

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

**CRA-S-1741-SB of 2011
DATE OF DECISION :- July 28, 2015**

Smt. Sushma Bansal

...Appellant.

Versus

The State (UT Chandigarh)

...Respondent

CORAM: HON'BLE MR.JUSTICE M.JEYAPPAUL

Present:- Ms. Aditi Girdhar, Legal aid counsel.

Mr. Karanbir Singh, Advocate
for Mr. J.S. Toor, A.P.P. (U.T., Chandigarh)

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the digest? **Yes**

M.JEYAPPAUL, J.

1. Accused Sushma Bansal has challenged the conviction and sentence recorded by the trial Court under Sections 328 and 379 IPC.
2. It is the case of the prosecution that on 10.9.2008 at about 8.00 P.M., accused administered stupefying substance to PW1 Anil Kumar who gave a lift to her on his scooter and robbed him of wrist watch, mobile phone, gold kara and a sum of ₹9200/-.

3. PW1 Anil Kumar has set the law in motion by lodging F.I.R. on 28.9.2008. He deposed that on 10.9.2008 at about 8.00 P.M. when he reached the light point at Sector 36-37, Chandigarh by his scooter after paying visit to his father at Sector 25, Chandigarh, the accused stopped his scooter and asked for lift upto Sector 36, Chandigarh. PW1 gave lift to her. In front of the market at Sector 36, Chandigarh, the accused asked for a cold drink as she was feeling thirsty. PW1 purchased cold drink from the market and gave to the accused. In the meantime PW1 received a phone call and was busy in attending the said call. PW1 consumed cold drink in a glass offered to him, whereas accused consumed the remaining cold drink in the bottle. Thereafter they proceeded to Sector 36, Chandigarh. He felt giddiness and, therefore, he parked the scooter in the parking slot and became unconscious. When he regained consciousness he found himself admitted in PGI, Chandigarh. His gold kara, wrist watch make sonata, cash of ₹9200/- and mobile phone of Nokia make were stolen by the accused after administering stupefying substance in cold drink.

4. PW9 Sub Inspector Jaswinder Singh who investigated the case, deposed that the accused was arrested only on the identification made by PW1, but PW1 denied it and submitted that the accused who was kept in the police station was identified by him as that of the lady who robbed him. The articles which were found in the police station were identified by him.

5. PW7 Dr. Karthik, Department of Medicine, PGI, Chandigarh deposed that on 11.9.2008 PW1 was medico legally examined by Dr. Vinay Devraj. PW1 was found unconscious in a parking area in the morning as per the version of PW1. PW2 Sanjiv Verma, proprietor of M/s Verma Watch and Mobile World spoke about selling of Nokia mobile phone to PW1 Anil Kumar. PW4 proprietor of Vijay Jewellers spoke about the purchase of gold kara from his shop by the complainant. PW11 R.M. Tripathi, Senior Scientific Officer from Central Forensic Science Laboratory deposed that 'Lorazepam' was detected in the sample sent for examination.

6. The accused set up a plea under Section 313 Cr.P.C. that she was innocent but she had been falsely implicated in this case by the police.

7. PW1 Anil Kumar has categorically deposed before the Court that accused who occupied the pillion seat of his scooter administered him stupefying stuff mixed in cold drink and robbed his gold kara, mobile phone, wrist watch and a sum of ₹9200/- after he became unconscious.

8. PW7 Dr. Karthik spoke about medical treatment given to PW1 who was found unconscious in a parking area. The FSL report spoken to by PW11 R.M. Tripathi establishes that stupefying stuff 'Lorazepam' was found in the sample collected sent for examination.

9. PW2 Sanjiv Verma, deposed that it was he who sold mobile phone, marked in this case, to PW1. PW4 Vijay Thakur

deposed that gold kara, exhibited in this case, was sold by him to PW1. The above evidence on record would clinchingly establish that accused having administered stupefying substance to PW1 Anil Kumar robbed him of the above articles.

10. The learned counsel appearing for the appellant would submit that there had been a delay of 17 days in lodging the First Information Report.

11. The learned counsel for U.T., Chandigarh referring to the evidence of PW1 submitted that PW1 has properly explained the delay in lodging the First Information Report.

12. On a perusal of the testimony of PW1, I find that PW1 was in fact admitted for 1½ days as In-Patient in PGI, Chandigarh. Thereafter he had remained under medical treatment for some days and as a result of which he could not contact the police to lodge the First Information Report.

13. The above explanation submitted by PW1 is found to be acceptable. Even otherwise, the delay in lodging the First Information Report had not culminated in fabrication of the case as against the accused, inasmuch as the name of the accused was not indicated in the First Information Report. For all these reasons, I find no reason to reject the case of the prosecution, just because there was a delay of 17 days in lodging the First Information Report.

14. The learned counsel appearing for the appellant would submit that cash amount of ₹9200/- allegedly robbed by the accused

was not recovered from her. The learned counsel for U.T., Chandigarh would submit that non recovery of the cash amount from the custody of the accused does not falsify the case, inasmuch as she was very much identified by PW1 and the other articles were recovered from her possession.

15. I find that there is substance in the submission made by counsel appearing for U.T., Chandigarh. It is a well settled proposition of law that non recovery of the material object in a criminal case does not throw any doubt on the case of the prosecution. But in the instant case, though cash was not recovered from the accused, the other articles, namely, gold kara, wrist watch and mobile phone had been recovered from her possession and the same were identified by PW1.

16. The learned counsel appearing for the appellant would submit that PW1 had not accompanied Sub Inspector Jaswinder Singh to identify the accused for the purpose of effecting arrest, as per the version of PW1. Whereas, PW9 has come out with a different story.

17. The learned counsel for U.T. Chandigarh would bring to the notice of this Court that PW1 turned hostile as regards the arrest of the accused at his instance. It is his submission that the prosecution has established otherwise that the accused was arrested only on the identification of PW1.

18. PW1 has turned hostile qua the arrest of the accused on

identification made by him. PW9 has categorically stated that on 29.9.2008 the police party headed by him went along with PW1 to arrest the accused. Only on the basis of the identification made by PW1, the accused was arrested and recovery was made, PW9 has deposed.

19. The accused could not have been arrested unless PW1 was associated for identification of the accused. Therefore, in my view, PW9 who was examined after about two long years from the date of occurrence, had come out with a slightly different version as regards the arrest of the accused based on his identification. I am of the considered view that the prosecution has established through the evidence of PW9 that accused was arrested only on identification made by PW1.

20. It was lastly submitted that the Court may reduce the sentence considering the fact that the accused had already undergone sentences in two other cases.

21. I find that there is no merit in the above submission made by counsel appearing for the appellant. It is an admitted fact that the accused was convicted in two other cases of similar nature and is facing trial in other cases as well. The accused who was convicted and sentenced for similar offence in other cases and is also facing some other cases, cannot validly and justifiably submit for reduction of sentence.

22. The trial Court has awarded substantial sentence of 5

years under Section 328 IPC. The sentence is not disproportionate to the offence committed by a habitual offender like the appellant. Therefore, the above submission of the learned counsel for the appellant for reduction of sentence stands rejected.

23. In view of the above, the judgment of conviction and sentence passed by the trial Court as against the accused stands confirmed and the appeal is dismissed.

**(M. JEYAPPAUL)
JUDGE**

July 28, 2015
p.singh