



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

301

CRA-S-32-SB-2011 (O&M)

Date of decision: 10.04.2026

Balbir Singh @ Balbira

...Appellant(s)

VERSUS

The State of Punjab

...Respondent(s)

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

Present :- Mr. Anish Kansal, Advocate for the appellant
(Legal Aid Counsel).

Dr. (Ms.) Savi Nagpal, AAG Punjab.

VINOD S. BHARDWAJ, J. (Oral)

1. The present appeal arises out of the judgment of conviction dated and order of sentence dated 03.11.2010 passed by the Sessions Judge, Sri Muktsar Sahib, in Sessions Case bearing RT No.37 dated 23.02.2010/15.05.2009, arising out of FIR bearing No.06 dated 25.01.2009, registered under Section(s) 379, 411 and 413 of the Indian Penal Code, 1860, at Police Station City Malout.

2. Briefly stated, the case of the prosecution is that on 25.01.2009, a police party headed by Head Constable Harwinderpal Singh No. 392, along with Head Constable Swaran Singh No. 701 and other officials, was present at Bathinda Chowk, Malout, on naka duty. During the course of such duty, a secret information was received by HC Harwinderpal Singh to the effect that Balbir Singh @ Bira, son of Gurmukh Singh, resident of Sheikhu Road, Ward No. 7, Dhingra Colony, Malout, was habitually engaged in

selling stolen motorcycles and bicycles. It was further informed that on the said day, he was present beneath a shed on the right side of the grain market, in possession of a green coloured Suzuki motorcycle bearing registration No. PB-53-6773, which he intended to sell and which was suspected to be stolen. Finding the information to be credible, HC Harwinderpal Singh reduced the same into writing and sent a ruqa to Police Station City Malout, on the basis whereof a formal FIR came to be registered by ASI Sham Lal. Thereafter, a raiding party was constituted and a raid was conducted at the indicated location. The accused was apprehended while standing with the said motorcycle. Upon inquiry, he disclosed that he had stolen the motorcycle on 24.01.2009 at about 4:00 PM from a narrow street behind the Government Hospital and was present there to sell the same. The said motorcycle, bearing chassis No. 9105F-938473 and engine No. 9105-M-992543 and without any valid documents, was taken into police possession vide a recovery memo attested by HC Swaran Singh and HC Bagh Chand. During further interrogation while in custody, the accused made a disclosure statement admitting that he had also stolen two bicycles of Atlas make one black and one green from the Civil Hospital, Malout and from a fodder stall at Sarabha Nagar, Malout. He further disclosed that he had concealed the said bicycles in paddy straw at a deserted brick kiln on Sheikhu Road, Malout, which fact was within his exclusive knowledge. The disclosure statement was recorded and attested by the witnesses. Pursuant thereto, the accused led the police party to the disclosed place of concealment and got recovered one Atlas Goldline Super bicycle bearing chassis No. 832265 and another Atlas Super Strong bicycle bearing chassis No. 1752606 of green

colour. The said bicycles were taken into possession vide separate recovery memos attested by the aforesaid witnesses. The investigating officer also prepared a rough site plan of the place of recovery and recorded statements of the witnesses. The accused was thereafter arrested in connection with the theft of the bicycles as well.

3. After completion of the investigation challan against the appellants was presented in the Court and copies of the same were supplied to the accused. The Ilaqa Magistrate committed the case to the Court of Sessions vide order dated 17.04.2009.

4. Upon consideration of the material placed on record and finding that a prima facie case was made out, the Trial Court framed charge against the appellant under Sections 411 and 413 IPC. The appellant pleaded not guilty to the charge and claimed trial.

5. In order to prove its case, prosecution examined the following witnesses, who tendered the following documents:

PW No.	Name & Designation
PW1	Jaswant Singh
PW2	Manoj Kumar
PW3	Sandeep Bathla
PW4	Avtar Singh
PW5	ASI Sham Lal
PW6	HC. Harwinderpal Singh
PW7	HC Swaran Singh
PW8	HC Gurmeet Singh

6. Upon closure of prosecution evidence, while recording their statement under Section 313 Cr.P.C. the appellant when confronted with evidence appearing against them, denied all the evidence and pleaded false implication.

7. The parties were heard by the trial Court and after considering the evidence adduced and the rival submissions advanced, the appellant was convicted for commission of offences under Sections 411 and 413 of the Indian Penal Code, 1860 and sentenced to undergo as below:

Under Section	Sentence
411 of IPC	2 years Rigorous Imprisonment
413 of IPC	6 years Rigorous Imprisonment and fine of Rs.2000/- and in default thereof to undergo further 3 months Rigorous Imprisonment

8. Hence, the present appeal.

9. Learner Legal Aid Counsel for the appellant submits that the impugned judgment of conviction is unsustainable in law as the same is founded on conjectures and surmises rather than on cogent and reliable evidence. It is contended that the findings recorded by the learned Trial Court reflect a misappreciation of the material available on record. He contends that the prosecution has failed to establish the foundational ingredients of the offences alleged as the case of the prosecution primarily rests upon the recovery of a motorcycle and subsequently certain bicycles; however, there is no convincing evidence to prove that the appellant was in conscious possession thereof or that he had knowledge or reason to believe the same to be stolen.

10. Learned counsel further submits that the alleged recovery itself is doubtful, having been effected without associating any independent witness, despite the place of occurrence being a public area. The entire case rests upon the testimonies of official witnesses, which, in the absence of independent corroboration casts a serious doubt on the genuineness of the recovery proceedings. It is also contended that the conviction under Section 413 IPC is wholly untenable, as there is no material on record to suggest that the appellant was habitually dealing in stolen property. He submits that a solitary instance of recovery cannot constitute habitual conduct so as to attract the rigours of the said provision.

11. In the totality of circumstances, it is submitted that the learned Trial Court has not properly considered the defence put forth by the appellant and has discarded the same without adequate reasoning, thereby resulting in a one-sided appreciation of evidence. The prosecution has failed to prove its case beyond reasonable doubt and, in such circumstances, the impugned judgment of conviction and order of sentence be set aside and the appellant be acquitted of the charges.

12. However, learned Legal Aid Counsel submits that out of the total sentence of 6 years imposed upon the appellant, he has already undergone total sentence of 5 years, 11 months and 30 days, thereby completing virtually the entire substantive sentence. It is thus contended that the appellant has, in effect, suffered the full rigour of the sentence imposed upon him.

13. Learned State Counsel, on the other hand, vehemently opposes the plea for leniency and submits that the appellant was rightly

convicted and that the findings of guilt recorded by the Courts is based on a thorough appreciation of evidence, including recovery of stolen property at the instance of the appellant, his disclosure statement and corroborative testimonies of prosecution witnesses. The learned counsel submits that the chain of circumstances stands firmly established and points unerringly towards the guilt of the appellant. Learned State Counsel further argues that the nature of the offence reflects a deliberate and premeditated act and the appellant cannot be treated as a first-time offender in the strict sense, inasmuch as he has been involved in other cases of a similar nature. She, however, does not dispute that out of the total sentence of 6 years imposed upon the appellant, he has already undergone total sentence of 5 years, 11 months and 30 days, thereby completing the entire substantive sentence.

14. I have heard the learned counsel appearing for the respective parties and have gone through the documents appended along with the present appeal, including the impugned judgment.

15. At the outset, it is apposite to refer to the judgment dated 03.11.2010 passed by the Sessions Judge, Sri Muktsar Sahib. The relevant extract thereof are as under:

“7. I have heard the learned APP for State and the learned defence counsel and have also examined the record of the case. The points for determination in this case before this Court are that on 25.1.2009 the accused was found in possession of one stolen Suzuki Motor cycle bearing registration No. PB-53-6773 belonging to Sandeep Bathla and two atlas cycles belonging to Jaswant Singh and Pritpal Singh knowing or having reason to believe them to be stolen property, That accused on the above

referred dates and time was found habitually dealing in stolen properties i.e, motor cycles and cycles and other vehicles in this case. These points are to be adjudicated by this Court on the basis of evidence in this case.

8. *The prosecution examined PW6 HC Harvinderpal Singh in this case, who has proved this fact in his statement that on 25.1.2009 he headed a police party in the area of Bathinda chowk, Malout. That on receipt of secret information against the accused, he raided him and recovered from his possession one Suzuki motor cycle bearing registration No.PB-53-6773 without any document of its ownership. That he took it into police possession vide memo Ex.PWG/C, which was attested by HC Swaran Singh and HC Bagh Chand. This witness has further proved this fact that on the basis of disclosure statement of accused, while in custody, two atlas cycles one of black colour and second of green colour were also recovered at his instance from a deserted brick-kiln in the area of Shekhu road, which were concealed in the heap of paddy straw. He has proved the fact of two above referred atlas cycles on the basis of disclosure statement of accused while he was in custody. He has proved his disclosure statement Ex. PWG/D and the recovery memo of the cycles as referred above vide Ex.PW6/F. This witness has deposed that on examination of previous record against the accused, the offence in this case was added against him later on vide DDR Ex.PW6/K and the endorsement of the Magistrate is Ex.PW6/K/1 thereupon. This witness has further proved that Sandeep Bathla was the owner of the motor cycle in question which was stolen on 24.1.2009 and the same was recovered from the possession of the accused by him bearing registration No.PB-53-6773. Sandeep Bathla entered into witness box as PW3 and deposed on oath and also proved this fact that on 24.1.2009, he parked his motor cycle Make Suzuki bearing registration No. PB53-6773 outside the house of his relative. That it was stolen therefrom. That he identified his*

motor cycle when it was recovered by the police from the accused. He proved this fact that he handed over the registration certificate of the motor cycle, which was taken into police possession vide memo Ex. PC and copy of the registration certificate is Ex. P1. This witness has, thus, proved that his motor cycle was stolen in this case and PW6 HC Harvinderpal Singh and PW7 HC Swaran Singh have proved the fact that they recovered the motor cycle bearing registration No. PB-53-6773 Make Suzuki from the possession of accused on 25.1.2009 on the basis of secret information received against him. That he was a dealer in the stolen properties.

9. *PW6 HC Harvinderpal Singh and PW7 HC Swaran Singh have further proved this fact on the record that on the basis of disclosure statement of accused Balbir Singh, they recovered two atlas cycles, one of green colour and second of black colour from his possession from the specified place of concealment as disclosed by him. That they took them into police possession vide memo Ex.PW6/F prepared on the record. The prosecution examined PW1 Jaswant Singh to prove this fact that he purchased Atlas cycle of green colour bearing No.752606 from Guru Nanak Cycle store, Malout for a sum of Rs. 1495/- in the year 1999. That his cycle was stolen from the premises of civil hospital Malout, where he parked it. That the key of the cycle was with him and he tried to locate it but could not find it. Thereafter he lodged a complaint with the police on the next day. That he handed over the bill Ex. PA with regard to purchase of the cycle to the police, which was taken into police possession vide memo Ex.PB, which was attested by the witnesses. PW2 is Manoj Kumar as examined by the prosecution who has also proved this fact on the record that he sold one cycle on 11.8.1.999 for a sum of Rs.1495/- to Jaswant Singh and proved its bill Ex.PA. He further proved this fact that he is the proprietor of Guru Nanak Cycle store, Old Dakkhana Chowk Malout. PW4 is Avtar Singh as examined by the*

prosecution who has proved this fact that Sandeep Bathla son of Abinashi Lal Bathla resident of Ward No.4, Malout, who entered into witness box as prosecution witness in this case, is recorded as owner of Suzuki Motor cycle No.PB53-6773 vide entry Ex.PW4/A in the record of registration in the office of transport authority, Muktsar,

10. *The prosecution has examined PW5 ASI Sham Lal in this case. This witness has proved this fact that on 25.2.2007, he was posted as ASI at P.S.City Malout. That HC Harvinderpal Singh, the investigating officer of this case, showed him one photocopy of recovery memo dated 5.11.2007 in case FIR No.110 dated 09.06.2007, under Section 379 and 411 IPC against accused Balbir Singh. That he was investigating officer of that case. That he held Nakabandi in Bathinda Chowk, Malout, where one motor cycle Victor TVS of blue colour bearing registration No. PB60-5230 was recovered from Balbir Singh accused of this case. He further stated that it was taken into police possession in the presence of HC Balkaran Singh No.397 and Ashok Kumar was the complainant in that case to the effect that it was stolen. That his statement was recorded in the case. He proved the recovery memo of the above said motor cycle as Ex.PW7/A and identified signatures of ASI weet Singh thereon. This witness further proved that accused was convicted by the criminal Court in that case vide certified copy of judgment Ex.PY on the record.*

11. *The State further relied upon the certified copy of judgment dated 24.4.2007 of the Court of Smt. Gurmeet Kaur, Sub Divisional Judicial Magistrate, Malout, vide ExPX, certified copy of judgment dated 08.07.2008 of the Court of Smt. Harpreet Kaur, Sub Divisional Judicial Magistrate Malout, vide Ex.PY and certified copy of judgment dated 3.2.2007 of the Court of Smt. Gurmit Kaur, Sub Divisional Judicial Magistrate, Malout vide Ex.PZ on the record. The certified copies of the judgments are per-se admissible in*

evidence as they are certified copies of the public record. They are admissible in evidence in this case. They have proved this fact on the record that the accused was convicted regarding stolen properties in the above referred cases on different occasions and sentences were awarded to him thereunder accordingly. Ex PW5/A is copy of FIR No.110 dated 09.06.2007 of P.S. City Malout, registered against accused Balbir Singh. Ex. PW8/A is copy of FIR No.137 dated 10.6.2005 under Section 379 IPC registered against the accused at P.S. City Malout. PW8/B is the copy of FIR No.160 dated 29.06.2009, registered under Section 379 IPC at P.S.City Malout against the accused ExPW8/C is the copy of FIR No.110 dated 09.06.2007 for the offence under Section 379 IPC registered against the accused at P.S.City Malout. The accused has also been convicted even on earlier occasions by the criminal Courts vide certified copies of judgments Ex. PX, Ex. PY and Ex.PZ on the record in this case.

12. From careful appreciation of evidence on the record and keeping in view the explanation of accused of simple denial of the case of prosecution in his statement under Section 313 of Code of Crimina Procedure, this Court is of this view that the prosecution has led evidence on the record which has proved this fact that the accused habitually receives or deals in the property which he knows or has reason to believe to be stolen property. It is not even necessary under law that accused should have been convicted for it, but it is necessary that the proof of the act of accused should be convincing for it which determines the applicability and measure of punishment here provided. Habitually receives, The receipt which should have been so frequent as to become a matter of habit on the part of the accused. Habitually deals is tantamount to as a professional dealer. Such dealing must have been a trade or otherwise there would be no habitual dealing. Dealing implies a transfer of such property to others whether possessing the same guilty knowledge or not. The gist of the offence lies in the habit of

receiving or dealing in stolen property. Herein, this court is of the view that the accused has dealt in or habitually received the stolen properties on different occasions and it could be safely inferred therefrom that he was either a habitual dealer or a habitual receiver of the stolen properties. It is not the requirement of law that he must have been convicted thereof by a competent Court. Even herein, the accused has been convicted on earlier occasions with regard to dealing in stolen properties or receiving the stolen properties by the competent criminal courts. It is not a matter of casual recoveries of stolen properties from the accused. It is a matter, which involves constant habit of the accused either in dealing or receiving the stolen properties with requisite mens-rea on his part. The accused cannot be held to be a casual receiver of stolen properties on the basis of above referred evidence. The accused is found in the category of either professional receiver or professional dealer of stolen properties which is the gravamen of this offence. The word dealing implies the carrying on traffic in stolen properties. Herein, the mens-rea of the accused is apparent for dealing in and receiving the stolen properties one after the other. The prosecution has simply to establish that the properties recovered from the accused are stolen properties and accused constantly dealt with it or received it with the requisite mens-rea, It is not the requirement of law that the accused must have been convicted thereof as has been held by the Apex Court in Ajendranath Vs. The State of Madhya Pradesh reported in 1964 (1) Criminal Law Journal page 129. Herein, the case of prosecution rather stands on better footing because even the accused has already been convicted on three different occasions for dealing with the stolen properties. In addition to that, the recovery of stolen motor cycle and two stolen Atlas cycles from the possession of the accused has been proved by the prosecution evidence, which has further established the offence under Section 413 of IPC against the accused. So far as the offence under Section 411 IPC is concerned, the accused is liable to be separately

convicted therefor. The statement of the owner of the motor cycle Sandeep Bathla on oath that it was stolen property and the fact of recovery thereof as proved by PW6 HC Harvinderpal Singh and PW7 HC Swaran Singh have further proved this fact on the record. The statement of PW1 Jaswant Singh can also not be brushed aside lightly because he has given positive evidence on oath that he was the owner of the above referred stolen cycle. It is not possible for a person to possess the requisite bills after such a long period from the time of purchase of such miscellaneous items. This Court finds no difficulty in relying upon the testimonies of the above referred witnesses in this regard.

13. The conclusion drawn by this Court is that protection has proved the offence under Sections 411 and 413 of IPC against the accused. The accused is convicted of the offences under Sections 411 IPC and 413 IPC. Let he be heard on the point of sentence.”

16. A perusal of the aforesaid impugned judgment shows that the findings of conviction are based upon a careful and comprehensive appreciation of the evidence led by the prosecution. The Trial Court has framed specific points for determination, namely, whether the accused was found in conscious possession of stolen property and whether he was habitually dealing in such property, and has thereafter examined the entire evidence on record to return its findings. The testimony of PW6 HC Harvinderpal Singh and PW7 HC Swaran Singh has been found to be consistent and reliable in establishing the recovery of the stolen motorcycle from the possession of the accused, as well as the subsequent recovery of two stolen bicycles pursuant to his disclosure statement. The Trial Court has further relied upon the testimony of the respective owners of the stolen property, namely PW3 Sandeep Bathla and PW1 Jaswant Singh, who have

categorically proved the ownership and theft of the articles in question. Their statements have also been corroborated by documentary evidence, including registration records and purchase bills, thereby establishing the foundational requirement that the recovered property was indeed stolen. The Court has also taken into consideration the official records and the testimony of witnesses such as PW4 Avtar Singh, which further substantiates the ownership of the motorcycle.

17. Significantly, the learned Trial Court has also examined the past conduct of the accused and these prior convictions, coupled with the recoveries in the present case, have led the Court to conclude that the accused was habitually engaged in dealing with stolen property, thereby attracting the provisions of Section 413 IPC by rightly drawing a reasonable inference from the consistent pattern of conduct exhibited by the accused. The defence put forth by the accused, being a mere denial in his statement under Section 313 Cr.P.C., has been rightly rejected by the Trial Court in the absence of any substantive evidence to rebut the prosecution case. The reasoning recorded reflects a proper application of mind and adherence to settled principles of criminal law.

18. In view of the aforesaid, it is evident that the conviction recorded by the learned Trial Court does not suffer from any illegality, perversity, or misappreciation of evidence. Consequently, no ground is made out for interference in appellate jurisdiction.

19. It is further noteworthy that out of the total sentence of 6 years imposed upon the appellant, he has already undergone an actual period of custody amounting to 5 years, 11 months and 30 days. It is also not in

dispute that the fine, as imposed by the learned Trial Court, stands duly deposited. In such circumstances, nothing further survives for consideration on the aspect of sentence, as the appellant has, in effect, already undergone the entire sentence awarded to him.

20. Accordingly, finding no illegality, impropriety, perversity or misappreciation of evidence in the findings recorded by the trial Court, the judgment of conviction dated 03.11.2010 is, therefore affirmed and the present appeal, being devoid of merit, is accordingly ***dismissed***.

(VINOD S. BHARDWAJ)
JUDGE

10.04.2026

Mangal Singh

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