

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Appeal. No.S-1432-SB of 2015

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Date of decision:10.01.2019

Balwinder Kaur

...Applicant

v.

State of Punjab and others

...Respondents

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Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. V.K. Sandhir, Advocate for the appellant.

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Inderjit Singh, J.

Balwinder Kaur-appellant has filed this appeal challenging the impugned judgment dated 12.1.2015 passed by learned Additional Sessions Judge, (Ad hoc), Fast Tract Court, Amritsar, whereby respondent No.3- Darshan Singh has been acquitted from charges under Sections 328, 457, 380 read with Section 34 IPC and respondent No.2- Surinder Kaur has been convicted under Section 328 IPC and acquitted under Sections 457, 380 read with Section 34 IPC and prayed that the same be modified and they be convicted and sentenced for the offences under Sections 328, 457, 380 read with Section 34 IPC.

Challan was presented against Surinder Kaur and Darshan Singh-accused (respondents No.2 and 3 herein) by Police of Police Station Sultanwind, District Amritsar for the offences under Section 328, 457, 380 read with Section 34 IPC in FIR No.75 dated 13.04.2014 registered for the offences under Sections 328, 457, 380 read with Section 34 IPC at Police

Station Sultanwind. The brief facts of the case as noted down by learned Additional Sessions Judge, (Ad hoc), Fast Tract Court, Amritsar, in his judgment dated 12.01.2015 are as under:-

“That they in furtherance of common intention of each other brought the food articles mixed with intoxicant and served the same to the complainant Balwinder Kaur, Iqbal Singh and Jaspal Singh who became unconscious and they committed offence of lurking house trespass and further committed theft are points to seek affirmative response to which the Officer Incharge of Police Station Sultanwind has forwarded the accused Surinder Kaur and Darshan Singh to stand trial in these proceedings arising out of a report (hereinafter referred to as the report) submitted in terms of Section 173(2) of the Code of Criminal Procedure (for short Code).

As manifested in the report quintessence of the prosecution story is that the complainant Balwinder Kaur made statement to ASI Arjan Kumar on 13.04.2014 at Shri Guru Ram Dass Hospital, Vallah, Amritsar to the effect that on 12.04.2014 at about 8-00 PM their neighbour Surinder Kaur wife of Sukhwinder Singh came to their house carrying with her cooked vegetable “AALU MATTAR” and entered in their kitchen and prepared chapattis for them. The complainant, her husband and her son took dinner and thereafter she went to her house. After having meals they went to sleep. At about 3.30 AM as per daily routine on hearing the alarm she got up for

going to Gurdwara Sahib and tried to wake up her husband but he was in unconscious condition. Thereafter she noticed that gate of her house was lying opened which was locked at night. She also noticed that her purse containing Rs.35,000/- lying below dining table was missing. The said amount was brought by her son Jaspal Singh by selling scrap from his factory. Another purse lying near bed containing Rs.30,000/- was also stolen. She further apprehended that her gold ornaments were also stolen and they were stolen by her neighbour Surinder Kaur along with her accomplice. She also apprehended that her neighbour Surinder Kaur had given poisonous substance in the food articles and had committed the theft in their house.

ASI Arjan Kumar having received the message through telephone from MHC regarding admission of Balwinder Kaur in Shri Guru Ram Dass Hospital, Vallah, Amritsar with case of poisoning thereupon he along with other police officials reached in the emergency ward. There Balwinder Kaur, Iqbal Singh and Jaspal Singh were under treatment and he after obtaining opinion of the concerned doctor regarding fitness of complainant Balwinder Kaur recorded her statement who narrated the entire story of happenings, as stated here-in-above. Investigating Officer read over the statement to the complainant and the latter to signify its correctness put her signatures on foot thereof. Investigating officer recorded a note on the statement and dispatched it through PHG Harbhajan Singh to

the police station where formal First Information Report came to be recorded on the basis of this statement.

Investigating Officer of the case went to the place of occurrence, prepared rough site plan and arrested the accused Surinder Kaur and thereafter in pursuance of disclosure statement arrested accused Darshan Singh also.”

On completion of investigation, challan was presented in the Court. On presentation of challan, the trial Court finding *prima facie* case against the accused framed charges for the offences punishable under Sections 328, 457, 380 read with Section 34 IPC, to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW-1 Balwinder Kaur-complainant, Jaspal Singh as PW-2, Dr. Ashok Khurana as PW-3, Dr. Jivtesh Preet Singh as PW-4, Iqbal Singh as PW-5, LC Rajbir Kaur as PW-6, ASI Arjun Kumar as PW-7, HC Harvinder Singh as PW-8, HC Sarwan Singh as PW-9, HC Ramesh Kumar as PW-10, HC Major Singh as PW-11. Thereafter, learned Additional Public Prosecutor for the State closed evidence of the prosecution.

At the close of prosecution evidence, the accused were examined under Section 313 Cr.P.C. and were confronted with the evidence of the prosecution but they denied the correctness of the evidence and pleaded themselves as innocent. They also deposed that they have been falsely implicated in this case. No defence evidence has been led by the accused.

After going through the evidence and material placed on

record, the learned trial Court vide impugned judgment and order convicted and sentenced the accused-respondent No.2 for the offence under Section 328 IPC and sentenced her to undergo rigorous imprisonment for a period of three years and to pay fine of ₹5,000/- and in default thereof to further undergo rigorous imprisonment for one month. She has been acquitted for the offences under Sections 457 and 380 IPC. Accused Darshan Singh has been acquitted for the offences as framed against him.

I have heard learned counsel for the appellant and have gone through the record.

From the perusal of record, I find that, in no way, the findings can be held as perverse or against the evidence. Nothing has been pointed out as to which material evidence has been misread by the Court below and as to which material evidence has not been considered by the Court below. A perusal of the FIR shows that there is no allegation against Darshan Singh. Darshan Singh had been nominated on the disclosure statement of Surinder Kaur. The disclosure made by Surinder Kaur is inadmissible in evidence and hit by Section 25 of the Evidence Act. Furthermore, as per disclosure statement of Darshan Singh, recovery of 2 currency notes in the denomination of ₹500/- and 12 currency notes in the denomination of ₹100/- had been shown recovered from Darshan Singh. But there is no evidence on record to connect these currency notes with the notes which were stated to have been stolen in this case. Furthermore, one voter identity card of Iqbal Singh is stated to have been stolen by Darshan Singh, but this is not the case in the FIR that any voter identity card was taken away.

Nobody had seen the commission of theft. PWs had not deposed that they

have seen the accused Surinder Kaur or Darshan Singh committing the theft nor these witnesses have deposed that they have seen the accused committing the offence of lurking house trespass. No stolen articles had been recovered from Surinder Kaur. Therefore, from the above, I find that the findings given by the learned Additional Sessions Judge, (Ad hoc), Fast Tract Court, Amritsar, acquitting Darshan Singh for all the offences and Surinder Kaur for the offences under Sections 457 and 380 IPC are correct as per law.

Therefore, from the above discussion, finding no merit in this criminal appeal, the same is dismissed. However, the findings given above are only for the purpose of this appeal and will not affect any other proceeding pending qua the same occurrence.

January 10, 2019.

(Inderjit Singh)
Judge

hsp

NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	No