



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

450

Date of decision: 23.03.2026

CRA-S-1172-SB-2012

SEHDEV KUMAR

.....Appellant

VERSUS

STATE OF HARYANA

.....Respondent

CRA-S-1704-SB-2012

ROHTASH @ KALUA

.....Appellant

VERSUS

STATE OF HARYANA

.....Respondent

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: - Mr. Ashwani Bhardwaj, Advocate
for the appellant in CRA-S-1172-SB-2012.

Mr. Ankit Saini, Advocate for
Mr. Ram Kumar Saini, Advocate for the appellant.
in CRA-S-1704-SB-2012.

Mr. Omkar Singh Wahla, Sr. DAG, Haryana.

VINOD S. BHARDWAJ, J. (Oral)

Both these appeals, against the judgment dated 17.11.2011 passed by the Additional Sessions Judge, Palwal, in Electricity Case No. 36 dated 22.07.2010 arising out of FIR No. 170 dated 10.05.2010 registered under Section 136 of the Electricity Act, 2003 at Police Station Hathin, are being decided by a common order.

2. Briefly stated, the prosecution case arises out of an incident that took place in the intervening night of 17/18 April, 2010, wherein coils from three transformers of 16 KV capacity, installed at the premises of Tej Pal (resident of Village Sheoroli), Lekh Ram (resident of Village Mandkola), and Rakhey (resident of Village Aaluka), were stolen by some unknown persons. In this regard, an application was submitted by Kiran Pal, Junior Engineer, D.H.B.V.N.L., Sub Office, Mandkola, upon which the FIR came to be registered at Police Station Hathin, District Palwal. The investigation was initially conducted by Head Constable Indraj Singh, who inspected the places of occurrence and prepared the site plan indicating the locations from where the transformer coils had been stolen. A scaled site plan was subsequently prepared by Sub-Inspector Anoj Kumar. During the course of investigation, on 30.05.2010, accused Sehdev was apprehended in connection with another case bearing FIR No. 186 of 2010 registered at Police Station Hathin. During interrogation, he is stated to have suffered a disclosure statement admitting his involvement in the present case. He was formally arrested in the present case on 31.05.2010 and he thereafter demarcated the place of occurrence, in respect whereof a memo was prepared. In his disclosure statement, accused Sehdev stated that, in the intervening night of 14/15.05.2010, he, along with

one Kalua, had stolen transformer coils near Village Sheoroli and had divided the same between themselves. He further disclosed that approximately 40–42 days prior thereto, he and Kalua had also stolen coils from a transformer at Village Mandkola, which were also similarly divided, and that he had sold his share to a junk dealer for a sum of Rs.2,000/-. In a further disclosure, he stated that the coils falling to his share had been concealed by him in a white polythene bag, buried beneath soil in tall grass near the Gurgaon canal along a passage leading to Village Khedki and that he could get the same recovered.

3. Pursuant to the aforesaid disclosure, accused-appellant Sehdev led the police party to the said location and effected recovery of the concealed coils, which were taken into possession vide seizure memo and the site plan of the place of recovery was prepared. The recovered articles were subsequently identified by Kiran Pal, Junior Engineer, D.H.B.V.N.L.

4. During further investigation, accused Rohtash was arrested by ASI Bijender Singh. He too suffered disclosure statements admitting his involvement in the thefts along with co-accused-appellant Sehdev. He disclosed that he had participated in the theft of transformer coils from the Mandkola area and had concealed certain coils at his residence. He further stated that he had earlier sold part of the stolen coils to a junk dealer at Aligarh and could identify the shop.

5. In pursuance of his disclosure, accused-appellant Rohtash pointed out the place of occurrence and got recovered four coils from his house, which were taken into police possession and the site plan of the place of recovery was prepared. The recovered coils were also identified by the aforesaid Junior Engineer.

6. On the basis of the above investigation, the accused-appellants persons were formally arrested and upon completion of investigation, the police report (challan) was presented before the competent Court for trial of the accused-appellants.

7. Upon appearance, the accused-appellants were supplied with copies of all relevant documents relied upon by the prosecution, in compliance with the mandate of Section 207 of the Code of Criminal Procedure, 1973. On the basis of the material available on record, charges were framed against the accused-appellants under Section 136 of the Indian Electricity Act, 2003, vide order dated 09.08.2010. The contents of the charge were read over and explained to the accused-appellants, to which they pleaded not guilty and claimed trial.

8. In order to substantiate its case, the prosecution examined the following witnesses:

- i. PW-1 Lekh Ram deposed that transformer coils had been stolen in the intervening night of 17/18.04.2010 from near his tubewell and that the matter was reported to the Junior Engineer of D.H.B.V.N.L.
- ii. PW-2 Head Constable Indraj Singh, the initial Investigating Officer, deposed that he received an application from the Junior Engineer, D.H.B.V.N.L., Mandkola, made his endorsement thereupon and got the FIR registered through ASI Mukh Ram. He further proved that the site plan of the place of occurrence was prepared by him.
- iii. PW-3 ASI Anoj Kumar proved the scaled site plan of the place of occurrence.

- iv. PW-4 Kiran Pal, Junior Engineer, D.H.B.V.N.L., Sub Office, Mandkola, deposited regarding the theft of transformer coils and further proved that the recovered coils were identified by her on 25.06.2010 and 01.06.2010 vide identification memos.
- v. PW-5 ASI Bijender Singh, the Investigating Officer, deposited regarding the arrest of accused Sehdev, his disclosure statements, demarcation of the place of occurrence and recovery of approximately 9 kilograms of transformer coils, which were taken into possession. He further proved the preparation of the site plan of the place of recovery and the identification of the recovered coils by PW-4. He also deposited regarding the arrest of accused Rohtash, his disclosure statements, demarcation of the place of occurrence and recovery of additional coils from his residence, which were similarly taken into possession and identified.
- vi. PW-6 Head Constable Ravinder Singh corroborated the testimony of PW-5 with regard to the disclosure statement of accused Sehdev, the recovery effected at his instance and the preparation of the relevant documents.
- vii. PW-7 Head Constable Sanjay Kumar also supported the prosecution case by deposing with respect to the disclosure statements made by accused Rohtash, the recovery of coils at his instance and the preparation of documents, including identification of the recovered property by PW-4.
9. Certain other witnesses were given up as unnecessary and the prosecution evidence was accordingly closed on 14.03.2011.
10. Thereafter, the statements of the accused-appellants under Section 313 of the Code of Criminal Procedure were recorded on 06.04.2011,

wherein they denied the allegations and pleaded false implication. Despite being afforded adequate opportunity, no evidence was led by the defence and the defence evidence was closed on 16.11.2011.

11. After having heard learned Counsel appearing on behalf of the respective parties and taking into consideration the evidence adduced on record, the Additional Sessions Judge, Palwal vide judgment dated 17.11.2011, recorded a finding of conviction against the appellants for the commission of offence punishable under Section 136 of the Electricity Act, 2003 and vide order dated 18.11.2011 sentenced the appellants to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.5,000/- each; in default of payment of fine, they were directed to further undergo rigorous imprisonment for a period of six months. Aggrieved by the aforesaid judgment of conviction and order of sentence, the appellants have preferred the present appeal.

12. Counsel appearing on behalf of the appellant-Sehdev Kumar in CRA-S-1172-SB-2012 submits that as against the total sentence of 2 years, the applicant-appellant has already undergone an actual sentence of 1 year 5 months and 29 days and that he does not intend to assail the findings of conviction and confines his submissions solely to the quantum of sentence. The following mitigating circumstances are pointed out by the counsel for the appellant:

- a. The occurrence in question dates back to the year 2010 and a considerable period of nearly 16 years has elapsed since the occurrence.

- b. The appellant has endured the ordeal of protracted criminal proceedings for over one and a half decades, resulting in sustained mental stress and social stigma.
- c. The appellant has already undergone a major portion of the sentence imposed.
- d. There is no material on record to suggest that the appellant has been involved in any subsequent criminal activity, thereby indicating a clean antecedent post the incident and a reformed conduct.
- e. The appellant was approximately 27 years of age at the time of the incident and is presently in his early forties, suggesting that he has since transitioned into a more mature and settled phase of life.
- f. The nature of the offence does not involve grave violence or aggravating circumstances warranting imposition of the maximum sentence prescribed under law.
- g. The long passage of time has, to a considerable extent, diminished the need for further custodial sentence, particularly when viewed through the lens of reformatory and rehabilitative principles of criminal jurisprudence.

13. Learned State counsel does not raise any serious objection with regard to the custody already undergone by the appellant in CRA-S-1172-SB-2012.

14. Learned counsel appearing on behalf of the appellant in CRA-S-1704-SB-2012 contends that the prosecution has failed to establish the charges beyond reasonable doubt and, therefore, the benefit of such failure ought to enure to the appellant. It is further submitted that the appellant was

implicated solely on the basis of a disclosure statement made by the co-accused Sehdev, without any independent corroboration. Learned counsel submits that the alleged recovery of stolen transformer coils has been falsely attributed to the appellant, whereas, in fact, no recovery whatsoever was effected from his possession. It is thus contended that the case against the appellant is fabricated and devoid of substantive evidence. It is also submitted that the prosecution has failed to examine any independent witness to corroborate its version, thereby rendering the case doubtful and unworthy of reliance. He, however, submits that the appellant in CRA-S-1704-SB-2012 has already undergone the entire sentence awarded to him and has since been released from custody.

15. Responding to the above, learned State counsel contends that the name of the appellant was specifically disclosed by the co-accused and pursuant thereto, recovery of the stolen transformer coils was effected. It is submitted that such recovery, made at the instance of the appellant, constitutes a vital incriminating circumstance linking him to the commission of the offence. It is further contended that the appellant has failed to furnish any plausible explanation as to how the stolen property came into his possession while recording of his statement under Section 313 of the Code of Criminal Procedure, 1973. He contends that in the absence of any satisfactory explanation, an adverse presumption arises against the appellant under Section 114 of the Evidence Act, 1872 and strengthens the case of the prosecution. It is further contended that mere failure to join an independent witness is not, by itself, sufficient to demolish the case of the prosecution.

Rather, the evidentiary value of such omission must be assessed in the context

of the facts and circumstances of each case and where the recovery stands duly established, the same would not be vitiated solely for want of corroboration by an independent witness. It is also contended that the investigating agency has successfully established the chain of circumstances, including the recovery effected at the instance of the appellant, thereby completing the entire circuit and substantiating the commission of the offence by the appellant beyond reasonable doubt. Counsel for the respondent-State, however, does not dispute that the appellant in CRA-S-1704-SB-2012 has already undergone the entire sentence awarded to him and stands released from prison upon completion thereof.

16. I have heard learned Counsel appearing on behalf of the appellant(s) and have gone through the documents appended alongwith the present petition.

17. It is evident from the record that learned counsel appearing on behalf of the appellant in CRA-S-1704-SB-2012 has not been able to point out any material contradiction, inconsistency, or infirmity in the testimonies of the prosecution witnesses which could render the recovery effected at the instance of the appellant, pursuant to his disclosure statement, doubtful or unreliable. The position in law needs no reiteration that the mere absence of an independent witness at the time of recovery does not, by itself, vitiate the recovery proceedings, particularly when the same are otherwise proved through credible testimony of official witnesses. In the present case, no circumstance has been brought on record to discredit the official witnesses or to suggest any motive for false implication. Besides, the appellant has failed to offer any explanation whatsoever, either during the cross-examination of

the prosecution witnesses by way of specific suggestions, or in his statement recorded under Section 313 of the Code of Criminal Procedure, 1973, as to how and under what circumstances the incriminating recovery came to be effected at his instance. No defence evidence was led by him at any stage to rebut the prosecution case or to probabalize any alternative version. The defence, thus, rests merely on bald denial and a general challenge to the recovery, which stands otherwise duly corroborated by the prosecution evidence.

18. Learned counsel for the appellant has also not been able to refer to any judgment or point out any discrepancies in the testimonies of the prosecution witnesses or any material contradictions in the evidence as led by the prosecution that would warrant interference with the well-reasoned findings recorded by the trial Court. **In view of the aforesaid discussion, this Court finds no merit in the appeal bearing CRA-S-1704-SB-2012, and the same is accordingly dismissed.**

19. Since the appellant in CRA-S-1172-SB-2012 has expressly given up the challenge to the judgment of conviction on merits, this Court refrains from examining the findings of conviction. The scope of the present consideration is, thus, confined solely to the aspect of sentencing i.e. the quantum and adequacy of punishment to be imposed in the facts and circumstances of the case.

20. This Court, in CRR-2697-2025 titled *Lakshay Jain v. State of Punjab & Another*, vide order dated 14.11.2025, has held that sentencing must prioritise a reformatory approach, assessing an offender's background and circumstances rather than adopting a purely punitive stance. Mere

involvement in an offence does not, by itself, establish criminality; instead, the totality of circumstances including the manner of the act, antecedents, conduct, and intent must guide sentencing. The law, therefore, distinguishes between errors of judgment and acts driven by deliberate mens rea, recognising that offenders are often capable of reform and should not be presumed beyond rehabilitation. The relevant extract of the aforesaid judgment are as follows:

32. The imposition of punishment is a refined judicial function that demands a careful harmonization of its underlying purposes namely, retribution, deterrence, and reformation. This balance must reflect not only the reasoning of the Court but also the ethical standards and social context in which justice is administered. As societal values and circumstances evolve, the prominence accorded to each of these aims necessarily varies, requiring the Court to adapt its emphasis in response to the changing demands of justice. The aforesaid principle found early articulation in the writings of Justice Caldwell, who, in his authoritative work “Criminology,” observed that:

“If the infliction of pain is to have its greatest effect upon the behavior of a person, it must follow soon after the act for which it is given. But punishment always takes place weeks or even months after the offense has been committed, since the offender must first be apprehended, tried, and convicted. Such delay tends to disconnect the punishment from the offense in the mind of the offender, and it may well be considered as merely another painful experience in an unjust world.”

33. Moreover, Italian criminologist and jurist Cesare Beccaria, in his

seminal treatise “On Crimes and Punishments,” propounded the doctrine of penal parsimony, emphasizing that the justification of any criminal justice system rests upon its capacity to inflict the least possible evil necessary to achieve its ends. The underlying premise is that punishment, being in itself a necessary evil and devoid of inherent virtue, must be confined strictly within the bounds of necessity. The imposition of suffering or restriction upon an offender cannot extend beyond what is indispensable for the preservation of social order.

34. While ‘retributive’ object of sentencing is seen regressive, in modern day sentencing jurisprudence for its focus on punishing proportionally for the harm done and caters to the negative senses of spite and anger against a wrongful act, the rehabilitative/reformative approach examines the circumstances surrounding the offender on social, economical, physical and psychological level so as to reintegrate the offender in the social mainstream. The law extends the benefit of good and perceives a probability and possibility of reform. It aims at capitalising a perceived social liability. The expectation of law is based on the surrounding circumstances to distinguish between a ‘criminal’ and an ‘offender’.

35. While the pre-requisites of crime do not distinguish two persons, on the legal scale, this aspect is significant for sentencing. A mere involvement of a person in crime may not necessarily mark a person as a ‘criminal.’ ‘Criminality’ in mind and action has to be determined from the totality of circumstances including the mode and manner in committing an offence, the conduct pre and post the offence, the

criminal antecedents, nature of involvement, influence of peers etc. and not just from an isolatory consideration of commission of an offence. A Court of law would not assume every offender to be beyond reform and differentiate in punishment on considering whether the offences arise due to human error or that stem from actions propelled by mens rea.

21. Adverting to the facts of the present case and the mitigating circumstances as pointed out by counsel for the appellant, it is established that the appellant in CRA-S-1172-SB-2012 has, undisputedly, faced the ordeal of a protracted criminal trial for a period of nearly 16 years. It is further evident that he has already undergone an actual custody of more than 01 year, 05 months and 29 days out of a total sentence of 2 years imposed upon him. Additionally, there is no material on record to indicate that the appellant has indulged in any criminal activity subsequent to his release on bail, thereby reflecting a reformed conduct. These circumstances demonstrate a clear reformatory tendency on the part of the appellant.

22. In view of the aforesaid, I am of the opinion that adequate and compelling mitigating circumstances exist in the present case and the same call for interference with the quantum of sentence. The peculiar facts and circumstances, as noticed hereinabove, justify a modification of the sentence in the interest of justice

23. Taking into consideration the facts and mitigating circumstances relied upon by the appellant in CRA-S-1172-SB-2012, I deem it appropriate to **partly allow the appeal bearing No. CRA-S-1172-SB-2012**. While maintaining the judgment of conviction, the order of sentence is modified.

The sentence awarded by the Additional Sessions Judge, Palwal, vide order

dated 18.11.2011, is modified and reduced to the period already undergone by the appellant.

24. All the pending miscellaneous application(s), if any, are also disposed of.

MARCH 23, 2026

Vishal Sharma

(VINOD S. BHARDWAJ)
JUDGE

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