

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

1. CRA-S-3964-SB-2016 (O&M)
Date of decision : 26.06.2018

Avtar Singh

...Appellant

Versus

State of Punjab

...Respondent

2. CRA-S-138-SB-2017 (O&M)
Date of decision : 26.06.2018

Sachin Kumar

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Yogesh Goyal, Advocate for the appellant.

Mr. Sidakmeet Singh Sandhu, AAG, Punjab.

ANIL KSHETARPAL, J.

Arguments were heard. Judgment was reserved. The judgment is being released.

By this judgment, CRA-S-3964-SB of 2016 and CRA-S-138-SB of 2017 shall stand disposed of as both the appeals are arising out of the common judgment passed by the learned trial Court.

These two appeals have been filed separately by two accused through legal aid.

The appellants have been convicted under Section 379-B of the Indian Penal Code and sentenced to undergo rigorous imprisonment for a period of 5 years and to pay a fine of ₹10,000/- and in default of payment of fine, to further undergo rigorous imprisonment for one month.

Learned trial Court while convicting the appellants have noticed that the appellants are also involved in certain other cases of similar nature and are habitual offenders.

The facts of the case as noticed by the learned Additional Sessions Judge, are as under:-

“2. The brief version of the case are that this case was registered on the application of Jagjit Singh son of Milkha Singh resident of Nanowal Kalan, District Gurdaspur, which was moved to SHO, Police Station, Shri Garbonindpur, who stated therein that on 19.11.2015, he has gone to Tanda to meet his relative. On 20.11.2015 at about 7.00 am, he was coming back on his motorcycle make Splendor bearing Registration No.PB-06-K-6843 and when he reached just behind near Gurudawara Baba Manj Sahib and just ahead to Beas River, he stopped his motorcycle for the purpose of urination. When after urination, he was about to pick his motorcycle, two young persons came on motorcycle. The pillion rider gave push to complainant and fled away with his (complainant) motorcycle towards the Light Wala Chowk. There was bag containing two passport size photographs, other documents and his licence and one pair of slippers. On the basis of that application, the present case was registered. The Investigating Officer also reached

at the spot and prepared rough site plan. During investigation, ASI Balkar Singh came to know that the accused, who had snatched the motorcycle of complainant had been arrested by SI Ram Singh in FIR No.107 of 9.11.2015 u/s 379-B IPC, Police Station Ghoman on 21.11.2015 and in that case, the said accused suffered a disclosure statement that on 20.11.2015, they had snatched the motorcycle near Gurudawara Baba Manj Sahib. The said motorcycle has also been recovered by Police Station, Ghoman. The said motorcycle has also been recovered by Police Station, Ghoman. The accused were also arrested in this case. Statements of witnesses under Section 161 Cr.P.C. were recorded. After completion of all the necessary formalities, challan against the accused was presented in the Court.”

The prosecution in order to prove its case, examined PW1 Jagjit Singh, the complainant, PW2 Head Constable Prabhjot Singh, PW3 Assistant Sub Inspector Balkar Singh, PW4 Sub Inspector Ram Singh, PW5 Jatinder Singh Clerk, PW6 Assistant Sub Inspector Kuldeep Singh, PW7 Head Constable Mohan Singh, PW8 Ravinder Singh. The statement of the appellants was recorded under Section 313 Cr.P.C.

This Court has heard the learned counsel for the parties at length and with their able assistance gone through the judgment passed by the learned trial Court and the record.

Learned counsel for the appellants while referring to the English translation of the statement of the complainant, Jagjit Singh PW1 has stated that the complainant did not recognize the accused present in the Court. He has further drawn attention of the Court to the statement of PW7

Head Constable Mohan Singh who has stated that no Test Identification Parade was conducted in this case. Hence, he pleaded that it was a case of false implication and, therefore, the judgment passed by the learned trial Court was required to be set aside.

On the other hand, learned counsel for the State has submitted that in fact English translation is not correct and he has drawn the attention of the Court to the statement given by the witnesses in vernacular. He has further submitted that the Test Identification Parade memo is Ex.PB on the record. He has further submitted that the statement of the complainant has to be read in entirety and one line cannot be read out of context and in isolation of the entire statement.

This Court finds substance in the arguments of the learned counsel for the State.

Ex.PB is memorandum of Test Identification Parade held on 26.11.2015. This memorandum is signed by the complainant Jagjit Singh who while appearing in the witness-box has in chief specifically stated that Assistant Sub Inspector Balkar Singh had called him for identification of both the accused present in the Court. He has further stated that he identified both the accused and it bears his signatures. The aforesaid memo was attested by Head Constable Mohan Singh and Head Constable Davinder Singh. The complainant even has stated that he identifies both the accused present in the Court. In these circumstances, it is the duty of the Court to scrutinize the evidence carefully. In the present case, in cross-examination, Jagjit Singh has at some places erred. However, in view of the overwhelming evidence available on the file, such minor contradictions and

discrepancies in the evidence which are bound to occur cannot be made basis to reverse the well considered judgment passed by the learned trial Court.

Learned trial Court has considered the fact of discrepancy in the evidence and have found that the prosecution has proved the case against the appellants beyond any reasonable doubt. The alleged motorcycle which was snatched has been recovered on the disclosure statement of the appellant. Still further, Assistant Sub Inspector Balkar Singh Investigating Officer has been examined who has proved the various documents/memos prepared during investigation. He has also proved the disclosure statement of both the accused and the recovery memo in the interrogation in FIR No.107 dated 09.11.2015. He has also proved the Test Identification Parade memo.

In view of the aforesaid overwhelming evidence, one line in the statement of PW7 Head Constable Mohan Singh cannot be permitted to be used by the appellants. In examination-in-chief, Head Constable Mohan Singh has specifically stated that the complainant had identified both the accused in the Test Identification Parade conducted vide memo Ex.PB. Mohan Singh has only stated that no Test Identification Parade was conducted in this case. Such statement has to be read in context it was made. It is worth noting that both the appellants were apprehended in another FIR and during investigation, the appellants made a disclosure statement, on the basis whereof, the recovery was made. During investigation of the aforesaid case, the complainant was called and the Test Identification Parade was carried out on memorandum Ex.PB where FIR No.73 dated 20.11.2015 has

been specifically mentioned.

In view of the aforesaid, this Court does not find any substance in the arguments of the learned counsel for the appellants. Finding no merit in both the appeals, judgment under challenge is upheld. Both the appeals are dismissed.

26.06.2018

Pawan

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**