

**IN THE COURT OF MS. HARMANDEEP KAUR
JUDICIAL MAGISTRATE IST CLASS, GURDASPUR**
PBGD030017742014



Presented on : 03-11-2014
Registered on : 03-11-2014
Decided on : 01-04-2019
Duration : 4 years, 4 months, 29 days

Chi/156/2015

State	Versus	1. Seema @ Jeet Kaur wife of Late Puran Chand, resident of H.No. 134 Ghah Mandi, Sujanpur, Tehsil and District Pathankot. 2. Babi @ Anu wife of Vinod Kumar, resident of Sabzi Mandi, Sujanpur, Tehsil and District Pathankot. ...Accused
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F.I.R.No. 48 of 16.07.2014

Under sections 380/411 of IPC

P.S. Purana Shalla.

Present:- Sh. Bikramjeet Singh Mahla A.P.P for the State
Accused on bail with counsel Sh. J.S. Babbar Advocate.

JUDGMENT

The above named accused were forwarded by the officer-in-charge of Police Station, Purana Shalla to face the trial for the offences punishable under Sections 380/411 of the Indian Penal Code.

2. In brief, the facts of the prosecution case are that on 16.07.2014 ASI Sukhjinder Singh alongwith PHC Manjit Singh No. 1538, PHC Naresh Kumar 1654, L/PHC Paramjit Kaur 1747, PHC Kulwinder

In the court of Ms. Harmandeep Kaur, JMIC, Gurdaspur UID NO. PBO555

Kaur went from Adda Purana Shall to Pull Tibbri for patrolling duty, when Police party reached at Tibbri Cantt Gate, then Subedar Chanchal Singh, Canteen Manager 96, URC, 96 presented one letter No. 96/YRC dated 16.07.2014 before ASI Sukhjinder Singh, in which he requested to register an FIR in respect of following defaulter for shop lifting theft case in URC HQ 96. On 16.07.2014 at about 12:30 Hours, Smt. Seema @ Jeet Kaur age 45 years wife of Puran Chand 134, Ghas Mandi Pathankot Sujanpur and Smt. Bevi @ Anu wife of Vinod Kumar 274 Sabzi Mandi and they stolen following items and recovered from them on the spot by Frisking by two ladies of the URC(a) Head & Shoulder Shampoo Quantity 13, Hair & Care Quantity 6 Rs. 336/- Total Rs. 2832, Seema @ Jeet Kaur theft Hair and Care Quantity 16 Rs. 896. The details of other items recovered from them are as under. Seema @ Jeet Kaur I 12 Ref URC Bill No. 606380- One date 15.07.2014 for Rs. 1418, Lighter I, Bid One Rs. 272/-, MHTC Mobile Phone (7837388134). Bevi theft Grossary Cards(GA0211056366700x00,GS05030565291900000,GS003311041046 0200x00, GA05020547946300D00, Metro Care No. 48018842, Reliance One Card, Club more card, Rani CSD Bill No. 34013 dated 16.07.2014 Rs. 478/-, Nokia Mobile No 750806786. All these items handed over to Police alongwith footage CS of the Camera. On 16.07.2019 ASI Sukhjinder Singh Police Station Purana Shalla was registered FIR 48 dated 16.07.2014 under Section 380/411 IPC against the above said accused persons. Thereafter ASI Sukhjinder Singh reached at the spot and arrested that accused and recovered the theft material and prepared

separate memos. He also prepared personal search memo. After completion of investigation challan was prepared and presented before Hon'ble Court.

3. On the appearance of the accused, the copies of police report under Section 173 of Cr.P.C along with documents appended therewith were supplied to the accused free of costs as envisaged under Section 207 of Cr.P.C.

4. After hearing the learned APP for the State and the learned defence Counsel and examining the report submitted under Section 173 of the Code of Criminal Procedure and supporting documents, a prima-facie case against the accused for having committed offences punishable under Sections 380/411 of the Indian Penal Code was made out and charge against them was framed accordingly, to which, they pleaded not guilty and claimed trial.

5. In evidence, prosecution has examined PW-1 Ex- Subedar Major Chanchal Singh, Rachna Bala examined as PW-2, Kulwinder Kaur examined as PW-3, PHC Kulwinder Kaur No. 14/GSP and PW-5 ASI Sukhjinder Singh and thereafter evidence of prosecution is closed by order vide order dated 06.02.2019.

6. The brief resume of the prosecution evidence for the facility of reference is as under:-

PW-1 Ex. Subedar Major Chanchal Singh, who deposed that he is working as Canteen Manager in URC Head Quarter 96 Infantry Brigade since the last two years. On 16.07.2014, two ladies named Bevi @ Anu

and Seema @ Jeet Kaur were caught while committing theft of articles from the U.R.C. Accused Seema @ Jeet Kaur is present in the Court and the other accused Bevi @ Anu hyas moved an application for exemption from personal appearance for today. The accused were seen shoplifting the articles in the CCTV installed in the URC and mentioned in the letter dated 16 July 2014 which is signed by him as Canteen Manager and Ex. PA. The value of the articles in respect of which the theft was committed is also mentioned in Ex. PA. On being caught stealing the articles, the accused Bevi @ Anu and Seema @ Jeet Kaur were searched by two female employees of the URC namely Kulwinder Kaur and Rachan Bala. Keeping in view the gravity of the offence, the matter was brought to the notice of Colonel H.S. Boparai, who is the Canteen Officer Incharge. Thereafter the matter was brought to the notice of the Police and the accused ladies were handed over to the Police. The memos of stolen articles Ex. PB and Ex. PC were prepared by the Police office after the registration of the case and the memos were also signed by him as well as Kulwinder Kaur and Mrs. Rachna Bala. The memos of personal search Ex. PD and Ex. PE were also prepared in his presence and signed by him as a witness. The trousers of the accused were taken into possession by the police during the investigation of the case and the memo Ex. PF was prepared, which is signed by Naib Subedar Shiv Sarjan, who is working in the URC. The CD of the accused committing theft of the articles from the URC was prepared and the same was handed over to the Police, vide memo Ex. PG. The CD is Ex. PH(objected to), which is authenticated by

Major Vikram Singh Bohara, AA and OMG HQ-96 Inf. Bde, whose signature he identify on the certificate dated 22.10.2014, which is Ex. PJ as well as Ex. PK issued under the provisions of Section 65-B of the Indian Evidence Act (objected to on the ground of mode of proof). The photographs printout taken alongwith the stolen articles are Mark A to Mark D. His statement was recorded by the Police.

PW-2 Rachna Bala, who deposed that she is working as Computer Clerk at Ravi Canteen, Tibri Cantt. On 16.07.2014 at about 12:00 P.M., her canteen Incharge Subedar Chanchal Singh came to her and stated that he had estopped two ladies having suspicion of being indulged in theft of canteen articles. He further requested her that being male, he cannot search the said ladies and asked her to search person of those ladies. Thereafter she alongwith Kulwinder Kaur her colleague computer operator went to those ladies and asked their name. Both of them stated their names as Baby wife of Vinod Kumar resident of Sujjanpur whereas second as Seema @ Jit Kaur wife of Late Puran Chand resident of Sujjanpur. Both of them are not present in the Court today but he has seen the documents/photographs Mark A to Mark D and the ladies shown in these pictures are same, who apprehended on that day namely Seema and Babby. Both of them were taken to in a side by room and they were searched by him and Kulwinder Kaur. On their personal search, it was found that they had wore another Pajami (Salwar) underneath their wearing suit, which Pajami was tied near their feet. Further, 13 head and shoulder shampoo plastic bottles amount to Rs. 2496 and six hair and care

bottles amounting to Rs. 336/- were recovered from said Pajami of Babdy. At the same time, four grocery cards and currency of Rs. 9474/- was also recovered from Baby. Further, on personal search of Seem @ Jit Kaur, similar Pajami brown in colour was found out of which, 16 hair and care oil bottles amounting to Rs. 896/- and one bill, one cigarette lighter bundle of Biri, Currency of Rs. 272/-, one torn currency note of Rs. 500/- and one mobile phone were recovered. Whole of the articles were handed over the canteen Incharge, Chanchal Singh. His statement was recorded by the Police.

PW-3 Kulwinder Kaur, who deposed that she is working as Computer Clerk at Ravi Canteen, Tibri Cantt. On 16.07.2017, at about 12:00 P.M., her canteen Incharge Subedar Chanchal Singh came to her and stated that he had estopped two ladies having suspicion of being indulged in theft of canteen articles. He further requested her that being male, he cannot search the said ladies and asked her to search person of those ladies. Thereafter she alongwith Rachna Bala her colleague computer operator went to those ladies and asked their name. Both of them stated their names as Baby wife of Vinod Kumar resident of Sujjanpur whereas second as Seem @ Jit Kaur wife of Late Puran Chand resident of Sujjanpur. Both of them are not present in the Court today but she has seen the documents/photographs Mark A to Mark D and the ladies shown in these pictures are same, who apprehended on that day namely Seema and Babby. Both of them were taken to in a side by room and they were searched by him and Kulwinder Kaur. On their personal search, it was

found that they had wore another Pajami (Salwar) underneath their wearing suit, which Pajami was tied near their feet. Further, 13 head and shoulder shampoo plastic bottles amount to Rs. 2496 and six hair and care bottles amounting to Rs. 336/- were recovered from said Pajami of Babdy. At the same time, four grocery cards and currency of Rs. 9474/- was also recovered from Baby. Further, on personal search of Seem @ Jit Kaur, similar Pajami brown in colour was found out of which, 16 hair and care oil bottles amounting to Rs. 896/- and one bill, one cigarette lighter bundle of Biri, Currency of Rs. 272/-, one torn currency note of Rs. 500/- and one mobile phone were recovered. Whole of the articles were handed over the canteen Incharge, Chanchal Singh. His statement was recorded by the Police.

PW-4 PHC Kulwinder Kaur, who deposed that on 16.07.2014 he was posted at P.S. Purana Shalla. On that day he alongwith other Police officials joined the Police party headed by ASI/IO Sukhjinder Singh in connection with petrol duty and when the Police party reached in the area of Tibri Road in front of main gate of cantt, in the meantime Canteen Manager Chanchal Singh met IO and given an application to IO addressed to SHO Police Station Purana Shall. On the basis of said application IO made endorsement at the foot of the application and sent ruqa through PHC Naresh Kumar to the police station for registration of the case against the accused present in the Court. Manager Chanchal Singh also produced the articles stolen by the accused namely Baby @ Annu and Seema @ Jeet Kaur both present in the Court. The articles stolen by the

accused Baby @ Annu was taken into the Police station by IO vide recovery memo Ex. PB. Similarly the articles stolen by the accused Sema @ Jeet Kaur was taken by the Police Station by IO vide recovery memo Ex. PC. Both the above said memos were witnessed by her and complainant Chanchal Singh and Kulwinder Kaur and Rachna Bala both computer operator of canteen. IO prepared personal search memo of accused Seema Ex. PD and of accused Baby Ex. PE. Two Pajamies one/one each from both accused were also produced by Naib Subedar Shiv Sarjan Singh and the same were taken into Police Station by IO vide seizure memo Ex. PF and the memo was witnessed by her and Kulwinder Kaur and Rachna Bala Computer Operators. Manager Shiv Serjan Singh also signed by the memo. Chanchal Singh Manager also produced one CD before IO at the spot which was taken by seizure memo vide memo Ex. PG which was witnessed by her and Manager Chanchal Singh. Accused Baby was arrested in this case vide arrest cum intimation memo Ex. PL and accused Seema was arrested vide arrest cum intimation memo Ex. PM. Both the memos were witnessed by her. Accused Baby also suffered disclosure statement Ex. PN during interrogation before IO in her presence which was witnessed by her and accused Baby also signed the memos. On returned to the police Station both the accused were locked up in the Police Station. On 17.07.2014 accused Baby led the Police party as per her disclosure statement and Guard recovered stolen articles from her house, which were taken into Police Station vide recovery memo Ex. PO by IO in the presence of PHC Manjit Singh.

PW-5 ASI Sukhjinder Singh, who deposed that on 16.07.2014 he was posted at P.S. Purana Shalla. On that day he alongwith other Police officials in connection with petrol duty and when the Police party reached in the area of Tibri Road in front of main gate of cantt, in the meantime Canteen Manager Chanchal Singh met him and given an application No. 96/VRC/GEN dated 16.07.2014 to him and he signed the same at point and sent ruqa Ex. PW5/A through PHC Naresh Kumar and on the basis of which he registered the FIR Ex. PW5/B in which ASI Jaswinder Singh signed the same. He also prepared the site plan after reaching at the spot Ex. PW5/C. He also taken into police possession theft material which is Ex. PB, Ex. PC. He also prepared arrest cum intimation memo of accused which is Ex. PC and Ex. PM. Major Chanchal Singh also handed over him CCTV CD, which is Ex. PG. He also prepared memos of personal search of accused Ex. PD and Ex. PE. He also prepared memo of Pajami Ex. PF. On 17.07.2014 he recovered the theft material, which is Ex. PO. He also prepared site plan on the spot Ex. PW5/D.

7. Statement of accused in terms of Section 313 of Cr.P.C has been recorded wherein, all the incriminating evidence appearing against them in the prosecution evidence has been put to them in question answer form, to which they pleaded innocence and termed the case of prosecution to be false.

8. Learned APP for the state while relying upon the evidence of complainant PW1, eye witnesses PW2 and PW3, vehemently argued that it has been established on file that it was the accused persons present in

the court who committed theft of alleged articles from the canteen under the supervision of the complainant without his consent and was also found in possession of the stolen property having reason to believe that same is stolen. He further prayed that there is sufficient evidence to bring home the guilt of the accused persons and prosecution has proved its case beyond shadow of any reasonable doubt, as such the accused persons are liable to be convicted and sentenced.

9. On the other hand, learned defence counsel has argued that false case has been registered against the accused persons by the police officials whereas accused never committed any theft and neither was found in possession of the stolen property. He further argued that there are material contradictions in the testimony of prosecution witnesses. He further argued that the prosecution has failed to prove its case against the accused beyond the shadow of reasonable doubt and as such, they are entitled to benefit of doubt and consequential acquittal.

10. The main evidence on record is perhaps the testimony of eyewitnesses. Admittedly there are 3 eyewitnesses of the incident that is complainant (PW1), Rachna Bala (PW2), Kulwinder Kaur (PW3). Complainant, PW1 has narrated the entire incident. He has narrated the fact that the accused persons were seen shoplifting the articles through CCTV installed in the canteen. He has further mention that on being caught stealing the articles, the accused persons were searched by 2 female employees of the URC namely Rachna Bala and Kulwinder Kaur, who are also eyewitnesses in this case. He has further submitted that

thereafter after the matter was brought to the notice of the police and the accused persons were handed over to the police. He deposed about the arrival of the police officials mentioning that they seized the recovered stolen articles. He has further deposed that the trousers of the accused persons were taken into possession by the police officials during investigation of the case. Further he has submitted that the CD of the accused committing theft of the articles from the URC was prepared and the same was handed over to the police. The CD was authenticated by major Vikram Singh Bohra. He further submitted that the photographs printout were taken along with the stolen articles. The record shows that although, this witness has been cross examined at length but his testimony about the theft of alleged articles and its recovery from the possession of accused has remained unblemished. His deposition that he apprehended the accused red-handed from the spot itself has remained uncontroverted.

11. Testimony of the complainant finds support from the deposition of Rachna Bala PW2 and Kulwinder Kaur PW3. Both these witnesses have supported and corroborated the testimony of the complainant on all the material aspects. Both the witnesses have mentioned that the accused persons were taken into a side room and they were searched by them. Upon their personal search, it was found that they had worn another pajami which was tight from the feet. Further both the witnesses have submitted that 13 head and shoulder shampoo plastic bottles amounting to Rs. 2496/- and 6 hair and care bottles amounting to Rs. 336/- were recovered from said pajami of accused Baby. They have

further submitted that on the personal search of another accused Seema similar pajami was found to be worn by, and out of which, 16 hair and care oil bottles amounting to Rs. 896/-and one bill, one cigarette lighter, bundle off biri was recovered from her. Now both the eye witnesses have mentioned about the recovery of stolen articles from the accused persons and have identified the accused as the thief. The testimony of these witnesses provide support to the version of complainant that accused persons were caught red-handed from the spot.

12. Ld. defence counsel has vehemently argued that testimony of complainant should be discarded because there are contradictions in the statement of the witnesses. He has stated that the CD produced on record by the prosecution has not been duly proved as per the rules. Further he has argued that the photographs has also not been proved.

13. After going through the entire evidence upon record I do not find force in the arguments of the defence counsel. Record shows that although there are some minor contradictions but these variations are inconsequential. The testimony of complainant about the theft committed by the accused has remained unshaken. He has stated that accused persons were caught red-handed from the spot itself. I find no reason to discard the testimony of the complainant. He is a victim of the alleged offence and due entity should be awarded to his testimony. There is apparently no reason as to why he should falsely depose against the accused to implicate them in the present case.

14. It has been argued by the defence counsel that there are certain infirmities in the investigation as the case property produced in the court has not been duly proved as the same was not bearing any identification mark. This court is not at all impressed by this argument of the counsel. Even if there are infirmities in the investigation, still accused do not stand to gain any advantage. This court is of the considered opinion that police officials have duly proved investigation part. PW5 ASI Sukhjinder Singh, has stated that after receiving information about the theft, he immediately reached the spot along with other police officials, where the complainant met him and handed over the custody of the accused persons. He further submitted that he has recorded the statement of the complainant and has taken the possession of the stolen articles. He has duly supported and corroborated the statement of the complainant. Testimony of this witness establishes the entire chain of investigation.

15. The argument of defence that non production of Case property in the court is fatal to the prosecution case do not hold any water. The record shows that in terms of the testimony of complainant and eyewitnesses, there is overwhelming direct evidence to establish the charge that accused committed theft of shampoos, hair oils, one cigarette lighter and bundle of biri and other valuable articles. Eyewitnesses PW2 and PW3 has categorically submitted that they have recovered the stolen articles from the possession of accused persons. The recovered stolen articles were seized immediately and were taken into possession by the police officials. In these circumstances, it would be grossly incorrect to

reject a direct evidence merely because they recovered stolen articles could not be produced during trial. This court is of the concerned view that in the light of aforementioned discussion, the accused persons cannot be acquitted only on the ground of non production of the stolen property as there is overwhelming direct and circumstantial evidence to establish that the accused persons have committed theft. The argument of the defence counsel about the non-joining of public witnesses also not convincing. The falsity of the defence is evident from the fact that not even a single suggestion in conformity with the line of defence was put to the eye witnesses. It is not possible to conceive that a person would go to the extent of falsely implicating a person as thief and would unnecessarily take a pain of indulging into litigation against any person randomly. The court do not see any reason for the complainant and eyewitnesses to falsely implicate the accused persons. There is no evidence of previous enmity between the parties and no purpose would be served to the complainant by falsely implicating the accused. The defence taken by the accused persons do not appeal to the intellect of this court and the same is hereby rejected

16. In the case of **Mano Dutt V. State of UP , (2012) 4 SCC 79**, it was held by the Hon'ble Supreme Court of India, “normally, an injured witness would enjoy greater credibility because he is the sufferer himself, and thus there will be no occasion for such a person to state an incorrect version of the occurrence or to involve anybody falsely and in the bargain, protect the real culprit.

17. Further in Namdeo v. State of Maharashtra, Crl Appeal No. 914/2006 decided on 13.03.2007, the Hon'ble Supreme Court of India observed that even the testimony of a solitary witness can be made the basis of conviction. The credibility of the witness is required to be decided with reference to the quality of his evidence which must be free from blemish or suspicion and must impress the court as fact wholly truthful and so convincing that the court has no hesitation in recording a conviction solely on his uncorroborated testimony.

18. The contention of the Ld. Defence counsel that the accused are liable to be acquitted for want of independent witness, is bereft of any force as it is not the absolute and mandatory rule to associate independent witness before conducting search of a person. No doubt, it is a rule of caution and prudence which should be invariably followed in order to lend authenticity to the procedure of search and seizure but accused can not be acquitted solely on this score especially when possession of stolen articles from the accused have been proved by complainant. The police officials are competent and reliable witnesses as they are not supposed to depose falsely. Moreover, when no previous enmity exists between the accused and police officials, no reason can be attributed upon them for false implication of the accused. As such, in view of positive and affirmative evidence led by prosecution, it clearly stands established that accused was found in possession of stolen property.

19. The prosecution has produced sufficient evidence through which it is established the identity of both the accused persons that they

were present in canteen. Complainant PW-1 and eyewitnesses PW 2 and PW3 have further proved that the accused persons had stolen the articles from the canteen. The argument of the defence counsel that the Case property has not been produced in the court is not fatal to the prosecution case.

20. From the evidence upon record it has clearly been established that the accused persons have committed the theft of alleged articles and they were in the possession of the stolen articles. Thus the prosecution has successfully proved the case under section 380 IPC and 411 IPC against the accused persons, namely Baby and Seema as all the ingredients of section 380 and 411 has been duly satisfied by the prosecution. Accordingly, they are convicted under section 380 IPC and 411 IPC. Let convicts be taken into custody and be heard on quantum of sentence.

Pronounced: 01.04.2019

Rohit Tandon
Stenographer-III

**Harmandeep Kaur, PCS,
Judicial Magistrate 1st Class,
Gurdaspur. UID No.PB0555**

Quantum of sentence

Present:- Sh. Bikramjeet Singh Mahla APP for the State.
Sh J.S. Babbar Advocate counsel for convict.

21. Learned Counsel for the accused/convicts submitted that the accused are first offenders. It is further submitted that convicts are poor persons and only bread winners of their family and are women and hence a lenient view may kindly be taken while imparting sentence. On the other hand, Ld. Addl. P.P for the State submitted that accused have committed serious offences and they be punished strictly.

22. I have considered the submissions in the light of record placed before me. Needless to mention that convicts are facing agony of present trial since last more than 4½ years . As per the record and report made by the concerned Ahlmad, both the accused persons Babi and Seema have remained in custody during the trial of this case for a period of 38 days. Therefore, keeping in view the gravity of the offence and antecedents of the accused persons and age of the convicts and keeping in mind the fact that the accused persons are ladies and the theft was committed of the property of very meagre amount, both the accused persons are sentenced to imprisonment already undergone by them in this case. Case property, if any, be dealt with as per the rules, after the expiry of period of limitation for filing appeal/revision. Copy of judgment be supplied to the accused free of cost. File be consigned to the record room.

Pronounced: 01.04.2019

Rohit Tandon
Stenographer-III

**Harmandeep Kaur, PCS,
Judicial Magistrate 1st Class,
Gurdaspur. UID No.PB0555**

In the court of Ms. Harmandeep Kaur, JMIC, Gurdaspur UID NO. PBO555

Present:- Sh. Bikramjeet Singh Mahla A.P.P for the State
Accused on bail with counsel Sh. J.S. Babbar Advocate.

Arguments heard. Vide my separate detailed judgment of even date, accused Seema @ Jeet Kaur and Babi @ Anu present in the court stands convicted of the charges framed against them in this case and keeping in mind the fact that the accused persons are ladies and the theft was committed of the property of very meagre amount, both the accused persons are sentenced to imprisonment already undergone by them in this case. Case property, if any, be dealt with as per the rules, after the expiry of period of limitation for filing appeal/revision. File be consigned to the Record Room, Gurdaspur after due compliance.

Pronounced: 01.04.2019

Rohit Tandon
Stenographer-III

**Harmandeep Kaur, PCS,
Judicial Magistrate 1st Class,
Gurdaspur. UID No.PB0555**