

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

CRR-341-2020

Date of Decision: February 03, 2023

Rakesh Kumar alias Lovely

...Petitioner

Versus

State of Punjab

...Respondent

2.

CRR-2271-2019

Sonu Kumar and another

...Petitioners

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Ms. Bhagyashri, Advocate for
Mr. Bhavesh Aggarwal, Advocate for the petitioner
in CRR No.341 of 2020.

None for the petitioners in CRR No.2271 of 2019.

Mr. Parneet Singh Pandher, AAG, Punjab.

DEEPAK GUPTA, J.(Oral)

This order shall dispose of aforesaid two criminal revision petitions arising out of the same FIR.

The three petitioners (Rakesh Kumar @ Lovely - petitioner in CRR No.341 of 2020; and Sonu Kumar & Narinder Kumar @ Neetu - petitioners in CRR No.2271 of 2019) along with Ashok Kumar were tried by the Court of learned Chief Judicial Magistrate, Gurdaspur in case FIR No.69 dated 24.04.2011, registered at Police Station City Gurdaspur, under Sections 457, 380 IPC. Vide judgment dated 02.11.2016, though they were acquitted for the charges under Sections 457 as well as 380

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IPC but were convicted under Section 411 IPC. Vide separate order of even date, all four of them were sentenced to undergo rigorous imprisonment for a period of three years with fine of ₹5,000/- each with default sentence for committing the said offence punishable under Section 411 IPC. All four of them filed separate appeals, which were heard together by learned Additional Sessions Judge, Gurdaspur. The appeal against conviction was dismissed. However, sentence was reduced and all four of them were sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of ₹5,000/- each with default sentence, vide judgment dated 08.08.2019. Against the aforesaid judgments of the Courts below, these two revisions have been filed by three of the convicts.

2. FIR was lodged on the complaint of PW1 Suchint Kumari by alleging theft by breaking into the room of her son Vijay Mahajan and to have stolen the gold ornaments. It is contended that the case of the prosecution to the effect that recovery of stolen property was effected from the petitioners, is based on disclosure statements allegedly made by them. Learned Chief Judicial Magistrate rightly acquitted them under Sections 457 and 380 IPC but went in error in recording the conviction under Section 411 IPC. There is no evidence on record that from where the petitioners and co-accused had purchased the stolen property. None of the prosecution witnesses stated in this regard. There was delay on the part of the complainant in reporting the matter to the police, which has not been taken into consideration. Various discrepancies in the statements of the witnesses have not been noticed.

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3. I have considered the submissions of learned counsel for both the sides and have also gone through the case files carefully.

4. Prosecution allegations are that on the night intervening 23/24.04.2011, theft was committed in the house of Dr. Vijay Mahajan, Rulia Ram Colony, Gurdaspur. The son and daughter-in-law of the complainant were out of station. FIR was lodged on the complaint of Suchint Kumari, mother of Dr. Vijay. Theft was detected in the morning of 24.04.2011 and it was found that outer door of the room of her son Vijay Mahajan had been opened by breaking the glass of upper ventilator. Godrej almirah was found to be opened. It was also reported that Ashok Kumar and Rakesh Kumar @ Lovely used to work in the clinic of the son of the complainant. It was suspected that they had committed the theft with the help of Narinder Kumar @ Neetu and Sonu Kumar. FIR was lodged. Son and daughter-in-law of the complainant came and made statements and gave details about the stolen gold and other articles. The four accused (3 petitioners and Ashok Kumar) were arrested. On the basis of disclosure statements suffered by them, Sonu Kumar got recovered, ₹ 1,99,400/-, one gold nose pin, one pair of ring and one ear-ring besides a gold necklace. Narinder Kumar @ Neetu on the basis of disclosure statement got recovered ₹2,15,000/- besides gold chain, one pair of gold tapas and one piece of necklace. Rakesh Kumar @ Lovely, on the basis disclosure statement got recovered ₹1,18, 200/- besides gold chain, and a pendant, which was taken into possession. Ashok Kumar got recovered ₹ 2,12,300/- besides one pair of gold tapas and one piece of gold necklace pursuant to his disclosure statement.

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5. After completion of investigation, final report under Section 173 Cr.P.C. was filed and all the four accused were charge-sheeted under Sections 457, 380 and 411 IPC by the Trial Court. Prosecution examined six witnesses to prove their case.

PW1 Suchint Kumari, complainant proved the complaint Ex. PA made to the police.

PW2 ASI Manjit Singh, the Investigating Officer of the case proved the ruqqa Ex.PW2/A and that after recording of the statement of the complainant, FIR Ex.PW2/B was lodged. He also proved rough site plan of the place of crime as PW2/C. He further deposed the arrest of four accused, respective disclosure statements made by them and recovery of the stolen cash amount and gold articles recovered from them, which were taken into possession vide various memos. It has further come in his testimony that Vijay Mahajan and Jyoti Mahajan, the son and daughter-in-law of the complainant and owners of the stolen articles identified the recovered articles, regarding which memo of identification Ex.PW2/T was prepared.

PW3 Paras Mahajan proved a bill, whereby 8 bangles, one pair of tapas, one pendant chain, one pair of earrings, one gold tikka, one gold nose-pin, one mangalsutra were sold to Vijay Mahajan.

PW4 Dr. Vijay Mahajan, son of the complainant proved the identification of the stolen articles as were recovered from the accused. PW5 Dr. Jyoti Mahajan corroborated the statement of PW4 by proving the identification memo Ex.PW2/T.

PW6 ASI Jagdish who remained associated in the

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investigation with ASI Manjit Singh and corroborated his statement in all particulars.

6. In defence, accused examined Dalbir Singh as DW1 and Gurnam Singh as DW2, who alleged false implication of the accused Rakesh Kumar @ Lovely.

7. After taking evidence of the prosecution, recording statements of the accused under Section 313 Cr. P.C. and defence evidence, learned Chief Judicial Magistrate, Gurdaspur recorded conviction under Section 411 IPC, which has been upheld by the Appellate Court.

8. The only point as raised in the petition on behalf of petitioners, namely Sonu Kumar and Narender Kumar @ Neeta is that recovery was allegedly effected from diggy of the scooter but that scooter was not produced, so link evidence was missing. On behalf of petitioner Rakesh Kumar @ Lovely, it is urged that no *iota* of evidence has come on record to prove as to from where the petitioner and co-accused had purchased the stolen property.

9. After hearing counsel for both the sides, I find no merit in any of the revision petition.

10. The factum of the theft is proved by the testimony of PW1. Recovery of stolen gold ornaments and cash amount has been proved by the testimony of PW2, corroborated by PW6. The recovered gold ornaments have been identified by PW4 and PW5, which is duly proved on record by way of identification memo Ex.PW2/T.

11. Offence under Section 411 IPC is a crime against possession

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and so, title of ornaments was not required to be proved by the prosecution. Prosecution is required to prove that stolen property was in possession of the accused; that some persons other than accused had possession of the property before the accused got possession of it and that accused had knowledge that property was the stolen property.

12. Prosecution in this case has duly established that it is the complainant/her son and daughter-in-law, who were in possession of the stolen property. Prosecution further established that stolen gold ornaments were recovered from the possession of the four accused, which were later on identified by PW4 and PW5. At no point of time, any of the accused claimed that the gold ornaments as recovered from them belonged to them. They have not disclosed in any manner whatsoever as to how the stolen property belonging to complainant/her son and daughter-in-law came to their possession.

13. In view of the aforesaid discussion, it is held that no error has been committed by the Courts below in recording conviction of four accused under Section 411 IPC. As such, both the revisions are dismissed.

14. As per the custody certificate placed on record, Narender Kumar @ Neetu, Rakesh Kumar @ Lovely and Ashok Kumar have already completed their sentence and have since been released. However, petitioner Sonu Kumar was released on bail on 12.1.2019 by suspending his sentence. Therefore, with the dismissal of his revision, said Sonu Kumar is hereby directed to surrender before the jail authorities for carrying out remaining sentence imposed upon him. The copy of this order be sent to learned Chief Judicial Magistrate concerned for ensuring

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the compliance of the order, so that petitioner-convict Sonu Kumar carries out the sentence awarded to him.

Photocopy of this order be placed on the connected case file.

February 03, 2023
sarita

(DEEPAK GUPTA)
JUDGE

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