

IN THE COURT OF AMANDEEP SINGH , PCS,
JUDICIAL MAGISTRATE 1ST CLASS, HOSHIARPUR
UID NO.PB0587

CIS CHI No.	:	272 of 2023
Date of Institution	:	24.5.2023
CNR No.	:	PBHO03007963-2022
Date of Decision	:	21.5.2024

State of Punjab

Versus

Satish Kumar son of Tarsem Lal, resident of Baicha Khurd, Post Office
Chotala Police Station Tanda, District Hoshiarpur.

...Accused

FIR No.162 dated 30.10.2022
under Sections 379, 411 of IPC
Police Station Bullowal, District Hoshiarpur

Present: Shri Nitin Berry, Ld. APP for the State.
Accused on bail with counsel Ms. Rupika Thakur Deputy
Chief LADC

J U D G M E N T

1. The aforesaid accused has been sent by the Station House
Officer, Police Station Bullowal, Hoshiarpur to face trial for commission
of offence punishable under Sections 379, 411 of Indian Penal Code-
1860.
2. The brief factual matrix of the prosecution story is that on
30.9.2022, when SI Kamaljit with along with other police officials was on
patrolling duty in search of suspicious elements and was present at T-

point Bullowal, then Raj Kumar Lineman PSPCL Sub-Division Bullowal moved an application No.646-5 dated 30.9.2022 written by SDO PSPCL, Sub Division Bhogpur. As per the said complaint moved by SDO PSPCL Sub-Division Bhogpur, it is submitted that the officials of PSPCL Department have apprehended one person namely Satish Kumar son of Tarsem Lal near the pillar box at Village Sherpur Pucca who committed theft of copper wires of PSPCL and disrupted the electricity supply. Further request was made in the complaint to take appropriate legal action against the above said accused. On the basis of the above said complaint, FIR under Sections **379, 411** of IPC was registered against the accused and criminal law was set into motion. During the ensuing investigation, accused was arrested and statement of witnesses were recorded. Site plan was also prepared. After completion of investigation, challan u/s 173 Cr.P.C. was presented against the accused **Satish Kumar** before the Court under section 379 and 411 of IPC.

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

4. Finding a prima facie case under Sections **379, 411** of Indian Penal Code, accused was charge sheeted accordingly. The charge was read over and explained to the accused, to which he pleaded not guilty and claimed trial.

5. In order to prove its case, prosecution examined **Pw-1** Surinder Singh SDO, PSPCL (complainant), Raj Kumar Lineman **PW-2** and SI Kamaljit Singh **Pw-3**. No other witness was examined by the prosecution and thereafter prosecution evidence was closed by order after proving the following documents through statement of witnesses:

Ex.P1/PW1	Complaint moved by complainant Surinder Singh SDO PSPCL
Ex.P2/PW2	Recovery memo
Ex.PW3/A	Ruqa
Ex.PW3/B	FIR
Ex.PW3/C	Site plan
Ex.PW3/D	Arrest memo of accused
Ex.PW3/F	Copy of DDR No. 42 dated 30.9.2022
Ex. MO1 to MO3	Case property i.e. 5 piece of copper wires, one pillar and one screw driver

6. After closing the prosecution evidence, statement of accused under Section 313 of Code of Criminal Procedure was recorded in which he denied all the incriminating evidence of prosecution put to him and pleaded that he has been falsely implicated in the present case. He further pleaded that he has not committed any offence. Thereafter, accused opted not to lead defence evidence, after which the case was fixed for arguments.

7. During the course of arguments, Ld. APP for the state argued that the witnesses produced by the prosecution duly supported the prosecution version and the evidence of witnesses considered in totality in the context of the present case clearly proves all the accusations against

the above named accused person beyond shadow of reasonable doubt. Lastly, he prayed for conviction of accused person and requested that accused may be awarded maximum imprisonment provided for the offence.

8. On the contrary, Ld. counsel for the accused has argued that the testimony of prosecution witnesses cannot be relied upon being untrustworthy and evidence brought by the prosecution is not sufficient to bring home the guilt against the accused. He further argued that there are material discrepancies in the statements of witnesses which is fatal to the case of prosecution. He further argued that accused was falsely implicated by the complainant and therefore, he is entitled to the benefit of doubt and hence he may be acquitted.

9. After perusal of the record available and hearing learned Assistant Public Prosecutor and the learned advocate for defence, the following points for determination arises:

- (i) **Whether on 30.09.2022 at about 8:00 AM to 9:00 AM in the area of Sherpur Pacca, PS Bullowal, Hoshiarpur, accused Satish Kumar having dishonest intention committed the theft of copper wires from the Pillar box, i.e. five piece of copper wires of different colours & dimensions, which is property of PSPCL without their consent and thereby committed an offence punishable under Section 379 of IPC ?**
- (ii) **Whether on the same date, time and place accused retained in his possession stolen property i.e. five pieces of copper wires of different dimensions**

knowingly or having reason to believe the same to be stolen property and thereby committed an offence punishable under Section 411 of IPC ?

POINT FOR DETERMINATION NO.1 AND 2

10. Both the points of determination are being taken up together being interconnected and in order to avoid repetition on the discussion of evidence.

Perusal of the case file reveals that the accused was charged under Sections 379, 411 of IPC. It is well settled principle of law that onus to prove its case beyond reasonable doubt is upon the prosecution and in the present case also, the onus was upon the prosecution to prove its case beyond shadow of reasonable doubt with regard to commission of crime.

11. In order to prove its case, prosecution examined **Surinder Singh, SDO, PSPCL (complainant) who stepped into the witness box as Pw-1** and supported the case of prosecution and deposed that on 30.09.2022, he was posted at PSPCL, Bullowal Sub-Division, as Assistant Engineer (DS). He further deposed that he received information from Raj Kumar (lineman) and Ajay Pal (contractual employee) and they informed him that they have apprehended one person near the pillar box at Village Sherpur Pakka who was manipulating and disrupting the electricity supply wires from the pillar box. He further deposed that a person has cut down about 5 electricity wires and disrupted the electricity supply. He further deposed that on receiving the information, he went to

the spot where Raj Kumar and Ajay Pal contractual employee met him and they had stopped the accused in possession of 5 pieces of electricity wires along with pillar, screw driver and other instruments. He further deposed that he made a roving inquiry and found that the accused Satish Kumar who is present in the Court and whom he identified has actually disturbed the electricity supply and caused damaged to the property of PSPCL. He further deposed that in this regard he made one complaint to the police authorities and his complaint is Ex.P1/PW1 over which he identified his initials at point A. He further proved on record the stolen pieces of copper electricity wires of different dimensions along with the accused was handed over to the police for further proceedings. He further proved on record the case property i.e. five pieces of copper wire which is MO1, one pillar MO2, one screw driver MO3 and he identified the case property which was being stolen by the accused from the pillar box. **During his cross-examination,** he deposed that **he is not the witness of the occurrence.** He further deposed that his statement in this case hearsay. He further admitted that on all the electricity wires, whether manufactured by PSPCL or not, batch No. along with month and year of manufacturing remained printed on the said electric wires. He further admitted that in his application moved to the police Ex.P1/PW1 there is no name of manufacturer, Batch No. of electric wires. He further deposed that no CCTV cameras were installed at PSPCL Office Sherpur Pacca. **He further admitted that he did not mention in his complaint to the police regarding**

the number of wires stolen and what is the mm of length and width of the alleged electricity wires. He further admitted that the tools and wires pieces similar to the alleged wires recovered are lying in the bags of electricians.

12. The prosecution further examined **Pw-2 Raj Kumar Lineman PSPCL** who supported the case of prosecution. He deposed that on 30.09.2022 he was posted at PSPCL, Bullowal Sub Division, as lineman and he along with Ajay Pal CHB were present at his complaint center office at Bullowal. He further deposed that there was interruption in power supply but usually there is supply of electricity at complaint center 24*7. He further deposed that he along with Ajay Pal went outside to see if there is any aberration in power supply and they saw that the accused Satish Kumar, who is present in the court and whom he identified was manipulating with the pillar box which was 20 meters away with plier and screw driver. He further deposed that they approached the accused and saw that the accused had cut down 5 electricity supply wires of different dimensions and the the accused was putting the same in his bag. He further deposed that they stopped him and informed SDO Sh. Surinder Singh who came at the spot a little later. He further deposed that SDO inquired the accused and thereafter they handed over the accused along with the complaint by SDO and the recovered electricity supply wires. He further deposed that Police recovered electricity supply wires vide recovery memo **Ex.P2/PW2** over which he identified his signatures at

Point A. He further proved on record the case property i.e. 5 pieces of copper wire which is MO1, one piller MO2 and one screw driver MO3 which was being stolen by the accused from the piller box. He identified the accused present in the Court. **During his cross examination, he stated that he never visited the police station regarding this case. He further deposed that his statement not recorded by the Investigating Officer and he never gave any statement to the police.** He further admitted that main wire from the transformer to the meter and then from meter to the respective houses is of aluminum and not of copper. **He further admitted that on all the electricity wires manufactured which are used by PSPCL, batch NO. along with month and year of manufacture remained mentioned.** He further deposed that he did not make any video nor clicked any photographs of accused committing the alleged occurrence. **He further admitted that accused is also an electrician. He further admitted that an electrician always carry plier, screwdriver and wires i.e. pieces of red and black wires in their bag.**

13. The prosecution further examined **Pw-3 SI Kamaljit Singh (Investigating Officer)** who supported the case of prosecution. He proved the investigation proceedings conducted by him in the **present** case. He proved on record Complaint Ex.P1/PW1, ruqa **Ex.PW3/A**, FIR **Ex.PW3/B**, site plan **Ex.PW3/C**, arrest memo of accused **Ex.PW3/D**, personal search memo **Ex.PW3/E**, copy of DDR No. 42 dated 30.9.2022 **Ex.Pw3/F** and case property Ex. MO1 to MO3. **During his cross**

examination, he stated that he has seen the alleged recovered property i.e. 5 wires out of which 3 are red and 2 are black alongwith plier and screw driver. He further deposed that there is no marka on the wires. He further deposed that he cannot tell whether the screw driver is 4 pointer or single pointer. He further deposed that black wire was 48 inch, 38 inch, 37 inch and two black wires is 43 inch and 37 inch. He further deposed that the alleged place of occurrence is a public place and they can see people roaming. But apart from the said 3 witnesses he has not recorded the statement of any other witness inspite of being a public place.

14. On the basis of above discussed evidence, Ld. APP for the State contended that the prosecution has proved the guilt of the accused beyond shadow of reasonable doubt and prayed that accused may kindly be convicted with maximum sentence provided under law. **On the other hand**, Ld. Counsel for accused vehemently argued that no person has seen the accused committing theft of copper wires from the pillar box. He further argued that the accused is a contractual electrician, so therefore, he cannot be said to commit theft. He further argued that there are material discrepancies in the statement of the witnesses, as such, the benefit of doubt must be given to the accused and he be acquitted.

Before proceeding further, this Court finds it apposite to go through the relevant provision of Indian Penal Code. **Section 378 of IPC** defines the offence of "*theft*" which is as follows:-

“Sec. 378 : Theft:- *Whoever, intending to take dishonestly any movable property out of the possession of any person without that person’s consent, moves that property in order to such taking, is said to commit theft.*

Explanation 1:- A thing so long as it is attached to the earth, not being movable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

Explanation 2:- A moving effected by the same act which affects the severance may be a theft.

Explanation 3:- A person is said to cause a thing to move by removing an obstacle which prevented it from moving or by separating it from any other thing, as well as by actually moving it.

Explanation 4:-a person, who by any means causes an animal to move, is said to move that animal, and to move everything which, in consequence of the motion so caused, is moved by that animal.

Explanation 5:- The consent mentioned in the definition may be express or implied, and may be given either by the person in possession, or by any person having for that purpose authority either express or implied.”

From the bare perusal of the above said section, it is crystallized that the following essential ingredients are to be established before the offence of theft is made out :-

- (i) *the intention of the person must be dishonest at the time of committing offence.*

- (ii) *the property must be movable property.*
- (iii) *the property must have been taken out of the possession of another person irrespective of the fact that he is the true owner.*
- (iv) *Such property must have been taken without the consent of the person having possession over it.*
- (v) *the offence of theft is complete when the property is moved in order to such taking.*

15. Now the onus was on the prosecution to prove that the wires in question which were alleged to be stolen by the accused belonged to PSPCL and the same were taken out of their possession by the accused with dishonest intention. As per the version of prosecution, it is submitted that there was disruption of electricity in the complaint centre of PSPCL and upon checking by the officials of PSPCL, they apprehended accused Satish Kumar committing theft of electric wires belonging to PSPCL from the Piller box.

16. After going through the gamut of testimony of prosecution witnesses, this Court is of the considered opinion that the first question for consideration before this Court was whether the electric wires in question alleged to be stolen by the accused belonged/were in the possession of PSPCL or not. PW1 Surinder Singh (complainant) and PW-2 Raj Kumar lineman (eye witness) are the prime witnesses of prosecution. During cross-examination of PW1 Surinder Singh and PW-2 Raj Kumar lineman, both the witnesses have admitted that on all the electricity wires used by PSPCL, proper batch No. along with month and year of manufacturing is mentioned

but neither of the witnesses disclosed the batch No. or the manufacturing month/year of electric wires in their initial complaint moved to the Investigating Agency. Even the above said witnesses did not disclose the said fact during their examination in chief before the Court in order to show that the alleged wires in question were installed at the pillar box by the PSPCL or were under their possession. Even Investigating Officer SI Kamaljit Singh PW-3 during his cross-examination admitted the fact that there is no such description written on the electric wires recovered from the accused. Nevertheless to say, no description about the length/width and colour of the alleged wires installed at the pillar box by the PSPCL was mentioned by the complainant Surinder Singh in order to show that the alleged wires in question were the same which were installed by PSPCL at the Pillar box. Further no documentary evidence or other record have been placed on record by the prosecution agency in order to show that the electric wires alleged to be stolen belongs to PSPCL. In the absence of any such proof, this Court is unable to understand as to how the prosecution agency links the alleged case property with the PSPCL which is alleged to be stolen by the accused.

17. Further, it is pertinent to mention here that the entire case of prosecution is based upon the complaint moved by the Surinder Singh SDO PSPCL but he himself did not witness the alleged occurrence and moved the said complaint to the police officials on the basis of hearsay information received from lineman Raj Kumar. It is further pertinent to mention here

that PW-2 Raj Kumar Lineman during his examination in chief categorically deposed that he along with SDO PSPCL handed over the accused to the police authorities. But during his cross-examination he deposed that he never visited the police station with regard to this case and his statement was never recorded by the I.O. and he further deposed that he never gave any statement to the police which is completely in contradiction with his stance in his examination in chief. Thus, both the witnesses examined by the prosecution cannot be relied upon being untrustworthy. The prosecution has also not examined any independent witness to corroborate their version who could have seen the accused committing theft of electric wires with dishonest intention. It is further pertinent to mention here that PW-2 during his cross-examination admitted the fact that the accused is himself an electrician and it is common for an electrician to carry a plier, screwdriver and pieces of red/black wires in their bag. This admission by Raj Kumar Lineman PW-2 creates a cloud of suspicion over the prosecution story. In view of the aforementioned discussion, it is crystal clear that there is no convincing evidence on record which could substantiate that the accused committed theft of electricity wires. Accordingly, prosecution has failed to link the accused with the alleged offence under Section 379 of IPC and therefore **point no.1 is decided in negative and against the prosecution.**

18. Further, in order to connect the accused with the offence punishable under Section 411 of the IPC, it was required by the prosecution to prove that the accused was found in possession of stolen electric wires

having reason to believe the same to be a stolen property. To prove the stolen nature of the property, it was necessary for the prosecution to bring on record the evidence to the effect that possession of the said property was transferred by theft or extortion or robbery or in any one or more ways as referred to in section 410 IPC. Until and unless it is not established that possession of the property was transferred in the manner as stipulated under section 410 IPC, property cannot be termed as stolen. Since the prosecution has miserably failed to prove that the electric wires in question recovered from accused were stolen, therefore, charge under section 411 IPC does not stand proved. Accordingly, the **point of determination no.2 is decided against the prosecution and in favour of the accused.**

19. In view of the aforesaid detailed discussion, this Court is of the opinion that the prosecution has failed to prove the guilt of accused Satish Kumar for the offence punishable under Sections 379 and 411 of IPC. Accordingly, **accused Satish Kumar** is hereby acquitted of the charges framed against him. Bail bonds and surety bonds of accused stand discharged. Case property, if any, be dealt with as per rules, after the expiry of period of limitation for filing an appeal or revision, if any. File be consigned to the Judicial Record Room, Hoshiarpur.

Pronounced in Open Court this 21st day of May, 2024

Reena Kumari.
(JW)

(Amandeep Singh-I), PCS
Judicial Magistrate 1st Class
Hoshiarpur/UID No.PB0587

Note: Dictated directly on computer