

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-1515-2019(O&M)
Date of Decision :12.12.2019

Amar Pal Singh @ Lamba

....Appellant

Versus

State of Punjab

...Respondent

CORAM : HON'BLE MR.JUSTICE ANIL KSHETARPAL

Present : Mr. Atul Bhatia, Advocate for the appellant

Mr. Hittan Nehra, Addl. AG, Punjab

ANIL KSHETARPAL, J.

Correctness of judgment passed by learned Additional Sessions Judge dated 3.12.2018 passed in Session Case No.11 of 2018 convicting appellant alongwith another under Section 379-B/34 IPC, sentenced to undergo RI for 5 years and to pay fine of Rs.5,000/-, has been challenged.

In nutshell the case of the prosecution has been noticed by the Additional Sessions Judge, Amritsar which is extracted as under:-

“Brief facts of the case of prosecution are that present case was registered on the statement of complainant Gurwinder Singh son of Mohan Singh, resident of House No.69, Hardev Nagar, G.T.Road, Bypass, Backside Nirankari Bhawan, Amritsar in which he has stated that on 25.3.2017, he on his motorcycle Discover bearing no.PB-02-CB-2060 was going towards

his house. When at about 7:30 pm he reached near S.K.Dhaba, Khalchian, then two young persons on their motorcycle forcibly snatched his purse containing Rs.5000/- along with one mobile Samsung J/7, RC of the motorcycle, two ATM cards of Punjab National Bank and Bank of India, Adhar card and Voter card. On the basis of the above said statement of complainant, present case was registered against the accused. Thereafter, investigation was initiated and during investigation, accused were arrested, statements of witnesses were recorded, site plan was prepared and after completion of all necessary formalities, challan against the accused was prepared and presented in the Court.”

Prosecution in order to bring home the guilt of the convicts examined ASI Subhash Chander as PW1, ASI Kewal Singh as PW 2, First informant Gurwinder Singh as PW3 and ASI Jasbir Singh as PW 4. Statements of the accused under Section 313 Cr.P.C were recorded in which they denied all the incriminating evidence put to them and pleaded their innocence. In defence, accused examined DW 1 Mohinder Singh and DW 2 Dr. Gurbrinder Singh.

Learned counsel for the appellant, appearing for the Legal Aid has submitted that the judgment passed by the learned Additional Sessions Judge is erroneous and the prosecution has failed to prove its case beyond shadow of reasonable doubt. He further submits that in the present case, apart from the deposition of the Investigating Officer and first informant,

recovery of the alleged snatched items.

On the other hand, learned State counsel has supported the judgment passed by the learned Additional Sessions Judge.

In the present case, Ex.PAA is an application submitted by the appellant which formed the basis of First Information Report. It is alleged that appellant alongwith another convict had snatched purse containing cash Rs.5000/, two ATM cards; (one issued by Punjab National Bank and second issued by Bank of India), Aadhar and Voter identity cards, Samsung Mobile J7 and registration certificate of motorcycle at 7:30 P.M on 25.3.2017 near S.K.Dhaba (Eatery). It is also the case of the prosecution that two persons came from the back side and inflicted injury to the first informant on his back. It is undisputed even by learned State counsel that none of the snatched items have been recovered from the possession of the appellant or his co-accused. Appellant alongwith co-convict are alleged to have been apprehended in a different FIR on 9th November, 2017 and on their disclosure/confession, appellant alongwith co-convict were implicated.

It may be noted here that there is an unexplained delay of 23 hours in lodging the FIR. The alleged incident of 25.3.2017 at 7:30 p.m. The FIR has been lodged on 26.3.2017 at 6:29 pm. It is not the case of the first informant-victim that he went to the police station but FIR was not registered by the police. The first informant/victim claims that he searched for his items on his own. Once the first informant has alleged that two persons had snatched the items referred to above after causing him injury, there was no occasion for the first informant to search for the articles himself.

Still further when first informant appeared in evidence, he

admitted that his Aadhar card and Voter identity card are lying in his house. The statement of the first informant is contradictory in as much as in Ex.PA, he states that purse containing his Voter card and Aadhar card, apart from other items has been snatched. There has been no recovery by the police except of motorcycle which was never snatched. Motorcycle does not belong to the first informant. There is no explanation as to how Voter and Aadhar cards are in the possession of the appellant.

Still further, when first informant appeared, he has stated that occurrence took place near S.K.Dhaba, Khalchian and there was light on account of electric bulb outside eatery and some people were sitting outside the Dhabha, however, no person gathered at the time of occurrence. Even when the police official visited the place of alleged occurrence i.e on 26.3.2017, no independent witness was joined to check whether such incident happened or not?

Still further, the statement of Investigating Officer makes an interesting reading. He states that he was entrusted with the investigation on 17.7.2017. He further submits that on 10.11.2017 he came to know that the alleged convicts have committed the occurrence, on the alleged disclosure statement suffered by the convicts during police custody when they were apprehended on 9.11.2017 in FIR No.76/2017 u/s 22 of the NDPS Act. When cross-examined by the learned counsel appearing for the accused, the Investigating Officer has deposed as under:-

“It is correct that no recovery was effected from the accused after the disclosure statement. I have not got identified the accused from the complainant during the investigation. It is wrong to suggest that I have deposed falsely.”

In view of the aforesaid facts, this Court is of the considered view that the prosecution has miserably failed to prove the case against the appellant. The disclosure statement suffered by the convicts while in police custody is not admissible in evidence in view of Section 26 of the Evidence Act. No test identification parade of the convicts was conducted. The first informant recognizes the convicts for the first time in the Court.

Hence, the appeal is allowed, while setting aside the judgment impugned herein.

(ANIL KSHETARPAL)
JUDGE

12.12.2019
rekha
Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No