

**In the Court of Sh. Gurpreet Singh, PCS, Judicial Magistrate 1st class,
Jalandhar/UID No.PB0615**

CNR Number	PBJL03-013097-2021
CIS Number	CHI/2470/2021
Date of Institution	24.01.2025
Date of Decision	24.09.2021

State

Versus

1. Vicky Singh S/o Jarnail R/o Purani Mandi Atari Mohalla Rodan wali Amritsar, at present Arman Nagar, Street No.4 Zone Park Raman Mandi, Jalandhar.
2. Gurdial Singh S/o Hem Raj R/o Village Fatehpur PS Gardiwal District Hoshiarpur at present R/o Arman Nagar, Street No.4 Zone Park Rama Mandi, Jalandhar.

.....Accused

**FIR No. 107 dated 08.09.2021
U/s 379, 411, 34, 201 of IPC
Police Station, Cantt., Jalandhar.**

Present:- Ms. Manjinder Kaur, APP for the State.
Accused Vicky and Gurdial Singh on bail represented
by Sh. S.K.Gautam, Advocate.

JUDGMENT:-

1. The Station House Officer of Police Station Cantt. Jalandhar has sent up the above said accused persons to face trial for the commission of offences punishable under Sections 379, 411, 34 and 201 of Indian Penal Code.

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BRIEF FACTS:

2. Tersely, the factual matrix of the case as unfolded by the prosecution as per police report under Section 173 of Code of Criminal procedure is that on 08.09.2021, ASI Satnam Singh alongwith other police officials were present at chowki, when one complaint no.545BH dated 08.09.2021 was moved by Navdeep Samra, SDO, PSPCL, Rural Cantt. 2 Jalandhar regarding the theft of oil from transformer by some unknown persons. Thereafter, on receipt of said complaint, it was found that matter pertained to theft of oil from electricity transformer located at Kot Kalan. Then, ruqa was sent through PHG Vijay Kumar for registration of FIR. Thereafter, on the basis of ruqa sent, present FIR has been registered against unknown persons under Section 379 of IPC and investigation begins.

INVESTIGATION:-

3. During the course of investigation, Investigating Officer recorded statements of the witnesses under Section 161 Cr.P.C. The accused persons were arrested during investigation. The completion of the investigation was followed by submission of the police report under Section 173 Code of Criminal procedure against the accused persons in the Court.

PRESENTATION OF CHALLAN:-

4. On completion of the necessary formalities and investigation, the instant challan against the accused persons has been presented in the Court for commission of offences under Sections 379, 411, 34 and 201 of Indian Penal Code.

SUPPLY OF COPIES OF CHALLAN:-

5. On presentation of challan/police report copies of documents as relied upon by the prosecution have been supplied to the accused persons free of cost as statutorily required under section 207 of Code of Criminal Procedure 1973.

CHARGE:-

6. Finding a prima facie case against the accused persons for commission of offences Under Section 379, 411, 34 and 201 of Indian Penal Code, charges has been framed against them, to which they pleaded not guilty and claimed trial.

PROSECUTION EVIDENCE:-

7. To prove its case prosecution has examined witness as detailed herein:-

Serial no.	Examined As/Type of witness	Witness Name	Documents Exhibited
1.	PW1 (Complainant)	Navdeep Samra	Complaint Ex.PW1/A
2.	PW2 (Recovery witness)	ASI Harbhajan Lal	Arrest memo of accused Vicky Singh and Gurdial Singh @ Sonu Ex.PW2/A and Ex.PW2/B, personal search of both the accused Ex.PW2/C and Ex.PW2/D, recovery memo Ex.PW2/E.
3.	PW3 (Investigating Officer)	ASI Satnam Singh	Ruqa Ex.P1, FIR Ex.P2, endorsement on ruqa Ex.P3,

			rough site plan of place of occurrence Ex.P4, arrest memo of accused Vicky Singh and Gurdial Singh @ Sonu Ex.PW2/A and Ex.PW2/B, personal search of both the accused Ex.PW2/C and Ex.PW2/D, recovery memo Ex.PW2/E, rough site plan of place of recovery Ex.P5, disclosure statement Ex.P6 and Ex.P7, identification memo of accused Ex.P8, letter from Executive Engineer PSPCL is Ex.P8, case property Ex.MO1 and Ex.MO2, DDR regarding addition of offence is Ex.P9 and Ex.P10
4.	PW4 (Recovery witness)	HC Niranjan Dass	Complaint Ex.PW1/A, ruqa Ex.P1, FIR Ex.P2, endorsement on ruqa Ex.P3, rough site plan of place of occurrence Ex.P4, arrest memo of accused Vicky Singh and Gurdial Singh @ Sonu Ex.PW2/A and Ex.PW2/B, personal search of both the accused Ex.PW2/C and Ex.PW2/D, recovery memo Ex.PW2/E, rough site plan of place of recovery Ex.P5, disclosure statement Ex.P6 and Ex.P7.

5.	PW5 (Sample Deposit and examination)	HC Kulwinder Kaur	-----
6.	PW (Identification witness qua case property)	Retired Lineman Harbilas	Identification memo Ex.P/8, case property i.e. cane containing transformer oil Ex.MO1.

Thereafter the learned APP for the State vide her separate statement has closed the prosecution evidence.

SECTION 313 CRPC STATEMENT:-

8. After closure of prosecution evidence, statutory statement of accused persons were recorded as envisaged under section 313 of Cr.P.C, wherein all the incriminating material alongwith evidence against the accused Vicky Singh and Gurdial Singh which has come on record has been put to them to which they denied the same, to which the above said accused stated that they are innocent. They have not committed any offence and falsely implicated in the present case. Accused opted to lead defence evidence, but they have not lead any evidence in their defence and closed the same vide separate statement.

9. I have heard submissions of the learned APP for the State and the learned Defence Counsel and have examined the material available on record with due care and circumspection.

ARGUMENTS ON BEHALF OF STATE:

10. It is settled law that it is the prosecution to prove the guilt of accused beyond shadow of reasonable doubt by producing cogent and

convincing evidence. Reliance can be placed on ratio of law laid down by Hon'ble Supreme Court of India in “ *Dahyabhai Chhaganbhai Thakkar versus State of Gujrat*” AIR 1964 SC 1563, wherein it is observed that it is fundamental principle of criminal jurisprudence that an accused is presumed to be innocent and therefore, the burden lies on the prosecution to prove the guilt of the accused beyond reasonable doubt. Learned APP for State while referring to the prosecution evidence, has forcefully argued that accused persons intended to take dishonestly certain movable property i.e. oil of transformer and knowingly or having reason to believe as such property was stolen property and also argued that accused persons dishonestly retained the stolen property. He forcefully argued that prosecution has been successful in proving its case beyond all shadows of doubt and has prayed for conviction of the accused person.

ARGUMENTS ON BEHALF OF ACCUSED PERSON:-

11. On the other hand learned Counsel for defense, has vehemently argued that the prosecution has failed to bring home the guilt of the accused persons. He further argued that false case has been registered against the accused persons just to procure their conviction. He also contended that even there are material contradictions in the prosecution evidence and evidence led by prosecution itself casts doubt on their version. He further argued that present case is planted one as prosecution failed to connect the alleged recovery from the accused persons, thus prosecution has miserably failed to prove the guilt of the accused beyond the shadow of reasonable doubt.

Thereafter learned defense Counsel has prayed for acquittal of the accused persons in the present FIR.

12. After hearing learned APP for the State, learned counsel for accused persons and upon perusal of the file following point emerge for determination in the present case:-

1. *Whether in the intervening night of 7/8-09-2021, both accused share common intention and in furtherance of common intention, accused committed theft of oil of transformer and thereby committed an offence punishable under Section 379 IPC read with Section 34 of IPC ?*
2. *Whether accused Vicky and Gurdial Singh in furtherance of common intention dishonestly retained the oil of the transformer having the reasons to believe or knew the same to be stolen property and thereby both accused committed an offence punishable under Section 411 IPC read with Section 34 of IPC ?*
3. *Whether accused persons caused disappearance of evidence of offence that is the oil transformer and thereby both accused committed an offence punishable under Section 201 of IPC ?*

TESTIMONY OF WITNESSES, DISCUSSION ON POINTS NO. 1 to 3 FOR DETERMINATION AND APPRECIATION OF EVIDENCE:-

13. In order to prove case of prosecution, prosecution has firstly examine PW1 Navdeep Samra complainant. During his examination in chief, he depose as per the stand taken by the prosecution and proved on

record document Ex.PW1/A i.e. complaint filed by him to police. During his cross examination, he specifically stated that he has not brought any proof regarding the installation of 100 KV transformer at village Kot Kalan and also not given any proof to police regarding the installation of 100 KV transformer, Karnail Singh, Kot Kalan. Thereafter, his remaining cross examination was deferred for want of presentation of proof regarding installation of transformer of Karnail Singh Kot Kalan but it is apposite to mention here that thereafter, complainant PW-1 Navdeep Samra never stepped into witness box for the purpose of his remaining examination and question of installation of 100 KV transformer Karnail Singh Kot Kalan remained unanswered.

14. Further prosecution examined, PW2 ASI Harbhajan Lal, who deposed as to that IO ASI Satnam Singh joined him into the investigation of the present case and he accompanied the IO for the purpose of investigation. During his cross examination, he stated that he has not prepared any document before the lodging of FIR and he has prepared document i.e. memo of recovery.

15. Further prosecution examined PW3 ASI Satnam Singh, Investigating officer, who deposed as to investigating the present matter and proved on record documents i.e. Ruqa Ex.P1, FIR Ex.P2, endorsement on ruqa Ex.P3, rough site plan of place of occurrence Ex.P4, arrest memo of accused Vicky Singh and Gurdial Singh @ Sonu Ex.PW2/A and Ex.PW2/B, personal search of both the accused Ex.PW2/C and Ex.PW2/D, recovery

memo Ex.PW2/E, rough site plan of place of recovery Ex.P5, disclosure statement Ex.P6 and Ex.P7, identification memo of accused Ex.P8, letter from Executive Engineer PSPCL is Ex.P8, case property Ex.MO1 and Ex.MO2, DDR regarding addition of offence is Ex.P9 and Ex.P10. However, said witness fails to stand tall in the test of cross examination as he specifically stated that the transformer from which the alleged theft of oil has taken place was never taken into possession by them and no report from any laboratory was taken regarding the oil which was allegedly recovered that whether it was used in the transformer. He also stated that there was no technical report regarding how much oil was reduced in the transformer. He also stated that no videography or photography was done regarding the alleged recovery. He further stated that they tried to join independent witness but nobody was ready to join and no respectable persons i.e. Sarpanch, Numberdar, Panch was ever included in the investigation as witness. He also stated that alleged recovery is done in village Kot Kalan. He also stated that it is correct that transformers are installed at the height from the road and no stair was recovered from alleged place of recovery and transformer was installed at 10-12 ft. height from the road. He further stated that total quantity of alleged oil in the alleged transformer has not been disclosed by the complainant. He further stated that complainant has not given any evidence regarding the working/running of alleged transformer. He also stated that FIR has been registered against the unknown person. He further stated that he has not recorded the statement of Karnail Singh and

complainant/department has not given any document to him to prove that any such alleged transformer was installed at the alleged place. He further stated that he has seen the site plan Ex.PH and it is correct that no alleged transformer has been mentioned in the site plan. He further stated that police has not received any complaint of theft of oil from the transformer from any person or authority. He also stated that complainant has not given to him any copy of complaint of any consumer who are using electricity from the said department and police had also not received any such complaint. He further stated that complainant has not given any document to show that there was any transformer and there was no any oil in it. From entire testimony of star witness of the prosecution i.e. investigating officer, who conducted the entire investigation has denied the fact of receiving any complaint of theft of oil from the transformer from any person or authority, thus, he himself create dent upon the prosecution story, which render the entire prosecution story meaningless and create serious doubts.

16. Further prosecution examined PW4 SI Naranjan Dass, who deposed as to fact that he accompanied the police party headed by IO ASI Satnam Singh in the present case. During his cross examination, he specifically stated that no independent witness was joined by IO during entire investigation. His statement was recorded on 08.09.2021 by the IO and no other statement was recorded by the IO. He further stated that only his statement was recorded by the IO in the present case. Meaning thereby,

PW-4 create suspicion as to the accompanying the other officials in the investigation of the present case.

17. Further prosecution examined PW5 HC Kulwinder Kaur, who deposed as to fact regarding deposit of case property on 08.09.2021 and testing of the same being done on 10.09.2021 by Harbilas. It is apposite to mention here that testimony of said case property has not been done by any expert or authorized Government Laboratory.

18. Further prosecution examined PW6 Retired Lineman Harbilas, who deposed as to fact of identification of oil which was used in electricity transformer.

19. I have heard submissions of the learned APP for the State and the learned Defense Counsel and have examined the material available on record with due care and circumspection. Therefore, this Court come to the conclusion that the prosecution has failed to prove the guilt of the accused persons in the present case beyond shadow of all reasonable doubts. The prosecution has failed to establish the fact of theft of oil from the transformer been committed by accused persons as well as retention of the same being stolen property by the accused persons and also failed to link the alleged recovery effected with the accused persons.

FINDING ON POINTS FOR DETERMINATIONS WITH REASONS:-

20. For the purpose on reasoning, all the points for determinations are taken together. The present FIR was registered on the basis of complaint moved by Navdeep Samra, SDO, PSPCL against unknown person for

alleged commission of offence of theft as well as for receiving stolen property. Further during investigation present accused namely Vicky and Gurdial Singh have been arrayed as an accused and accordingly arrested in the present FIR on the basis of his disclosure statement u/s 27 of Indian Evidence Act made during investigation.

21. However, prosecution has failed to prove such theft by the accused persons as PW-3 ASI Satnam Singh specifically stated that no independent witness has been joined into the investigation while recovering the alleged oil and that too alleged recovery is stated to be effected from village Kot Kalan. Further, admittedly, no Sarpanch, Panch and Numberdar were ever included in the investigation as witness. Furthermore, in the present case, no evidence has been led by the prosecution to link the accused persons with the alleged commission of offence of theft and merely relying upon disclosure statement made u/s 27 of Indian Evidence Act. The law is well settled by *Hon'ble Supreme Court of India to invoke section 27 of Indian Evidence Act in case tilted as "Preumal Raja @ Premal Vs. State represented by the inspector of Police"* wherein it has been held that firstly there should be discovery of fact and the fact should be relevant in consequence information received from the accused person. Secondly the discovery of such fact must be deposed to i.e. that fact should not already known to the police. Thirdly at the time of receipt of information, accused should be in custody of police. Lastly only so much information as relates distinctly to fact thereby discovered is admissible. Further *Hon'ble Supreme*

Court of India in case tilted as “Manoj Kumar Soni Vs. State of Andhra Pradesh(2023)” wherein it has been held that disclosure statement is a significant contributing factor for conviction, but it cannot be the sole basis of conviction. In the present case also prosecution has not led any corroborated evidence and merely relying upon the disclosure statement of the accused in the present case and that even when no recovery has been effected on the basis of said statement. Rather investigating officer, PW-3 ASI Satnam Singh himself creating doubt over the prosecution version by way of stating during his cross examination that police has not received any complaint of theft of oil from the transformer from any person or authority and he also specifically stated that complainant has not given to him any copy of complaint of any consumer who was using the electricity from the said department and police has also not received any such complaint.

22. Further admittedly no independent witness was joined into the investigation when alleged recovery has been stated to be effected from village kot kalan and not the secluded place and thus joining of independent witnesses is foremost requirement. PW3 ASI Satna Singh, investigating officer specifically stated that they tried to join independent witness but nobody was ready to join. He also stated that alleged recovery is done in village Kot Kalan. Thus there is serious lapse at the part of investigating agency. Reliance can be placed upon ratio of ***Hon'ble High Court of Rajasthan in “Raju Munim Vs. State of Rajasthan” 2006(3) RCR (Crl) 181,*** wherein it has been held that when no independent witness has been joined

from the locality and it was explained that number of person from locality were contacted but none was willing, said explanation was not tenable. Absence of independent witnesses vitiate the proceedings.

23. Thus, this court finds no justification in the investigation conducted by the investigating agency, which fells flat itself on the testimony of prosecution witnesses more specifically PW-3 ASI Satnam Singh, Investigating officer as well as from testimony of PW-4 HC Naranjan Dass i.e. recovery witness. Therefore, in such circumstances, there left nothing against the accused persons.

24. The prosecution is required to prove case against the accused beyond all shadows of reasonable doubts. In ratio of law laid down by Hon'ble Punjab & Haryana High Court in "*State of Haryana Vs. Shamsher Singh*" 2006 (3) RCR (Criminal) 346 (P&H) (DB), Hon'ble Court has held that in a criminal trial, prosecution is cast with very serious duty to bring on record quality evidence in order to substantiate its allegation against an accused person. It cannot seek conviction of any person without bringing substantial evidence on record as it becomes extremely difficult for the Court to pronounce a person guilty in the absence of foolproof evidence nailing guilt by the accused persons. In present case, prosecution has failed to link the accused persons with the alleged commission of theft of oil from transformer as alleged as not even a single witness has been examined who can identify the accused persons been the same persons who have committed theft. Further complainant itself failed to prove that how he got the

information about the accused persons have committed theft of oil from transformer as alleged. There is absence of iota of evidence to link the said accused persons with the alleged occurrence of theft. Therefore there remains nothing against the accused persons and they deserved to be given with benefit of doubt. Thus, the prosecution has miserably failed to connect the accused persons with commission of offence punishable under sections 379 of IPC as prosecution has failed to prove firstly the theft of oil from transformer in question and also section 411 of IPC as secondly prosecution also failed to connect the alleged recovery stolen property. Even prosecution also failed to prove that alleged theft was committed by more than one person and disappearance of evidence has been caused by the accused persons. Now there remains nothing against the present accused persons and benefit of doubt must be given to them. Reliance can be placed on ratio of *Hon'ble Supreme Court of India in case "Krishna Janardhan Bhat Vs. Dattatraya G. Hegde", 2008(1) RCR (Criminal) 695*, wherein it has been held that presumption of innocence is a human right. The prosecution evidence should be of such, which should lead to no other hypothesis except guilt of the accused. Thus, from the evidence adduced by the prosecution the guilt of accused persons not established.

25. As sequel of the discussion made here-in-above, accused Vicky Singh and Gurdial Singh are acquitted of the charges framed against them Under Section 379, 411, 34 and 201 of IPC after giving them benefit of doubt. Instead of furnishing surety bonds for compliance under section 437-

A of Cr.P.C, accused requested that their personal bonds may kindly be taken in compliance of Section 437-A of Cr.P.C to ensure the presence of the accused in case of filing of appeal/revision if any, as the case may be preferred by the State. Request considered and allowed. Personal bonds furnished, which are accepted and attested.

26. Case property, if any be disposed of as per the rules after awaiting the result of appeal/revision, as the case may be if any. Sapurdari bonds furnished be discharged accordingly after awaiting the result of appeal/revision, as the case may be if any. The documents in Original on the file be returned back to the original owner as per rules against proper receipt after awaiting period of filing of appeal/revision, as the case may be if any. File be consigned to the Judicial Record Room after due compilation.

**Pronounced in open Court:
06.07.2026**

Renu* JW

**Gurpreet Singh PCS
Judicial Magistrate 1st Class,
Jalandhar/UID No.PB0615**

Note : It is certified that this Judgment shall contain 16 pages and each page of the Judgment is signed by me and same is dictated directly on computer.

Gurpreet Singh, PCS
Judicial Magistrate 1st Class, Jalandhar,
UID No.PB0615/ 06.07.2026