

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CRA-S-4374-SB-2017 O&M)

Reserved on: 8th December, 2017

Pronounced on 19th December, 2017

Suraj Pal

..Appellant

versus

State of Haryana

.Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Shiva Khurmi, Advocate,
for Mr. Sarfraj Hussain, Advocate,
for the appellant.

RAMENDRA JAIN, J.

Through this instant appeal, the appellant has assailed the judgment of conviction dated 24.10.2017 and order of sentence dated 26.10.2017 of the learned court below in the following terms:-

U/s 379-A To undergo RI for a period of five years and pay a fine of Rs.25,000/-. In default thereof, further RI for a period of six months.

2. The police machinery swung into action on the basis of complaint, Ex.PW1/A, made by PW1 Vikas Sharma to the Station House Officer, Police Station Manesar, averring therein that he was resident of Ashok Vihar, Gurgaon and was working at Munjal Crew Industries Private Limited, Plot Number 192, Sector 4, IMT, Manesar. On 15.3.2016, when he was going to his house after attending his duties, the motor cycle borne persons snatched away his mobile phone having Model Number Nexus 5, IMEI number 352136-06-027482-2 having SIM of Airtel bearing number 9871395297. He also produced invoice of said mobile Ex.PW1/B to the police. On receipt of the complaint, ASI Vijay Pal recorded FIR, Ex.P3 and

made endorsement Ex.P4. Subsequently, he along with Vikas Sharma visited the place of occurrence and prepared rough site plan Ex.P5 and intimation, in this regard, was sent to the Station House Officers, District Gurugram and neighbouring Police Stations as to the occurrence vide memo Ex.P6. When ASI Vijay Pal could not be able to find out any clue about the assailants, he filed untraced report, Ex.P7, in the case, which was forwarded by SI PW4 Sunil Kumar to the Assistant Commissioner of Police, Manesar. On 18.8.2016 PW8 SI Jahir Abbas, who was posted as SHO, Police Station Tapukra, District Alwal, arrested accused Javed in FIR No.209/2016 registered under section 392 IPC at Police Station Tapukra and interrogated him. On interrogation, accused Javed suffered disclosure statement, Ex.P8, regarding his involvement along with his co-accused Suraj Pal in the commission of crime. Consequently, SI Jahir Abbas intimated this fact to the Police of Gurugram.

3. On 22.8.2016, on receipt of the disclosure statement Ex.P8 from SI Jahir Abbas, ASI Amit Kumar, who was posted in Crime-X, Palam Vihar, Gurugram, obtained production warrants of accused Javed and Suraj Pal. On 20.9.2016 ASI Amit Kumar along with other police officials joined both the accused aforesaid in the investigation of the instant case. After being interrogated, both of them were arrested. He prepared arrest memos Ex.PW2/A and Ex.PW2/B and personal search memos, Ex.PW2/C and Ex.PW2/D of both the accused. During interrogation, Suraj Pal and Javed suffered disclosure statements Ex.PW2/E and Ex.PW2/F, respectively with regard to their involvement in the present case. The accused, resiling from their above disclosure statements, suffered new disclosure statements, Ex.PW2/G and Ex.PW2/H. Pursuant thereto, accused Javed got recovered

snatched mobile phone 'LG' Nexus' from his house which was taken into possession vide recovery memo Ex.PW2/1. After completion of necessary formalities, a final report under section 173, Code of Criminal Procedure, was submitted before the trial court.

4. After supplying the copies of challan to the accused under section 207 Cr.P.C, he was charge sheeted under section 379-A IPC read with section 34 IPC, to which he pleaded not guilty and claimed trial.

5. After closure of evidence by the prosecution, statement of the accused under section 313, Code of Criminal Procedure, was recorded putting all incriminating evidence came against him on the record, to which he pleaded his false implication in the case and took a plea that the alleged recovery was foisted upon him. The accused, however, did not lead any evidence in defence.

6. Learned counsel for the appellant has contended that the mobile phone, allegedly, snatched from the complainant, was not recovered from the appellant, rather was recovered from his alleged co-accused Javed, who was declared a juvenile during the pendency of trial. The appellant was not named in the FIR nor was apprehended at the spot, rather was implicated falsely only on the basis of disclosure statement of his alleged co-accused Javed, which is a very weak type of evidence.

7. Having given thoughtful consideration to the submissions made by learned counsel for the appellant, the present appeal, being without any merit, fails and is dismissed for the reasons to follow:-

8. It is the case of the prosecution that mobile set was snatched away, when complainant Vikas Sharma was going to his house after attending his duties in the company, who as PW1 corroborated the version

of the prosecution in its entirety. The question that arises for consideration is whether Vikas Sharma was the owner in possession of the mobile phone. In order to prove this fact, PW1 Vikas Sharma produced on the record copy of bill invoice Ex.PW1/B dated 19.1.2014 showing that he had purchased the mobile phone. Since no cross-examination was conducted by learned defence counsel with regard to purchase of the mobile phone, therefore, the learned trial court has rightly held that the mobile phone was owned and possessed by PW1 Vikas Sharma.

9. With respect to the disclosure statements Ex. PW2/E and Ex.PW2/F made by appellant Suraj Pal and his accomplice Javed, HC Mahesh Kumar stepped into the witness box as PW2 and deposed that on 20.9.2016, he remained associated in the investigation with ASI Amit Kumar, who interrogated appellant Suraj Pal and his co-accomplice Javed, and they suffered their disclosure statements, but subsequently, they resiled from their respective disclosure statements and suffered fresh disclosure statements Ex.PW2/G and Ex.PW2/H. On the basis of these disclosure statements, accused Javed got recovered mobile phone from his house. Both the accused also got the place of occurrence demarcated. The testimony of this witness is further corroborated by PW3 ASI Amit Kumar, who had also conducted investigation in this case. The contention of the learned counsel that the mobile phone was not recovered from the appellant, rather was recovered from his alleged co-accused Javed, hardly makes any difference, especially when both the accused had actively participated in the commission of crime. Therefore, in such circumstances, the appellant cannot be exonerated from charges levelled against him. Even otherwise, it is immaterial as to from whose possession, the mobile phone was recovered

subsequently.

10 The plea of the learned counsel for the appellant that the appellant was not named in the FIR, rather a false case was planted upon him only on the basis of disclosure statement made by his co-accomplice, Javed, which is a very weak type of evidence, cannot at all be countenanced keeping in view the testimony of PW8 SI Jahir Abbas, who deposed that Javed was arrested in FIR No.209/2016 registered under section 392 IPC at police station Tapukra with respect to his involvement along with his co-accused Suraj Pal in the commission of crime in the present case. That apart, the appellant and his co-accomplice Javed made their fresh respective disclosure statements, Ex.PW2/G and Ex.PW2/H. On the basis of these disclosure statements, accused Javed got recovered snatched mobile phone from his house, which was taken into possession vide recovery memo Ex.PW2/1, which was duly attested by PW2 HC Mahesh and Constable Mandeep duly signed by the accused persons. Both the accused also got the place of occurrence demarcated vide demarcation memo Ex.PW2/J, which was duly attested by PW2 HC Mahesh. There was no occasion for PW1 complainant Vikas Sharma to lodge FIR by name for the simple reason that when he was going to his house after attending his duties, the two persons came on a motor cycle and snatched away his mobile phone Mark “Nexus-5” bearing SIM Number 9871395297 and made complaint Ex.PW1/A duly signed by him to the Station House Officer, Manesar. In such circumstances, how could he be able to know their names. PW1 Vikas Sharma has specifically deposed before the trial court that he identifies the accused who snatched his mobile phone. The appellant has not been able to produce on record even a single witness in his defence despite taking a plea

of false implication in the present case while recording his statement under section 313, Code of Criminal Procedure, who could depose that on account of his animosity against the police officials, a false recovery of mobile phone was foisted upon him. In the absence of any animosity of the appellant with the police officials, it can easily be inferred that the appellant in league with his co-accomplice Javed, took active part in the commission of crime and snatched away mobile phone from the possession of PW1 Vikas Sharma. The finding recorded by the learned court below can not at all be said to be erroneous that may warrant interference by this court.

11 In view of what has been recorded hereinabove, this court does not find any illegality or perversity in the well reasoned judgment of the learned court below. Consequently, the appeal, being without any merit, fails and is dismissed.

19th December, 2017
VK

(RAMENDRA JAIN)
JUDGE

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| 1. | Whether reasoned/speaking | Yes/No |
| 2. | Whether Reportable: | Yes/No |