

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-1415-2019 (O&M)
Date of Order: 17.12.2019

Hari Om

..Appellant

Versus

State of Haryana

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Jagmohan S. Ghuman, Advocate
for the appellant.

Mr. Anmol Malik, AAG, Haryana

ANIL KSHETARPAL, J.

Challenge is to the judgment of conviction under Section 379-B of Indian Penal Code, 1860 and under Section 25 of the Arms Act, 1959 passed by the learned Additional Sessions Judge, Gururgram, in Sessions Case No.74. The relevant part of the order of sentence reads as under:-

Section 379-B IPC	The convict is sentence to undergo rigorous imprisonment for ten years and to pay fine of Rs.25,000/-. In default of payment of fine he shall undergo further rigorous imprisonment for six months.
Section 25 of Arms Act, 1959	The convict is also sentenced to undergo rigorous imprisonment for three years and a fine of Rs.5,000/-. In default of payment of fine, the convict shall undergo further rigorous imprisonment for three months.

In a nut shell, the case of the prosecution is that on 03.07.2018, complainant Divyanjali Rautray presented an application addressed to Station House Officer, Police Station Sector-5 Gurugram, alleging that on

03.07.2018 at about 2:00 PM, when she reached ahead of New Light School then a boy wearing t-shirt of green colour standing along with his scooter snatched her purse containing Rs.600/- in cash, her identity card, aadhar card, pan card, voter identity card on the pistol point and fled away from the spot.

On the basis of the aforesaid information supplied by Divyanjali Rautray in writing, FIR was registered. During investigation, appellant was apprehended on 03.07.2018 and on his search a country made pistol with two live cartridges were recovered from his possession. On checking of the activa scooter, one knife, one lady purse containing the aforesaid articles belonging to the first informant were found and therefore, taken in police possession after converting them into samples. The activa scooter bearing registration No.DL-9SBD-6173 along with Registration Certificate was also taken into possession. Appellant was taken to the hospital for treatment as he had received injury on his right foot and doctor after examination opined that appellant has suffered fracture on his right foot. The appellant was got admitted in government hospital under the supervision of the police official and recovered articles were deposited in the store(malkhana). On discharge of the appellant from the hospital on 05.07.2018, he was interrogated and arrested. His disclosure statement was also recorded and thereafter Section 379-A IPC was deleted and Section 379-B IPC was added. The country made pistol was got inspected from the armourer and sanction to prosecute the appellant under the Arms Act was obtained. On completion of investigation, the police report under Section 173 Cr.P.C. was presented in the Court, copies whereof were supplied to the appellant as per Section 207 Cr.P.C. Learned Judicial Magistrate Ist Class

committed the case to the Court of Sessions, where appellant was charge sheeted on 16.10.2018 for commission of offence punishable under Section 379-B IPC and Section 25 of the Arms Act to which he pleaded not guilty and claimed trial.

Prosecution in order to bring home the guilt of the appellant examined following witnesses:-

PW1	SI Ved Pal
PW2	SI Satish Kumar, Armourer
PW3	Divyanjali Rautray, complainant
PW4	Girish Kumar, Draftsman
PW5	ASI Sanjay Kumar
PW6	Head Constable Dinesh Kumar
PW7	Dr. Lalit Chopra
PW8	Dr. Sunder Lal Yadav
PW9	Head Constable Sandeep
PW10	ASI Raj Kapoor
PW11	Constable Wahid.

The appellant was examined under Section 313 Cr.P.C., entire incriminating evidence/material was put to him. He denied the allegations and pleaded false implication. No evidence was led by the accused.

This court has heard learned counsel for the appellant and learned State counsel at length and with their able assistance gone through the record and the impugned judgment.

Learned counsel for the appellant has submitted, while drawing attention of the court to page 81 to the statement of PW10-Investigating Officer, that the first informant did not identify the accused. He, hence submitted that prosecution has failed to prove its case. He further submitted that the application was submitted by the prosecution for test identification parade on 01.08.2018, whereas appellant was produced before the first informant much before and, therefore, appellant rightly refused test identification parade. He further pointed out that there were material

contradictions in the statement of the witnesses and therefore, the prosecution has failed to prove its case beyond shadow of reasonable doubt.

He, hence, prayed that judgment of conviction be set aside.

On the other hand, learned counsel appearing for the respondent-State has contended that the prosecution has proved its case beyond shadow of reasonable doubt. He further submitted that the appellant was apprehended on the same day, when the appellant had snatched the purse, and from his possession a ladies purse containing the articles referred to the above was recovered. He further submitted that the case of prosecution stands proved from the statement of Divyanjali Rautray- PW3, the deposition of Investigating Officer- ASI Raj Kapur and deposition of Constable Wahid-PW11, a member of the police team which apprehended the appellant.

On consideration of the matter, this court finds no substance in the arguments of learned counsel for the appellant.

Learned counsel for the appellant is reading one line in the deposition of PW10-Raj Kapoor, ASI in isolation and that also out of context. It is the case of the prosecution that the occurrence of snatching took place at 2:00 PM whereas the FIR was registered at 5:37 PM on the same day. The first informant gave information to the police about the incident at about 4:00 PM, whereas the appellant was apprehended on the same day at about 8/8:30 PM when police official had laid 'Naka' and the appellant, who was driving his activa scooter, on seeing the police party tried to escape vide taking a turn which resulted the appellant slipped, resulting in injury on his foot. From possession of the appellant, articles as referred to above along with country made pistol with two live cartridges

and a knife were recovered.

As per the case of the prosecution, appellant was discharged from the hospital on 05.07.2018 and thereafter, victim-first informant identified the appellant, resulting in his formal arrest. The Investigating Officer has only stated that the first informant did not identify the accused on the same day. The words 'same day' are with reference to the day of occurrence. It is the case of the prosecution itself that first informant was not called to identify the appellant on the day of occurrence because the appellant had suffered fracture of the foot which was put in a plaster cast. Hence, it cannot be said that victim did not identify the appellant. It may be noted here that the appellant was identified by the victim-first informant when she appeared in evidence in the presence of the appellant. She has further stated that she visited the police station and the police had shown her the accused when she was brought face to face with the accused and she identified the appellant.

In view of the aforesaid statement, it cannot be said that the appellant was not identified by the first informant (complainant/victim).

As regards submission of learned counsel regarding late filing of application for test identification parade, dismissed by the Court as appellant refused to undergo the test identification parade vide order dated 06.08.2018, it may be noted that in each and every case, it is not necessary that the test identification parade must be held. It would always depend upon the facts and circumstances of each case. No doubt, the prosecution should carry out the investigation in a proper and impartial manner, however, in the facts of the present case failure to immediately hold test identification parade cannot be said to be fatal to the case of the

prosecution.

Next argument of learned counsel is with regard to contradictions in the oral evidence. It may be noted here that the occurrence is of July, 2018 whereas the statement of witnesses were being recorded after a period of more than 4 months. There are slight improvements/variations in the statements of the witnesses, however, such variations are natural. Minor difference in the ocular version are natural. Each individual has his own perceptions of the happening in a particular manner and he looks at the events according to those perceptions. The human memory normally cannot be expected to re-collect the entire incident or its sequence in the exact manner. If the witnesses are deposing in a parrot like manner, the evidence of the prosecution becomes doubtful.

No doubt, the victim has stated that she went to the police station next day to identify the accused i.e. on 04.07.2018, whereas she actually went to the police station on 05.07.2018. However, it would not make much difference particularly when she has not only identified the appellant but the items referred to in her complaint have been recovered from the appellant. The description of the appellant given in the first complaint also matches with the appellant.

Next contradiction pointed out by learned counsel for the appellant is in the statement of PW10, the Investigating Officer. In this context, it must be noticed that the Investigating officer, a police official deal with various criminal cases daily which are brought before them. They are busy in performance of their duties and therefore, some time it may be not possible to precisely give the time and the manner how the appellant was apprehended.

In the considered view of this Court, apprehension of the appellant as to whether at 8:00 PM or 9:30/10:00 PM would not be material/significant particularly when same white activa scooter which was used for fleeing from the place of occurrence, was recovered from the appellant along with the purse containing the articles referred to the above belonging to the first informant along with one knife and one country made pistol with 2 live cartridges.

Keeping in view the aforesaid facts, this court is not inclined to interfere in the detailed judgment passed by the learned Additional Sessions Judge, Gurugram. The sentence awarded by the Additional Sessions Judge is the minimum and therefore, there is no scope for interference even in the order of sentence.

Hence, dismissed.

17th December, 2019
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No