

In the High Court of Punjab and Haryana at Chandigarh

1. CRA-S-1127-2021 (O&M)
Reserved on: 26.5.2023
Date of Decision: 01.6.2023

Satnam Singh @ SattuAppellant

Versus

State of PunjabRespondent

2. CRA-S-1248-2022 (O&M)
Pritpal Singh @ BillaAppellant

Versus

State of PunjabRespondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Pulkit Dagar, Advocate for
Mr. Kunal Muthreja, Advocate
for the appellant (in CRA-S-1127-2021).

Mr. Kushagra Mahajan, Advocate
for the appellant (in CRA-S-1248-2022).

Ms. Monika Jalota, Sr. DAG, Punjab.

SURESHWAR THAKUR, J.

1. Since both the appeals (supra) arise from a common verdict, made by the learned trial Judge concerned, hence both are amenable for a common verdict being made thereons.

2. Both the appeals (supra) are directed against a common verdict of conviction, made on 12.8.2021, against the convicts-appellants, upon Sessions case No. 199 of 22.4.2019, thus by the learned Sessions Judge,

Amritsar. Through the above said verdict, the learned trial Judge concerned,

convicted the accused, for the commission of offence punishable, under Section 379-B read with Section 34 of the IPC. Moreover, through a separate sentencing order of even date, the learned trial Judge concerned, sentenced the convicts to undergo rigorous imprisonment for a period of six years, for an offence punishable under Section 379-B read with Section 34 of the IPC, besides also imposed, upon the convicts sentence of fine, comprised in a sum of Rs. 10,000/- each, and, in default of payment of fine amount, she sentenced the convicts to undergo rigorous imprisonment for a period of six months. However, both the convicts were acquitted of the charge framed against them qua commission of an offence punishable under Section 411 read with Section 34 of the IPC.

3. The periods of detention undergone by the convicts, during the investigations, and, trial of the case, were, in terms of Section 428 of the Cr.P.C., rather ordered to be set off, from the above imposed sentence(s) of imprisonment.

4. The accused-convicts become aggrieved from the above drawn verdict of conviction, besides also, become aggrieved from the consequent therewith sentences of imprisonment, and, of fine as became imposed, upon them, by the learned convicting Court concerned, and, hence have chosen to institute thereagainst the instant criminal appeals, before this Court.

Factual Background

5. The genesis of the prosecution case, becomes embodied in the appeal FIR, to which Ex. P-7 is assigned. The narrations carried in Ex. P-7, are that on 28.06.2016 SI Satinder Pal Singh, Incharge Police Post Khasa alongwith other officials of police party, was present in the area of Hamidpura colony near India Gate, in connection with patrolling and search

resident of Bharoli Khurd, Police Station Sujanpur, district Pathankot, appeared, and, got recorded his statement before SI Satinder Pal Singh to the effect that he is the resident of the above mentioned address, and, is working in SKS Micro Finance Company having office at Naraingarh, Amritsar. On that day, after making collection on behalf of company, he was going from Jhabal Kalan to Chheharta, Amritsar, on his motorcycle. On the way at about 12.15 p.m. in the area of turning of village Basrake Bhaini, three young persons came on a motorcycle, and, brought their motor cycle parallel to his motorcycle. One of the riders of the aforesaid motorcycle, forcibly snatched his bag containing cash of Rs.60,000/-, one Tab Samsung and two new mobile phones of Nokia, and then they fled towards Chheharta side. Out of the three snatchers, two were clean shaven, and, one was wearing a turban (patka), and all of them were wearing capris. On the above allegations, FIR under sections 379-B/411/34 of the Indian Penal Code was registered.

Investigation proceedings

6. During investigation, site plan of the place of occurrence was prepared, and, statements of witnesses were recorded. On 15.07.2016 accused Baljit Singh made disclosure statement in case FIR No. 87 dated 16.06.2016 registered at Police Station Gharinda, that on 28.06.2016 he alongwith his companions Satnam Singh and Pritpal Singh committed snatching in the area of Sun Sahib road, Chheharta, Amritsar. Accordingly, accused Baljit Singh was arrested in this case on 16.07.2016 and then on 17.07.2016 in pursuance to his disclosure statement he got recovered six currency notes of the denomination of Rs. 500/-each. Accused Pritpal Singh was arrested on 17.07.2016, and, then in pursuance to his disclosure statement, he got recovered four currency notes in the denomination of

alongwith his companions Satnam Singh and Baljit Singh committed snatching of bag from Akshay Kumar, and that on reaching village, Satnam Singh gave Rs. 5,000/- each to him and Baljit Singh, and, retained the bag with him. Accused Satnam Singh was arrested on 18.4.2017. Accused were got identified by the complainant. During investigation of the case, accused Baljit Singh had expired on 28.12.2017. After conclusion of investigations, the investigating officer concerned, proceeded to institute a report under Section 173 of the Cr.P.C., against accused Pritpal Singh and accused Satnam Singh, before the learned committal Court concerned.

Committal Proceedings

7. Since the offence under Section 379-B of the IPC was exclusively triable by the Court of Session, thus, the learned committal Court concerned, through a committal order made on 8.4.2019, hence proceeded to commit the accused to face trial before the Court of Session.

Trial Proceedings

8. The learned trial Judge concerned, after receiving the case for trial, after its becoming committed to him, made an objective analysis of the incriminatory material, adduced before him. Resultantly, he proceeded to draw charges against the accused, for offences punishable under Sections 379-B/411/34 of the IPC. The afore drawn charges were put to the accused, to which they pleaded not guilty, and, claimed trial.

9. In proof of its case, the prosecution examined eight witnesses, and, thereafter the learned Public Prosecutor concerned, closed the prosecution evidence. After the closure of prosecution evidence, the learned trial Judge concerned, drew proceedings, under Section 313 of the Cr.P.C., but thereins, the accused pleaded innocence, and, claimed false implication.

The accused also chose to adduce defence evidence, but did not lead any

defence witness into the witness box.

10. As above stated, the learned trial Judge concerned, proceeded to convict the accused for the charge(s) (supra), as became drawn against them, and, also as above stated, proceeded to, in the hereinabove manner, impose the sentence(s) of imprisonment, as well as of fine, upon the convicts.

Submissions of the learned counsels for the appellants

11. The learned counsels for the aggrieved convicts-appellants have argued before this Court, that the impugned verdict of conviction, and, consequent therewith order of sentence, require an interference. They support the above submission on the ground, that it is based on a gross misappreciation, and, non-appreciation of evidence germane to the charge.

Submissions of the learned State counsel

12. On the other hand, the learned State counsel has argued before this Court, that the verdict of conviction, and, consequent therewith sentence(s) (supra), as become imposed upon the convicts, is well merited, and, does not require any interference, being made by this Court in the exercise of its appellate jurisdiction. Therefore, he has argued that the instant appeals, as preferred by the convicts, be dismissed.

Analysis of the statement of complainant Akshay Kumar, who stepped into the witness box as PW-1

13. In support of the prosecution case, the complainant Akshay Kumar stepped into the witness box as PW-1, and, in his examination-in-chief, he made speakings, which are in tandem with his previously made statement Ex. P1, to the police officer concerned. Though, the accused were previously unknown to the complainant, but since in his previously made statement to the police officer concerned, he described the key physical attributes of the accused, which led the investigating officer concerned, to

hold a test identification parade, wherein, through identification memos, to which respectively Ex. P-2 and Ex. P-3 become assigned, thus the complainant identified the accused. Therefore, with the complainant identifying the accused, thus also in the Court, rather is not a legally unworthy identification, as during the course of investigations, the complainant through apposite identification memos to which Ex. P-2 and Ex. P-3 becomes assigned, did proceed to then identify the accused.

14. Though, the appeal FIR (Ex. P-7), carries a narrative about the accused snatching from the complainant Rs. 60,000/-, a Tab Samsung, as also two mobile phones of make Nokia. However, a reading of the cross-examination of the complainant reveals, that he was unable to produce on record original/photocopy of ownership documents, thus relating to the above. Therefore, besides when recovery of the above items remained unaffected at the instance of the accused concerned, to the investigating officer concerned, resultantly a conclusion is required to be drawn, that the snatchings of the above items, allegedly by the accused concerned, from the complainant, thus does not become cogently established.

15. Be that as it may, during the course of investigations, being made into the appeal FIR (Ex. P-7), the deceased co-accused Baljit Singh made a signed disclosure statement, before the investigating officer concerned, and, to which Ex. P-17 becomes assigned. In the said disclosure statement, he assigned an incriminatory role to both the convicts, before this Court. In pursuance to the said disclosure statement, the said deceased co-accused Baljit Singh, ensured recovery of six currency notes in the denomination of Rs. 500/- each, to the investigating officer concerned. The above recovery was made through recovery memo Ex. P-16.

deceased co-accused Baljit Singh, thus in his disclosure statement Ex. P-17 rather to both the convicts, before this Court, namely Pritpal Singh @ Billa and Satnam Singh @ Sattu. Therefore, the incrimination, as was assigned in Ex. P-17 to the convicts (supra), before this Court, was also required to be cogently established by the prosecution.

17. Though, the investigating officer concerned, did not, during the course of his carrying investigations into the appeal FIR Ex. P-7, record the disclosure statement of co-convict Satnam Singh @ Sattu. However, though the above wants, do not *prima facie* appeal to the judicial conscience of this Court, rather to sustain the verdict of conviction, as drawn against co-convict Satnam Singh. Nonetheless, the investigating officer concerned, during the course of his carrying investigations into the appeal FIR Ex. P-7, had taken to record the disclosure statement of co-convict Pritpal Singh @ Billa. The said disclosure statement becomes embodied in Annexure P-15, and, is signed by co-convict Pritpal Singh @ Billa. The contents of Ex. P-15, are ad verbatim extracted hereinafter.

“In the presence of following witnesses accused Pritpal Singh @ Billa son of Dilbagh Singh, Caste Majbi, resident of Jhabal, P.S. Jhabal District Tarn Taran made disclosure statement that he used to consume Heroin alongwith Satnam Singh @ Sattu son of Gurdial Singh, Caste Majbi, resident of Jhabal and Baljit Singh @ Gora son of Balwinder Singh, Caste Majbi, resident of Mannan, Police Station Jhabal, District Tarn Taran and said heroin was got supplied by Satnam Singh Sattu for consuming and we used to do bad work and due to lack of money Satnam Singh @ Sattu told us that he will took them to somewhere and if someone has money with them, we will snatch that money. On 28.06.2016, I alongwith Satnam Singh @ Sattu son of Gurdial Singh, Caste Majbi resident of Jhabal and Baljit Singh @ Gora son of Balwinder Singh, Caste Majbi, resident of

Mannan, Police Station Jhabal, District Tarn Taran, on one motorcycle Splendor without any number, which has already been taken into possession by you and one case bearing FIR No. 92 dated 01.07.2016 under section 379, 411 IPC was registered against me, and that motorcycle was being driven by Satnam Singh @ Sattu and Baljit Singh @ Gora was pillion rider of that motorcycle and I was sitting behind and Satnam Singh @ Sattu was having knowledge that one agent namely Akshay Kumar of SKS Finance Company to whom he already knew that he used to attend meetings in our village at different places and collect the money. We followed him on our motorcycle from Village Jhabal Kalan and stopped him at Village Basarke Bhaini on the road leading from Sann Sahib to Chhehrata Road and snatched his bag and fled away our motorcycle and when we reached at Village, Satnam Singh @ Sattu gave Rs. 5000/- each to me and Baljit Singh @ Gora and bag was kept by him in his possession and I do not know what was lying in that bag and Rs. 5000/- which was given to me by Satnam Singh @ Sattu, kept concealed by me in almirah of my house and I can get recovered the same. ”

18. A perusal of the above extracted contents of Ex. P-15, unravels, that the maker thereof had confessed his receiving from convict Satnam Singh @ Sattu a sum of Rs. 5,000/-, and, further his evincing his willingness to cause recovery thereof, thus from an almirah located in his house.

19. Though, there is no denial by co-convict Pritpal Singh @ Billa about the authenticity of his signatures, as carried on Ex. P-15, nor though the said denial has been ably proven, through adduction of best evidence, comprised in the report of the hand writing expert concerned. However, yet through recovery memo Ex. P-14, he caused the recovery of four currency notes in a denomination of Rs. 500/- each, from an iron almirah lying in the room of his house. The said recovery memo is signed by ASI Dharminder

Singh. It is but from the above contents of Ex. P-15, that an incrimination

was drawn against co-convict Satnam Singh, irrespective of his not making any disclosure statement to the police officer concerned, nor his causing any recovery to the investigating officer concerned.

20. It appears that, on the basis of the said disclosure statement Ex. P-15, and, consequent thereto recovery, as became made to the investigating officer concerned, through Ex. P-14, that reiteratedly an incrimination was drawn against co-convict Pritpal Singh @ Billa, and, co-convict Satnam Singh @ Sattu. However, for the reasons to be assigned hereinafter, this Court does not deem it fit, and, appropriate to assign any evidentiary tenacity to the above memos.

21. The reason for making the above inference, becomes grounded in the factum, that though the investigating officer concerned, who drew the above memos, had expired at the time of the production of the case property (supra), before the learned trial Judge concerned, but yet the signatures of the deceased investigating officer concerned, were proven by the police officer concerned. Moreover, ASI Dharminder Singh, the marginal witness to recovery memo Ex. P-14, had also stepped into the witness box as PW-6, thus for adducing proof qua the recitals, as carried therein. Though, a reading of his examination-in-chief, reveals that, he has made speakings therein, about the authenticity of drawings of the above memos. However, in his cross-examination, he made speakings, that the room inside the house of convict Pritpal Singh @ Billa, wherein, the relevant almirah was located, thus was free to be openly accessed, and, was also free for being ingressed into, and, from being egressed therefrom. Moreover, a reading of his cross-examination also unravels, that the almirah wherefrom the relevant recovery, as was made through Ex. P-14, rather was not locked.

comprised in the stark factum, that the production in Court, was of those recovered thus six currency notes, in the denomination of Rs. 500/- each, thus totaling Rs. 3,000/-, whereas, the recovery memo Ex. P-14 rather speaks, about four currency notes in the denomination of Rs. 500/- each, becoming allegedly recovered from the open almirah, kept in the open room of the house of convict Pritpal Singh @ Billa. It appears that the four currency notes in the denomination of Rs. 500/- each, as became recovered through Ex. P-14, at the instance of co-convict Pritpal Singh @ Billa, were never produced in Court, rather the recovery, as made of six currency notes in the denomination of Rs. 500/- each, rather from deceased co-accused Baljit Singh, rather did become produced in Court. The effect of the above would be deliberated upon subsequently.

23. Therefore, if the recovery, as made through recovery memo Ex. P-14, thus in pursuance to the disclosure statement Ex. P-15, was made from an open almirah, kept inside the open room of the house of co-convict Pritpal Singh @ Billa, as such the said recovery, as made through recovery memo Ex. P-14, becomes vulnerable to skepticism. The reason being that, the unlocked almirah, located inside the open room of co-convict Pritpal Singh @ Billa, thus was freely accessible, thus even to the investigating officer concerned, to but contemporaneously to his accompanying the convict to the relevant place of recovery, rather place the said currency notes inside the open almirah located in the open room, inside the house of co-convict (supra). In consequence, it appears, that thereby both the disclosure statement Ex. P-15, and, also the consequent thereto recovery memo Ex. P-14, are thus engineered rather to falsely implicate the accused. As but a natural corollary, no credence is to be assigned to the disclosure statement

Ex. P-15, and, also the consequent thereto recovery memo Ex. P-14.

24. The effect of the non-assigning of credence to the above, is that, the confession, as made by convict Pritpal Singh @ Billa about his receiving the said currency notes from co-convict Satnam Singh @ Sattu, does thereby concomitantly loose its creditworthiness. In sequel, the incrimination, as drawn against co-convict Satnam Singh @ Sattu, thus on the basis of the above disclosure statement Ex. P-15, and from the consequent thereto recovery, as made through recovery memo Ex. P-14, rather also looses the apposite evidentiary vigour, and/or, for the reasons (supra), thus becomes belied.

25. Moreover, the investigating officer concerned, produced in Court, the currency notes recovered through recovery memo Ex. P-16, from the almirah lying in the house of deceased co-accused Baljit Singh. However, the currency notes, as became allegedly recovered by accused Pritpal Singh @ Billa, through recovery memo Ex. P-14, were not produced in Court. Therefore, for want of production in Court of the currency notes, as became purportedly recovered at the instance of co-convict Pritpal Singh @ Billa through recovery memo Ex. P-14, belies the incriminatory role, as assigned to co-convict Pritpal Singh @ Billa. Since the above co-accused deceased Baljit Singh died during the pendency of the investigations, therefore, when he was not required to be tried by the learned trial Judge concerned, as such, there was no requirement of recovery, as was made by him to the investigating officer concerned, to become produced in Court, thus in respect of charges drawn against the other co-convicts.

Final order

26. The result of the above discussion, is that, this Court finds merit in both the appeals, and, is constrained to allow them. Consequently, both

the appeals are allowed. The impugned judgment convicting, and,

sentencing the appellants, and, as becomes recorded by the learned trial Judge, concerned, is quashed, and, set aside. Both the appellants are acquitted of the charges framed against them. The fine amount, if any, deposited by them, be, in accordance with law, refunded to them. The personal, and, surety bonds of the accused shall stand forthwith cancelled, and, discharged. The case property be dealt with, in accordance with law, but after the expiry of the period of limitation for the filing of an appeal. The appellants, if in custody, and, if not required in any other case, be forthwith set at liberty. Release warrants be prepared accordingly.

27. Records be sent down forthwith.

28. The miscellaneous application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

June 01, 2023
Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : Yes