

PBFZ030032632020



**IN THE COURT OF MS. RADHIKA LIKHI, PCS,
JUDICIAL MAGISTRATE IST CLASS, FEROZEPUR.
UID PB0597**

CIS No. CHI/ 223/2020.

DATE OF INSTITUTION 28.09.2020

DATE OF DECISION: 08.07.2024

(Details of FIR/Crime and police station)

Complainant	State through complainant Sarabjit Kaur wife of Sukhdev Singh
Represented by	Ld. APP for the State
Accused	Suraj @ Taklu son of Chandeshwar son of Gulab, resident of Sokar river Golbagh Ferozepur District Ferozepur
Represented by	Sh. M.S Khokhar Advocate
Date of offence	19-12-2019
Date of FIR	FIR No. 296 dated 20-12-2019
Date of charge sheet	28-09-2020
Date of framing of charge	14-01-2021
Date of commencement of evidence	17-03-2021
Date of the judgment	08-07-2024
Date of sentencing order, if any	08-07-2024
Police station	City Ferozepur

(Radhika Likhi), Judicial Magistrate First Class, Ferozepur

Accused Details:

Ran k of the accu sed	Name of accused	Date of arrest	Date of release on bail	Offenc es charge d with	Whethe r acquitt ed or convict ed	Sentence imposed	Period of Detenti on Underg one during Trial for purpose of section 428, Cr.P.C.
1.	Suraj @ Taklu son of Chandes hwar son of Gulab	23-12- 2019	04-03- 2020	Under section : 454/38 0/411 of IPC	Convict ed under section 411	Released on probatio n	---

FIR No.296 dated 20-12-2019
Under section 454/380/411 of IPC,
Police Station City Ferozepur.

Present:- Ld. APP for the State
Accused on bail with counsel Sh. M.S Khokhar
Advocate.

J U D G M E N T

The accused in the present case has been sent by the police
to stand trial for commission of offence punishable under Section 454 ,

(Radhika Likhi), Judicial Magistrate First Class, Ferozepur

380 and 411 of IPC.

2. Brief facts as per the case of the prosecution are that on 20.12.2019 ASI Joginder Singh along with C Tajinder Singh , PHG Kipal Singh and other police officials were present on Ichhewala road near Church Ferozepur City. Where complainant Saranbjit Kaur met ASI Joginder Singh and got recorded her statement with the police, wherein, she depose that on 19.12.2019 at about 4.25 P.M she went to the house of her friend Sarabjit Kaur after locking her house and when she came back at about 5.45 P.M she saw that taps of bathroom and kitchen were broken and lock of Almirah was also broken. She found that gold articles of 46 tolas belonging to her daughter Rupinder Kaur , 25 tolas gold of her daughter-in-law Mandeep Kaur and her own 10 tola gold(total 81 tolas) and currency note of Rs. 25,000/- were stolen by some unknown person. On the basis of said statement, ruqa was sent through PHG Gurdev Singh for registration of FIR and on the basis of which Inspector Jatinder Singh registered FIR. Thereafter, on 23.12.2019 Sukhdev Singh husband of complainant came to police station and recorded his statement with the police that accused Suraj Taklu committed theft in his house. Thereafter, on 23.12.2019 on receiving secret information SI Sharma Singh along with HC Balour

(Radhika Likhi), Judicial Magistrate First Class, Ferozepur

Singh and other police officials reached near Veterinary hospital Ferozepur, where, one young man was seen alongwith polythene/envelop. On seeing the police party he tried to fled away from the spot. IO apprehended him with the help of other police officials and upon asking, he disclosed his name as Suraj @ Taklu. Thereafter, IO conducted search of envelop/polythene and receovered two taps of pital. On inquiry, he disclosed that on 20.12.2019 he made theft in a house which was locked from outside. He further deposed that from the said house he made theft of taps and gold lying in Almirah. Thereafter, IO took into possession of said taps vide memo of recovery. Accused was taken into custody. Statement of witnesses were recorded .

3. After completion of the investigation, challan was presented against accused under Section 454,380 and 411 of IPC. In compliance of Section 207 Cr.P.C, copies of the challan and other documents were supplied to the accused free of cost.

4. Finding a prima facie case made out against accused under Section 454, 380 and 411 IPC, he was charge sheeted accordingly. The charge was read over and explained to the accused but he pleaded not guilty and claimed trial.

(Radhika Likhi), Judicial Magistrate First Class, Ferozepur

5. In order to substantiate its case the prosecution has got examined following six witnesses:-

PW-1	Sarabjit Kaur	Complainant
PW-2	Sukhdev singh	Husband of complainant
PW-3	Sukhdev Singh	Witness
PW-4	ASI Joginder Singh	Investigating officer
PW-5	ASI Sharma Singh	Investigating officer
PW-6	Yusuf	Who prove the bill of gold

The above said witnesses proved on record following documents:-

Ex. PA	Statement of complainant
Ex. P1	Recovery memo
Ex. P2	Arrest memo
Ex P3	Personal search memo
Ex P4	Memo to call upon counsel
Ex. P5	Intimation memo
Ex. P6	Disclosure statement
Ex. P7	Memo recovery of gold
Ex. P8	List of gold ornaments
Ex. P9 to Ex. P28	Photographs
Ex. PW3/A	FIR
Ex. P31	Site plan
Ex. P34	Site plan
Ex. P35	Copy of DDR
Ex. P37	Site plan regarding recovery

Ex. PW3/A	Memo regarding identification of stolen articles
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Thereafter, Ld. APP for the state closed the evidence on behalf of prosecution vide separate statement dated 13.06.2024.

6. As per Rules, statement of accused under Section 313 Cr.P.C. was recorded in which whole of the incriminating evidence was put to him but he denied the same. However, he did not lead any evidence in defence.

7. After perusing the file on record and hearing the respective submissions of the learned APP for the State and learned defence counsel, following questions for determination arise in the present case: -

- i) Whether it has been proved on record that on the intervening night of 19.12.2019 at about 5:45 P.M the accused committed lurking house by entering into the building of the complainant Sarabjit Kaur with intention to commit theft of money of the complainant ?
- ii) Whether it has been proved that accused committed theft of 81 tolas of gold and currency notes of Rs. 25,000/- belonging to the complainant ?

(Radhika Likhi), Judicial Magistrate First Class, Ferozepur

- iii) Whether the prosecution has succeeded in proving on record recovery of gold ornaments belonging to the complainant ?
- iv) Whether the prosecution has proved its case against the accused beyond reasonable doubt ?

8. During arguments, learned APP for the State submitted that the case of the prosecution has been fully proved. The witnesses got examined by the prosecution have fully corroborated the stand of the prosecution. The recovery from the accused has been proved on the file hence, accused be convicted.

9. On the other side, learned counsel for the accused argued that a false case has been registered against the accused. No recovery from the accused has been proved. He further argued that the CCTV footage of the complainant has not been taken into custody by the police nor proved on the file. The prosecution has failed to prove its case against the accused beyond shadow of all doubts hence, he be acquitted.

10. Case file perused and arguments considered. All questions for determination are taken up together to avoid repetition. The allegations against the accused are of commission of lurking house

trespass by entering into the house of the complainant with intention to commit theft and then, commission of theft of 81 tolas of gold and currency notes of Rs.25,000/- belonging to the complainant. In order to prove his case ***prosecution firstly examined complainant Sarabjit Kaur*** who during her testimony stepped into witness box and deposed as per her statement given to police and further corroborated the version of prosecution. During cross-examination, she deposed that they had given 30 tola gold articles to her daughter but not given bills regarding the gold. She further deposed that they purchased the said gold from Ferozepur but failed to produce the bills of said gold. She further deposed that she had not seen the accused Suraj running away.

Thereafter, prosecution examined PW2 Sukhdev Singh who during his testimony stepped into witness box and deposed as per his statement given to the police and further supported the case of prosecution. During cross-examination, he deposed that gold articles are easily available in the market. He further deposed that on 19.12.2019, he was on his duty at the time of occurrence.

Thereafter, Prosecution examined PW-3 Sukhdev singh who during his testimony stepped into witness box and deposed as per the case of prosecution and during cross-examination, he deposed that he

had not seen the accused while committing theft of said articles. He further deposed that he did not brought the bill of said gold articles.

Thereafter, prosecution examined Pw-4 investigating officer ASI Joginder Singh who during his testimony stepped into witness box and deposed as per the investigation conducted by him and further supported the case of prosecution. During cross-examination he deposed that he had prepared the site plan and the same was prepared at the instance of complainant and her husband.

Thereafter, prosecution examined PW-5 investigating officer ASI Sharma Singh who during his testimony stepped into witness box and deposed as per the investigation conducted by him and further supported the case of prosecution. During cross-examination, he deposed that he had not seen the case property in the court

Thereafter, prosecution examined Yusuf as Pw-6 who during his testimony stepped into witness box and deposed that he is working at Jewellers shop of Mahinder Singh and further deposed that on 17.12.2016, he weighed the gold ornaments and Mahinder Singh presented bill. During cross-examination, he deposed nothing regarding the present case. As discussed above, the prosecution has got examined six witnesses.

11. In order to decide the above points of determination, at first instance, this Court would like to discuss the evidence adduced by the prosecution on judicial file.

The main ingredients of section 380 of IPC are as follows:-

- (a) there was a movable property kept in building, vessel or tent as appeared in section itself;
- (b) that the said movable property was in possession of person other than the accused;
- (c) the accused took it out of the possession of said person;
- (d) that the accused did it dishonestly i.e. with intention to cause wrongful gain to himself or wrongful loss to another;
- (e) that the property was taken out without consent of the possessor.

In the present case, subject matter of theft are some gold ornaments, currency notes and taps which are surely moveable property, which were kept in the residence of complainant and it had been moved out of the possession of the complainant without her consent. In the present case, PW-5 ASI Sharma Singh deposed that the police recovered the stolen articles i.e. gold articles weighing 694 gm 470 mg. He further deposed that when police party went to the house of

accused, got recovered gold articles weighing 149 grm 520 Mgs. In order to prove the such recovery prosecution has examined the abovesaid six witnesses. PW-1 complainant Sarabjit Kaur during her cross-examination deposed that she did not see the accused Suraj running away. She further deposed that total 81 tolas gold alongwith currency notes of Rs. 25,000/- were stolen by some unknown persons. Also, she failed to produce any bill of the said gold articles. Further, prosecution examined PW-2 Sukhdev Singh who during his testimony deposed that during search of accused he had taken the CCTV Footage and prepared CD and photographs and handed over the same to the police officials. But it is interesting to note here that prosecution failed to produce in court the abovesaid CCTV Footage and CD which was handed over to the police party by the PW-2 and which creates a serious doubt in the story of prosecution that why prosecution withheld the best evidence with it which is very essential to prove the case of prosecution. Also, PW-3 Sukhdev Singh during his cross-examination, deposed that he had not seen the accused while committing of theft of above said articles. Nor he produced the bills of such articles in the court at any point of time.

12. So, from the entire evidence available. It appears that as

(Radhika Likhi), Judicial Magistrate First Class, Ferozepur

prosecution fails to prove the bills of the gold articles further failed to prove the CCTV footage which could prove the identity of accused. No body saw the accused person committing the offence of theft in the house of complainant and Pw-3. The doctrine of circumstantial evidence is brought into aid where there is no eye witness to the occurrence and it is for the prosecution to establish the complete chain of circumstance leading to definite conclusion pointing towards the guilt of accused. There should not be any missing links. As in the present case, there is no direct witness who has seen the accused persons while committing theft in the house of complainant. Moreover, the prosecution has failed to prove the ownership of complainant over the stolen property. So, the prosecution has failed to fulfill the ingredients of section 380 of IPC.

13. ***Furthermore, the basic ingredients of section 454 are as follows:-***

whoever commits lurking house-tresspass or house breaking, in order to committing of any offence punishable with imprisonment, shall be punished with imprisonment

It is a well settled principle of law that the prosecution has to prove its case beyond all reasonable doubt and if there is any doubt in its story then its benefit must go to the accused. No witness deposed on the file

that he or she saw the accused entering into house of complainant and committing theft from his house. The entire case of the prosecution is based on CD which has also not been proved on the file. PW2 Sukhdev Singh has deposed that he prepared CD and photographs of the alleged occurrence/ theft committed by accused Suraj @ Taklu and handed over the same to the police party but the prosecution has failed to prove that CCTV Footage and CD and thus prosecution failed to prove a satisfactory evidence to reach on conclusion that the accused committed lurking house trespass at house of complainant. So, the prosecution has failed to fulfill the ingredients of section 454 of IPC.

Furthermore, the basic ingredients of section 411 are as follows:-

As in order to prove the charge against the accused under Section 411 IPC the following ingredients were necessary to be proved by the prosecution:-

- 1. The property must be of stolen property.***
- 2. The property must have been dishonestly received or retained.***
- 3. The person from whose possession said property was recovered knew or having reason to believe the same to***

be stolen property.

PW5 ASI Sharma Singh has deposed on oath that when he arrested the accused, he made disclosure statement as Ex.P6 and on the basis of the same recovery of stolen gold articles weighing 674 gram 470 mg belonging to the complainant was made from the accused from his house under the earth in a pit at the backside of his house. Though it has been argued that no recovery was effected from the accused and he has been falsely implicated, there is no reasonable explanation of the accused as to why only accused has been selected by the police for registration of the present case. The accused has failed to take any plea that no recovery has been effected from the accused. The accused has failed to bring on record any personal grudge with the IO of the case or the other police officials in the light of which chances of false implication of accused could have been there. The prosecution has thus successfully proved on the file that the accused retained amount the gold articles which was a stolen property belonging to complainant Sarabjit Kaur and PW-3 Sukhdev Singh in his possession while having knowledge that the same is a stolen property.

15. Furthermore, learned Counsel for accused has argued that no independent witness was joined, though independent witnesses was

(Radhika Likhi), Judicial Magistrate First Class, Ferozepur

available as the recovery was effected from the house of accused. But, I am unable to accept the above said contention. It is a settled principle of law that evidence of one witness is sufficient to prove the allegations against the accused. In case of evidence of a single witness, only court is required to scrutinized the same carefully and cautiously. After careful and cautious scrutiny, if court comes to conclusion that same does not suffer from any serious infirmity, the same can be believed. In **Appa Bai and another vs. State of Gujrat AIR 1988, Supreme Court 696**, it has been held that the prosecution story cannot be thrown out on the ground that an independent witness has not been examined by the prosecution. It was further held in the said authority that civilized people are generally insensitive, when crime is committed even in their presence and they withdraw from the victim sides and from the sides of vigilant. They keep themselves away from court, unless it is inevitable. Moreover, they think the crime like a civil dispute between two individual and do not involve themselves in it. The principle of law laid down in the aforesaid authority is fully applicable to the facts of present case. In these circumstances, mere non joining of independent witness, when the evidence of prosecution witness has been held to be cogent and convincing, credit worthy and

reliable, there was no reason on their part to falsely implicate the accused, no doubt is cast on the prosecution story. Therefore, submission of Learned counsel for the accused in this regard, being without merit must fail and same stands rejected.

15. In view of aforesaid discussion, ***accused Suraj @ Taklu is acquitted under Section 454 and 380 IPC but is convicted under Section 411 IPC.*** Let, the accused be taken into custody and be heard on quantum of sentence. File be consigned to the Record Room, after due compliance.

Pronounced in open court

Dated : 08.07.2024

Sheenam stenographer Gr. II
(directly dictated on computer).

sd/-(**Radhika Likhi**)
Judicial Magistrate First Class,
Ferozepur.

QUANTUM OF SENTENCE

Present:- Ld. APP for the State
convict in custody represented by counsel Sh. M.S
Khokhar Advocate.

Learned counsel for the convict submitted that the convict is very poor person. He is facing trial for the last two and half year. He is a young person and is first offender. Hence, lenient view may kindly be taken. On the other side, Learned APP for the State has requested that convict be punished strictly. Arguments considered and file perused. Accused is facing trial for the last more than two and half years. He has already spent about two and half months in custody i.e. from 23-12-2019 to 04-03-2020. He must have learnt lesson. Keeping in view the gravity of the offence and plea of convict, ends of justice would be met if he is convicted to rigorous imprisonment for the period already undergone by him. As such, convict is accordingly sentenced to undergo rigorous imprisonment for the period, already undergone by him, in this case. The bail bonds/surety bonds submitted by the accused persons during the trial will be considered as bail bonds under section 437(A) Cr.P.C and will remain in force till next six months. Thereafter, it will be automatically discharged. Copy of judgment be

(Radhika Likhi), Judicial Magistrate First Class, Ferozepur

supplied to convict free of cost. File be consigned to record room after due compliance.

Pronounced in open court

Dated : 08.07.2024

Sheenam stenographer Gr. II
(directly dictated on computer).

sd/-(**Radhika Likhi**)
Judicial Magistrate First Class,
Ferozepur.

CHI 223.2020**“State Vs. Suraj @ Taklu.”**

Present:- Ld. APP for the State
Accused on bail with counsel Sh. M.S Khokhar
Advocate.

Accused closed his defence evidence closed. Arguments addressed. Vide separate judgment of even date, accused has been acquitted under Section 457 and 380 IPC but convicted under Section 411 IPC. Copy of the judgment be supplied to the accused free of cost, file be consigned to Record Room, after due compliance.

Pronounced in open court**Dated : 08.07.2024**

Sheenam stenographer Gr. II
(directly dictated on computer).

sd/-(**Radhika Likhi**)
Judicial Magistrate First Class,
Ferozepur.

(Radhika Likhi), Judicial Magistrate First Class, Ferozepur