

In the Court of Shinku Kumar, PCS, Judicial Magistrate Ist Class, Faridkot UID No. PB0571

Unique Identification No. PB0571

Filing No. 709 dated 09.04.2019

CIS No: CHI/120/2019

CNR No: PBFD03-000709-2019

Date of Institution: 09.04.2019

Date of Decision: **11.06.2024**

State.....

Versus.....

1. Satnam Singh @ Sunny son of Surjit Singh @ Seeta resident of Tibba Duareana Road, Kotkapura.
2. Jagjit Singh @ Jassa son of Balwinder Singh resident of Tibba Duareana Road, Kotkapura.
3. Dharminder Singh @ Vicky son of Lakhwinder Singh resident of Gandhi Basti, Kotkapura.
4. Ranjit Singh @ Sonu son of Angrej Singh resident of Shere Punjab Nagar, Duareana Road, Kotkapura.

.....Accused.

FIR No: 15 Dated: 31.01.2016

Under Section: 379, 411, 482 IPC

Police Station: City Kotkapura

Present: Sh. S.S. Gill, Ld. APP for the State.
Accused Satnam Singh and Ranjit Singh on bail with counsel Sh. U.S. Sharma, Advocate.
Accused Jagjit Singh and Dharminder Singh on bail with counsel Sh. Devinder Singh, Advocate.

JUDGMENT:-

1. The above named accused have been sent to face trial for the offence punishable under Sections 379, 411, 482 of IPC, by the Officer in

Charge of Police Station, City Kotkapura.

2. The brief facts of the case as set forth by the prosecution are that on 31.01.2016, ASI Jagdish Singh along with other police officials in connection of patrolling and checking of bad elements were present at Tikoni Moga Bathinda Road, then at about 05.30 P.M. IO received secret information that Jagjit Singh @ Jagga son of Balwinder Singh resident of Duareana Road, Tibba Kotkapura, Dharminder Singh @ Vicky son of Lakhwinder Singh resident of Gandhi Basti, Kotkapura, Satnam Singh son of Surjit Singh @ Seeta resident of Tibba Duareana Road, Kotkapura and Ranjit Singh @ Sonu son of Angrej Singh resident of Duareana Road, Basti Tibba Kotkapura were habitual of stealing motor-cycle and scooter from Kotkapura, Faridkot and Jaitu and they were roaming in the city for selling the vehicle. If picket be laid, then all the above named accused can be apprehended along with stolen vehicles. Information being reliable, IO sent ruqa through C. Kulwinder Singh for registration of FIR. On the basis of which, FIR was registered under Section 379/411 IPC.

3. Thereafter, IO laid picket at Tikoni Moga Bathind road and checked the vehicles. IO saw three motor-cycles which was being driven by Hindu gentlemen coming from the side of Moga, they were tried to apprehend as their motorcycles were without number plate. IO apprehended two persons on first motorcycle and one person on second motor-cycle and inquired their names. The other person fled away with the third motor-cycle. The apprehended persons disclosed the name of person who fled away from the spot as Ranjit Singh @ Sonu son of Angrej Singh. The persons who were apprehended on first motor-cycle disclosed their names as Jagjit Singh

and Dharminder Singh. IO recovered motor-cycle make Splendor Plus of black colour having chassis no.MBLHA10EJDHB26145 and engine No.HA10EA9HB60223. They did not produce any document of said motor-cycle. IO took into possession the said motor-cycle while preparing separate recovery memo. The person who were apprehended on second motor-cycle disclosed his name as Satnam Singh @ Sunny. IO got recovered motor-cycle make Splendor Plus having chassis no.MBLHA10EJ911E50814 and engine no.HA10EAJKEA4083 and took into possession the same while preparing separate recovery memo. Accused were interrogated and arrested. During investigation, accused got recovered 8 motor-cycle and one scooter on their disclosure statements, which were taken into police possession while preparing separate recovery memos. Site plan was prepared.

4. During investigation accused Jagjit Singh got recovered three motor-cycles on 01.02.2016 on his disclosure statement. Later on offence under Section 482 IPC was added. Statement of witnesses were recorded. After completion of the investigation and other formalities, challan against accused was presented in the Court for judicial verdict.

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

6. Finding a prima facie case is made out against the accused, a formal charge under Section 379, 411 & 482 of IPC was framed against the accused and the same was read over and explained to them in simple Punjabi language to which accused pleaded not guilty and claimed trial.

7. In order to prove its case and to bring home the guilt of accused, prosecution has examined SI Jagdish Singh, Investigating Officer as (PW1), Shiv Kumar as PW3 (wrongly numbered as PW3 instead of PW2), Karanbir Singh as PW4 (wrongly numbered as PW4 instead of PW3), ASI Jang Singh PW5 (wrongly numbered as PW5 instead of PW4), Jaspreet Singh as PW6 (wrongly numbered as PW6 instead of PW5), Sewak Singh as PW7 (wrongly numbered as PW7 instead of PW6), Ravinder Singh as PW8 (wrongly numbered as PW8 instead of PW7). Thereafter, no other prosecution witness was examined by the prosecution and after availing numerous effective opportunities, evidence of the prosecution was got closed.

8. Statement of accused under Section 313 Cr.P.C. was recorded, whereby, all the incriminating facts/evidence appearing on record against them were put to them, to which they denied all the allegations of the prosecution and termed the case as well as prosecution evidence to be false and pleaded their innocence. They further stated that they have been falsely implicated in the present case and the accused desired to lead evidence in their defence.

9. In defence evidence, accused did not lead any evidence in their defence and closed the defence evidence, vide their separately recorded statement.

10. During the course of arguments learned APP for the state reiterated all the contents of prosecution version as given in F.I.R. as well as in report U/s 173 Cr.P.C. He further categorically stressed upon the fact that the prosecution witnesses have proved the entire version of the prosecution

which is un-rebutted by the defence. So the prosecution has proved his case and lastly he prayed for conviction of the accused.

11. On the other hand learned counsels for the accused submitted that the prosecution has failed to establish this case against the accused. They further referred to the cross examination of prosecution witnesses and raised doubts against the truthfulness of the statement of these witnesses. They further made submission that the prosecution has failed to prove its case beyond every shadow of doubt and therefore, they lastly prayed for acquittal of the accused in this case.

12. **I have heard the submissions of Learned A.P.P. for the State and Learned Defence counsels with reference to the evidence and material available on record and I have gone through the case file very carefully and minutely.**

13. In view of the prosecution case and arguments on both sides, the point which arises for determination for decision of this case are:-

(i) Whether on 31.01.2016 at about 05.30 hours in the area of Tikoni Moga road Kotkapura, accused committed theft of motor-cycle make Splendor having engine no.60223 belonging to owner or not?

(ii) Whether on same date, month and place, all the accused were found in possession of above said motor-cycle which accused dishonestly retained in their possession knowingly the same to be stolen property or not?

(iii) Whether on the same date, month and place, all the accused persons used a false registration number plate

bearing no.PB-36E-7127 to denote that certain property belongs to them whereas the same belongs to the complainant or not?

14. Now analyzing the case of prosecution step by step, first of all, I would like to discuss the evidence led on record by the prosecution through the testimony of PW1 SI Jagdish Singh, on whose statement FIR was registered in the present case and criminal law was set into motion. No doubt, he being investigating officer of the present case during his examination-in-chief tried to prove on record the investigating part conducted by investigating agency, however, during his cross-examination, he has deposed that earlier no complaint was pending in any police station regarding the theft of the alleged motorcycle. He even admitted that no complaint was ever received by them regarding the theft or selling the stolen motor-cycle in the market. He even deposed that the alleged motor-cycles were recovered in thickly populated area but they did not summon to any independent witness in the locality. He even deposed that at the time of recovery of motor-cycles, no owners of the motor-cycles were called for the identification. He even deposed that they did not summon any independent witness at the time of recovery. He even deposed that no complaint in writing received by them regarding the theft of the motor-cycle till date.

15. So far as the evidence of PW3 Shiv Kumar is concerned, no doubt he during his evidence tried to reiterate the version of the prosecution, however, during his cross-examination, he has deposed that he did not know who has stolen his motor-cycle, as he was not present at the spot. Not only this, he even deposed that he did not record any complaint

before the police regarding theft of his motor-cycle till date. He even deposed that neither at the time of recovery of the motor-cycle he was called by the IO for identification of the motor-cycle nor in the police station for identification of the vehicle.

16. Apart from that prosecution has also examined Karanbir Singh as PW4, no doubt he also tried to reiterate the version of prosecution during his examination-in-chief but when he faced the acid test of cross-examination, he badly deteriorated the version of prosecution by deposing that he did not know who had stolen his motor-cycle. He even deposed that he was never called by the police at the time of recovery of the motor-cycle. He even deposed that no identification was got done by the police of his motor-cycle.

17. PW5 ASI Jang Singh being member of police party of the present case during his evidence also tried to prove on record the investigating part conducted by investigating agency, however, during his cross-examination, he has deposed that no independent witness was joined during investigation of the present case. He even deposed that all the motor-cycles were stolen from different places on different dates. He even deposed that he could not tell from where the motor-cycles were stolen. Not only this, he even deposed to the extent that he could not tell whether any FIR was registered regarding the theft of the vehicles. He even deposed that he did not know who were the owner of the motor-cycles recovered by them.

18. It is also to be noted that PW6 Jaspreet Singh, PW7 Sewak Singh and PW8 Ravinder Singh being independent witnesses also tried to

reiterate the version of the prosecution, however, when all these witnesses faced the acid test of cross-examination, they specifically deposed that they did not know who had stolen their motor-cycles. They even deposed that neither the identification of the motorcycle was conducted by the investigating officer nor they had seen the accused at the time of theft.

19. Furthermore, I have gone through the entire evidence of the prosecution, but there is no such witness, who has ever testified that the alleged motorcycles were stolen by the accused in their presence or has ever seen the accused stealing the same. Therefore, the ingredients of charge of offence under Section 379 IPC against the accused is not made out in the present case. Even otherwise, there is no direct evidence against the accused to connect them with the alleged commission of theft.

20. Although, there is Presumption under section 114 Illus.(a) of Evidence Act, 1872 that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession.

A reference is also necessary to **Section 114 of the Evidence Act**, which reads as under:-

The court may presume the existence of any fact which it thinks likely to have happened regard being had to be common course of natural events, human conduct and public and private business, in their relation to the facts of a particular case;

(a) that a man who is in possession of stolen goods soon after

the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession.

Presumption under section 114 Illus.(a) of Evidence Act, 1872 can only be raised, If prosecution established ownership of property, its theft and possession by accused soon after the incident. The Hon'ble Division Bench of Bombay High Court in case titled as “Jagdish vs. State of Maharashtra 2006(1) Cri.CC 730” has held that;

“On perusal of Section 114(A), it is apparently clear that the stolen property is even in possession of the person soon after the theft, the court under Section 114 is entitled to presume that either the person is himself thief or he has received the property knowing them to be stolen, unless he can account for the possession. Section 114 is a rule of guidance and it does not lay down any hard and fast rule with regard to the circumstances in which any fact may be presumed. The principle laid down by Section 114 is one of very wide application, it cannot be made at random, there must be connection between facts proved and those to be proved. The section is wide enough to permit the court to raise a presumption not only with regard to the real evidence but also with regard to some of the stolen properties which are recovered from the house of accused and he himself has not offered any explanation, the court may draw presumption under Section 114A (illustration (a)) of in a given case may presume to draw such presumption,

which is discretionary. Thus drawing of presumption under Section 114A is a matter which depends upon the evidence and the circumstances of each case, thus the nature of stolen articles, the matter of its acquisition by the owner, the nature of evidence about its identification, the manner in which it was dealt with by the accused, the place and circumstances of its recovery, the length of interruptive period, the ability or otherwise of the accused to explain his possession, are the facts which have to be taken into consideration. For drawing presumption under Section 114, two essential elements necessary to be established are possession of articles and that the possession is soon after the incident. In other words, both the corpus and animus are to be established by the prosecution for raising the presumption of possession under Section 114 of Evidence Act. It is equally true that to raise presumption under Section 114A, the prosecution must establish ownership of property by complainant, its theft and possession by the accused.”

21. Therefore, it was incumbent for the prosecution to prove on record firstly the theft committed by the accused persons and thereafter possession of alleged motorcycles from the accused. However, in the present case prosecution has been miserably failed to prove on record the theft, as alleged by them. Non-examination of other material witnesses of the present case is also fatal to the version of the prosecution. Link

evidence to connect the accused with the alleged commission of offence is also missing in the present case, more so, when there is no direct evidence against the accused regarding the alleged commission of theft. Therefore, there are certain flaws in the version of prosecution which remained unexplained at the part of prosecution agency. Even otherwise, there is not an iota of evidence to prove the ingredients of the offence pertaining to false registration number plate punishable under Section 482 of IPC. Therefore, this court is of the considered view that prosecution has miserably failed to prove its case against the accused beyond reasonable shadow of doubt and this creates doubt about the story of the prosecution and benefit of doubt always goes in favour of accused.

22. It is well settled that prosecution has to prove its case against the accused beyond all shadows of reasonable doubts. In **State of Haryana Vs. Shamsher Singh, reported in 2006 (3) RCR (Criminal) 346 (P&H) (DB)**, 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 becomes extremely difficult for the Court to pronounce a person guilty in the absence of fool-proof evidence nailing guilt by the accused person.

23. Apart from this, even if the occurrence is viewed from another angle giving due regard to the facts of the prosecution and the persons present there stepped into witness box and deposed on the similar lines along with the evidence that an occurrence has took place at the spot.

However, on the contrary, the prosecution story being dented by various reasonable doubts as discussed in detail above definitely calls for acquittal of the accused. In “State of Rajasthan Vs Raja Ram, 2003(4) R.C.R (Criminal) 238”, it has been held by Hon’ble Supreme Court that “The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in that case, on pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent.” This view has been reaffirmed by the Hon’ble Apex Court in “Upendra Pradhan Vs State of Orissa 2015 (2) R.C.R.(Criminal) 907”.

24. On the basis of aforesaid detailed discussion, this Court is of the considered opinion that prosecution has miserably failed to bring home the guilt of the accused and to prove case against the accused beyond the reasonable shadow of doubt. Thus, accused facing trial are hereby **acquitted** of the offences, for which, they are charged for. The accused are ordered to be set at liberty.

25. The bail/surety bonds already furnished in the case shall remain intact for a period of six months from the date of passing of this judgment as bail/ surety bonds under Section 437-A Cr.P.C. Intimation be sent to the sureties of the accused and the same shall stand discharged automatically on expiry of six months from the date of judgment.

26. The case property is ordered to be dealt with, as per rules,

after the expiry of period of appeal or revision, if any. File be consigned to the Judicial record room, Faridkot, after due compliance.

Pronounced in Open Court
Dated: 11.06.2024

Shinku Kumar, PCS
Judicial Magistrate Ist Class
Faridkot, UID No. PB0571.

I attest to the accuracy and
authenticity of this document
Typed by: Suraj Bansal, Stenographer G-III

CERTIFICATE

Note:- Certified that this judgment contains **(13) Thirteen** pages which are signed by me and which have been directly dictated and typed on computer.

Dated: 11.06.2024

Shinku Kumar, PCS
Judicial Magistrate Ist Class
Faridkot, UID No. PB0571.

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