

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

CRA-S No. 815 of 2022 (O&M)

Reserved On: 12.05.2022

Pronounced On: 24.05.2022

Maninder Singh @ Mani

..... Appellant

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Abhaysher Singh, Legal Aid Counsel (HCLSC)
for the appellant.

Ms. Bhavna Gupta, Deputy Advocate General, Punjab

SURESHWAR THAKUR, J.

1. The accused, namely, Balwinder Singh @ Binder, and, Maninder Singh (appellant herein), became convicted, by the learned Sessions Judge, Barnala, hence through a verdict made on 09.01.2020, upon, Sessions Case bearing CIS No. SC/100/2019. The afore verdict of conviction was made in respect of charges drawn against them for offences, punishable under Sections 379-B, 411 & 34 of the Indian Penal Code.

2. The learned Sessions Judge, Barnala, through a separate order of sentence, made on 09.01.2020, imposed upon each of the convicts, the hereinafter extracted sentence(s) of imprisonment, and, of fine:-

<i>Under Section 379-B of IPC</i>	<i>To undergo rigorous imprisonment for period of five years each and to pay fine of Rs. 5000/- (five thousand only) each and in default of payment of fine, to further undergo rigorous imprisonment for a period of two months each.</i>
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3. The above made verdict of conviction, and, the consequent therewith sentencing order (supra) brought pain to the convict-appellant (Maninder Singh), and, led him to institute thereagainst the instant appeal before this Court.

4. The brief facts of the prosecution case are that an FIR Ex. PW3/B was registered on the basis of statement Ex. PA made by Gurpreet Singh son of Lal Singh got recorded by him with ASI Dalwinder Singh on 26.09.2019, inter alia, alleging that he is driver by profession and he is employed as driver on truck No. PB-13-AL-4994 belonging to Avtar Singh son of Dharam Singh resident of KC Road, Barnala. On the day of recording his statement, he brought sugar bags for transporting the same to Tulsi Karyana Store by loading the same from Gurdaspur in the above said truck. It was at about 11.15 a.m., he, after unloading the truck at Tulsi Karyana Store situated in the street of YS School, Barnala and after taking the transport charges of Rs. 18,150/-, was counting the money while standing in the street near driver side window of the truck. His friend Karamjit Singh son of Ranjit Singh resident of Suja Patti, Sanghera also came near to him. In the meantime, Balwinder Singh son of Ranjit Singh and Maninder Singh son of Gurwinder Singh came from market side and snatched Rs. 18,150/- from his hand and ran away towards the market from the street of YS School. He got perplexed and raised alarm. Thereafter, he and his friend Karamjit Singh chased the said persons, but they succeeded in fleeing away. He informed his owner Avtar Singh regarding the occurrence. He and his friend Karamjit Singh remained searching the said persons.

5. After recording statement Ex. PA of the complainant, ASI Dalwinder Singh attested the same and conducted police proceedings Ex.PW3/A. While finding a prima facie case for offence punishable under Section 379-B of the IPC, statement was sent to the police station, on the basis of which, formal FIR Ex. PW3/B was registered against the accused vide endorsement Ex. PW3/C. Investigation ensued, during the course of which, ASI Dalwinder Singh inspected the place of occurrence and prepared rough site plan Ex. PW3/D on demarcation of complainant. Thereafter, when the police party of ASI Dalwinder Singh alongwith complainant reached near vegetable market in search of accused, two persons were seen while standing by the side of Market Committee and were identified by the complainant as accused of the present case vide identification memo Ex.PD. The accused were arrested vide separate arrest memo Ex.PB. Their personal search was conducted vide separate memo Ex.PC. During interrogation, accused Balwinder Singh suffered disclosure statement under Section 27 of Evidence Act Ex.PE before ASI Dalwinder Singh and in pursuance of said disclosure statement, accused Balwinder Singh got recovered Rs. 3000/- which were taken into police possession vide separate recovery memo Ex.PF. Rough site plan Ex. PW3/E of place of recovery was prepared. During investigation, statements under Section 161 of the Cr.P.C. of witnesses were recorded. On return to police station, case property was deposited with MHC Sarwan Singh. During investigation, offences under Sections 411 , 34 of the IPC were added.

6. On completion of investigations into the FIR (supra), the Investigating Officer presented an affirmative report under Section 173(2)

of the Cr.P.C., before the learned Committal Court concerned, whereafter the latter committed the accused for trial before the learned Sessions Court concerned.

7. The accused/appellant was charged by the learned trial Court, for his allegedly committing offences punishable under Section 379-B, and, Section 411 of the IPC, to which he pleaded not guilty and claimed trial.

8. In order to prove its case, the prosecution examined three (03) witnesses, namely, Gurpreet Singh, complainant as PW-1, Karamjit Singh as PW-2, and, ASI Dalwinder Singh, as PW-3. On closure of prosecution evidence, the statements of the accused, under Section 313 of the Code of Criminal Procedure, were recorded, wherein, they pleaded innocence, and, claimed false implication. However, the accused did not ensure the leading into the witness box of any defence witness.

9. On an appraisal of the evidence on record, the learned trial Court, recorded, in respect of charges (supra), findings of conviction against the accused/appellant herein.

10. The learned counsel for the appellant, has contended with much vigour before this Court, that the impugned verdict, as, drawn against the aggrieved appellant, is not merit worthy, as, it is a sequel of gross misappreciation and non-appreciation of the adduced evidence on record, rather by the learned Sessions Judge concerned. He also contended, that the other co-convict, namely, Balwinder Singh @ Binder, who had also chosen to assail the afore verdict of conviction, and, the consequent therewith sentencing order (supra), stands acquitted, through an order made on 24.02.2020 in CRA-S-1130-2020, by this Court.

11. On the other hand, the learned State Counsel, has argued that the verdict of conviction, and, the consequent therewith sentence (supra), as, became imposed by the learned Sessions Judge concerned, upon, the appellant, is merit worthy and does not warrant any interference being made by this Court.

12. Though, PW-1, PW-2 & PW-3 all make consistent echoings, in their respective examinations-in-chief, with respect to the genesis of the prosecution case, as becomes embodied in the FIR, and, to which Ex. PW3/B is assigned. Moreover, though in their respective cross-examinations, there are apparently no gross improvements or embellishments vis-a-vis their respectively made previous statements in writing, and, nor their respective testifications suffer from any taint or blemish of any inter se contradictions.

13. Though, the afore unblemished testifications, as made by the prosecution witnesses concerned, do prima facie constrain this Court, to uphold the impugned verdict of conviction, and, the consequent therewith sentence (supra), as became imposed, upon the convicts, by the learned Sessions Judge, Barnala. Moreover, even though the recoveries concerned, appear to be validly made, through efficacious drawings of recovery memos concerned.

14. However, the afore incriminatory evidence, as, surges forth against the aggrieved convict – appellant herein, does not yet appeal, to the judicial conscience of this Court, nor is merit worthy. The reason for making the above conclusion, is drawn from the factum, that in his examination-in-chief, though the complainant upon his stepping into the

witness box, as PW-1, though evidently discloses, that he made Ex.P-A, and, whereafter FIR bearing Ex. PW3/B, became registered at the police station concerned. Moreover, even though the names of the accused are mentioned therein. Nonetheless the gravity of the afore becomes completely paled. The reason for drawing the afore conclusion, spurs from the factum of PW-1, in his cross-examination voluntarily stating, that prior to the lodging of FIR, he was not acquainted with the names and identities of the accused, rather he became acquainted with the names and identities of the accused, only after his seeing a footage of CCTV cameras, as were installed at the place of occurrence, inasmuch as, at a shop located in proximity to the site of occurrence. However, the afore best electronic evidence, did not come, to be adduced by the prosecution, whereas, it constituted as afore stated, the best evidence to sustain the charge drawn against the accused.

15. The learned trial Judge concerned, proceeded to over-ride the exculpatory effect of non-adduction of best evidence (supra), merely on the ground that with the complainant in his examination-in-chief, hence proving Ex. PA, wherein, occurs the names of the accused, rather thereupon the exculpatory effect, if any, of the best evidence (supra), becoming subsumed. Obviously, hence the learned trial Judge concerned, also proceeded to make pale, the conspicuous exculpatory significance of a statement, existing in the cross-examination of PW-1, wherein, he echoes that prior to the occurrence, he was completely unaware qua the names and identities, of the accused, and that he became awakened qua the identity of the accused, only upon his seeing the footage of CCTV cameras, located in proximity to the site of occurrence. It appears the afore meted reason is extremely shaky and

feeble and cannot become vindicated by this Court. The reasons being that even if in EX.PA, the complainant had named the accused. However, since as stated above, he appears to therein name the accused, only after his viewing the footage of CCTV cameras, existing in proximity to the site of occurrence. Therefore, the afore statement carried in the cross-examination of PW-1, was a successful effort on the part of the learned defence counsel, to validly seek exculpation of the aggrieved accused – appellant, from the charge drawn against him. In sequel, it was to be assigned credence. May be its credence would become enhanced or completely belittled, yet only upon adduction of the best electronic evidence (supra), rather by the prosecution, before the learned trial Judge concerned, than through, its being withheld or suppressed from its becoming viewed, by the learned trial Judge concerned, (i) and, whereafter, the latter could proceed to make a valid affirmative opinion, qua whether the statement in the examination-in-chief, of PW-1, wherein, he admits his making Ex. P-A, and, wherein occur the names of accused, is merit worthy, (ii) or whether the subsequent thereto exculpatory statement, as, made by him, in his cross-examination, wherein, he echoes, that the afore naming, was a sequel of his viewing the footage of a CCTV camera, as, became installed in proximity the site of occurrence, is rather credible. Consequently, the lack of adduction of the afore best evidence, by the prosecution, and, it becoming untenably condoned by the learned trial Judge concerned, does make, the charge to founder.

16. Therefore, the impugned verdict, and, the consequent therewith sentence (supra), as, became imposed, upon, the accused-appellant, by the learned trial Judge concerned, suffers from a gross absurdity of mis-

appraisal of the impact of withholding of the afore best electronic evidence, by the prosecution.

17. In sequel, there is merit in the appeal. The same is allowed. The impugned judgment of conviction, and, the consequent therewith sentence (supra), as, became imposed, upon the convict, only inasofar as the appellant herein is quashed, and, set aside.

18. The accused-appellant is acquitted of the charged offence(s) (supra). The personal and surety bonds of the appellant are ordered to be forthwith cancelled and discharged. Fine amount, if any, realized from the present appellant may, in accordance with law, be refunded to him. The case properties be, in accordance with law, dealt with after expiry period of limitation. The accused-appellant herein, if is in custody, be forthwith released from custody. Release orders be accordingly prepared. Records be sent back to the quarter concerned.

19. Since, the main appeal itself has been decided, therefore, no order is required to be passed in the pending miscellaneous application(s), if any, and, the same also stand(s) disposed of.

May 24, 2022
'dk kamra'

(SURESHWAR THAKUR)
JUDGE

<i>Whether Speaking/reasoned</i>	<i>Yes / No</i>
<i>Whether Reportable</i>	<i>Yes / No</i>