

***IN THE COURT OF MRS HIMANSHI GALHOTRA (PCS)
SUB DIVISIONAL JUDICIAL MAGISTRATE,
KHAMANON.***

**CNR No.PBFGB1-000119-2016
CHI No. 14/ 2016
PCH NO. 11 of 19.02.2016
Date of decision 18.01.2019.**

State

Versus

1- Paramjit Singh @ Pamma son of Gurnam Singh,
2- Rajwinder Singh @ Raju son of Kuldeep Singh,
Both rs/o Village Nanowal Kalan, PS Khamanon, District
Fatehgarh Sahib.

.....Accused.

**FIR No 131 of 28.09.2015,
U/s 379, 411 IPC
PS Khamanon,
District Fatehgarh Sahib.**

Present: Sh. Rajinder Kumar, APP for the State.
Both accused on bail with Sh. D.S.Chakal, Adv.

Judgment

Accused above named has been sent by SHO P.S.

Khamanon to stand trial under section 379, 411 IPC.

2. Briefly the facts of the prosecution case are that on 28.09.2015, ASI Sapinder Singh, alongwith the police party was present at T-point of village Lakhanpur in connection with checking of bad elements, where Sukhwinder Singh complainant came present and suffered a statement that he is resident of village Burma, P.S. Samrala, District Ludhiana and is an agriculturist. His agricultural land is adjoining to abadi of village Nanowal Kalan and is at some distance. Alongwith his land, 2½ kanal land of Harwinder Singh son of Surinder Singh, r/o Burma is also adjoining with pahi. Due to facilitation, he used to put the agricultural implements in the land of Harwinder Singh. On 1.6.2015, before harvesting paddy crop, he has placed his Hal Suhaga and 11 Falian cutter on the land of Harwinder Singh. On 2.6.2015, when he again went to the land of Harwinder Singh then found that the Hal Suhaga and 11 Falian cutter was not there. The above said articles have been stolen by some unknown persons. Some days before the occurrence, Paramjit Singh @ Pamma, Rajwindr Singh @ Raju were found roaming in that area by him and he has full suspicion that his Hal and Suhaga have been stolen by them. He also

came to know that Iron Tavian of Balwinder Singh r/o Raipur, Toplink of Ravi Mangat of village Nanowal Kalan, one Jindra of Gurdial Singh @ Diali of village Nanowal Kalan, Iorn Suhaga of Sandeep Singh of village Chandiala were also stolen. He has also inquired about his above said agricultural implements, but they have put off the matter on one pretext or another. He has full suspicion the above said articles have been stolen by Paramjit Singh and Rajwinder Singh, amounting to Rs.One lac. Action be taken against them.

On the basis of the statement of the complainant formal FIR was registered. Initial investigation was conducted during which site plan was prepared. Accused were arrested. Statements of witnesses under section 161 Cr.P.C were recorded. After completion of the formalities, challan was prepared and presented in the court.

3. On presentation of challan, copies of the necessary documents as required u/s 207 Cr.P.C, were supplied to accused free of costs.

4. From the report under Section 173 Cr. P.C and documents attached with the report a prima facie case under Section

379, 411 IPC was found to have been made out against the accused and accordingly charge was framed against them to which they pleaded not guilty and claimed trial.

5. In order to prove its case the prosecution has examined Kuldeep Singh as PW1, PW Ravi Mangat, ASI Sapinder Singh as PW2, Sukhwinder Singh as PW3, Hardial Singh as PW4, Balwinder Singh as PW5, Charanjit Singh as PW6, Harwinder Singh as PW7, Charan Singh as PW8, Ajit Singh as PW9. Thereafter, despite availing a number of opportunities, prosecution failed to conclude its evidence as such, the evidence of the prosecution was ultimately closed by order.

6. Statement of accused Under Section 313 Cr.P.C was recorded to which the accused pleaded innocence. They pleaded that no offence or theft has been committed by them and no recovery has been effected from them. Accused did not lead any evidence in their defence.

7. I have heard the Id.APP for the State and the Id.defence counsel and have gone through the file carefully with their

able assistance.

8. The ld. APP has argued that the prosecution has duly proved the guilt of accused beyond the shadow of reasonable doubt. Recovery of stolen articles from possession of accused stands established on record. He prayed that the accused are liable to be convicted and punished as per the provisions of law.

On the other hand the ld. defence counsel has submitted that in the present case the ingredients to establish the charge under section 379, 411 IPC have not been proved. There are number of discrepancies in the prosecution case. There is unreasonable delay in registration of FIR which raises doubt regarding false implication of accused in the present case. There is no eye witness of alleged theft. No recovery has even been made from accused Rajwinder Singh. No recovery of plough, Tavyan, topline, jindra could be effected. There is nothing to established that the Hal Loha and Suhaga so recovered belonged to complainant Sukhwinder Singh. The identification of the case property is doubtful. Accused have been falsely implicated. Lastly, he prayed that accused may kindly be acquitted.

9. In the present case accused Paramjit Singh and Rajwinder Singh have been charged Under Section 379 IPC. It is allegation against them that on the intervening night of 1/ 2.6.2015, in the area of Nanowal Kalan, accused intending to take dishonestly a certain movable property i.e. tools of agriculture out of the possession of Sukhwinder Singh, Kuldeep Singh, Ravi Mangat, Charanjit Singh, Hardial Singh and Balwinder Singh without their consent and later the articles recovered from their possession. However, to establish the said charge of theft, there is no direct evidence. None of the complainant saw accused Paramjit Singh or Rajwinder Singh stealing the agricultural tools and implements of complainants. Merely because accused were seen roaming in the place of occurrence is not sufficient to convict them U/s 379 of IPC. There being no direct evidence to establish the said charge, charge U/s 379 of IPC is not proved against both the accused.

10. Accused Paramjit Singh and Rajwinder Singh have also been charged U/s 411 IPC. It is the allegations against accused Paramjit Singh and Rajwinder Singh that on 1.10.2015 and 3.10.2015, he

dishonestly retained agricultural tools Hul Loha, Suhaga and Tavian having reasons to believe that they are stolen property.

11. To establish the said charge, prosecution examined PW1 Kuldeep Singh, who deposed that his Suhaga has been stoled in October, 2015 by some unknown person. In his cross examination, he admitted that he did not see anyone committing theft nor did he file any complaint qua the said incident. The broken pieces of Suhaga were produced in the court. However, testimony of this witness is not reliable as FIR in the present case was registered in September, 2015. But the incident as alleged by PW Kuldeep Singh is of October, 2015.

12. PW Ravi Mangat was also examined, who deposed that in June, 2015 Toplink of his Tractor was stolen by some unknown person, which was recovered lateron and he had identified the same in police station. However, this witness suffered a separate statement that the case property is not in his possession. He did not see any person committing theft nor the case property was produced in the court. So, neither theft of Toplink of the tractor of Ravi Mangat could be established, nor its recovery from any of the accused could be proved.

13. PW3 Sukhwinder Singh complainant was also examined, who deposed as per the prosecution story that he had kept the agricultural tools and implements in the adjoining land of Harwinder Singh. On 1.6.2015, he kept his Suhaga and Hul Loha in the land of Harwinder Singh but in the morning found the same to be stolen. Some days before the incident, he has seen Paramjit Singh and his nephew roaming near the place of theft. He identified the accused in the court. He even came to know that Tavian of Balwinder Singh, Top link of Ravi Mangat, Lock of Gurdial Singh and Suhaga of Sandeep Singh had been stolen from their motors. Despite asking the accused, they failed to produce the said articles. Later, he suffered the statement Ex.P1 with the police. On 1.10.2015, upon his identification, accused Paramjit Singh was arrested and identification memo is Ex.P14. On the same date, his Suhaga and plough having 11 spokes was recovered from the house of accused Paramjit Singh and identified by him vide memo Ex.P12. He handed over the Bill to police of said articles vide memo Ex.P18 and also proved the case property MO1 and MO2.

His testimony was assailed on the ground that he reported

the matter to police only on 28.09.2015 and thus there is delay in registration of FIR. However, this court is of the view that complainant has alleged that in the said time, he kept on asking the accused to return his articles. So, the delay in the present case is not fatal. His testimony was also challenged on the ground that he stated that at the time of theft, his agricultural implements were of Saleti colour but infact, they are of light blue colour. So, the identification of case property is also disputed. However, this court does not agree with the contention of Ld. Defence counsel. Complainant from the very beginning alleged that his case property Hul Loha was having 11 spokes. Even, the recovered Hul Loha was having 11 spokes. Complainant identified the case property. So, mere discrepancy in stating the colour of case property by the witness in his cross examination is a mere minor discrepancy.

14. Prosecution even examined PW8 Charan Singh, who deposed and proved the Bills of Suhaga and cultivator Hul Loha bearing 11 spokes dated 15.1.2015 vide which he had sold the said articles to complainant for Rs.25,550/-. The copy of bills is Ex.PW8/A

upon which he identified his signatures. His cross examination could not shake his testimony.

PW5 Balwinder Singh also deposed regarding theft of his 16 Tavies in July 2015 and deposed that the said Tavies have been recovered and identified by him vide memo Ex.P16. The case property MO3 was proved on record.

15. Thus, from the co-joint testimonies of PW3 Sukhwinder Singh complainant and PW8 Charan Singh, PW5 Balwinder Singh prior possession of complainant Sukhwinder Singh of Suhaga and Hul Loha and of Tavies with PW5 Balwinder Singh stands established. However, admittedly the case has been registered at a gap of more than three months from the date of occurrence. Testimony of PW2 ASI Sapinder Singh further proves the recovery of Hul Loha and Suhaga belonging to complainant, from the possession of accused. PW ASI Sapinder Singh proved the statement of complainant Ex.P1, Ruqa Ex.P2, FIR Ex.P3, site plan of place of theft of complainant Ex.P4, site plan of the place of motor of Kuldeep Singh Ex.P5, site plan of motor of Hardial Singh is Ex.P6, site plan of motor of Ravi Mangat is Ex.P7,

arrest memo of Paramjit Singh is Ex.P8 and personal search memo is Ex.P9, recovery memo of tractor is Ex.P10 belonging to accused. He even proved that on the basis of disclosure statement Ex.P11 suffered by accused Paramjit Singh, the cultivator and Suhaga of complainant Sukhwinder Singh were recovered from the house of accused Paramjit Singh vide memo Ex.P12, site plan of place of recovery is Ex.P13, identification memo of accused is Ex.P14. In the second disclosure statement Ex.P15 suffered by accused Paramjit Singh, he got recovered 16 Tavis from his motor vide memo Ex.P16, site plan of place of recovery is Ex.P17, memo regarding recovery of bill is Ex.P18, and bill is Mark-A. Tractor belonging to accused is MO4. He admitted that before 28.9.2015, Sukhwinder Singh never approached the police. He did not join any independent witness. He deposed that no other articles or tools was recovered. However, testimony of PW2 ASI Sapinder Singh regarding recovery of Hul Loha and Suhaga and Tavis from the possession of accused Paramjit Singh stands corroborated by testimony of PW9 Ajit Singh, independent witness. Even PW7 Harwinder Singh established that agricultural tools are kept by Sukhwinder Singh and

others in his land.

Now, it is in evidence that on the basis of disclosure statement suffered by the accused Paramjit Singh Hul Loha and Suhaga of Sukhwinder Singh complainant was recovered from the house of the accused and and Tavies of Balwinder Singh were recovered from the motor of accused Paramjit Singh. The site plan of place of recovery is also proved on record. The place and the manner in which the Hul Loha and Suhaga and Tavies were hidden show that it can be clearly related to the accused and was in exclusive possession and knowledge of the accused Paramjit Singh. No recovery could be effected however, from accused Rajwinder Singh.

In the present case no person has seen the accused committing theft. Even, the FIR was registered at a gap of more than three months from the date of occurrence. Recovery of Hul Loha and Suhaga from the possession of accused Paramjit Singh is not soon after the occurrence. Therefore, as per the presumption illustration (a) under section 114 of Indian Evidence Act, accused Paramjit Singh cannot be presumed to be thief of the stolen property. However, accused Paramjit

Singh has failed to give any explanation for keeping the Hul Loha and Suhaga and Tavies hidden in secretive manner in his house and motor and even could not account for its possession.

16. Section 411 IPC provides punishment for receiving or retaining stolen property. Prior possession of complainant Sukhwinder Singh of Hul Loha and Suhaga and possession of Balwinder Singh of 16 Tavies is also established. So, accused Paramjit Singh is presumed as receiver of stolen property, as per the presumption illustration (a) under section 114 of Indian Evidence Act. Accused could not rebut the presumption. As such, charge U/s 411 of IPC stands established against accused Paramjit Singh.

17. Accused Rajwinder Singh has also been charged U/s 411 IPC on the ground that he dishonestly retained tools of agriculture i.e. Engine, Jindra, Toplink, Iron Cutter, Pieces of Suhaga knowing or having reason to believe as stolen property. As per the testimony of PW3 Sukhwinder Singh, he came to know that Tavian of Balwinder Singh, Top link of Ravi Mangat, Lock of Gurdial Singh and Suhaga of Sandeep Singh had been stolen from their motors. However, discussed

above PW1 Kuldeep Singh deposed about theft of his Suhaga by some unknown person. PW Ravi Mangat deposed regarding theft of his Toplink in June 2015 by some unknown person. But neither Kuldeep Singh nor Ravi Mangat filed any FIR regarding the incident. Even prior possession of Suhaga and Toplink is doubtful as no Bill of said articles could be established. Neither, recovery of Suhaga or Toplink belonging to Kuldeep Singh or Ravi Mangat was proved. Similarly, PW4 Hardial Singh deposed regarding theft of his Jindra in June, 2015 by some unknown person. But this witness turned hostile and deposed that no recovery of his Jindra was effected. PW6 Charanjit Singh turned hostile and denied that his engine standing in the fields of Harwinder Singh. So, testimony of this witness is not reliable. Thus, there is nothing on record to establish that accused Rajwinder Singh either committed theft or received the stolen property. No recovery has been effected from accused Rajwinder Singh. As such, charge U/s 411 IPC also could not be established against accused Rajwinder Singh beyond doubts.

18. In view of the above discussion, I hold accused

Paramjit Singh guilty for the commission of offence punishable under Section 411 IPC and convict him thereunder. However, accused Paramjit Singh is acquitted of charge under section 379 IPC and accused Rajwinder Singh is acquitted of charges U/s 379, 411 of IPC by giving them benefit of doubt. Judgment has been read out and explained to convict Paramjit Singh in his language as per provision of Section. 353 of CrPC. Let the convict Paramjit Singh be taken into custody and be heard on the quantum of sentence.

*Announced in open court.
Dated; 18.01.2019.*

*(Himanshi Galhotra), PCS
Sub Divisional Judicial Magistrate,
Khamanon. UID No. PB0317
(Directly typed)*

Quantum of Sentence.

Present : Sh.Rajinder Kumar, APP for the state.
Convict Paramjit Singh in person.

Heard on the question of sentence. The convict Paramjit Singh verbally pleaded for leniency on the ground that he is a first offender and is the only bread winner of his family and prayed that he be released on probation.

Keeping in view the nature of offence and antecedents of accused, I find it a fit case to extend benefit of probation to the convict Paramjit Singh. Accordingly, convict Paramjit Singh is released on probation for period Six months on furnishing personal probationary bonds in the sum of Rs.20,000/-. However cost of litigation Rs.1000/- is imposed on the convict Paramjit Singh. It is made clear to him that if he is found indulging in such like acts during period of probation, he shall be called upon to receive the sentence. Cost of litigation paid. Probation bonds furnished. Case property be dealt with as per rules after expiry of period of appeal or revision, if any. File be consigned to the record room, Khamanon.

Pronounced: 18.01.2019.

***(Himanshi Galhotra), PCS
Sub Divisional Judicial Magistrate,
Khamanon. UID No. PB0317
(Directly typed)***

*Ashok Kumar,
Judgment Writer (Sr. Grade),
I attest to the accuracy
and authenticity of this document.*