

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-1080-2019 (O&M)

Date of Order: 9th September, 2019

Anil and another

..Appellants

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vinod Bhardwaj, Advocate,
for the appellant.
Mr. Vikas Chopra, Advocate
for the respondent.

ANIL KSHETARPAL, J.

Challenge is to the judgment passed by the learned Sessions Judge, Kaithal, convicting the appellants under Section 379-A of the Indian Penal Code and sentencing them to undergo rigorous imprisonment for a period of 5 years each and to pay a fine of Rs.25,000/- each, and in case of default of payment of fine, they shall further undergo simple imprisonment for a period of 2 months each.

As per the case of the prosecution, on 07.06.2018, Joginder Singh victim who appeared as PW1 produced a written complaint Ex.P1 addressed to in-charge of Police Post, Pundri, alleging that when he alighted from bus at Brahmanand Chowk, Pundri, a bag carried by him having an amount of Rs.1,34,750/- (Rs.1,00,000/- in polythene) and Rs.34,750/-(in his purse) both kept in the bag has been snatched by 5 young boys, who had also alighted from the same bus and fled away towards Kaithal road. On raising alarm by first informant, the offenders were chased and one boy Anil was apprehended in the street with the bag. Anil disclosed names of his accomplices who had fled from the spot as Surender, Joginder, Kuldeep

alias Manju and Anil alias Leelu.

The first informant when checked the bag, he found Rs.1,00,000/- in the bag but the purse containing Rs.34,750/-, Aadhar card and some other amount belonging to the first informant was not found there. The first informant can identify the offenders if they are brought before him.

The first informant had called the police and handed over the bag and the thief to the police. Assistant Sub-Inspector Balwan Singh along with his fellow police officials reached Brahmananad Chow, Pundri, on receipt of information that a thief had been caught by the shopkeepers with the bag of money. Parcel of the currency notes was prepared by the police and the parcel was sealed with seal of monogram 'RK' and it was taken into possession vide seizure memo Ex.P2. Place of occurrence was demarcated by the accused and the demarcation memo Ex.P7 was prepared .

On 28.07.2018, the investigation of the case was handed over to CIA-II, Kaithal and further investigation was carried out by Assistant Sub-Inspector Hawa Singh. On 26.08.2018, further investigation was handed over to Assistant Sub-Inspector Krishan Kumar, PW11. Kuldeep was arrested on 02.11.2018, who suffered a disclosure statement confessing his involvement in the crime. Accused Joginder was declared proclaimed person.

After completion of the investigation, final report under Section 173(2) of the Code of Criminal Procedure was forwarded to the Court along with accompanying documents supplied to all the accused free of cost.

The case was committed to the Court of Sessions and the accused were chargesheeted.

Prosecution in order to prove its case has examined the following witnesses:-

PW1	Complainant Joginder Singh
PW2	Sanjay Kumar, eyewitness of the occurrence
PW3	Jagat Singh, eyewitness of the occurrence
PW4	Sub-Inspector Chander Bhan, who prepared reports under Section 173(2) and 173(8) of the Code of Criminal Procedure, 1973.
PW5	Exemptee Sub-Inspector Sher Singh, who recorded First Information Report 'Ex.P4' and endorsement 'Ex.P5' underneath application 'Ex.P1'
PW6	Rajinder, who had handed over Rs.34,750/- to the complainant for the supply of solar panel of Mircotek Company, which he had purchased on credit from him.
PW7	Head Constable Deepak, who remained associated in the investigation of this case with Investigating Officer Assistant Sub-Inspector Raj Kumar (PW10)
PW8	Head Constable Kamaljeet Singh, who remained associated in the investigation of this case with Sub-Inspector Krishan Kumar (PW11)
PW9	Exemptee Head Constable Ajit Singh, who also remained associated in the investigation of this case with Sub-Inspector Krishan Kumar (PW11)
PW10	Sub-Inspector Raj Kumar, first Investigating Officer
PW11	Sub-Inspector Krishan Kumar, second Investigating Officer.

Apart therefrom, the prosecution has made effort to prove following documents:-

Ex.P1	Application moved by the complainant which led to the registration of the FIR.
Ex.P2	Seizure memo of parcel of recovered currency notes
Ex.P3	Statement of PW2 Sanjay Kumar, recorded under Section 161 of the Code of Criminal Procedure, 1973.
Ex.P4	Copy of the FIR
Ex.P5	Endorsement recorded underneath application Ex.P1, regarding registration of the FIR
Ex.P6	Disclosure statement suffered by accused Anil son of Vijay
Ex.P7	Demarcation memo of the place of occurrence prepared at the instance of accused Anil son of Vijay
Ex.P8	Disclosure statement suffered by accused Surender
Ex.P9	Seizure memo of Rs.5,000/- (two currency notes in the denomination of Rs.500/- each and two currency notes in the denomination of Rs.2,000/- each), recovered from accused Surender.
Ex.P10	Demarcation memo of the place of occurrence prepared at the instance of accused Surender
Ex.P11	Disclosure statement suffered by accused Anil alias Leelu
Ex.P12	Seizure memo of four currency notes in the denomination of rs.500/- each recovered form accused Anil alias Leelu.

Ex.P1	Application moved by the complainant which led to the registration of the FIR.
Ex.P13	Demarcation memo of the place of occurrence prepared at the instance of accused Anil alias Leelu.
Ex.P14	Police proceedings recorded underneath application Ex.P1.
Ex.P15	Rough site plan of the place of occurrence.
Ex.P16	Rough site plan of the place of recovery of Rs.5,000/- (two currency notes in the denomination of Rs.500/- each and two currency notes in the denomination of Rs.2,000/- each) prepared at the instance of accused Surrender.
Ex.P17	Rough site plan of the palce of recovery of four currency notes in the denomination of Rs.500/- each, prepared at the instance of accused Anil alias Leelu

After completion of the evidence, accused persons were personally examined under Section 313 Cr.P.C. and incriminating evidence appearing on the record was put to all the accused who denied correctness of the case set up by the prosecution.

In defence, accused examined Rajesh Kumar, DW1 and produced statement of Jagat Singh, Ex.D1, recorded under Section 161 Cr.P.C. Another document was marked as Ex.D1 i.e. Registration Certificate of Bhagwati Electric Store, Kaithal.

Learned trial Court acquitted Anil alias Leelu and Kuldeep alias Manju. However, convicted Anil son of Vijay Kumar, Surrender son of Jagir Singh. One accused, namely, Joginder was declared proclaimed person.

This Court has heard learned counsel for the appellants and counsel for the State at length and with their able assistance gone through the paper book and the record.

Learned counsel for the appellants has submitted as under:-

“1. That the recovery of amount of Rs.1,00,000/- which has been shown to be effected from the appellant Anil in the FIR has been admitted by the PW-1 Joginder (informant) and PW-3 in their chief examination to be

brought subsequently by some stranger in black polythene upon the mobile phone call of Anil. However, this fact was never been revealed to police nor the so called mobile has been got recovered from the appellant Anil during his personal search by the police.

2. That the appellant Surender has been arrested by the police on 09.12.2018 i.e. after six months of incident, on the basis of disclosure statement of accused Anil only, and thereafter no TIP has been conducted by the police and his identification by PW-1 straight in the Court on after 8 months of occurrence is highly doubtful.

3. That the learned lower court has acquitted one of the co-accused Kuldeep, on the ground of suspicious identification by the PW-3.

4. That the occurrence is alleged to have taken place on 07.06.2019 at 9.20AM but the FIR has been registered at 7:50 PM, although, police post is hardly at the distance of 01 kilometer from the spot.

5. That no independent witness has been joined in the investigation, however, at the time of apprehending appellant no.1, many people of the locality were present there and as per the official witnesses of the police (PW-7, PW-10) entire proceedings has been conducted at the shop of Dashmesh Engg. Works.

6. That PW-3 Jagat Ram is a planted witness, who was already known to the informant/complainant and has been someway connected to the distributor i.e. Bhagwati Electrical and it was not a co-incident that PW-3 was present at the time of occurrence, PW-6 has admitted in cross examination that PW-3 Jagat Ram is someway related with Bhagwati Electricals and a photograph on the hording reflecting the name of Jagat Ram on the shop of Bhagwati Electricals has been palced on file as Mark-A.

7. *That there exist lot of contradictions in the statements of prosecution witnesses:-*

(a) That the PW-1 has stated in his deposition that an empty bag has been recovered from the appellant Anil, however, PW-2 has stated that they apprehended one boy and four boys with snatched bag running towards Kaithal.

(b) That the PW-2 has stated in his cross examination that they have chased the accused on foot after occurrence, however, PW-3 has stated that they have chased the accused on Motor cycle.

(c) That PW-2 and PW-3 has stated that just after an hour of occurrence police reached at the shop of Gurbaj took the accused/appellant Anil to Police Station and police has not conducted any proceeding at the shop of Gurbaj, however, official witness of police i.e. (PW-7 , PW-10) has stated that they reached at the shop of Gurbaj at about 4:00/4:30 PM and entire proceeding was written at the shop of Gurbaj and in presence of many local witnesses.”

On the other hand, learned counsel for the State has submitted that the Court of Sessions has correctly held that the appellants are guilty and therefore, convicted them. He further submitted that the learned Court of Sessions has already appreciated the evidence in proper perspective.

At the outset, it must be noticed that first informant Joginder Singh, PW1 and Sanjay Kumar, the alleged eye witness PW2 were found by the Public Prosecutor to be suppressing truth and sought permission of the court to cross-examine the witnesses, which was allowed.

Ex. P1 is the written application submitted by the first informant to the police on 07.06.2018. On the basis of this application, FIR in question was registered. He has stated that 5 boys (accused) had

travelled in the same bus and had alighted from the bus at Brahmanand Chowk and one of the boy forcibly snatched the bag held by him in his hand and thereafter they ran away towards Kaithal road. When he raised an alarm, 2 boys from the nearby place came to his rescue who ran after the accused and then one boy along with the bag was apprehended, who on being asked disclosed his name as Anil. When the names of other co-accused were enquired, he disclosed their names as Surender, Joginder, Manju and Leelu. When he checked his bag, he found pack of Rs.1,00,000/- was separately kept in a polythene in the bag but amount of Rs.34,750/- which was kept in his purse was not found. In the aforesaid purse, his Aadhar card and certain amount were also there. If the other boys are produced, he can identify those accused.

However, when Joginder Singh appeared in Court, he tried to give a different picture. It was deposed that when Anil was caught with bag, the same was empty. Thereafter, Anil made a phone call to someone for bringing money but nobody came there. Thereafter, victim voluntarily stated that one person had brought Rs.1,00,000/- in a polythene. In the Court, when the bag which was in a sealed parcel was opened, it was found containing currency notes worth Rs.1000/- (denomination of Rs.100/- each). He has further stated that Sanjay and Jagat Singh, the alleged eye witnesses had reached there after a period of 2-3 minutes on his raising alarm after the bag was snatched from him. He goes on to say that his driving licence, registration certificate of the vehicle and ATM card were not in his purse at the time of snatching. He goes on to admit that Aadhar card is with him at the time of making statement in the Court. Thereafter, when Sanjay Kumar appeared as PW2, he deposed in a slightly different manner. He has stated

that he along with Jagat Ram were present at Brahamanand Chowk, Pundri on his motorcycle. When a bus came from the side of Kaithal and stopped there. From that bus, Joginder, first informant alighted who was having a bag and thereafter 5 other persons also alighted from the bus and one boy snatched the said bag from the first informant and fled from the spot. One boy entered the colony near Monga Filling Station and remaining 4 boys with snatched bag ran towards Kaithal. He, Jagat Singh, first informant Joginder and 2-3 other persons apprehended the boy who had entered the colony. A boy, who was apprehended was asked to make a call to his companions for returning the bag on which he made a phone call but nobody came there. After some time, people gathered there and police had came on the spot and they took the boy to the Police Station. He further went on to say that Anil did not disclose the name of other accused.

Public Prosecutor was permitted to examine, wherein he stated that accused Anil had told that money and purse were taken from the bag by Joginder son of Kalu. He further went on to say that nobody had given money to the police in his presence.

Similarly, when Jagat Singh, the alleged eye witness was examined as PW3, he also stated that when they reached there, a bus was standing there and the first informant-Joginder was raising alarm while standing on the back side of the bus by saying that his bag has been snatched. On our enquiry, he told that snatchers have gone towards Kaithal road and then they saw 4-5 persons running towards Kaithal. Out of them, two boys entered the colony. We all apprehended them. One of them got himself released and succeeding in escaping whereas Anil was caught, brought to a shop near Brahmaanand Chow, Pundri.

On enquiry, he told the name of other accomplices and made a phone call and asked his accomplices to return the money. After some time, somebody had thrown the bag containing money, at a distance of 100 feet, from the place where they were standing. He further stated that he had written the application Ex.P1 on the dictation of Joginder.

Apart therefrom, various police officials witnesses were examined as noted above.

On critical appraisal of the evidence, 2-3 significant facts comes out.

In Ex.P1, the first application moved before the police, it has been stated that Jagat and Sanjay came to the place of occurrence after some time. However, as per the evidence of Sanjay, he and Jagat were already standing there when bus came and stopped from which accused and the first informant had alighted. Still further, in the application Ex.P1, it has been stated that when Anil was caught he had disclosed that the bag Purse and money had been taken out by Joginder. However, in the application, there is nothing with regard to Anil having made a phone call and thereafter someone had delivered Rs.1,00,000/- in a polythene bag. When victim was examined in the Court, he stated that when the Anil was caught, he was having only empty bag and thereafter Anil had made a phone call to someone to bring the money but nobody came there. But thereafter he stated that one person had brought Rs.1,00,000/- in a polythene.

It may be noted here that 2 persons were apprehended, but one had slipped away is also not born out from Ex.P1. Joginder, victim when examined in the Court also does not state this fact. When one carefully reads the statement of Sanjay Kumar, PW2, he goes on to state that one boy

had entered colony and remaining 4 boys with snatched bag had ran towards Kaithal. The boy who had entered the colony was apprehended and he made a phone call to his accomplices for returning a bag but nobody came there. He goes on to say that no money was recovered in his presence. Whereas when Jagat Singh was examined as PW3, he had made a statement that 2 boys who had entered the colony were apprehended, one got released himself and succeeded in escaping and accused Anil made phone call to his accomplices to return the money and someone had thrown a bag containing money, at a distance of about 100 feet from where they were standing. Further, Joginder while moving application, Ex.P1 has stated that his purse containing ATM card and Rs.34,750/- and some other money could not be recovered. However, when he appeared in evidence, he admitted that he has his driving licence, registration certificate of the vehicle, ATM card and Aadhar Card with him. Although, he has gone to state that Aadhar card can be downloaded from the internet, however, he does not stated that Aadhar Card in his possession is printout from the internet.

It may further be noted here that learned trial Court had acquitted Kuldeep and Anil alias Leelu when first informant-victim Joginder failed to identify them. It may be noted here that Surrender was apprehended by the police on 09.12.2018 and thereafter no test identification parade was conducted by the police. Surrender has been identified by the first informant-victim in the Court only. It may further be noted here that incident in question took place at 9.20 AM on 07.06.2018, whereas FIR in question was registered at 7.30 PM, although, the distance between the place of incident and the police post is hardly 1 km.

Still further, the Court has also ignored the statement of the

accused-appellant Anil recorded under Section 313 Cr.P.C. in which accused had submitted that they have been falsely implicated as Joginder was travelling in the same bus where some altercation for occupying a seat in the bus took place between them. Joginder gave a telephone call to his friends and called them on crossing at Pundri where Joginder and his friends caught them and took Anil to the shop where he was given beating.

The mobile phone from which Anil had made a call to his accomplices has not been recovered, nor there is any explanation where that mobile phone has gone. That mobile phone would have connected and corroborated the statement of Sanjay and Jagat Singh.

The prosecution is required to bring home the guilt of the accused beyond a shadow of reasonable doubt. From the evidence discussed above, it is apparent that the prosecution has failed to lead evidence to bring home the guilt of the appellants beyond reasonable shadow of doubt. Therefore, learned Sessions Judge, committed an error in refusing to give benefit of doubt to the appellants. Hence, the appellants are acquitted while giving them benefit of doubt.

Appeal allowed.

September 09, 2019

(ANIL KSHETARPAL)

nt

JUDGE

Whether speaking/reasoned

:YES/No

Whether reportable

:YES/No