

Case No. 53 dated 02-9-2014

CNR No. PBLD03-009914-2014

State Vs 1. Ravi Singh son of Khadak Bahadur, R/o Thal Manha, P.S Brij Manganj, District Jang (U.P) at present Dhandari Khurd, Ludhiana.

2. Vijay Kumar s/o Jagdish Lal, R/o St. No. 11, New Angad Dev Colony, Ludhiana.

-----Accused

PS. Sahnewal Ludhiana

Accused Vijay Kumar on bail represented by Sh Pankaj Suri

Advocate

Accused Ravi Singh proclaimed person.

JUDGMENT:

The above named accused have been sent up by the SHO of P.S Sahnewal to face trial for the offences under Sections 379, 411 and 120 -B IPC.

2. Briefly stated case of the prosecution is that on 22.06.2014 ASI Karamjit Singh along with other police officials was present at Airport Chowk near Zimidara Daba then secret information was received to the effect that accused Ravi Singh son of Khadak Bahadur, R/o Thal Manha, P.S Brij Manganj, District Jang (U.P) at present Dhandari Khurd, Ludhiana who is driver of truck bearing registration no. PB 23F 6296, after committing theft of iron bars from loaded iron bars in the truck and after unloading the stolen iron bars in the godown of accused Vijay Kumar (scrapped dealer) was coming towards Sahnewal and if a raid is conducted then he could be apprehended. Being information credible ruqa was sent for registration of criminal case. Hence, present FIR has been registered against the accused for the offences under Sections 379, 411 and 120-B IPC.

3. During investigation Nakabandi was arranged at disclosed place and truck bearing registration No. PB23F 6296 was got stopped and driver of the same disclosed his name as Ravi Singh. The truck was taken into police possession and site plan was prepared. The accused Ravi Singh was arrested. During investigation, the accused Ravi Singh suffered disclosure

statement on 23.06.2014 and got recovered 100 KG stolen iron bars from the godown of accused Vijay Kumar (scrap dealer). The recovered iron bars were taken into police possession. On 15.07.2014, accused Vijay Kumar produced bail order and he was joined into investigation. On 23.7.2014, accused Vijay Kumar got recovered 100 KG iron bars and same was taken into police possession. The recovered iron bars were identified by owner Rajpal. Statements of witnesses under section 161 Cr.P.C were recorded. After completion of necessary formalities, police report under section 173 Cr.P.C prepared and challan for the offence under Sections 379,411 and 120 B IPC against the accused has been presented before the Court.

4. Upon presentation of challan, the copies of challan and other documents attached therewith were supplied to accused free of costs, as envisaged under sections 207 Cr.P.C.

5. After going through the case file and finding a prima facie case having been made out against the accused, the formal charge under Section 379,411 and 120 B IPC was framed against the accused and the same was read over and explained to the accused to which they pleaded not guilty and claimed trial.

6. In order to prove its case, the prosecution has examined the following witnesses:

(i) PW1 Balkar Singh who is owner of the truck PB 23 F 6296 and he proved on record RC of the truck as Ex PA and insurance policy Ex PB

(ii) PW1/A ASI Karamjit Singh who is investigating officer and he reiterated the entire prosecution version and proved on record following documents:

- (a) Ruqa Ex PA
- (b) FIR Ex PB
- (c) Recovery memo Ex PC
- (d) Site plan Ex PD
- (e) Arrest memo Ex PE
- (f) Search memo Ex PF
- (g) Disclosure statement Ex PG
- (h) Recovery memo Ex PH
- (i) Site plan Ex PI
- (j) Receipt Ex PJ
- (k) Possession memo Ex PK
- (l) Arrest memo Ex PL

(iii) PW2 ASI Pritpal Singh who stated that he was present along with investigating officer and he proved on record Ex PA to Ex PL.

No other witness has been examined by the prosecution therefore, the prosecution evidence has been closed by order. During prosecution

evidence, the accused Ravi Singh remained absent and has been declared as proclaimed person vide order dated 20.10.2016.

7. After completion of prosecution evidence, statement of the accused Vijay Kumar has been recorded under section 313 Cr.P.C wherein all the incriminating evidence was put to him and he denied the same. The accused did not intend to lead any evidence in his defence.

8. The Ld APP for the State submitted that the prosecution has proved the charge against accused beyond all reasonable doubt. He submitted that the prosecution has examined the witness PW1/A and PW2 who are official witnesses and these witnesses have proved on record that the accused Ravi Singh after hatching conspiracy committed theft of iron bars from the loaded iron bars from the truck PB 23 F 6296 and in this regard, these witnesses have duly proved on record recovery of 100 KG iron bars from the possession of accused. Hence, prayer is made to convict and sentence the accused accordingly.

9. On the other hand, the defence counsel submitted that the prosecution has failed to prove the charge against the accused beyond all reasonable doubt. He submitted that there are material contradiction between the testimonies of PW1/A and PW2. He submitted that the prosecution has vehemently failed to connect the accused Vijay Kumar with the alleged recovery of 100 KG from the possession of accused Ravi Singh. He submitted that nothing has recovered from the possession of the

accused and further the prosecution has not examined any witness to prove the identification of the allegedly recovered iron bars. He submitted that the prosecution has failed to prove its case and accused deserves acquittal.

10. I have heard the submissions made by the Ld. APP for the state as well as a defence counsel and also gone through the material available on the record. In my opinion, the following points are required to be fixed for determination:

1. Whether the accused committed theft of iron bars of owner Rajpal on 22.06.2014 after hatching conspiracy with accused Ravi Singh and stolen iron bars were recovered on 23.06.2014 from the possession of the accused.

- 2, Conclusion

After hearing the arguments in the present case and after going through the evidence available on the record, my point wise discussion is as per following:

POINT NO. 1

11. In the present case the allegations against the accused are accused Ravi Singh after hatching conspiracy with accused Vijay Kumar committed theft of iron bars of owner Rajpal and subsequently stolen iron bars weighing 100 KG was recovered from the godown of accused Vijay Kumar on 23.06.2014. In order to prove these allegations, the prosecution has examined the witness PW1/A ASI Karamjit Singh and this witness

stated that on 22.06.2012, the accused Ravi Singh was arrested and on 23.06.2014, during investigation accused Ravi Singh suffered disclosure statement and on the basis of said statement he got recovered 100 KG stolen iron bars from the godown of accused Vijay Kumar. In this regard, this witness has proved on record disclosure statement Ex PG and possession memo Ex PH. The prosecution has also examined the witness PW2 ASI Pritpal Singh and this witness also deposed on similar terms with the witness PW1/A and also proved the documents Ex PG and Ex PH.

12. In this case, the recovery has been effected from the possession of the accused Ravi Singh but he has been declared as proclaimed person in the present case. However, regarding the accused Vijay Kumar is concerned, I find that the prosecution is trying to prove the charge against the accused Vijay Kumar only on the ground that the stolen iron bars have been recovered from the godown of Vijay Kumar and therefore, it proves that the accused Ravi Singh hatched conspiracy with accused Vijay Kumar and then committed theft of iron bars and thereafter sold the same to accused Vijay Kumar. However, even if for the sake of arguments, it is presumed that the recovery of 100 KG iron bars has been effected from the possession of the accused Ravi Singh on his disclosure statement even then I find that the prosecution has not led any type of evidence to prove that the spot/godown from where the alleged recovery of 100 KG has been effected on the basis of disclosure statement of accused Ravi Singh

belongs to accused Vijay Kumar. Though, the prosecution has cited the witness Balwinder Singh s/o Harjit Singh r/o 65 L, Model Town, Ludhiana to prove the possession of accused Vijay Kumar over the godown in question but I find that the prosecution has failed to examine the said witness Balwinder Singh and even the investigating officer PW1/A ASI Karamjit Singh has not produced on record any document to show the ownership of witness Balwinder Singh or possession of Vijay Kumar over the godown in question. Therefore, if the recovery of any alleged iron bars has been effected from the possession of the accused Ravi Singh then it does not prove that the accused Vijay Kumar has hatched conspiracy with the accused Ravi Singh.

Further, I find that the prosecution has vehemently failed to prove on record any iota of evidence to connect the accused Vijay Kumar with the accused Ravi Singh and has also failed to prove on record any evidence to show if at any stage of time accused Ravi Singh sold any iron bars to accused Vijay Kumar.

13. Further, as per the police report, the accused Vijay Kumar also produced 100 KG iron bars which were taken into police possession and was later on got identified from owner Rajpal. However, I find that prosecution has vehemently failed to prove this rather the perusal of the file shows that witness PW1/A ASI Karamjit Singh and PW2 HC Pritpal Singh have remained completely silent regarding any recovery of iron bars

from the possession of the accused. Even the prosecution has failed to examine the witness Rajpal who is stated to be owner of the recovered bar thus the non examination of witness Rajpal is also fatal to the prosecution to prove the identification of the allegedly recovered iron bars.

14. Not only this, the prosecution has alleged that the accused Ravi Singh after committing theft of loaded iron bars in Truck no. PB 23 F 6296 unloaded the same in the godown of accused Vijay Kumar and sold the same to him and it is further alleged that the stolen recovered iron bars has been identified by Rajpal who is owner of this stolen iron bars. However, I find that the prosecution has failed to examine the said witness Rajpal to prove if he has loaded his iron bars in truck PB 23 F 6296 rather as per the statement of witness Rajpal recorded under section 161 CrPC shows that this witness has got recorded that his three quintal iron bars was stolen outside from his house in the night of 21.06.2014, which means that he has not loaded his iron bars in the truck PB 23 F 6296. Therefore, the version of witness Rajpal as recorded by the investigating agency is completely fatal to the prosecution version as if three quintal iron bars of Rajpal was stolen outside from his house then the prosecution version that the accused has committed theft of iron bars from the loaded iron bars in truck no PB 23 F 6296 has not legs to stand and it has not examined any other witness who could state that he loaded his iron bars in the truck PB 23 F 6296 and found that some of his iron bars were stolen.

15. Otherwise also, the prosecution has examined the investigating officer PW1/A ASI Karmajit Singh and PW2 ASI Pritpal Singh but these witnesses have not stated if at any stage of time any ownership proof regarding the recovered iron bars was obtained from the owner Rajpal Singh, therefore, even if it is presumed that the recovery of 100 KG has been effected from the possession of accused Ravi Singh even then there is nothing on record to prove the same as stolen property and mere identification of iron bars by Rajpal does not serve the purpose. Once, the prosecution has failed to prove on the record that allegedly recovered iron bars from the accused Ravi Singh are stolen property, then no offence under section 411 IPC is made out against the accused. In this regard I relied upon one judgment passed by the Hon'ble Supreme Court of India in a case titled as **Mahabir Sao Vs. State of Bihar** cited as AIR 1972 SC 642 and judgment passed by the Hon'ble Punjab and Haryana High Court in case titled as **Manjinder Singh Vs. State of Punjab** cited as 2009 (RCR) Criminal 919.

16. Therefore once the prosecution has failed to examine any person who loaded any iron bar in truck PB 23 F 6296 and found the same stolen and further failed to prove the identification of allegedly recovered iron bar and not only this failed to connect the accused Vijay Kumar with the spot from where the alleged recovery of iron bar has been effected from the

possession of accused Ravi Singh, then the prosecution has vehemently failed to prove the charge against the accused Vijay Kumar.

17. In view of my above discussion, the prosecution has failed to prove that the accused committed theft of iron bars of owner Rajpal on 22.06.2014 after hatching conspiracy with accused Ravi Singh and stolen iron bars were recovered on 23.06.2014 from the possession of the accused.

CONCLUSION

18. In view of my above point wise discussion, the prosecution has failed to prove the charge under section 379/411/120-B IPC against the accused Vijay Kumar beyond all reasonable doubts. Accordingly, the accused Vijay Kumar is hereby acquitted from the charges framed against him in the present case by giving him benefit of doubt. He be set at liberty. His bail bonds and surety bonds stand discharged. Case property, if any, be dealt with under rules. File be consigned to the Record Room, Ludhiana after due compliance and same be taken up as and when the accused Ravi Singh surrenders or produced before the court.

Announced.

Jagjeet Singh, PCS,

Dated: 10.05.2018

Judicial Magistrate 1st Class,

(directly typed)

Ludhiana

Yogesh Kumar

(UID No. PB0422)

Present: Sh.S.S Haider Ld. Additional P.P for the State.

Accused Vijay Kumar on bail represented by Sh Pankaj Suri
Advocate

Accused Ravi Singh proclaimed person.

No PW present. The summons issued to witness Balwinder Singh, BWs issued against the witness Rajpal Singh and ASI Niranjana Singh received back unserved. The perusal of the file shows that prosecution has failed to lead any evidence despite last opportunity. Therefore, the prosecution evidence stands closed by order. Statement of the accused under section 313 CrPC recorded. The accused does not intend to lead any evidence. The perusal of the file shows that the witness Balkar Singh and ASI Karamjit Singh have been mentioned as PW1, therefore, in order to avoid any ambiguity and complication, the reader of this court is directed to mention the witness ASI Karamjit Singh as PW1/A with red ink by giving noting in this regard.

Arguments heard. Vide my separate detailed judgment of the even date, the prosecution has failed to prove the charge under section 379/411/120-B IPC against the accused Vijay Kumar beyond all reasonable doubts. Accordingly, the accused Vijay Kumar is hereby acquitted from the charges framed against him in the present case by giving him benefit of doubt. He be set at liberty. His bail bonds and surety bonds stand discharged. Case property, if any, be dealt with under rules.

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