepared the scaled site plan Ex.PA with correct marginal notes as pointed out by Mohar Singh complainant.

PW2 Mohar Singh complainant deposed about theft from his house and proved complaint Ex.PB made by him to the police. He also deposed that the police took into possession six receivers, six ACM, one combiner, one VCD converter, three amplifiers in burnt condition vide recovery memo Ex.PC.

PW7 Inspector Bimla Devi testified that on 6.8.2002, she interrogated accused Zile Singh, Rajbir, Sham Singh and Satnam Singh and they had suffered disclosure statements Ex.PR, Ex.PS, Ex.PT and Ex.PU, respectively and had signed the same.

She further stated that on 8.8.2002 Zile Singh accused suffered another disclosure statement Ex.PD and got recovered stolen articles, i.e. two cassettes Ex.P19 and Ex.P20 from his residential house, which were taken into possession vide memo Ex.PE, which was attested by Constable Ishwar Singh and Constable Sohan Lal. She deposed about preparing site plan Ex.PV of the place of recovery.

She also deposed that on 8.8.2002 Rajbir accused suffered another disclosure statement Ex.PF, pursuant to which, he got recovered the stolen articles, i.e. VCR Panasonic Ex.P21 from his residential house, which was taken into possession vide recovery memo Ex.PG. She deposed about preparing of site plan Ex.PW of the place of recovery with correct marginal notes and stated that Ex.PF and Ex.PG were attested by Constable Ishwar Singh and Constable Sohan Lal.

She further deposed that on 8.8.2002 accused Sham Singh suffered another disclosure statement Ex.PH and pursuant thereto, he got recovered colour TV Samsung Ex.P-22 and remote control Ex.P23 from his residential house. She proved recovery memo Ex.PJ and site plan Ex.PX of the place of recovery. She deposed that Ex.PH and Ex.PJ were attested by Constable Ishwar Singh and Constbale Sohan Lal. She proved site plan Ex.PX of the place of the recovery.

She also deposed that on 8.8.2002 Satnam Singh accused suffered another disclosure statement Ex.PK and pursuant thereto he got recovered video cassettes Ex.P24 and Ex.P25 from his residential house. She proved recovery memo Ex.PL and site plan Ex.PY of the place of recovery. She deposed that Ex.PL and Ex.PK were attested by Constable Ishwar Singh and Constable Sohan Lal.

She further deposed that on 30.8.2002, she arrested Hans Raj accused, who suffered disclosure statement Ex.PM and pursuant thereto got recovered stabilizer from his residential house, which was duly taken into possession vide recovery memo Ex.PN. The disclosure statement Ex.PM and recovery memo Ex.PN were attested by HC Ram Phal and Contable Bhup Singh. She proved rough site plan Ex.PZ with correct marginal notes and stated that on completion of the investigation, she prepared final report under Section 173 Cr.P.C. on 26.9.2002.

PW3 HC Ishwar Singh supported the deposition of PW7 SI/Inspector Bimla Devi. He also deposed about the disclosure statements made by Rajbir, Sham Singh and Zile Singh accused and proved the recoveries from them.

PW4 Bhoop Singh supported the deposition made by PW7 Inspector Bimla Devi regarding joining of investigation on 30.8.2002 and suffering of disclosure statements by accused Hans Raj and recovery of a stabilizer from him.

PW5 HC Bal Kishan deposed about scribing formal FIR Ex.PO on receipt of application Ex.PB and proved his endorsement Ex.PB/1.

PW6 ASI Ramphal deposed that on 3.8.2002 MHC Bal Kishan recorded formal FIR Ex.PO. Thereafter, he took over

the investigation of the case and alongwith complainant Mohar Singh visited the spot and prepared rough site plan Ex.PQ with correct marginal notes and took into possession burnt articles, i.e. amplifier, receiver, cassettes, VCR and electric articles vide recovery memo Ex.PC. He deposed that recovery memo Ex.PC was attested by complainant Mohar Singh and after that he handed over the investigation of this case to Inspector Bimla Devi. He further stated that he joined investigation on 30.8.2002 with Inspector Bimla Devi and arrested Hans Raj accused, who suffered disclosure statement Ex.PM regarding theft and pursuant thereto, he got recovered one stabilizer from his residential house which was taken into possession vide recovery memo Ex.PN attested by him and Constable Bhup Singh.

When examined under Section 313 Cr.P.C., all the accused denied the incriminating evidence and circumstances appearing against them and claimed themselves to be innocent. However, in their defence, they did not examine any evidence.

As mentioned above, all the accused were convicted under Section 411 IPC and, accordingly, sentenced to undergo imprisonment and fine.

This Court has heard learned counsel for the parties and scanned the evidence with their able assistance.

The occurrence in question is said to have taken place on the night intervening 14/15.9.2001 whereas the statement was made by complainant Mohar Singh to the police only on 3.8.2002, i.e. after a period of about eleven months of the incident. Further, the complainant without any basis, named the accused to be the one, who had broken open the lock of his house and committed theft besides burning some of the articles. It was not mentioned as to how the complainant came to know that it were the accused, who were responsible for committing the crime. No satisfactory explanation has been given to explain the delay in lodging of the FIR.

According to the prosecution, the accused were arrested on 6.8.2002 and after they were subjected to interrogation, they suffered disclosure statements, pursuant to which, they got recovered the various articles, which according to the complainant had been stolen from his house. In support of the factum of the accused suffering disclosure statements and getting recovered various articles, the prosecution relied upon the testimonies of only official witnesses. No independent corroboration was sought by the prosecution. Even the ownership of the various articles said to have been stolen is not proved to be that of the complainant. Complainant Mohar Singh while being examined as PW2 stated in his cross-examination that he had not

given the receipt of the articles mentioned in his application Ex.PB to the police in order to prove that he was the owner of those articles. He also stated that the articles mentioned in Ex.PB were readily and easily available in the market.

PW2 Mohar Singh has also a chequered record. He admitted that he was facing the criminal trial in two cases. One of those cases was pertaining to the theft while other about causing hurt. He also stated that one another case under Section 377 IPC was registered against him though he was subsequently acquitted of the same. He further stated that another criminal case was filed by him against Dalbir etc. who were his neighbours relating to causing of hurt. He also admitted that he had filed the criminal complaint against the police officials earlier but in both those cases compromise was effected. Merely because, the accused did not claim the ownership of the case property is not sufficient to hold that those articles belonged to the complainant or the accused were in possession of the same, which were got recovered pursuant to their disclosure statements.

In view of the above, this Court finds that the prosecution has miserably failed to prove its case against the appellants beyond reasonable doubt. Accordingly, the judgment of conviction and sentence passed by the learned trial Court while convicting and sentencing Sham Singh, Hans Raj and Rajbir @

Gadar is set-aside and they are acquitted of the charge against them. Criminal Appeal S-2157-SB of 2006 filed by Sham Singh and Hans Raj and Criminal Appeal S-2290-SB of 2006 filed by Rajbir @ Gadar are, accordingly, accepted.

All the three appellants are presently on bail. Their bail bonds and surety bonds shall stand discharged.

September 7, 2018.
amit rana

(T.P.S. MANN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No