

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

1. CRA-S-1607-2019(O&M)

Devender

.....Appellant

Versus

State of Haryana

.....Respondent

2. CRA-S-1530-2019(O&M)

Satinder

.....Appellant

Versus

State of Haryana

.....Respondent

3. CRA-S-1686-2019(O&M)

Ram Mehar

.....Appellant

Versus

State of Haryana

.....Respondent

Date of decision: 16.10.2020

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Ramandeep, Advocate for the appellant
in CRA-S-1607-2019

Mr. Judgepreet Singh Warring, Advocate for the appellant
in CRA-S-1530-2019

Mr. Parminder Singh, Advocate for the appellant
in CRA-S-1686-2019.

Mr. Chetan Sharma, AAG, Haryana

ANIL KSHETARPAL, J.

By this order, three criminal appeals i.e CRA-S-1607-2019, CRA-S-1530-2019 and CRA-S-1686-2019 which are arising from a common judgment passed by the learned Addl. Sessions Judge, Jind, shall stand disposed of.

Learned Sessions Judge has convicted all the three appellants under Section 411 Indian Penal Code while sentencing them with RI for a period of 3 years with fine of Rs. 1000/- each. In case the fine is not deposited, they shall have to further undergo SI for a period of 1 month each.

In a nutshell, the criminal law was set into motion with the registration of FIR on the written complaint filed by Gurjinder Singh s/o Manjit Singh. He claimed that while working as Driver with the Haryana Logistics which in turn had a contract with Swaraj Tractor Company, Mohali, for transportation of tractors in the State of Haryana, he was transporting two tractors from Mohali to Gurgaon on 15.04.2015. On 16.04.2015 at about 8:00 pm, he after having dinner slept at Sahi Punjabi Dhaba. On 17.04.2015, at about 4:00 am, he resumed his journey and when he reached 1 ½ kms from the said eating joint towards Jind, a white colour Indica car came in front of the tractor, forcing him to apply brakes and stop suddenly. Around 4-5 persons got down from the said car, dragged him from the tractor and forcibly put him in the car. These persons started beating him. One person among those who got down from car fled away with his tractors and documents. Remaining occupants of the car kept thrashing him and also snatched his mobile and

purse. Thereafter, they tied his hands with a rope and forcibly administered two tablets and some water to him whereupon he became unconscious. When he regained consciousness on 18.04.2015 at about 8:00 am, he found himself at a lonely place. His bag containing clothes was found lying nearby, however, documents of the tractors were not found in the bag. Thereafter, an auto rikshaw driver informed him that he was in the area of Saharanpur (UP) and on being requested he took him to Railway Station and got him boarded in the train for Ambala. On reaching back home, he narrated the incident to his family members who got him admitted in a hospital in Ambala. Thereafter, the complaint was submitted at Police Station, Sadar Jind.

On completion of the investigation, 5 accused were apprehended however, Lakhwinder Singh @ Lucky absented himself and was declared as a proclaimed offender on 05.04.2018. After supply of copies of the police report, the case was committed to the Court of Sessions vide order dated 21.08.2018. The prosecution examined as many as 12 witnesses on its behalf however, the public prosecutor gave up Gurmeet Singh and Satbir Singh. Thereafter, the accused were examined under Section 313 Cr.P.C while confronting them with the evidence led by the prosecution. However, they denied correctness thereof. The accused did not lead any evidence in defence.

In this case, first informant-victim Gurjinder Singh appeared as PW12, however, did not identify/recognize any of the accused to be among the persons who had dragged him from the tractor and given him beatings or who had flown away with the tractors. There

was no eye witness to the incident. Hence, the Court found that the prosecution has failed to prove the commission of the offences punishable under Section 147, 395, 341/ 149, 328/149, 369/149, 420/149 IPC. However, learned Trial Court convicted the appellants under Section 411 IPC, although, accused Satpal was acquitted.

This is how these three appeals have been filed by Ram Mehar, Satinder and Devender. This Court has heard learned counsel for the appellants as well Sh. Chetan Sharma, AAG, Haryana and with their able assistance gone through the paper books and record of the Trial Court.

Learned counsels appearing for the appellants have submitted that the judgment passed by the Trial Court is erroneous. They further submitted that once the dacoity as alleged is not proved, therefore, the trial Court erred in returning a finding that some stolen property was found in possession of the appellants. Hence, the conviction under Section 411 IPC is not sustainable. It was further submitted that no independent witness has been associated while making alleged recovery of the tractors and the car. It was further contended that there is an unexplained delay in the registration of FIR as the incident is alleged to have taken place on 17.04.2015 at about 4:00 am whereas the FIR was registered only on 20.04.2015.

Learned counsel appearing for Devender-appellant has further submitted that the prosecution has failed to prove its case against the appellant as the first informant has alleged that all the accused came in a white colour Indica car whereas the prosecution has alleged to have

recovered an i20 car, on the disclosure of the appellant. He, hence, submitted that the conviction of the appellant-Devender is liable to be set aside. In the end, learned counsel for the appellants submitted that a lenient view may be taken by reducing the sentence or releasing them on probation.

On the other hand, learned counsel appearing for State of Haryana, has supported the judgment passed by the learned Trial Court and contended that both the tractors were recovered on the disclosure statement of Satinder and Ram Mehar. He further submitted that recovery memos Ex. P-F and P-L have been proved by examining Head Constables Parveen, Anoop & Kamal Singh as PW1, PW4 and PW8 respectively. Investigating Officer Hawa Singh has also been examined as PW10.

This Court has considered the submissions of the learned counsels and with their able assistance analysed their arguments.

Let us first examine the record. Ex.PD is the disclosure statement of Satinder-appellant. This statement is to the effect that he can get Swaraj Tractor recovered. Ex.PF is the recovery memo which was prepared after Satinder led the police party to recover the stolen tractor. The recovery memo is attested by HC Parveen and Constable Gurpreet Singh as witnesses. It is also signed by Hawa Singh-Investigating Officer. Parveen has been examined as PW1 whereas Hawa Singh has been examined as PW10. It is not the case of the appellant –Satinder that the tractor belongs to him. Identity of the tractor is also not in dispute because it was a new tractor which was being

transported from the manufacturer to its distributor. The tractor was recovered from the village Khait. Satinder is also resident of village Khait. Hence, it cannot be said that the prosecution has failed to prove the possession of the stolen property from the custody of appellant-Satinder.

Similarly, on the disclosure statement of Ram Mehar-Ex.PK on 26.04.2015 another tractor without bonnet was recovered by recovery memo Ex. PL, on the same date i.e 26.04.2015. The recovery memo is signed by two witnesses namely Head Constables Anoop Singh and Kamal Singh. The prosecution has got recorded the statement of Anoop Singh, Hawa Singh and Kamal Singh, to prove the recovery memo Ex.PL.

Now, let us examine the case of Devender. It is the case of the prosecution that on disclosure statement of Devender-appellant Ex.PR, an i20 car was recovered. Ex.PS is the recovery memo which shows that i20 car with registration no.HR-26-AM-0059, parked in front of his house was got recovered.

It is significant to note here that the aforesaid car is stated to be owned by Tek Ram who has been examined as PW11. He has stated that the police has taken the aforesaid car from his house. He further stated that he never sold or handed over the above said car to anyone. At the cost of repetition, it is important to note that as per case the case of the first informant, the car, which was used at the time of occurrence was indica car of Tata make whereas the car which is shown to be recovered by the prosecution, on the disclosure statement, is an i20 car of Hyundai

make.

Now, the stage is set for examining the arguments of the learned counsels. As regards, first argument that since the prosecution has failed to prove the main offence of dacoity, therefore, it must be held that the prosecution failed to prove that the alleged tractors were stolen property. This Court has considered the submission, however, expresses its inability to accept the same. No doubt, the prosecution has failed to prove dacoity as defined under Section 391 IPC, as PW12 did not recognize/identity the appellants as the accused who had taken away the tractors after giving him beatings and administering to him some intoxicating tablets. However, that ipso facto does not lead the court to hold that even the offence under Section 411 IPC, has not been proved. The appellants do not claim that the tractors belong to them. New tractors are being transported from the manufacturer to its distributor. In these circumstances, once it is proved that both the tractors which were part of the stolen property were found to be retained by the accused-Satinder and Ram Mehar, therefore, the offence under Section 411 IPC, is made out. Hence, the Court below has not committed any error in convicting Satinder and Ram Mehar under Section 411 IPC.

As regards, next argument of the learned counsels that no independent witness has been joined, it may be noted that although it is desirable that independent witnesses should be joined when recovery of the stolen articles is being made, however, failure of the prosecution on this account itself is not fatal to the case of the prosecution. In the present case, the recovery of the stolen articles has been proved by

examining Investigating Officer –Hawa Singh and Head Constables Parveen, Anoop and Kamal Singh. This Court has carefully examined their deposition and found that they have proved the case of the prosecution and the defence has failed to shake the credibility of their deposition in the cross examination.

Now let us examine the case of Devender. As noticed above, as per the case of the prosecution on the disclosure statement of Devender, a motor car i20 (Hyundai make) is alleged to have been recovered. There is no explanation how the Indica car which was alleged to be involved in the occurrence is now changed to i20 car. The Indica and i20 cars can very well be distinguished on a casual glance. Therefore, the alleged recovery from Devender is doubtful. Still further, as noticed above, owner of the car has appeared as PW11 and deposed that the police has taken the vehicle from his custody. It is not the case of PW11 that the vehicle had been stolen. In these circumstances, the prosecution has clearly failed to prove its case against Devender. Thus, Devender-appellant is entitled to the benefit of doubt. Hence, criminal appeal CRA-S-1607-2019 is accepted while setting aside the judgment of conviction and order of sentence qua appellant-Devender.

This court has examined the custody certificates filed by the State. Appellant-Satinder is a person with no criminal antecedents. Before his sentence was suspended, he had already undergone 8 months and 4 days of the actual sentence awarded to him. Similarly, Ram Mehar-appellant as per custody certificate before being released on bail had served actual sentence of 5 months and 4 days. There was another

case against Ram Mehar in which he stands acquitted. Both Satinder and Ram Mehar are first time offenders. Learned Trial Court has sentenced them to the maximum sentence which is 3 years. Both are young boys. As per the custody certificate, Satinder is 26 years of age whereas Ram Mehar is 25 years of age at the time of the lodging of FIR. Keeping in view the provisions of Section 360 of Code of Criminal Procedure, this Court is of the considered view that the ends of justice would be met if the appellants- Satinder and Ram Mehar are released on probation of good conduct for a period of two years. Both the appellants shall file bonds with sureties to this effect. They would also appear and receive sentence when called upon during the period of two years. During probation period, they shall be required to keep peace and good behaviour.

Both the appellants – Satinder and Ram Mehar are out of the prison on account of the sentence having been suspended. However, the benefit of suspension of sentence was not given to Devender, therefore, it is directed that Devender be released forthwith, if not required in any other case.

With these observations, all the appeals are disposed of.

16.10.2020
rekha

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No