

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRA-S-343-2019 (O&M)
Date of Decision: 24.09.2019

Samual Masih @ Jolo

...Appellant

Versus

State of Punjab

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.A.S.Manaise, Advocate for the appellant.
Mr.SPS Tinna, Addl. Advocate General, Punjab.

ANIL KSHETARPAL, J.

Correctness of judgment passed by the learned Additional Sessions Judge, Gurdaspur, in criminal case arising from FIR No.102 dated 14.06.2017 registered under Sections 379-B/201 IPC at Police Station, City Gurdaspur, District Gurdaspur, has been challenged. The appellant was convicted under Section 379-B IPC, sentenced to undergo rigorous imprisonment for a period of 5 years with fine of Rs.10,000/- and in default of payment of fine, to undergo further rigorous imprisonment for a period of 6 months.

The process was set in motion on the complaint of Navkiran Bedi wife of Vipan Nanda, wherein it is stated that she is working as a Teacher at Saint Soldier Divine Public School, Gurdaspur. On 14.06.2017, she had gone to the market on her Moped and at about 12.15 PM when she reached in front of her house, stopped her Moped, then suddenly from her back side one hindu gentleman came on a motorcycle, not having any registration number, and snatched her gold chain and locket from her neck.

Mobile phone of the snatcher fell down. She raised noise but the accused ran away on the motorcycle of black color and she can identify that person.

On registration of the FIR, mobile phone was taken into possession by the police. On 03.08.2017, the complainant gave supplementary statement to ASI to the effect that on 14.06.2017 she came back home from the market on moped and when she reached near the entry gate of her house, a young unknown man came from backside and snatched her gold chain and locket. She disclosed that now she has come to know that the name of the accused is Samual Masih @ Jolo son of Najir Masih resident of village Aadian, Police Station Dorangwala, District Gurdaspur. The accused joined the investigation as per the orders passed by learned Additional District & Sessions Judge and produced motorcycle Hero Honda Splendor black color which was without any registration number.

During investigation, Investigating Officer obtained call details record of the recovered mobile phone having two SIM Cards of Idea Network. CAF was also obtained from the mobile company. Mobile phone was issued to a customer, Parveen wife of Balo Masih resident of village Mahal, Gurdaspur. On verification of call details and from questioning of Parveen, appellant Samual Masih was nominated as an accused. Statement of witnesses were recorded and offence under Section 201 IPC was added.

On completion of investigation, final report was presented and finding that offences under Sections 379-B and 201 IPC are triable exclusively by the Court of Sessions, the learned Magistrate committed the case for trial.

Prosecution in order to bring home the guilt of the appellant examined Navkiran Bedi as PW-1, Madhu Bala as PW-2, Investigating

Officer Jaswinder Singh, ASI as PW-3 and HC Mohinder Pal as PW-4.

Statement of the appellant was recorded under Section 313 Cr.P.C. in which incriminating evidence appearing against him was put to him, on which he pleaded innocence and claimed trial.

This Court has heard learned counsel for the appellant as well as learned counsel representing the State of Punjab and with their able assistance gone through the judgment passed as also the record.

First witness, which has been examined by the prosecution, is Navkiran Bedi, PW-1 (first informant-victim). She claimed that she had received injuries on her neck with some sharp edged weapon. She further stated that mobile phone belonging to the appellant fell down on the spot. During investigation, she identified the accused Samual Masih on 03.08.2017 when he was in custody. She claims that her Medico Legal Examination regarding neck injuries could not be conducted as it was minor in nature. In her cross examination, she claims that she had gone to Police Station at 12.45 PM. She has further stated that she had obtained an invoice of gold chain and locket. She claims that identity of the accused was revealed after the mobile phone number dropped by him on the spot was put on surveillance by the police. She further stated that she had not seen the mobile phone in the Court today i.e. on the date of recording of her deposition in the court. She further states that she did not make any call from the said mobile as there was no credit balance in the said mobile phone. She further admitted that SIM Card of the aforesaid mobile was issued in the name of Madhu Bala wife of Paramjit. During the course of evidence, the attention of the court was drawn and a note was appended by the learned Additional Sessions Judge to the effect that witness has written

the name of the appellant on her hand. Apart from that she made some improvements.

Second witness examined by the prosecution is Madhu Bala, PW-2. She claimed to have got issued one SIM Card of Idea Cellular bearing mobile number 94658-60972 and used the same for two years but thereafter she lost her mobile phone alongwith sim card but never lodged any FIR or DDR.

Prosecution also examined ASI Jaswinder Singh, Investigating Officer (PW-3). He stated that the mobile phone was issued to customer namely Parveen wife of Balo Masih resident of village Mahal, Gurdaspur and on verification of call detail records and questioning to Parveen, Samual Masih appellant was nominated as an accused. It has been stated that Navkiran Bedi also suffered a supplementary statement on 01.07.2017 and named Samual Masih appellant as an accused. It is further claimed that on the same day first informant was called to the Police Station and she identified Samual Masih appellant as the snatcher of her gold chain with locket. In cross examination, PW-3 stated that first informant had revealed the mobile number as mentioned in her statement but he does not know how she came to know regarding his mobile number. He further goes on to say that he got the aforesaid mobile phone recharged for Rs. 10/-. He admitted that he had obtained call detail record during investigation. He admitted that mobile number was not issued in the name of the accused. He has seen the mobile number which is Exhibit MO-1 but the same does not bear any seal or signature of any officer under the details of FIR number etc. He admitted that he did not record the statement of Parveen under Section 161 Cr.P.C.

Last witness examined by the prosecution is HC Mohinder Pal. He admitted that mobile phone was not sealed and he does not know regarding details of ownership of the said mobile phone.

On careful examination of evidence, it is apparent that Investigating Officer has not properly investigated the case. Once first informant had stated that she can identify the accused as she had seen him at the time of incident then it is not understandable as to why test identification parade was not got conducted so as to cross check the veracity/correctness of the statement made by the first informant. She claims that during investigation she identified the appellant on 03.08.2017 while appellant was in police custody.

There is a discrepancy as to when the police got information. As per the statement of the complainant, the occurrence is of 14.06.2017 at 12.15 PM. However, in cross examination, she stated that she had gone to the Police Station at 12.45 PM. Whereas it is the case of the Investigating Officer that the complainant-first informant had come to him, when he along with other police officials were present in the grain market chowk after 6.00 PM. Still further, there is no clarity as to how the appellant was identified. The Investigating Officer claims that he collected the call detail record of the mobile phone after getting it recharged but the aforesaid call detail records has not been proved. Still further, it is the statement of Investigating Officer that the complainant Navkiran Bedi had suffered a supplementary statement on 01.07.2017 disclosing the name of the accused. However, it is not known as to how she came to know the name of the accused. It has also come in the evidence that first informant had revealed the mobile number in her statement Exhibit P-1 which was submitted on the same day of the

occurrence. The mobile number is also mentioned in Ex.PC dated 14.06.2017, the recovery memo of the alleged mobile phone.

Further, it is the case of the prosecution that the aforesaid mobile phone was having two SIM cards. One SIM card is having mobile number 94658-60972. The aforesaid SIM is alleged to be belonging to Madhu Bala, who has been examined as PW-2. She claims that she lost the mobile phone in the year 2014, however, in cross examination she states that she lost the mobile in 2012 but she never made any complaint or never bothered to check as to whether the aforesaid mobile phone or the SIM card is working or not.

On the other hand, Investigating Officer has stated that mobile phone was issued to Parveen Kumari wife of Balo Masih resident of village Mahal, Gurdaspur. However, neither she ever joined in the investigation nor any record thereof was produced. Thus, it is also apparent that appellant was neither proved to be owner of the mobile phone nor both the SIM cards have been issued in his name.

Further, appellant is alleged to be traveling on a black coloured motorcycle without having the registration number. The Investigating Officer claims that on checking from the distributor, it was found that the motorcycle was in the name of brother of the accused. However, the aforesaid details have neither been produced nor proved.

Still further, when first informant/victim appeared in evidence, she stated that she has not been shown the mobile phone at the time of her deposition enabling her to identify. However, when Investigating Officer appears, he states that he has seen the mobile phone Exhibit MO-1, however, the same does not bear any seal or signature of any officer to

prove that the aforesaid mobile phone was handed over by the first informant to the police. The alleged gold chain with locket have not been produced. No bill or invoice of such gold chain or locket has been produced by the first informant, although, she claims that she had obtained an invoice. There is no recovery of the gold chain and the locket. Still further, it is apparent that the case property i.e. mobile phone LAVA was tempered with as it was not sealed by the investigating agency.

For the reasons stated above, it is proved that prosecution has failed to establish its case against the appellant beyond shadow of reasonable doubt. Hence, the appeal is allowed. Consequently, the appellant is acquitted by giving him benefit of doubt and he be released forthwith, if he is not required in any other case. Pending application(s), if any, shall also stand disposed of, in terms thereof.

24.09.2019
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No