

1 State Vs Balkar Singh etc

**In the Court of Tanvi Gupta, PCS
Judicial Magistrate Ist Class, Sunam
UID No. PB-0613**

Challan Filing No.1335 of 31/8/2022
CNR No.PBSGA1-001335-2022
CIS: CHI/132/2022
Date of decision: 31/1/2024

State

Versus

1. Balkar Singh @ Jaggi son of Bhola Singh @ Theekar son of Chhaju Singh, resident of Amra patti, village Sheron.
2. Kuldeep Singh @ Bhola son of Kala Singh, resident of Amra patti, village Sheron.
3. Raju Singh @ Jagraj son of Leela Singh son of Kartar Singh, resident of Amra patti, village Sheron.

.....Accused.

FIR No.79 dated 29/10/2021
U/s.457,380 and 411 of IPC
P.S Cheema.

Present: Shri Chander Goyal, APP for the State.
All the accused on bail with counsel Shri JS Changal, Adv.,

JUDGMENT

1. The Station House Officer (hereinafter referred to as 'SHO' for brevity), Police Station, Cheema has sent the above mentioned accused to stand trial for offence punishable under Sections 457,380 and 411 of Indian Penal Code, 1860 (hereinafter referred to as 'IPC' for brevity).
2. Brief facts as per the prosecution story are that the present case was got registered on the basis of statement of the complainant

Tanvi Gupta, JMJC, Sunam

2 State Vs Balkar Singh etc

Kuldeep Singh son of Sukha Singh son of Mangat Singh, resident of Namol, at present scrap shop, near Bus stand, Shahpur Kalan, Village Sheron, who stated that he runs a scrap shop in village Sheron. On 28/10/2021 as per routine, he locked his shop went to his house. On 29/10/2021 at about 8:00 AM, he came to the shop and checked the scrap material. He noticed that his scrap saag cutter machine, scrap iron fan tubs, scrap iron vandi of four inches, one iron plate of four inches and other iron scrap material had been stolen on the intervening night of 28-29/10/2021 by climbing the wall by some unknown person/persons. He went to the scrap shops of Mulakh Raj and Gopal Kumar and came to know from Mulakh Raj that Kuldeep Singh @ Bhola and Raju Singh @ Jagraj came to his shop for selling the said stolen articles on a motor cycle bearing no.PB13-BM-3644 make Bajaj CT-100. Then, brother of complainant Hardeep Singh went to the shop of Mulakh Raj on motor cycle and Chamkaur Singh son of Darshan Singh and Jaswinder Singh son of Kala Singh, residents of Sheron also reached there. Upon asking, accused Kuldeep Singh and Raju Singh disclosed that Balkar Singh @ Jaggi was also with them at the time of committing theft. Then he(complainant) and his brother Hardeep Singh took Balkar Singh to the shop of Mulakh Raj and he admitted regarding having stolen scrap material from the shop of complainant. After admitting the statement to be correct, the complainant put his signatures in punjabi langauge. On the basis of his statement, present FIR was registered against the accused. The offence under Section 411 of IPC was added. The Investigating Officer

3 State Vs Balkar Singh etc

initiated the investigation, prepared the site plan, and recorded the statements of the witnesses under Section 161 Code of Criminal Procedure, 1973 (hereinafter 'Cr.P.C' for brevity). Accused were arrested. After completion of the investigation and other necessary formalities, the present challan was presented against the accused.

3. On receipt of the challan, the requisite copies of the challan and other documents attached with it were supplied to accused free of cost in compliance with the provisions of section 207 Cr.P.C.
4. After going through the case file and hearing the submissions of both the sides, prima facie case punishable under Sections 457,380 and 411 IPC was made out against the accused and accordingly, accused were charge-sheeted under the above mentioned sections. Charge was read over and explained to the accused in vernacular, which they understood and pleaded not guilty and claimed to face trial.
5. The prosecution, in order to prove its case against the accused, examined Kuldeep Singh as PW1, Chamkaur Singh as PW2, Hardeep Singh as PW3, Jaswinder Singh as PW4, Mulakh Raj as PW5 and SI Balwant Singh as PW6. Thereafter, learned APP for the State closed the prosecution evidence.
6. Statements of accused under Section 313 Cr.P.C. were recorded in which all the incriminating evidence that appeared against them was put to them, which they denied and pleaded false implication. Accused opted not to lead any evidence in defence.
7. I have heard the respective submissions raised by learned APP

4 State Vs Balkar Singh etc

for the State and defence counsel. After hearing the learned APP for the State and learned defence counsel, I have made the following points of determination:-

(a) Whether on the intervening night of 28-29/10/2021 in the area of near Bus Stand Shahpur Kalan, all the accused committed lurking house tress pass by entering into the shop of complainant Kuldeep Singh for committing the offence of theft and thereby committed an offence punishable under section 457 IPC?

(b) Whether on the same date, time and place, all the accused entered the shop of complainant and committed theft of saag cutting machine, iron roof fan, one Boki four inch, iron pipe of two feet, one iron broken tulu pump, one four inch body iron pipe, one four inch plate iron and other iron material of scrap and thereby they committed an offence punishable under section 380 of IPC?

(c) Whether the accused were found in possession of above mentioned stolen items which they knew or had reason to believe to be stolen property and that said property belonged to complainant Kuldeep Singh and thereby they committed an offence punishable under section 411 of IPC?

(d) Whether the evidence led by the prosecution is sufficient to hold the accused guilty of the above said offence?

8. During the course of arguments, learned APP for the State has contended that although the complainant Kuldeep Singh and witnesses Chamkaur Singh, Hardeep Singh, Jaswinder Singh and Mulakh Raj during their examination in chief have not supported the prosecution version and were declared hostile as they resiled from their statements under Section 161 Criminal Procedure Code, yet the accused can be

5 State Vs Balkar Singh etc

convicted on the basis of the statements suffered by other witnesses before the police. The prosecution also examined other witness i.e. Investigating Officer and his statement recorded before the police has duly proved the offences made out against the accused and as such accused is liable to be punished accordingly.

9. Whereas, learned defence counsel has argued that as the main witnesses i.e. the complainant Kuldeep Singh and witnesses Chamkaur Singh, Hardeep Singh, Jaswinder Singh and Mulakh Raj during their examination in chief have resiled from their statements recorded before the police and have not supported the prosecution, the prosecution has failed to prove its case beyond shadow of any reasonable doubt and prayed for the acquittal of the accused.
10. After hearing the arguments advanced by learned APP for the State as well as learned defence counsel, I have perused the entire material available on the judicial file. In this case the prime and star witness of the case i.e. the complainant Kuldeep Singh (PW-1) himself has not supported the prosecution version and was declared hostile on the request made by learned APP for the State and this witness has resiled from his previous statement recorded before the police. This witness stated that he does not identify the accused present in the Court as same persons who committed the theft in his shop on the intervening night of 28-29/10/2021. PW2 Chamkaur Singh, PW3 Hardeep Singh, PW4 Jaswinder Singh and PW5 Mulakh Raj, other witnesses of present case while appearing in the witness box deposed on the same lines as that of PW1 Kuldeep Singh and

6 State Vs Balkar Singh etc

resiled from their statements recorded before the police during their examination in chief. Learned APP for the State has cross-examined these witnesses at length, but they stuck to their statements. It is pertinent to mention here that statement suffered by the these witnesses before the police is neither per se admissible nor it has got any evidentiary value in the eyes of law. The offences under which the charges have been framed against the accused can only be proved on the basis of the statements of the witnesses recorded in the Court, but in this case the complainant and material witnesses of the prosecution has turned hostile and did not establish the offences as alleged in the report under Section 173 Cr.P.C. As such, from the cross-examination of PW-1 to PW5 conducted by learned APP for the State, he has failed to extract anything fruitful which is beneficial to the version of the prosecution. The star witnesses have failed to identify the accused persons. PW6 SI Balwant Singh, Investigating Officer of present case proved on record statement of complainant as Ex.PW1/A, police proceedings as Ex.PW6/A, FIR as Ex.PW6/B, endorsement regarding FIR as Ex.PW6/C, recovery memo of stolen articles as Ex.PW1/B, recovery memo of offending motor cycle bearing no.PB13BM-3644 as Ex.PW6/D, arrest memo of accused as Ex.PW1/C, their personal search memo as Ex.PW6/E and case property as Ex.MO1 and Ex.MO2. The statement of IO is not sufficient to hold the accused guilty in the present case. So, far as the offence under Section 411 is concerned, the prosecution has failed to prove the effecting of recovery from the accused and as per

7 State Vs Balkar Singh etc

Ex.PW6/D even the stolen items have been produced by the complainant

11. Therefore, in view of the above discussion, in the present case the prosecution has failed to produce sufficient evidence against the accused to prove the charges framed against them and they are hereby acquitted of the charges framed against them. Their bail bonds and surety bonds also stand discharged. Case property, if any, be dealt with as per the rules after the expiry of the period of limitation of appeal or revision, as the case may be. File be consigned to the record room after due compliance.

**Announced in open court
Dated: 31/1/2024**

**(Tanvi Gupta), PCS
Judicial Magistrate Ist Class,
Sunam
UID No.PB0613**

Shavinder Kumar Stenographer Gr. II

8 State Vs Balkar Singh etc

Present: Shri Chander Goyal, APP for the State.
All the accused on bail with counsel Shri JS Changal, Adv.,

Accused closed their defence evidence. Compliance of provision of Section 437-A Cr.PC has already been made.

Arguments heard. Vide my separate judgment of even date, accused have been acquitted. Their bail bonds and surety bonds also stand discharged. Case property, if any, be dealt with as per the rules after the expiry of the period of limitation of appeal or revision, as the case may be. File be consigned to the record room after due compliance.

Announced in open court
Dated: 31/1/2024

(Tanvi Gupta), PCS
Judicial Magistrate Ist Class,
Sunam
UID No.PB0613

Shavinder Kumar Stenographer Gr. II