

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRA-S-117-SB of 2004
Date of Decision : 18.11.2015**

Manmohan Lamba

.....Appellant

Versus

State of Punjab

.....Respondent

CORAM:- HON'BLE MR. JUSTICE GURMIT RAM

Present: Mr. Gurcharan Dass, Advocate
for the appellant.

Mr. A.S. Klar, AAG, Punjab.

GURMIT RAM, J.

This appeal is preferred by above-said appellant Manmohan Lamba against the judgment and order of sentence dated 6.12.2003 passed by the Court of learned Additional Sessions Judge (*Ad hoc*), Ludhiana in criminal case bearing FIR No.274 dated 3.12.2001, under sections 411, 328 and 379 of the IPC, Police Station Sarabha Nagar, Ludhiana vide which he was held guilty for the offences punishable under Sections 328 and 379 of the IPC and awarded sentence thereunder.

2. Briefly, the case of prosecution as presented before the

learned trial Court was that on 3.12.2001, ASI Baldev Singh along with other police officials of Police Station Sarabha Nagar, Ludhiana was present near water tank, Sunet in connection with patrolling. There one secret informer informed him that Rajesh Sehgal alias Bablu son of Amrit Pal Sehgal, resident of Mohalla Asmani Building, in front of Alfa Tower, Ludhiana and Manmohan Lamba alias Bittu son of Sant Ram, resident of LIG Colony, Ludhiana are habitual to pilfer the goods of people after serving them intoxicants in biscuits in the buses and trains. Now both of them are present in the area of bus stand Aggar Nagar and if raid be made just now then they could be apprehended along with stolen articles and biscuits of intoxicant. This information being found to be reliable and solid, ruqqa was sent to the police station for registration of the case under sections 328 and 379 of the IPC, on the basis of which, the instant case was registered against above-said both Rajesh Sehgal and Manmohan Lamba. Then this police officer along with his police party conducted a raid in the area of bus stand, Aggar Nagar where two persons were found standing, who were apprehended. During interrogation, one of them told his name as Rajesh Sehgal alias Bablu and second one told his name as Manmohan Lamba @ Bittu as above described. During interrogation, one mobile phone make Panasonic, Model No.EB-GD-92 of grey colour was recovered from Rajesh Sehgal alias Bablu which was taken into police possession vide a memo. During further interrogation, both of them confessed that they had stolen this mobile phone from a bus passenger after serving him intoxicant in biscuit. Then both the accused were formally arrested in this case. Site-plan of the place of occurrence

was prepared. Statements of witnesses were recorded. On the completion of investigation, challan against the accused was presented in the Court of learned Illaqa Magistrate, Ludhiana who after making compliance of the provisions of section 207 of Cr.P.C. committed this case to the Court of learned Sessions Judge, Ludhiana for the trial.

3. Finding a prima facie case for the offences punishable under sections 328 and 379 of IPC against the accused, they were charge-sheeted accordingly, to which, they pleaded not guilty and claimed trial.

4. During trial of the case, prosecution examined five witnesses in all to prove its case.

Then as per the record, accused Rajesh Sehgal absconded from the Court during the trial proceedings and he was declared as a proclaimed offender vide order dated 6.6.2003.

5. Then accused Manmohan Lamba was duly examined as per the provisions of section 313 of Cr.P.C. Entire incriminating evidence as brought on the file against him during trial of the case was put to him, which was denied by him entirely. Further he pleaded his innocence and false implication in this case.

6. After hearing the learned counsel for both the parties and going through the record, the learned trial Court held accused Manmohan Lamba guilty for the offences punishable under sections 328 and 379 of the IPC vide the impugned judgment and awarded him sentence as detailed below:-

under Section 328, IPC.	To undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.1,000/- and in default of payment of fine, accused shall suffer further rigorous imprisonment for one month.
under Section 379, IPC.	To undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.200/- and in default of payment of fine, accused shall suffer further rigorous imprisonment for a period of ten days.

7. Appellant(accused) being not satisfied with the impugned judgment and order of sentence has come up in the instant appeal before this Court, notice of which was given to the respondent – State. Trial Court record was also requisitioned.

8. I have heard the learned counsel for the appellant, learned State counsel and have also gone through the record with their able assistance.

9. Learned counsel for the appellant has contended that there was delay of more than one month between the date of alleged occurrence and the date of recording of the FIR regarding which there is no explanation on the part of prosecution and consequently the possibility of false implication of the appellant in this case cannot be ruled out. It is further his contention that it is the case of prosecution that appellant Manmohan Lamba along with his co-accused Rajesh Sehgal (proclaimed offender) had stolen the mobile phone and a gold ring of the complainant after administering him biscuit containing intoxicant substance while they were travelling in a bus from Ludhiana to Jalandhar. In this regard he has also contended that appellant and complainant were not known to each other prior to the alleged occurrence. The above-said articles were allegedly stolen from the complainant while he was under the influence of some intoxicant due to consumption of biscuit containing intoxicant

substance. He has also submitted that in such a situation, it was required for the prosecution to conduct test identification parade in order to establish the identity of the appellant for his alleged involvement in the commission of the crime regarding which the prosecution did not take any step during the investigation and on this ground also the story of prosecution as alleged is discrepant. Then he has also referred to the statement of PW5 ASI Gurbinder Singh wherein he has admitted in his cross-examination that there is overwriting regarding date mentioned below the statement of PW1 Pargat Singh. Then it is also his submission that call identification facility was not available on the alleged telephone of PW Pargat Singh on the relevant date and as such it was difficult to find out from which telephone number, call was being made on his telephone. Lastly, he has contended that the entire impugned judgment recorded by the learned trial Court is based on mere surmises and conjectures and as such the same is liable to be set aside being not tenable from any point of view in the eyes of law.

10. But on the other hand, the learned State counsel has argued that the nature of the case and its surrounding circumstances as had come in the evidence of prosecution during the trial of the case are such which are self-explanatory with regard to the alleged delay in lodging the FIR. Then it is further his contention that the appellant himself had admitted his involvement in the commission of the alleged crime vide compromise Ex.P1 dated 30.11.2001 which was effected in the presence of respectables of both the parties bearing his signatures as well as of the respectables. Regarding this, it is further his contention that in

view of this compromise Ex.P1, appellant cannot wriggle out of his involvement in the commission of the alleged crime. Then further he contended that the impugned judgment of conviction is certainly tenable in the eyes of law being supported by the evidence available on the file. Lastly, he controverted above entire contentions of learned counsel for the appellant and prayed for dismissal of the appeal.

11. Before proceeding on the above rival contentions of both the parties, I deem it necessary to have a bird's eye view of the evidence as had come on the record during the trial of the case.

ASI Baldev Singh conducted the part investigation of this case and rather he was also the complainant since the case was registered on the basis of ruqqa sent by him on the basis of some secret information. He appeared in this case during the trial of the case as PW4. His statement was to the effect that on 3.12.2001 while he was posted in Police Station Sarabha Nagar, Ludhiana, he was present near water tank village Sunet. There he received a secret information that Manmohan Lamba and Rajesh Sehgal who used to rob the people by administering them sedative/intoxicant substance in biscuits are now present at bus stand Aggar Nagar. Their description was also given. On the basis of this secret information, ruqqa Ex.PW4/1 was drafted, on the basis of which formal FIR Ex.PW4/2 was recorded. Then he along with other police officials went to that disclosed place. There two persons, as per the description given by the informer, were found present who on inquiry disclosed their names as Rajesh Sehgal and Manmohan Lamba. From the personal search of accused Rajesh Sehgal, one mobile phone Ex.P2 and

currency notes of Rs.90/- were recovered which were taken into police possession vide memos Ex.PB and Ex.PC, respectively. Personal search of accused Manmohan Lamba led to the recovery of currency notes of Rs.110/- which were taken into police possession vide memo Ex.PD. Further he also proved the site-plan Ex.PW4/3 and identified the accused present in Court and also deposed about their formal arrest.

PW2 HC Pardeep Kumar was one of the members of the police party headed by ASI Baldev Singh on the relevant date. He also revealed about the arrest of the accused, recoveries made from them and the memos vide which recovered articles were taken into police possession.

PW5 ASI Gurbinder Singh also conducted the part investigation in this case. At the relevant time, he was posted as Incharge, Police Post, P.A.U. Ludhiana. On 27.4.2002, PW Ajay Kumar and Pushpinder Kumar produced before him photocopy of a bill regarding purchase of one mobile set and a bill pertaining to telephone call details which were taken into police possession vide memo Ex.PW3/3.

PW1 Pargat Singh was another star witness of prosecution in this case. His statement was to the effect that telephone number 505090 was installed at his residential house No.666, LIG, Dugri, Ludhiana and he knew Manmohan Lamba @ Bittu who was residing in front of his said residence. The said Manmohan Lamba @ Bittu made 3-4 calls on different occasions at his above-said telephone number from his mobile phone. The person to whom the said mobile belonged was resident of Jalandhar, who inquired about their identity. Later on, the said person

came to his residence at Ludhiana and he called Manmohan Lamba @ Bittu in his presence who admitted that he was the same person who was made to eat biscuit. Further he also stated that there was another person accompanying him. Then this witness also stated that this Bittu entered into a compromise Ex.P1 with said person whereby admitting that he took his mobile phone and a gold ring and undertook to return these articles along with a sum of Rs.30,000/- as the cost of his medical treatment. This compromise was duly signed by this accused and his mother and attested by the witnesses including PW1.

Victim of this case was Ajay Kumar who appeared as PW3. His statement was to the effect that he boarded a bus from Campa Cola Chowk, Ludhiana for going to Jalandhar on 1.11.2001 at about 3:30/4:00 p.m. Manmohan Lamba, who also boarded this bus from that spot, occupied a seat next to him. Near Jalandhar bye-pass Chowk, after becoming friendly with him, he offered him a Chocolate Cream Biscuit, half of which was consumed by him and remaining he threw since its taste was bitter. Till Phagwara, he was semi-conscious and thereafter he became unconscious. When he gained his consciousness on 3.11.2001, he found himself present in a hospital and learnt that his mobile phone GD 92 and one gold ring were missing which were removed by Manmohan Lamba. Then he contacted the office of Spice Cell Phone and enquired about the usage of his mobile connection and company persons told him that his mobile phone was used and the bill with regard to call details was issued on 30.11.2001 which was Ex.PW3/1. From this call detail bill, it was found that most of the calls were made on telephone number 505090

of Ludhiana and thereupon he contacted its owner (consumer) which call was attended by Pargat Singh who told him that the calls in question were made on his number by their neighbour Manmohan Lamba @ Bittu. Then this witness went to the house of said Pargat Singh at Ludhiana where said Manmohan Lamba was also called and in their presence, he tendered apology and admitted that he had stolen a mobile phone and gold ring by administering sedative to him vide a writing Ex.P1. Then on 30.11.2001, this Manmohan Lamba met them at Jalandhar and disclosed that he did the above-said act at the instance of Rajesh Sehgal. The mobile which was stolen was produced in the Court as Ex.P2 and photocopy of the bill vide which it was purchased as Ex.PW3/2.

12. During the trial, it was well proved on the record beyond the doubt that appellant Manmohan Lamba and PW1 Pargat Singh were neighbours to each other. As per the case of prosecution, the alleged stolen mobile of PW3 Ajay Kumar was being used by Manmohan Lamba for making phone calls from this mobile phone on the telephone number installed at the residence of PW1 Pargat Singh. When two or more persons are neighbours to each other then they become acquainted with each other to such an extent that they could identify each other from their respective voices or way of talking. Attested copy of the bill issued by Spice Telecom in this connection came on the record as above-said during the trial of the case as Ex.PW3/1 which depicted that the phone calls were made by this appellant from the stolen mobile phone in question on the landline telephone number of PW1 Pargat Singh. So in this backdrop, the contention that no call identification facility was available on the

telephone of PW1 Pargat Singh during the relevant time does not make out a good ground to dislodge the version of prosecution.

13. Admittedly, there was a delay of more than one month in the registration of this case as the alleged occurrence took place on 1.11.2001 whereas matter was reported to the police on 3.12.2001 vide ruqqa Ex.PW4/1 on the basis of which FIR Ex.PW4/2 was registered. In this connection as above-said, it is contended by learned counsel for the appellant that prosecution had miserably failed to bring on the record any explanation qua this delay in lodging the report and as such the entire case of prosecution is like a sand wall with no substance to rely upon it. But in the case in hand as per the version of prosecution, PW3 Ajay Kumar after losing his mobile, reported this matter to the concerned mobile company which on verification of record found that this mobile number is still in operation and from the bill of calls' detail Ex.PW3/1, its user and the person on whose phone number the calls were being made from this mobile phone were traced out. Then the matter was taken up with both of them and even a panchayat (gathering) of both the parties was convened in which the present appellant confessed his involvement in the commission of the crime along with his co-accused Rajesh Sehgal (proclaimed offender during the trial) vide writing Ex.P1 and undertook to compensate said PW3 Ajay Kumar qua the cost incurred on his medical treatment and to return the stolen articles. Thereafter, the instant case was got registered. So in the light of the above circumstances, delay in lodging the report in this case has vividly been explained beyond all shadow of doubt leaving nothing on the record to suspect the version of prosecution

on this account. Then in this case, it is also very interesting to note that the investigation work which the investigating agency had to do after registration of the case was done by PW3 Ajay Kumar at his own level prior to its registration in collaboration with the concerned Spice Telecom.

14. Then the learned counsel for the appellant has also pointed out the failure on the part of the investigating agency to conduct test identification parade in this case in order to establish the identity of the appellant for holding his involvement in the commission of the alleged crime. But in the case in hand as above-said, a writing in the shape of compromise Ex.P1 had come on the record during the trial of the case vide which the present appellant had admitted his involvement in the instant case and undertook to return the stolen articles and further to compensate PW3 Ajay Kumar with regard to the cost incurred by him on his medical treatment. This writing was signed by him as well as his mother Kamlesh along with witnesses Anil Kumar, Pargat Singh and others. Then it also came on the record that after boarding a bus from Campa Cola Chowk, Ludhiana, present appellant sat with PW3 Ajay Kumar and became friendly with him. Thereafter, he served him biscuit containing intoxicant substance in order to achieve his illegal design i.e. to rob his mobile phone and a gold ring in which he succeeded. So in the light of these circumstances, there was no need to conduct any test identification parade to establish the identity of the appellant for holding him liable in the instant case particularly in view of the above-said writing Ex.P1. Then it is also to note that FIR was got registered in this

case on 3.12.2001 and whereas this writing Ex.P1 came into existence on 30.11.2001. Meaning thereby, there was no coercion or any kind of police pressure on this appellant when he had made this writing whereby confessing his guilt.

15. Then it is also argued by learned counsel for the appellant that in this case no recovery of stolen articles was effected from the present appellant nor any alleged biscuit containing intoxicant substance was found from his possession during his search and as such it was difficult to fasten any criminal liability upon him. But as per his own self suffered confession Ex.P1, he admitted his involvement in the alleged illegal activities in association with his co-accused Rajesh Sehgal. So this contention of learned counsel for the appellant also does not cut any ice to hold him innocent in this case.

16. Then the learned counsel for the appellant has also pointed out the overwriting as admitted by PW5 ASI Gurbinder Singh in his cross-examination qua dates put beneath the statements of Pargat Singh and Dr. Nitin Gupta recorded under Section 161 of Cr.P.C. But this overwriting is also not found to be material to disbelieve the version of prosecution. Such like overwriting can usually occur in due course while preparing some documents either on account of slip of pen or tongue.

17. In the light of the above discussion, this appeal qua conviction of appellant being devoid of merits stands dismissed.

18. Then the alleged occurrence was dated 1.11.2001 and a period of about 14 years has already elapsed. During trial, appellant Manmohan Lamba was aged about 38 years and now by this time he

might be of around 50 years. So in these circumstances, the sentence imposed upon him under Section 328, IPC is reduced to rigorous imprisonment for two years from rigorous imprisonment for three years. The remaining part of the sentence imposed upon him is anyhow upheld. With this modification in sentence, this appeal stands disposed of.

A copy of this order be sent to the Court of learned Chief Judicial Magistrate, Ludhiana and trial Court concerned for strict compliance by securing the presence of this appellant and to commit him to concerned jail for undergoing the remaining part of sentence as per law.

18.11.2015
Brij

(GURMIT RAM)
JUDGE

1. To be referred to the Reporters or not? Yes
2. Whether the judgment should be reported in the Digest? Yes