

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR No.1714 of 2017
Date of Decision : 30.11.2022

Amrik Chand @ Sonu
.....Petitioner

Versus

State of Punjab
.....Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Ajay Kumar, Advocate for
Mr. Rishu Mahajan, Advocate
for the petitioner.

Mr. Sarabjit S. Cheema, Deputy Advocate General, Punjab
for the respondent/State.

PANKAJ JAIN, J.

Petitioner is in revision against the order passed by Sessions Judge, Jalandhar whereby judgment of acquittal passed by Judicial Magistrate 1st Class, Phillaur, dated 19th of July, 2014, in favour of the petitioner has been reversed holding the petitioner guilty of offences punishable under Sections 380, 411 IPC and sentencing him as under :-

Offence	Sentence	Fine	In default
380 IPC	To undergo rigorous imprisonment for a period of one year	Rs.15,000/-	To further undergo rigorous imprisonment for two months.
411 IPC	To undergo rigorous imprisonment for a period of one year	Rs.10,000/-	To further undergo rigorous imprisonment for one month.

2. The ball was set into motion by one Meena Kumari wife of

Jatinder Kumar who got her statement recorded with the police authorities claiming that on 14th of June, 2010 when she was away to her parental house she was informed by her nephew namely Narinder Kumar that theft has taken place in the house when she along with her brother Gurdeep Lal returned home they found that the lock of her room was broken and the same was ransacked. Valuable articles including gold jewellery and cash were found to be missing. Likewise room of her nephew namely Satnam Ram was also broke open and ransacked. It was claimed that some unidentified persons had stolen away gold jewellery, mobile phones and other articles at night. The aforesaid statement was made with the police authorities on 17th of June, 2010 and the case under Sections 457/380 IPC was got registered. On 1st of November, 2010 i.e. after more than four months her supplementary statement was got recorded to the effect that she is sure that Rupinder Kaur wife of her nephew namely Satnam Raj and Amrik Chand @ Sonu son of Bahadur Ram, the present petitioner have committed theft conniving with each other. After 10 days, Kuldip Singh Ex-Sarpanch of the village got his statement recorded before the police authorities claiming that Amrik Chand, the petitioner has confessed his crime before him. This all resulted in arrest of the petitioner on 15th of November, 2010. As per prosecution, on the disclosure statement made by present petitioner certain gold articles and an amount of Rs.1,60,000/- were recovered from rented accommodation. Likewise, it was further claimed

that on 17th November, 2010 on the disclosure made by accused-petitioner, another amount of Rs.40,000/- was recovered from drum of flour.

3. Trial Court after analyzing the evidence threadbare found that :-

“....It is very surprising that when she got her statement recorded with police Ex PA she did not specify gold articles and money which she alleges to have been stolen. She did not even make mention of her mobile number or even marka to the police. She had submitted the list of stolen articles with the police on 5.7.2010 which is Ex.PW2/A ie, after about 18 days. This fact gives clear rise to speculation that she had cooked up aftermath false story after thoughtful deliberation to rope in the accused in a false case. Though she had submitted the list of articles Ex.PW2/A on 5.7.2010 but even when she had appeared and stepped into the witness box as PW2 she had repeated the same story which she had mentioned in Ex.PA to the police again without specifying the stolen amount, the gold ornaments or the mobile number. Furthermore according to her version she lives in joint family with the family of her brother-in-law Dev Raj (Jeth) who lives in abroad, whose elder son Narinder Kumar lives with them and accused Rupinder Kaur also lives in the same house as her husband Satnam Ram the nephew of complainant is residing in foreign country. From the facts projected by her it becomes clear that the complainant was living in joint family. It is very astonishing that non in the family members had endeavored to joint the proceedings and tried to become witness to corroborate the complainant version. As per the complainant story she received a phone call from her nephew Narinder Kumar about the theft in her house. No reason has been assigned as to why the police did not join him as a witness. Moreover her brother had accompanied her to village Badala. As

per the complainant story how it is possible that he did not accompany her to her house where the alleged theft had taken place and left his sister in lurch. Apart from complainant herself no other family member has come forward to substantiate the complainant story.

19. Again the complainant is coming up with yet another story. Ex.PD is her second statement to the police which she had given on 1.11.2010 wherein she had stated that she remembered having seen Amrik Chand roaming around in the village street and that he had illicit relations with her nephew's wife and that she along with her child was missing since 1.11.2010 and that she in connivance with Amrik Chand had committed the theft. Now adverting again to Ex PA when she had reported the matter with the police about theft in her room she had also given statement that room of Satnam Ram was also broken open. From appraisal of statement of complainant it appears that Rupinder Kaur accused had been living jointly with the complainant along with other family members when her husband Satnam Raj was away to foreign country. This is beyond apprehension as to how the room of Satnam Singh was broken open when the accused No.2 was living in that room being the wife and was having possession thereof. The statement itself is ambiguous and unexplained.

20. Now coming to PWI Kuldip Singh who has deposed to the effect that on 5.11.2010 accused Amrik Chand made a confession before him that at the instance of Rupinder Kaur and in connivance with her they committed theft of gold, money and mobile phone at night in the house of complainant and that they are having intimacy with each other. Firstly, even if believing the version of this witness he has mentioned the stolen articles just in toto as those by complainant in Ex PA and her testimony ExP2 which reflects that this witness after consultation with complainant deposed in her favour and thus is tutored witness. Now so far as admissibility qua co accused Rupinder Kaur is

concerned it cannot be taken into account to set the guilt of Rupinder Kaur and even otherwise as it is extra judicial confession, as rule of caution, independence reliable corroboration to be looked for in order to place reliance upon an extra judicial confession. But in the instant case the prosecution has failed to give cogent explanation as to how Narinder Kumar who had informed the complainant about the alleged theft and brother of the complainant who had accompanied her to her village and none any other family member have been examined. More so the complainant has failed to specify the gold ornaments, amount of money and mobile number or its made. It cannot be conceded as to how much money she had kept in her almirha nor can she be considered to have been unaware of her mobile number or its made. More over she has minced no word about the fact as to why Rupinder Kaur needed to break open the door of her own room when she herself had been residing in that room. The entire prosecutions story is shrouded with suspicious circumstances which cannot be over looked. The prosecution has failed to bring home the guilt of the accused.”

4. In the appeal preferred by the State against the judgment of acquittal, the Ld. Appellate Court upheld the acquittal of Rupinder Kaur but convicted the petitioner of offence punishable under Section 380, 411 IPC awarding him sentence *ibid*.

5. While coming to the aforesaid conclusion, the Appellate Court has strongly relied upon the recovery of gold jewellery from the petitioner pursuant to his disclosure under Section 27 of the Evidence Act. Appellate Court found that recovery of Rs.1,60,000/- is not relatable to the offence however, the gold articles i.e. one pair of earrings and gold neckless were

admissible and were sufficient to bring home guilt of the petitioner.

6. Ld. Counsel for the petitioner has argued that the petitioner cannot be held guilty of offence punishable under Section 380 IPC and that punishable under Section 411 IPC. He submits that both the offences being mutually exclusive, conviction under both of them cannot be sustained. It has been further contended that in fact the petitioner has been falsely implicated in the present case as he was suspected of having illicit relations with co-accused Rupinder Kaur. He refers to the findings recorded by the Appellate Court to submit that the petitioner has been held guilty of offence punishable under Section 411 IPC merely on the basis of an extra judicial confession. Such statement cannot be said to be cogent evidence to bring home guilt against the petitioner. He relies upon the law laid down by Apex Court in **Trimbak vs. State of Madhya Pradesh, AIR 1954 Supreme Court 39** to contend that mere possession of a stolen property cannot be enough to hold petitioner guilty of offence punishable under Section 411 IPC till it is not proved that the accused had knowledge that the property was a stolen property.

7. Per contra Ld. State Counsel submits that the petitioner having found to be in possession of stolen property and the said property having been recovered pursuant to his disclosure under Section 27 of the Evidence Act is enough to hold petitioner guilty of offence punishable under Section 411 IPC and, thus, no fault can be found with the finding recorded by the

Trial Court *qua* the said offence. State Counsel further submits that it was on account of relations of the petitioner with co-accused Rupinder Kaur that he had an access to the house and, thus, no fault can be found with the finding recorded *qua* offence punishable under Section 380 IPC as well.

8. I have heard counsel for the parties and have gone through the records of the case.

9. There is no evidence on record *viz-a-viz* offence punishable under Section 380 IPC. In order to hold person guilty of offence punishable under Section 380 IPC, prosecution is required to prove that the accused has committed theft in a building, tent or vessel and that such building, tent or vessel was used as a human dwelling. Theft is defined under Section 378 IPC. As per the same when a person intending dishonestly to take any movable property out of the possession of any person without that person's consent, moves that property in order to such taking, he is said to have committed theft. There is no proof w.r.t. any of the ingredients to constitute offence under Section 378 IPC on record against the petitioner. Thus, in the absence of there being any evidence w.r.t. an overt act on part of the petitioner of having moved the property in question out of the possession of the owner, petitioner cannot be held guilty of the offence of theft and, thus, finding recorded by the Courts below w.r.t. offence punishable under Section 380 IPC cannot be sustained. The petitioner is acquitted of charge of offence punishable under Section 380

IPC.

10. In **Trimbak's case** (supra), Apex Court held that in order to constitute offence punishable under Section 411 IPC, the necessary ingredients are :-

- “1) that the stolen property was in the possession of the accused,
- (2) that some person other than the accused had possession of the property before the accused got possession of it, and
- (3) that the accused had knowledge that the property was stolen property.”

11. The recovery effected from the petitioner is of gold articles. The said articles have been well identified by Meena Kumari, the owner. She has proved the purchase bills as Exhibit PW2/D to Exhibit PW2/G. Resultantly, no fault can be found with the conviction of the petitioner for offence punishable under Section 411 IPC.

12. As a sequel of the discussion held hereinabove, the sentence of 1 year awarded to the petitioner for offence punishable under Section 411 IPC is hereby reduced to 9 months.

13. Since the petitioner has already undergone 3 months and 8 days out of awarded sentence of 1 year, he is directed to surrender before the CJM/Jail Authorities concerned within two weeks from today. On his doing so, he shall be taken into custody forthwith to suffer the remaining period of his sentence.

14. In case the petitioner does not surrender within the stipulated

period, CJM concerned shall order arrest of the petitioner for compliance of the above-said direction.

November 30, 2022
Dpr

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No