

**IN THE COURT OF MAMTA KAKKAR, PCS,
JUDICIAL MAGISTRATE IST CLASS,
BATALA**

<u>CHI/2151/2014</u>	
Criminal Case No :	243 of 2009
Date of Institution:	04.12.2009
Date of Decision :	02.11.2018

State	Versus	Hem Raj s/o Tarsem Pal, r/o Shekha Mohalla, Kalanaur, District Gurdaspur. ...Accused
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FIR No. 115 of 03.10.2009
Under Section 380/411 IPC
Police Station : City, Batala.

Present: Sh. A.S. Kahlon, APP for the State.
Accused on bail with counsel Sh. S.S. Randhawa, Advocate.

JUDGMENT

1. The above named accused has been sent to this court by the Officer In-Charge of Police Station City, Batala to face trial for the commission of offence punishable under Section 380/411 of Indian Penal Code.
2. Syntax of the case of prosecution, as emanates from the police report submitted under Sec. 173 Cr. P .C. and documents appended therewith, is that on 03.10.2009, SI Arvinder Singh alongwith police party was present at T-point Shastri Nagar, G.T. Road, Batala in connection with his patrolling duty. At that time, Hardeep Singh, head cashier, State Bank of Patiala, Branch Shastri Nagar has come present and got recorded his statement with SI Arvinder Singh to the effect that he is resident of Sundar Nagar Colony, Dera

Baba Nanak, Batala and is working as head cashier at State Bank of Patiala, Shastri Nagar branch, Batala. On 03.10.2009, at about 12:10 PM, he was present at his seat and a leather bag containing amount of Rs. 23 lacs i.e. 4 wads in the denomination of Rs. 500/- and 3 wads in the denomination of Rs. 100/- each, was lying by his side for the purpose of depositing that amount in the ATM machine installed at Railway Station, Batala. He has stated that while filling amount in ATM machine, Deputy Manager and security guard of the bank used to be present with him. On that date also, he had gone to the Deputy Manager Sh. Kuldeep Chand and Security guard Nirmal Singh to tell them about the fact that the above mentioned amount was to be filed in the ATM machine. For that purpose, he has left his seat and when after 2 minutes, he returned back, he has seen that the above mentioned leather bag containing Rs. 23 lacs was not lying by his seat and was stolen by some unidentified person. On the basis of statement of complainant, SI Arvinder Singh made his endorsement underneath the same and has sent ruqa for registration of FIR through PHC Malkiat, on the basis of which the present FIR was registered. Investigation ensued and police party had gone to State bank of Patiala alongwith complainant and place of occurrence was investigated from inside and out side the bank branch. At that time, outside the bank branch, one identity card of Punjab State Electricity Board, Dera Baba Nanak in the name of Hem Raj son of Tarsem Pal, resident of Mohalla Shekhan, Kalanaur, District Gurdaspur was found out alongwith one PAN Card in the name of the same person. The above mentioned Identity cards were taken into police possession and after knowing about the address of that person from those

identity cards and to investigate the matter from him, police parties were formed and out of those police parties, one police party consisting of SI Kamal Kishore alongwith HC Vijay Kumar was sent to the place of abode of accused at Kalanaur, who have got the mobile number of accused Hem Raj, the tower location of which was tracked, which was located near Ludhiana. Accordingly, SI Kamal Kishore alongwith police party had followed the accused. After giving information about this fact to SHO of P.S. Laddowal, barricade was laid down near Toll tax barrier at Laddowal and accused was apprehended while coming on a motorcycle. From his possession, one black bag containing amount of Rs. 22,66,500 was recovered, upon which slips of State Bank of Patiala were affixed. Site plan of place of recovery was prepared. The said currency notes were got identified from complainant in the presence of Sh. Arvind Salwan, Naib Tehsildar, Tehsil office, Batala. Accused Hem Raj was arrested. Thereafter, upon the completion of investigation and other formalities, challan against accused was presented in the court.

3. On appearance of accused in the court, copies of all the documents sent along with the police report and relied upon by prosecution, were supplied to him, free of costs, as envisaged under section 207 Cr.P.C.

4. From the perusal of those documents and after hearing learned A.P.P. for the State and learned defence counsel, sufficient grounds were made out to initiate trial against accused for the commission of offence punishable under section 380 IPC and charge was framed accordingly, to which accused pleaded not guilty and claimed trial.

5. To substantiate its case, prosecution examined following

witnesses:-

PW1	Hardeep Singh, Head cashier, SBOP	Complainant to prove his statement given to the police Ex. PA, upon which he identified his signatures as Ex. PA/1, photograph of recovered currency notes Ex. PB, wads of currency notes Ex. P1 to Ex. P7.
PW2	Inspector Arvinder Singh	Witness to prove statement of complainant Ex. PA, his signatures upon it Ex. PA/1, ruqa Ex. PW-2/B, FIR Ex. PX, seizure memo of Identity card and PAN Card of accused, which are Ex. PX1 & Ex. PX2, as Ex. PW-2/C, site plan Ex. PW-2/D, identification memo Ex. PW-2/E, currency notes Ex. P1 to Ex. P7.
PW3	ASI Jaswinder Singh	Witness to prove seizure memo of Identity card and PAN Card of accused which are Ex. PX1 & Ex. PX2 as Ex. PW-2/C.
PW4	ASI Harbans Singh	Witness to prove recovery memo of currency notes as Ex. PW-4/A, site plan of place of recovery Ex. PW-4/B, arrest-cum-intimation memo of accused Ex. PW-4/C.
PW-5 (wrongly mentioned as PW-2)	Arvind Salwan, Naib Tehsildar	Witness to prove his report on identification proceedings as Ex. PW-2/E and photograph of currency notes as Ex. PB.

Thereafter, upon the failure of prosecution to conclude its evidence, despite availing numerous opportunities, including last opportunity, evidence of prosecution was closed by order vide order dated 01.10.2016 by this court.

6. Statement of accused was recorded in terms of section 313 Cr.P.C, so as to apprise him of incriminating circumstances appearing against him in evidence led by prosecution, to which he pleaded his innocence and claimed false implication.

7. Accused closed his defence evidence, without examining any witness, vide separate statement dated 01.11.2016. It is pertinent to mention here that earlier vide judgment dated 01.11.2016, the present accused was convicted by this court. However, he filed appeal against the said judgment, which was allowed to the extent that the said judgment was set aside with the direction that prosecution be given an opportunity to produce witness PW1 Hardeep Singh, Head Cashier, State bank of Patiala for further cross-examination and with the opportunity to accused to cross-examine the said witness and thereafter to decide the matter afresh after recording the statement of accused under section 313 Cr.P.C. and by giving opportunity to him to lead evidence in defence. Accordingly, the presence of PW1 Hardeep Singh was procured and he was cross-examined. Supplementary statement of accused under section 313 Cr.P.C. was recorded. Accused closed his defence evidence, without examining any witness, vide separate statement dated 02.11.2018.

8. This court has heard the submissions made by learned APP for the State and learned defence counsel and has also gone through the prosecution evidence. From the entire case, following points for determination emerge out:

1. Whether accused has committed theft of a bag containing currency notes of Rs.23 lacs on 03.10.2009 from State Bank of Patiala, Shastri Nagar Branch, Batala?

2. Whether evidence led on record by prosecution is sufficient to hold the accused guilty and to convict him?

POINTS NO.1 AND 2 FOR DETERMINATION :-

9. Both the points for determination have been taken up together for the sake of brevity and to avoid repetition. Sh. A.S. Kahlon, Ld. APP for the State has argued that prosecution witnesses have deposed on the lines of prosecution story and proved on record documents such as statement of complainant Ex. PA, his signatures upon it Ex. PA/1, photograph Ex. PB, ruqa Ex. PW-2/B, FIR Ex. PX, seizure memo of Identity card and PAN Card of accused, which are Ex. PX1 & Ex. PX2, as Ex. PW-2/C, site plan Ex. PW-2/D, identification memo Ex. PW-2/E, currency notes Ex. P1 to Ex. P7, recovery memo of currency notes as Ex. PW-4/A, site plan of place of recovery Ex. PW-4/B, arrest-cum-intimation memo of accused Ex. PW-4/C. Thus, placing reliance on the oral testimony of these witnesses and documentary evidence proved on record by prosecution, Ld. APP for the State has further contended that the case of prosecution has been established on record beyond the shadow of reasonable doubt, therefore, accused must be convicted and be sentenced with the maximum punishment as provided under law.

10. On the other hand, learned defence counsel has raised his counter arguments thereby stating that accused is an innocent person and he has been falsely implicated in this case. Further, it was pointed out that story of prosecution has not been proved beyond the shadow of reasonable doubt. It was submitted that there are various discrepancies in the statements of prosecution witnesses as regards the possibility of all the acts of investigation,

being conducted within the short span as alleged, which are fatal. No independent witness was joined at any stage of investigation, despite availability. The fact of non-examination of alleged peon and the security guard of the bank, who were the material witnesses, is itself fatal for the prosecution version. Photograph Ex. PB has gone unproved for want of examination of photographer of it. Moreover, testimony of PW-1 is itself full of doubts and suspicions, as such no reliance can be placed upon it. No document or other record of the bank was taken into police possession to prove the availability of alleged amount of Rs. 23 lacs in the bank, stated to have been stolen by the present accused. No record has been produced showing the leave of accused on 03.10.2009 i.e. on the date of alleged occurrence to prove the fact that he has visited the bank branch on the said date. The alleged black coloured leather bag containing the amount of Rs. 23 lacs was never produced before this court. No eye witness to the alleged theft, stated to have been committed by present accused, was examined in this case. Accordingly, by raising all the above mentioned arguments, learned defence counsel has submitted that accused cannot be convicted in this case and he surely deserves to be acquitted by giving him benefit of doubt.

11. After giving thoughtful consideration to the rival submissions made by learned APP for the State and those of learned defence counsel, this court has gone through the entire record available on the file and the legal proposition involved in this case. It is well settled that in criminal law, it is the bounden duty of prosecution to prove its case beyond the shadow of reasonable doubt, that too, on the strength of its own evidence. No advantage

can be derived by prosecution from the weakness of defence case. Accused has got constitutional right to maintain silence during the trial of the case and if any doubt arises in the case of prosecution, benefit of the same has to be substantiated in favour of accused.

12. It is the version of prosecution that accused has committed theft of amount of Rs. 23 lacs from SBOP, Shastri Nagar Branch, Batala on 03.10.2009 at about 12:10 PM and the said amount was later on recovered from him at G.T. Road, Laddowal, Ludhiana on the same date, accordingly, he was charge sheeted for the commission of offence punishable u/s 380 IPC.

13. In order to prove the commission of offence punishable u/s 380 IPC, prosecution got examined **PW-1 Hardeep Singh, complainant**, Head cashier, SBOP, Shastri Nagar branch, Batala, who in his chief examination has reiterated his statement given to the police, which is Ex. PA and has identified his signatures upon it as Ex. PA/1. He has further submitted that on the next date of the alleged occurrence, he was called in the police station and one PAN Card and identity card alongwith the accused present in the court today was produced before him and he has identified the accused to be the same person as shown in the identity cards. He, in his testimony has deposed about photograph Ex. PB of the recovered wads of currency notes, produced by him in the court, which are Ex. P1 to Ex. P7. Learned counsel for accused has argued that the testimony of PW1 is full of doubts and suspicions, thus no reliance can be placed upon it. In this regard, it is apposite to mention here that no doubts, there are certain discrepancies in the statement of this witness in his examination-in-chief and cross-examination as regards the fact of

application moved to police and the visit of police at the place of occurrence, but the said discrepancies cannot be considered as fatal as such kind of discrepancies are bound to occur in the statement of a witness with the passage of time, whose examination-in-chief was recorded on 31.03.2010 and cross-examination on 20.10.2018 i.e. after the expiry of more than 7 and half years. Accordingly, in these circumstances, the mere said contention as referred above would not be sufficient to doubt the version of PW1.

14. Furthermore, apart from the evidence of PW-1, prosecution got examined **PW-2 Inspector Arvinder Singh**, who has duly stated in his evidence that on 03.10.2009, when he was present alongwith the police party at T-point Shastri Nagar, G.T. Road, Batala, complainant Hardeep Singh, head cashier of SBOP, came to him and got recorded his statement Ex. PA. He has also identified the signatures of PW-1 at that statement as Ex. PA/1. He has further submitted that after recording the statement of complainant, he alongwith the police party has visited the spot, from where he got recovered one identity card and PAN Card of accused Hem Raj from outside the bank, which were taken into police possession vide memo Ex. PW-2/C. He also deposed qua the identification of currency notes, recovered from the present accused, on 08.09.2010 in the presence of Naib Tehsildar, Batala, Hardeep Singh and in his presence, proceedings of which are Ex. PW-2/E. In order to corroborate the testimony of PW-2, qua the recovery of identity card and PAN Card of accused from outside the bank branch on the date of alleged occurrence, testimony of **PW-3 ASI Jaswinder Singh** was also recorded, who has deposed on the same lines as that of PW-2.

15. However, learned counsel for accused has argued that the said recovery has gone unproved as no independent witness was joined while taking into possession the above mentioned identity proofs of accused. But in this respect, it is pertinent to mention here that mere non-examination of an independent witness is no ground to disbelieve the testimonies of official witnesses, if otherwise proved on record. Moreover, PW-2 has specifically stated that at the time of effecting that recovery, attempt was made to join an independent witness, but no one got ready to join the police party. Similarly, PW-3 has also deposed on the same lines that attempt was made to join such persons, but they did not agree to do so. As such, in view of the explanation given by PW-2 & PW-3, it is clear that mere non-examination of an independent witness while taking into police possession, identity proofs of accused from the alleged place outside the bank branch, does not prove fatal to the prosecution version. Accordingly, above said contention raised on behalf of accused cannot be considered, being without merits.

16. Furthermore, it is the specific version of PW-2 & PW-3 that these identity proofs of accused were found out on the same date of alleged theft from outside the bank branch and there is no denial on the part of accused that the identity proofs Ex. PX1 & Ex. PX2 does not pertain to him, though PW-2 was cross-examined on the lines that investigating agency has not confirmed about the authenticity of identity card of P.S.E.B. of accused from his department. However, in this respect, it is suffice to mention here that at one point of time, it was argued by learned counsel for accused that the authenticity of identity card of accused was not got confirmed from the office

of P.S.E.B., but at another point of time, he has submitted that investigating officer has not made any attempt to inquire from P.S.E.B. as to whether accused was present in the office on 03.10.2009 or he was on leave. Thus, from the above mentioned contrary stands taken by accused, it is clear that it is an admitted fact on the part of accused that he was working with P.S.E.B. and identity card Ex. PX1 pertains to him. Furthermore, the contention raised on behalf of accused that his identity cards were left with the bank branch, where he has gone to withdraw his salary, itself shows that it is not denied on the part of accused that he has visited the bank branch on the date of alleged occurrence, where his identity proofs were found out. Even no witness was examined by accused to prove that he was having his salary account with State Bank of Patiala, Shastri Nagar Branch, Batala or to clarify that under which occasion, he has handed over his original identity proofs to the bank official as alleged. Thus, in such an eventuality, it is valid enough to conclude that the recovery of Ex. PX1 & Ex. PX2 from outside the bank branch has been duly proved on record alongwith the fact that same relates to present accused.

17. Further, to complete the chain of investigation and to prove that the alleged theft was committed by the present accused, **PW-4 ASI Harbans Singh** was examined, who has specifically stated that on 03.10.2009, he was posted at P.S. Shri Hargobindpur and on that date, he was joined in investigation of this case alongwith SI Kamal Kishore and in his presence, the present accused was arrested and recovery of one bag containing amount of Rs. 22,76,500/- was effected from him vide memo Ex. PW-4/A, witnessed by PW-4 alongwith SI Gurbinder Singh and SI Kamal Kishore, whose signatures

he has identified on Ex. PW-4/A at point A and B. He has proved on record site plan Ex. PW-4/B and the arrest-cum-intimation memo of accused Ex. PW-4/C by stating that intimation about the arrest of accused was given to his brother-in-law namely Mohan Lal. Learned counsel for accused has argued that testimony of PW-4 is not sufficient to prove the alleged recovery from accused as neither P.S. Laddowal was shown to be located near the place of recovery in the site plan Ex. PW-4/B nor the alleged bag containing the amount of Rs. 22,66,500/- was produced before this court. Further, he has submitted that nothing has been proved on record showing that as to why accused was going towards Ludhiana side, when it was the specific case of prosecution that he belongs to Kalanaur, District Gurdaspur. In respect of these contentions, it is pertinent to mention here that merely due to the fact that recovery was effected from accused near Ludhiana City in the jurisdiction of P.S. Laddowal, the said fact of recovery cannot be doubted only on the ground that accused belongs to Kalanaur, Gurdaspur as it cannot be expected in all eventualities that a thief will only go to his house alongwith the stolen property and nowhere else. Thus, this contention is merit-less to be considered. However, in respect of the fact that the alleged bag containing the recovered currency notes has not been produced, it can be said that the mere non production of that bag cannot create doubt in the prosecution version, where the entire amount of Rs. 22,66,500/- was duly produced before this court in the testimony of PW-1, being in wads Ex. P1 to Ex. P7. Accordingly, the above mentioned contention, can also not come to the rescue of accused from his liability in this case. As regards the fact that P. S. Laddowal is not shown to be in existence at the place

of recovery, it would be suffice to mention here that it is not the case of prosecution that recovery was effected near P. S. Laddowal, rather it is being alleged that recovery was effected from the place, which comes under the jurisdiction of P. S. Laddowal, accordingly, it is apparent that the above said contention, is also not having any worth in it to be considered.

18. Learned counsel for accused has also submitted that even there are various contradictions in the statements of prosecution witnesses as regards the time of particular stage of investigation. He has pointed out that the alleged occurrence has taken place on 12:10 PM, statement is stated to have been recorded by complainant at 2:20 PM, FIR is shown to have been registered at 3:45 PM, recovery is alleged to have been effected at 6:00 PM from Ludhiana having distance of about 130 KM from Batala and in the mean time, it is alleged by prosecution that after recording the statement of complainant, place of occurrence was visited by police party, then they had gone to the house of accused at Kalanaur and again returned back to Batala and from there, they had gone to Ludhiana, which is highly unbelievable to have done within a short span from 2:20 PM to 6:00 PM. In this respect, it can be said that it is the specific version of prosecution that upon the receipt of information about alleged theft, separate police parties were formed and out of these police parties, one police party had visited the spot and other police party, after the seizure of I.D. proofs of accused was sent to his place of abode at Kalanaur. Thereafter, obtaining information about his mobile number, the tower location of it was tracked, which is located near Ludhiana, accordingly, a police party was sent towards Ludhiana to apprehend the accused, who was

arrested alongwith the stolen cash amount of Rs. 22,66,500/- at G.T. Road, near Laddowal, District Ludhiana. It has also been specifically alleged by prosecution that SHO of P.S. Laddowal was also informed about laying down barricade at G. T. Road, Laddowal to apprehend the present accused. But the said fact in itself is not sufficient to doubt the sequence of events narrated by the prosecution witnesses. Furthermore, in such a situation, it is otherwise not expected that the formality of giving information to the concerned Station House Officer of the police station, where recovery was effected by following the accused, would have been completed first before effecting such recovery. Thus, the contention raised above is not having any worth in it to be considered. Moreover, minor contradictions as regards the particular time of a specific stage of investigation are not fatal to the prosecution version as such like contradictions are bound to occur in the testimonies of witnesses, from whom exact narration of facts is not expected.

19. Moreover, the chain of investigation in this case has been completed with the testimony of **PW-5 Arvind Salwan, Naib Tehsildar**, who has specifically stated that on 08.10.2009, upon the application of investigating officer of this case to SDM, Batala, he was deputed as Duty/Executive Magistrate for identification of currency notes by PW-1. Accordingly, on the same date, he has visited the police station, where SHO, SI Arvinder Singh and Hardeep Singh, Head Cashier, SBOP, were already present and on the direction of SHO, MHC has taken out one black coloured bag from police malkhana, consisting of 29 wads of currency notes in the denomination of Rs. 500/- each and one loose wad containing 53 notes in the

denomination of Rs. 500/- each, 29 wads in the denomination of Rs. 100/- i.e. Rs. 22,66,500/- in total and upon each wad there was a slip of SBOP, Branch Shastri Nagar. He has stated that he was told about the fact that these are the same currency notes, which were stolen from the bank on 03.10.2009. He has proved his report Ex. PW-2/E, containing his signatures. He has also identified the signatures of SI Arvinder Singh and Hardeep Singh. He has further deposed qua photograph Ex. PB. However, Learned counsel for accused has submitted that the testimony of PW-5 is not sufficient qua the identification of allegedly stolen currency notes as neither inventory of these currency notes has been prepared in this case nor the alleged photograph has been proved on record. In this respect, perusal of cross-examination of PW-5 reveals that as per the testimony of this witness, photograph Ex. PB was not got clicked in his presence and moreover, photographer of the said photograph was neither examined nor cited as witness in this case. Thus, it is clear that the above said photograph Ex. PB has gone unproved on record. But even if the said photograph will not be looked into evidence, then also, PW-2 and PW-5 remained successful in proving the fact that the recovered stolen currency notes were duly identified by PW-1 on 08.09.2010, which were also having slips of SBOP, Shastri Nagar, Branch. Thus, in these circumstances, mere non-examination of photographer and non preparation of inventory will not give any benefit to accused to avoid his liability in this case. Accordingly, the above mentioned contention stands ruled out, being without merits.

20. Lastly, it was argued on behalf of accused that peon of the bank branch and its security guard, who were the most important witnesses to prove

the factum of alleged theft, have not been examined in this case, thus, it cannot be concluded that the alleged theft has been committed by the present accused as there is no witness in this case proving the presence of accused in the bank branch on 03.10.2009 at the relevant time. He has also submitted that no evidence has been proved on record showing the existence of amount of Rs. 23 lacs, in the bank branch on 03.10.2009. In respect of both these contentions, it can be said that presence of accused in the bank branch on 03.10.2009 is otherwise not denied as it was the contention raised on behalf of accused that he has visited the bank branch on that date in order to withdraw his salary. Moreover, prosecution has successfully proved the chain of circumstantial evidence in this case in the testimony of PW-2 to PW-5 to the effect that after taking into police possession the identity proofs of accused, investigation began and it moved towards tracking the tower location of mobile number of accused, which was found out from his place of abode and after taking clue from the tower location of mobile number of accused, it was found out that accused was near Ludhiana and accordingly, barricade was laid down at G.T. Road Laddowal, from where accused was apprehended. It has been duly proved on record that recovery of amount of Rs. 22,66,500/- was effected from accused on the same date of its alleged theft at G.T. Road, Laddowal, thus, the mere fact that peon of bank and its security guard were not examined in this case is not fatal to the prosecution version. Further, it has been specifically stated by PW-2 that he has investigated about this case from the security guard of the bank also, but his evidence was not recorded.

21. Furthermore, it is required to mention here that as per **section 114**

of Indian Evidence Act, the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. Moreover Illustration I of that provision is clear in this regard, which provides that Court may presume that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession. Since it has been proved that the stolen property was found in the possession of accused as on the date of theft itself, thus, as per the presumption under section 114 of Indian Evidence Act, it was for the accused to prove by leading cogent and convincing piece of evidence that he has not committed theft of the above said huge amount of Rs.23 lacs from SBOP, Branch Shastri Nagar, Batala, but he failed to do so. Furthermore, it cannot be expected that such a huge amount was planted upon accused by police.

22. Thus, on the basis of entire evidence led on record by prosecution, which is mainly circumstantial in nature, it is clear that prosecution remained successful to prove on record the commission of offence punishable u/s 380 IPC by accused Hem Raj. Accordingly, both the points of determination are decided in favour of prosecution. Accused Hem Raj is held guilty under the said provision and is convicted as such. Let the convict be taken into custody and be heard on question of sentence.

Pronounced in open Court:
Dated: 02.11.2018

(Mamta Kakkar), PCS,
Judicial Magistrate Ist Class,
Batala/UID-PB0359

QUESTION OF SENTENCE

Present: Sh. A.S. Kahlon, APP for the State.
Convict in custody with counsel Sh. S.S. Randhawa, Advocate.

1. I have heard learned APP for the State and learned counsel for convict and convict in person. Convict Hem Raj has submitted that he is only bread winner of his family and is not a previous convict. Moreover, he is facing trial in this case from the last more than 9 years. Accordingly, he has prayed for taking a lenient view against him.

2. On the other hand, Learned APP for the State argued that huge amount of Rs. 23 lacs was proved to have been stolen by convict and even recovery of amount of Rs. 22,66,500/- has been effected from him, as such, the offence being serious in nature, convict should be severally punished so that punishment awarded to him acts as a deterrent to the like minded people.

3. After giving thoughtful consideration to the rival submissions of Learned APP for the State and learned counsel for convict, this court is of the view that before passing sentence upon convict, this court is bound to consider the fact as to whether convict is entitled to be released on probation or not. **Section 361 Cr.P.C.** provides that where in any case court does not give benefit of probation to the convict, then it is the duty of the court to record special reason for doing so. However, keeping in view the facts and circumstances of this case and the gravity of offence committed by the convict, I do not deem it appropriate to grant the concession of probation to him as he is held guilty of commission of theft of huge amount of Rs. 23 lacs, which was public money deposited in the bank. Moreover, it has come on

record that convict is working with Punjab State Electricity Board and despite being public servant, he has committed the alleged offence of theft, thus surely, he does not deserve leniency in the quantum of sentence to be awarded to him. But since, convict is stated to be the only bread winner of his family and is facing trial in this case from the last more than 8 and half years, as such, keeping in view the above mentioned facts and circumstances and plea of leniency by convict, convict Hem Raj is ordered **to undergo sentence of rigorous imprisonment of three years and to pay the fine of Rs. 1000/- and in default of payment of fine, further to undergo rigorous imprisonment of six months.** The period of detention already undergone by convict during the period of inquiry/investigation or trial, if any, is ordered to be set off against the substantive sentence awarded to him today. Fine paid. The case property, if any, is ordered to be dealt with as per law, after the expiry of period of appeal or revision, if any. Copy of Judgment be given to the convict, free of costs. File be consigned to the record room after due compilation.

*Note : Certified that all the Nineteen pages of this
Judgment are signed by me, which have been
dictated and typed directly on computer .*

Pronounced in open Court:
Dated: 02.11.2018.

(Mamta Kakkar), PCS,
Judicial Magistrate Ist Class,
Batala/UID-PB0359

JW Nitesh Kumar
Stenographer-II

Present: Sh. A.S. Kahlon, APP for the State.
Accused on bail with counsel Sh. S.S. Randhawa, Advocate.

Accused closed his defence evidence. Arguments heard. Vide my separate detailed Judgment of today, accused Hem Raj is convicted for the offence punishable u/s 380 of Indian Penal Code. Bail bonds and surety bonds discharged. Copy of judgment be given to convict, free of costs. After due compliance, file be consigned to the record room.

Pronounced in open Court:
Dated: 02.11.2018.

(Mamta Kakkar), PCS,
Judicial Magistrate Ist Class,
Batala/UID-PB0359

JW Nitesh Kumar
Stenographer-II

Present: Convict with counsel Sh. S.S. Randhawa, Advocate.

The convict/applicant moved an application under section 389 Cr.PC for suspension of sentence awarded to him. Heard. The applicant/convict want to prefer an appeal against the judgment and order of sentence awarded to him. This court has awarded sentence to the accused, which is upto three years and fine and convict has already deposited the fine. Accordingly, in order to enable the convict to file an appeal, the sentence awarded to him stands suspended till 03.12.2018 on his furnishing bail bonds in the sum of Rs.50,000/- with one surety in the like amount each with the direction to produce bail orders from the Learned Appellate Court on or before that date or to surrender before this court on 03.12.2018 to receive the sentence awarded to him. Convict has requested that he is not having surety bonds today and be released on personal bonds. He has undertaken to furnish surety bonds on 05.11.2018. Separate statement of convict has been recorded in this regard. In view of the request, convict is directed to furnish his personal bonds in the sum of Rs.50,000/- today and is further directed to furnish his surety bonds on 05.11.2018. Personal bonds have been furnished, which are accepted and attested. Papers be separated from the main file and be put up on 05.11.2018. Now to come up on 05.11.2018 for furnishing surety bonds.

Pronounced in open Court:
Dated: 02.11.2018.

(Mamta Kakkar), PCS,
Judicial Magistrate Ist Class,
Batala/UID-PB0359

JW Nitesh Kumar
Stenographer-II