

**CRA-S No.3154 of 2023 (O&M)****1**

2024:PHHC:078283

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****Reserved on 24th of April, 2024
Pronounced on 30th May, 2024****CRA-S No.3154 of 2023 (O&M)**

Navdeep @ Chhotu and another

....Appellants

Versus

State of Haryana

....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAINPresent : Mr. Madhur Singh, Advocate
for the appellant.

Mr. R.K. Ambavta, AAG, Haryana.

PANKAJ JAIN, J. (ORAL)

Appellants are before this Court assailing judgment of conviction dated 10th of January, 2023 passed by Additional Sessions Judge, Fatehabad convicting them of offence punishable under Section 412 IPC and sentencing vide order dated 13th of January, 2023 as under :

Name	Offence	Sentence	Fine	In case of default of payment of fine to undergo further R.I.
Navdeep @ Chhotu	412 IPC	5 years	Rs.10,000/	3 months
			-	
Sudhir	412 IPC	5 years	Rs.10,000/	3 months
			-	

2. Appellants were booked for offence punishable under Section 412 IPC in FIR No.167 dated 1st of September, 2020, registered for offence

**CRA-S No.3154 of 2023 (O&M)****2**

2024:PHHC:078283



punishable under Section 412 of IPC at Police Station Bhattu Kalan, District Fatehabad. As per the case of the prosecution, on 1st of September, 2020 the police party while patrolling received a secret information that a person is in possession of a Swift Dzire Car without number plate which is a proceed of snatching. The road was barricaded. Accused No.2 was apprehended in possession of a white colour Swift Dzire Car. He suffered a disclosure that the said vehicle was left with him by co-accused Navdeep @ Chhotu. It is further case of the prosecution that accused Navdeep – appellant No.1 was apprehended who suffered a disclosure and submitted that Swift Desire Car was proceed of loot. Trial Court relied upon the statement of Gurpreet Singh PW5. As per his testimony, he claimed that he was travelling in his car bearing Registration No.PB-11CJ-5097 to his house from Gurugram. His car was looted by 4 young boys at gun point near Sugar Mill, Jind. FIR No.306 dated 25th of August, 2020 was registered for the offence punishable under Sections 395 IPC and Section 25 of Arms Act. Trial Court thus held that the prosecution has been able to prove recovery of car in question from appellant No.2 Sudhir which was handed over to him by appellant No.2 Navdeep @ Chhotu. Trial Court in view of above held both the appellants guilty of offence punishable under Section 412 IPC and sentenced them as stated in Para 1 *ibid*.

3. Counsel for the appellants asserts that the Trial Court has totally misdirected itself in relying upon the extra judicial confessions alleged to have been made by Sudhir accused/appellant No.2 and that by the Navdeep



CRA-S No.3154 of 2023 (O&M)

3

2024:PHHC:078283



@ Chhotu appellant No.1. He submits that though as per the prosecution, recovery has been effected from appellant No.2 Sudhir but there is no cogent piece of evidence to show involvement of appellant No.1 apart from the disclosure statements while in police custody which are apparently hit by provisions of Sections 25 and 26 of Evidence Act.

4. It has been further contended that in order to constitute offence punishable under Section 412 of the Penal Code, prosecution has to prove that the appellants are guilty of having dishonestly received or retained stolen property, the possession thereof they know or has a reason to believe to have been transferred by commission of dacoity. Dacoity as defined under Section 391 of the Code requires 05 or more persons conjointly committing or attempting to commit a robbery. Gurpreet Singh son of Sukhwinder Singh, owner of the car which is stated to be proceed of dacoity appeared as PW-5 and claimed that on 24.08.2020 while he was going on his car, he was stopped by 04 young boys. He thus submits that even if the case of the prosecution is taken on its face value, the car claimed to have been recovered from the appellants cannot be stated to be proceed of dacoity and thus the appellants ought not have been convicted for offence punishable under Section 412 IPC.

5. *Per contra*, State counsel submits that the appellant No.2 Sudhir was found to be in possession of car No.PB-11CJ-5097 which is subject matter of FIR No.306 dated 25.08.2020, registered for offence punishable under Section 395 IPC read with Section 25 of Arms Act at Police Station

**CRA-S No.3154 of 2023 (O&M)****4**

2024:PHHC:078283



Sadar, Jind and the proceed of loot by 04 young boys at gun point. Appellant No.2 Sudhir suffered a disclosure that he was handed over the car in question by Navdeep @ Chotu appellant No.1 and thus there being a clear link established, the trial Court rightly convicted them holding guilty for offence punishable under Section 412 of IPC.

6. I have heard rival contentions of the parties and have carefully gone through the records of the case.

7. The case of the prosecution is that a secret information was received by the patrolling party that one person having Swift Dzire car without number plate was trying to sell the same which was a result of robbery. After sometime, the car was apprehended which was being driven by appellant-Sudhir. The car was without number plate. Sudhir was arrested and interrogated. During investigation, he named appellant No.1 Navdeep @ Chotu as the source of the car. Accused-Navdeep @ Chotu was produced before the Court through video conferencing on production warrant. On his interrogation, he is stated to have also suffered a disclosure admitting that it was he who handed over the car to accused Sudhir. ASI Ravinder Kumar appeared as PW-1. FIR bearing No.306 dated 25.08.2020, registered for offence punishable under Section 395 IPC read with Section 25 of the Arms Act was proved by PW-3 SI Satish Kumar, who further proved that Mohit was arrested which led to further arrest of Navdeep @ Chotu, Harikesh and Shekhar in the said FIR. The contents of the said FIR No.306 were proved by examining Gurpreet Singh son of Sukhwinder Singh as

**CRA-S No.3154 of 2023 (O&M)****5**

2024:PHHC:078283



PW-5. Apart from disclosures made by the co-accused while in police custody, there is no other incriminating evidence against Navdeep. Recovery of car is alleged to have been made from Sudhir Kumar. Testimony of PW-5 Gurpreet Singh son of Sukhwinder Singh reads as under:-

“testified that on 24.08.2020, he was going on his car bearing registration No PB-11CJ-5097 to his house from Gurugram and when he reached near Sugar Mill Jind, then a car stopped his way by stopping the said car in front of his car from the said car, four young boys stepped down having pistol with them and on the point of pistol, they looted his car at about 11:00 PM. In this regard, he got registered case FIR No 306 dated 25.08.2020, under Section 395 of IPC and 25 of Arms Act at Police Station, Sadar Jind Later on, he came to know that his above said car was recovered by police in the present case. He took his above said car on superdari from the Fatehabad Court vide order Ex P27 which he produced in the Court, parked outside the Court complex which is Ex P28 Investigating Officer recorded his statement under Section 161 of CrPC.

(Car bearing Registration No PB-11CJ-5097 returned to the witness.)”

8. Thus, the precise allegation by Gurpreet Singh PW-5 with respect to snatching of the car is that he was robbed of the same by 04 young boys on pistol point. The question is whether robbery committed by 04 persons falls within the ambit of ‘dacoity’. Section 391 of Code defines ‘dacoity’ and the same reads as under:-



CRA-S No.3154 of 2023 (O&M)

6

2024:PHHC:078283



“391. Dacoity.—

When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit “dacoity”

9. Section 412 of the Code reads as under:-

“412. Dishonestly receiving property stolen in the commission of a dacoity.—

Whoever dishonestly receives or retains any stolen property, the possession whereof he knows or has reason to believe to have been transferred by the commission of dacoity, or dishonestly receives from a person, whom he knows or has reason to believe to belong or to have belonged to a gang of dacoits, property which he knows or has reason to believe to have been stolen, shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

10. In order to attract offence of dacoity as adumbrated under Section 391 of the Code, the essential ingredient is commission of robbery by 05 or more persons conjointly. In order to constitute offence punishable under Section 412, it is quite essential that the proceeds must be result of dacoity. Thus, statement of PW-5 and the contents of FIR No.306 when gazed in the light of aforesaid provisions, it is evident that the offence as alleged under FIR No.306 does not constitute offence of dacoity as defined



CRA-S No.3154 of 2023 (O&M)

7

2024:PHHC:078283



under Section 391 of the Code. The property i.e. car was snatched at the gun point by 04 persons involved can also not be said to be members of the gang of dacoits.

11. As a result, this Court finds that the conviction of the appellants under Section 412 IPC can be maintained. The appeal qua appellant No.2 Sudhir is thus allowed to the extent that his conviction is altered qua offence punishable under Section 412 IPC to the one qua offence punishable under Section 411 IPC. Sudhir is resultantly held guilty of offence punishable under Section 411 IPC. So far as appellant No.1 Navdeep @ Chotu is concerned, apart from the disclosures made in the present case by both the accused while in police custody, there is no other incriminating evidence against him.

12. Question is whether confession made by accused while in police custody can be relied upon. Answer is in the provision contained under Section 25 of the Evidence Act which reads as under:-

“Confession to police officer not to be proved.-

No confession made to a police officer, shall be proved as against a person accused of any offence.”

13. In *State of U.P. vs. Deomon Upadhyaya (1961) 1 SCR 14*, Apex Court in a larger bench has interpreted Section 25 of Evidence Act and held as under:-

“7..... By Section 24, in a criminal proceeding against a person, a confession made by him is inadmissible if it appears to the court to have been caused by inducement,



CRA-S No.3154 of 2023 (O&M)

8

2024:PHHC:078283



threat or promise having reference to the charge and proceeding from a person in authority. By Section 25, there is an absolute ban against proof at the trial of a person accused of an offence, of a confession made to a police officer. The ban which is partial under Section 24 and complete under Section 25 applies equally whether or not the person against whom evidence is sought to be led in a criminal trial was at the time of making the confession in custody. For the ban to be effective the person need not have been accused of an offence when he made the confession. The expression, "accused person" in Section 24 and the expression "a person accused of any offence" have the same connotation, and describe the person against whom evidence is sought to be led in a criminal proceeding. As observed in *Pakala Narayana Swami v. King Emperor* by the Judicial Committee of the Privy Council: (SCC OnLine PC)

‘... Section 25 covers a confession made to a police officer before any investigation has begun or otherwise not in the course of an investigation.’

The adjectival clause “accused of any offence” is therefore descriptive of the person against whom a confessional statement made by him is declared not provable, and does not predicate a condition of that person at the time of making the statement for the applicability of the ban."

14. Likewise, in *Aghnoo Nagesia v. State of Bihar (1966) 1 SCR 134*, the Court held that:-

"9.... Section 25 provides:

‘25. Confession to police officer not to be



CRA-S No.3154 of 2023 (O&M)

9

2024:PHHC:078283



proved- No confession made to a police officer, shall be proved as against a person accused of an offence.'

The terms of Section 25 are imperative. A confession made to a police officer under any circumstances is not admissible in evidence against the accused. It covers a confession made when he was free and not in police custody, as also a confession made before any investigation has begun. The expression "accused of any offence" covers a person accused of an offence at the trial whether or not he was accused of the offence when he made the confession."

15. In view of the above confession made by accused in police custody cannot be relied upon to hold appellant guilty.

16. Keeping in view that the appellant-Navdeep @ Chotu has also undergone actual custody of 03 years, he is ordered to be released for offence undergone the same.

17. Ordered accordingly.

(PANKAJ JAIN)
JUDGE

30th May, 2024

Dinesh

Whether speaking/reasoned Yes

Whether Reportable : Yes