

PBBR010035372023



Presented on : 11-09-2023

Registered on : 11-09-2023

Decided on : 28-02-2024

Duration : 0 years, 5 months, 17 days

IN THE COURT OF
Additional Sessions Judge
AT Barnala, Barnala
(Presided Over by Kapil Dev Singla)
SC-106-2023

Prosecution:

State of Punjab

Through Police Station Officer City Barnala

81, City Barnala

Barnala.

VERSUS

Accused Name:

1. Gagandeep Singh, son of Balvir Singh;

2. Gurbakhsh Singh, son of Sarabjit Singh,

both residents of near Tarksheel Chowk, Barnala, District Barnala.

FIR No.81 Dated 19.02.2021,

U/ss 201, 379B, 411, 473, IPC.

Police Station : City Barnala

(Case committed by the Court of Sh. Munish Garg, Chief Judicial Magistrate, Barnala, vide committal order dated 24.08.2023)

Present: Ms. Navjyoti Gupta, Addl. P. P. for the State.
Accused-Gurbakhsh Singh on bail, with counsel, Sh. Gurnaib Singh Dhillon.
Accused-Gagandeep Singh on bail, with counsel, Sh. Baldev Singh.

J U D G M E N T

The above-named accused have been sent up to this Court by the officer in charge of Police Station City Barnala to face trial of the offences punishable under Sections 201, 379B, 411, 473, IPC, read with Section 34, IPC.

2. The factual matrix of the case, as unfolded by the prosecution in the police report under Section 173(2) Cr. P. C., is that one Milanpreet Singh on dated 10.02.2021 moved an application to the SHO, Police Station City Barnala to intimate about snatching of a mobile handset. The applicant submitted that two motor-cycle borne-persons on dated 10.02.2021 at about 10:00 A. M. within the area near Dr. Pardeep's House, Street No.7, K. C. Road, Barnala snatched a school bag and a mobile handset, make-Redmi 7, from his sister-Prabhjot Kaur's possession. An appropriate legal action against the two unidentified miscreants be taken.

3. Having received the above said application, the SHO, Police Station Barnala directed Darshan Singh ASI to proceed into the matter as per the law. Following this, Darshan Singh ASI sent the statement through Balwant Singh PHG to the Police Station for the purpose of registration of an FIR under

Section 379B, IPC, read with Section 34, IPC, against the two unidentified miscreants. The Investigating Officer, in the course of the ensuing investigation, drew a rough site plan of the site of occurrence, with correct marginal notes. After evidence came on record against them during the investigation, Gagandeep Singh, Gurbakhsh Singh and Hargobind Singh, alias Golu were nominated as accused into the case. The Investigating Officer arrested the accused-Gagandeep Singh, Gurbakhsh Singh and Hargobind Singh, alias Golu on dated 26.02.2021. The accused-Gurbakhsh Singh upon interrogation suffered a disclosure statement under Section 27 of the Indian Evidence Act, 1872 and got a stolen mobile handset, make-Oppo, recovered from the disclosed place. Similarly, the accused-Hargobind Singh upon interrogation too suffered a disclosure statement under Section 27 of the Indian Evidence Act, 1872 and got a stolen mobile handset, make-Samsung, recovered from the disclosed place. Also, the accused-Gagandeep Singh upon interrogation suffered a disclosure statement under Section 27 of the Indian Evidence Act, 1872 and got a stolen mobile handset, make-Redmi, a stolen school bag, two fake number plates depicting registration No.PB-29-Z-6603, and a motorcycle, bearing registration No.PB-19S-4790, used by him and his associates-Gurbakhsh Singh, Hargobind Singh to commit snatching of a school bag and a mobile handset from a girl near Street No.7, K. C. Road, Barnala on dated 10.02.2021 recovered from the disclosed place.

Afterwards, the victim-Prabhjot Kaur came present at the police station and identified the recovered school bag and the mobile handset, make-Redmi, to be belonging to her and the accused-Gagandeep Singh, Hargobind Singh the miscreants. She also identified the recovered motorcycle, bearing

registration No.PB-19S-4790, to be the same vehicle used by the miscreants to commit the snatching from her but added that it was on the fateful day bearing registration No.PB-29-Z-6603. Later on, one Manpreet Singh on dated 13.03.2021 came present at the police station and identified the recovered mobile handset, make-Oppo, to be the same mobile handset which was snatched by unidentified miscreants from him. The further investigation into the case revealed the recovered motorcycle, bearing registration No.PB-19-S-4790, to be registered in the name of the accused-Gurbakhsh Singh.

The Investigating Officer, in the course of the ensuing investigation, recorded the witnesses' statements under Section 161 Cr. P. C. and took the relevant record into police possession. The accused-Hargobind Singh is no more. The completion of the investigation was followed by submission of police report u/s 173(2) Cr.P.C. against the accused-Gagandeep Singh, Gurbakhsh Singh before the Ilaqa Magistrate.

4. The learned Ilaqa Magistrate complying with the provisions of Section 207 Cr.P.C. furnished to the accused free of cost copies of the police report and the documents forwarded with it under Section 173(5) Cr. P. C. Since the learned Ilaqa Magistrate found the case to be exclusively triable by the Court of Session, hence, he vide order dated 24.08.2023 committed the case to the Court of Session. The Learned Sessions Judge, Barnala in turn made over the case to this Court to deal with and dispose of.

5. Upon considering the police report and the documents sent with it and hearing the prosecution and the accused, charge under Sections 201, 379B, 411, 473, IPC, read with Section 34, IPC, was framed against the accused, to which they pleaded not guilty and opted trial. Following this, the

prosecution was called to lead evidence.

6. In order to bring home the charge against the accused, the prosecution examined the victim – Prabhjot Kaur as PW-1, Darshan Singh ASI, PW-2, and Joginder Singh ASI (Retired), PW-3. As the prosecution failed to conclude its evidence, despite being afforded numerous effective opportunities for the purpose, it was shut out by order of the Court, vide order dated 28.02.2024 of this Court.

7. After the prosecution evidence was closed, the accused' statutory statements under Section 313 Cr. P. C. were recorded, putting to them the entire incriminating evidence on record against them. The accused took the plea that they are innocent and have been falsely implicated in the present case. No snatching was committed by them. No recovery has been effected from them.

8. On their turn, the accused opted to examine no witness in their defence.

9. I have heard the submissions of the Additional P. P. for the State and of the counsel for the accused and have examined the evidence available on record with due care and circumspection. At this, I come to the conclusion that the prosecution has utterly failed to prove to the hilt the charge against the accused, for the reasons to follow.

10. It may be noted at the very onset that the victim-Prabhjot Kaur appearing as PW-1 did not support the prosecution version and resiled from the statement(s) allegedly made by her to the police. She stated at the trial that two unidentified persons with muffled faces on dated 10.02.2021 snatched a school bag and one mobile handset, make-Redmi, from her.

However, she does not know who the miscreants were. Her brother-Milanpreet Singh (now deceased) moved an application, Exh.PA to the police for taking an appropriate legal action against the unidentified miscreants. She cannot say, whether the accused are or are not the same persons who snatched her school bag and one mobile handset from her possession on dated 10.02.2021.

It is worthwhile to mention here that PW-1 was declared hostile at the behest of the prosecution.

11. No doubt, statement of a hostile witness should not be thrown overboard and so much part of the statement of a hostile witness which is consistent with the prosecution story can still be taken help to convict the accused person and the evidence of a hostile witness would not be totally rejected if submitted in favour of the prosecution or accused, but it can be subjected to close scrutiny and that portion of the evidence, which is consistent with the case of the prosecution or defence may be accepted.

12. I have gone through PW-1's statement from above said angle also, however, I find the same totally worthless. After being declared hostile, PW-1 was allowed to be cross-examined by the Additional P. P. for the State. Even after cross-examination of said witness by the Additional P. P. for the State, nothing favourable to the prosecution came out. PW-1, when confronted with her statement to the police, deposed that she did not make any such statement to the police.

13. It is also important to mention here that the first informant-Milanpreet Singh, being no more, remained unexamined at the trial.

14. Insofar as the recovery of three mobile handsets, one school

bag, two fake number plates depicting registration No.PB-29-Z-6603, and one motorcycle, bearing registration No.PB-19-S-4790, at the instance of the instance of the accused is concerned, in my opinion, the same also does not inspire confidence, for the reasons to follow.

15. In **Trimbak vs. State of Madhya Pradesh, AIR 1954 SC 39**, the Hon'ble Supreme Court discussed the essential ingredients for conviction under Section 411 of the IPC. The Court observed that it is the duty of the prosecution in order to bring home the guilt of a person under Section 411 Indian Penal Code to prove, (1) that the stolen property was in the possession of the accused, (2) that some person other than the accused had possession of the property before the accused got possession of it, and (3) that the accused had knowledge that the property was stolen property.

In the case at hand, I am of the opinion that there is no reliable evidence to prove either of these facts.

16. A bare look at the recovery memos, Exh.P6/PW3 – Exh.P7/PW3, Exh.P11/PW3 reveals that the alleged recoveries at the instance of the accused are not witnessed by any private witness. All the witnesses to the alleged recoveries, Naib Singh ASI, Jagdeep Singh HC, Harjinder Singh SCT, are official witnesses. The prosecution case hinges solely on PW-3 Joginder Singh' ASI deposition. On the mere *ipse dixit* of PW-3, who is a police official interested in the success of the case detected by him, this Court cannot play with the liberty of an individual. To me, it was imperative on the part of the Investigating Officer, to join an independent witness, at the time of the alleged recovery or at least to make a genuine, sincere and real effort, to join such a witness.

17. Sub-section (4) of Section 100 Criminal Procedure Code contemplates that search should, as far as practicable, be made in the presence of two independent and respectable witnesses of the locality and if the Investigating Officer fails to do so, the onus would be on the prosecution to establish that the association of such witnesses was not possible on the facts and circumstances of a particular case.

18. The search before an independent witness would impart much more authenticity and creditworthiness to the search and seizure proceedings, so conducted. It would have also verily strengthened the prosecution case. The said safeguard is intended to avoid criticism of arbitrary and high-handed action, against the police officials. The legitimacy of judicial procedure, may come under cloud, if the Court is seen to condone acts of violation of statutory safeguard, committed by the police officials, during search and seizure operation and may also undermine respect of law. Such an attitude of the investigative agency, cannot be permitted. Intentional and deliberate breach of the provisions of Section 100 Cr.P.C., certainly cause prejudice, to the accused, and cast a doubt on the prosecution story.

17. It is equally important to note that the prosecution has adduced no evidence worth the name as to distinct identity of the mobile handsets, make-Redmi, Oppo, allegedly stolen from the possession of Prabhjot Kaur (PW-1) and Manpreet Singh. No evidence worth the name has been adduced on record to bring the IMEI numbers of the mobile handsets allegedly snatched from the possession of Prabhjot Kaur (PW-1) and Manpreet Singh so as to say that the mobile handsets allegedly recovered at the instance of the accused are the same ones. It goes without saying that a mobile handset

burden lies on the prosecution to establish a close link between discovery of the material object and its use in the commission of offence. What is admissible under Section 27 of the Act, is the information leading to discovery and not any opinion formed on it by the prosecution.”

22. The Hon'ble Kerala High Court in the matter of **Mottammal Shaji, alias Kakka Shaji versus State of Kerala, (Kerala)(DB) : Law Finder Doc Id # 836998** has held as follows:

“47. The proposition that merely on the basis of a fact discovered on the confession of an accused, while in custody, the prosecution cannot seek his conviction without establishing other corroborating circumstances is beyond any pale of dispute. In other words, it may be imprudent to convict a person solely on the factum of recovery under Section 27 of the Act.”

23. Now, it is cardinal 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. The prosecution is under a legal obligation to prove each and every ingredient of the offence beyond any doubt, unless otherwise so provided by any statute. This general burden never shifts and it always rests on the prosecution. In **State of Haryana Vs. Shamsher Singh, reported as 2006(3) R.C.R. (Criminal) 346 (P&H) (D.B.)**, the Hon'ble Punjab & Haryana High Court 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 become extremely difficult for the Court to pronounce a person guilty in the absence of fool-proof evidence nailing guilt by the accused person.

24. In view of the discussion made here-in-above, this Court acquits the accused of the charge against them. The personal bonds and the surety bonds stand discharged. The case property, if any, be disposed of under the Rules after awaiting the result of the appeal/revision, if any.

Pronounced in open Court on
dated 28.02.2024.

Gurdit Singh

Stenographer-II

(Kapil Dev Singla),
Additional Sessions Judge,
Barnala.
(UID No.PB0238)

JUDGMENT
(Delivered on 28.02.2024)

Dictated on: 28.02.2024
Transcribed on: 28.02.2024
Checked on: 28.02.2024
Signed on: 28.02.2024

(Kapil Dev Singla),
Additional Sessions Judge,
Barnala.

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