

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

**CRR No.1816 of 2017 (O&M)
Date of Decision: August 01, 2017**

Gurpreet Singh @ Vicky

...Petitioner

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Jasraj Singh, Advocate
for the petitioner.

Mr.Gaurav Garg Dhuriwala, Sr.DAG, Punjab
for the respondent-State.

INDERJIT SINGH, J.

The present revision has been filed by the petitioner Gurpreet Singh @ Vicky against respondent State of Punjab, challenging the impugned judgment of conviction and order of sentence dated 30.09.2016 passed by learned Judicial Magistrate Ist Class, Hoshiarpur, vide which the petitioner along with co-accused was convicted and sentenced to undergo rigorous imprisonment for a period of three years and to pay fine of ₹500/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of 15 days under Section 382 read with Section 34 IPC and also challenging the judgment dated 04.03.2017 passed by learned Addl. Sessions Judge, Hoshiarpur, vide which appeal filed by petitioner was dismissed.

From the record, I find that challan was presented against petitioner along with co-accused in case FIR No.23 dated 15.04.2012 under Sections 392, 382, 411 and 34 IPC. The brief facts of the case as noted down in the judgment passed by learned JMIC, Hoshiarpur, are as under:-

“2. Briefly stated, the case of the prosecution is that on 15/04/2012, officials were on regular patrol when complainant came over along with her brother and got recorded her statement, contending that on 14/04/2012, she had come to her parental house at Haryana. The complainant submits that she along with her younger sister Megha Khosla had gone to the market in order to fetch some necessary household items. It is submitted that on their way back, when they were going back from the DCM Chowk, Haryana towards their house in the street, then at around 7 PM, two youth are stated to have come from the rear upon a motorcycle numbered PB07EU5161, which was of Hero Honda Splendor make. The said boys are stated to have come near the complainant and stopped their motorcycle. It is submitted by the complainant that the one driving the motorcycle was aged around 20/21 years and the one riding pillion enquired from the complainant the address of Saini Mohalla. The complainant submits that she was about to tell the same when the youth pointed towards a concealed weapon and stated that whatever the complainant and her sister had be handed over to the accused or else they would be shot at. The accused is stated to have alighted from the motorcycle and pulled off a gold chain weighing 2 tolas from the neck of the complainant. The accused is stated to have thereupon stated to the driver of the motorcycle, calling him by name that the job has been accomplished ‘Vicky’ and that he should now drive away the motorcycle at high speed. The complainant submits that in the course of their raising hue and cry, the accused had snatched the chain and fled from the scene. It has been revealed by the complainant that the motorcycle was of Hero Honda Splendour make and was black in colour. The gold chain is stated by the complainant to have been gifted by her husband at her marriage. It is contended that the complainant informed her husband about the occurrence and as per his advice, she accompanied her brother Rohan Khosla to police station Haryana in order to give intimation. From the statement of the complainant, prima-facie commission of offences under section 382/34 IPC were made out. Preliminary investigation commenced and the instant FIR was registered. Both the accused are stated to have been apprehended on 17/04/2012 and were got identified from complainant Shweta Pathak. The motorcycle numbered PB07EU5161, of Hero Honda make and black in colour, is

stated to have been taken into police possession vide separate memo. Accused Rakesh Kumar is stated to have suffered a confessional statement, in consequence of which the gold chain was recovered on 18/04/2012. The statements of witnesses were recorded. After completion of formalities, instant challan was presented before court.”

On presentation of challan against the petitioner and co-accused, copies of challan and other documents were supplied to them under Section 207 Cr.P.C. Finding prima facie case, the petitioner alongwith co-accused was charge-sheeted under Sections 411 and 382 read with Section 324 IPC, to which they pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 MHC Rajinder Singh, PW-2 HC Madan Singh, PW-3 Shweta Pathak, PW-4 Megha Khosla, PW-5 Smt. Davinder Sharma, PW-6 Ashok Kumar, PW-7 Yogeshpal Kundra, PW-8 ASI Akshpad Gautam, PW-9 SI Satpal and PW-10 Lehmbhar Ram (wrongly numbered as PW-9). PW HC Tajinder Singh given up by APP for the State.

In the statement under Section 313 Cr.P.C., the accused denied allegations and pleaded his innocence.

Learned JMIC, Hoshiarpur, after appreciating the evidence, convicted and sentenced the petitioner along with co-accused as stated above. An appeal was filed by the petitioner and co-accused and the same was dismissed by learned Addl. Sessions Judge, Hoshiarpur, vide judgment dated 04.03.2017.

Aggrieved from the above-said judgments, present revision petition has been filed by the petitioner.

Notice of motion. Learned State counsel accepted the notice

and contested the revision petition.

I have heard learned counsel for the petitioner as well as learned State counsel and have gone through and lower Court records.

The perusal of the judgments passed by both the Courts below shows that findings have been given as per evidence and law. The findings cannot be held as perverse or illegal. Nothing has been pointed out as to which material evidence has been misread and which material evidence has not been considered by the Courts below. Nothing has been pointed out as to how the findings given by both the Courts below are against the evidence and law.

Complainant Shweta Pathak has appeared as PW-3. I have gone through her statement in the lower Court record. She has supported the prosecution version. Megha Khosla, eye witness has also been examined as PW-4 and she also supported the prosecution version. The perusal of the cross-examination of these witnesses shows that there is nothing in their cross-examination which may make their statement unreliable. No material discrepancies or improvements have been pointed out at the time of arguments.

The main argument of learned counsel for the petitioner is that gold chain, which was snatched, has not been recovered from him and it has been recovered from the co-accused. This argument has no merit. When the allegations in the FIR are that two persons came on a motorcycle and one, after alighting from the motorcycle, asked for Saini Mohalla and when complainant was to tell about the same, then that person threatened and gold chain was snatched. It is also in the FIR that co-accused asked the driver of the motorcycle by name 'Vicky' to fled away. The present petitioner is

recovered. Both these accused were arrested by the police. The registration number and make of motorcycle has been given in the FIR. Both the accused have been apprehended on 17.04.2012 along with the motorcycle. Both the PWs i.e. complainant and eye witness have identified the accused in the Court, which is substantial piece of evidence. PWs have sufficient time, at the time of occurrence, to see the accused. It is not the case that simply motorcyclists came from back side, snatched the gold chain and fled away. One of the accused remained on the motorcycle and other accused went to the complainant and asked for the Saini Mohalla and then after giving threat, snatched the gold chain worn by her. The recovery of the motorcycle and identification of the accused in the Court by the material witnesses shows that the prosecution has duly proved its case beyond reasonable doubt. In no way, it can be held that identity of the accused has not been proved by the prosecution.

Otherwise also, it is a revision petition and in the revision petition, this Court is not to re-appreciate the evidence like Court of an appeal. The concurrent findings given by both the Courts below are correct, as per law and do not require any interference from this Court.

Therefore, finding no merit in the present revision petition, the same is dismissed.

August 01, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No