

**CRA-S-1799-2019(O&M)
and connected case**

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

1. CRA-S-1799-2019(O&M)

Krishan Kumar @ Sonu

.....Appellant

Versus

State of Punjab

.....Respondent

2. CRA-S-1279-2019(O&M)

Mandeep Kumar @ Kaka

.....Appellant

Versus

State of Punjab

.....Respondent

Date of decision: 25.11.2019

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present:- Ms. Harmanpreet Kaur, Advocate for the appellant
in CRA-S-1799-2019**

**Mr. Arjun Atri, Advocate for the appellant
in CRA-S-1279-2019**

Mr. S.P.S.Tinna, Addl. AG, Punjab

ANIL KSHETARPAL, J.

Two criminal appeals bearing number CRA-S-1799-2019 and CRA-S-1279-2019 shall stand disposed of by this order; arising from a common judgment passed in Sessions case no. SC/155/2018 arising from FIR No. 106 dated 9.4.2018 registered under Sections 379-B/34 IPC convicting and sentencing the appellants in the following manner:-

Kumar Kaka	@	rigorous imprisonment for a period of five years and to pay fine of Rs.10,000/- and in default to pay the fine to further undergo simple imprisonment for a period of three months.
		For offence punishable u/s 411 IPC: To undergo rigorous imprisonment for a period of one year and to pay fine of Rs.50/- and in default to pay the fine to further undergo simple imprisonment for a period of one month.
		For offence punishable u/s 201 IPC: To undergo rigorous imprisonment for a period of one year and to pay fine of Rs.500/- and in default to pay the fine to further undergo simple imprisonment for a period of one month.
Krishan Kumar Sonu	@	For offence punishable u/s 379-B IPC: To undergo rigorous imprisonment for a period of five years and to pay fine of Rs.10,000/- and in default to pay the fine to further undergo simple imprisonment for a period of three months.
		For offence punishable u/s 411 IPC: To undergo rigorous imprisonment for a period of one year and to pay fine of Rs.50/- and in default to pay the fine to further undergo simple imprisonment for a period of one month.
		For offence punishable u/s 201 IPC: To undergo rigorous imprisonment for a period of one year and to pay fine of Rs.500/- and in default to pay the fine to further undergo simple imprisonment for a period of one month.

The sentences imposed upon the convicts shall run concurrently. The period already undergone shall be set of in the sentence. Fine has not been deposited.”

Facts

In nutshell the case of the prosecution is that on 9.4.2018 when Head Constable Mahinder Pal alongwith Head Constable Karnail Singh and PHG Harkesh Singh were present near KSM Road adjoining Nirmal Stadium, Rajpura, Divya Rani w/o Parveen Kumar alongwith Hanisha and her brother came and informed that she is working at a chemist shop

situated near Shani Mandir, Rajpura while her husband is doing private job in shop dealing in the footwears. On 6.4.2018 at about 9:15 pm when she alongwith her husband after finishing their work were going to their house on motor cycle bearing No.PB-39A-7210, two persons came from the back side on a motorcycle and the pillion rider snatched her purse and fled away taking advantage of the darkness. Her husband followed them on motorcycle and thus noted registration number of the motorcycle being driven by the offenders as PB-11AL-9011- make Splender black colour. Her bag was containing a booklet issued by the Indane Gas Agency, her voter card, keys of the house and Rs.400/- in cash. People gathered also informed that on 3.4.2018 at about 9:00 pm similarly, purse of one Hanisha daughter of Jyoti Parkash resident of House No.1095, Gandhi Colony, Rajpura Town was also snatched by the motorcyclists of motorcycle bearing registration No. PB-11AL-9011. When the first informant was going to inform the police post, Hanisha d/o Jyoti Parkash alongwith her brother Deepak Kumar also met her at Hira Chowk, Rajpura who also disclosed that she is victim of the similar incident on 3.4.2018. Her bag containing ATM card issued by ICICI Bank, her Aadhar card, keys of the office, two pen drives, Rs.1800/- in cash and some other important documents was also snatched. Both of them stated that they can identify those persons.

On the aforesaid statement, FIR for the offence punishable under Section 379-B/34 IPC was registered against unknown persons. Investigating officer thereafter visited the place of occurrence, prepared lay out plan and recorded the statement of the witnesses. On 10.4.2018 appellants were arrested on the basis of the secret information and

motorcycle bearing registration no. PB-11AL-9011 alongwith its original registration certificate was taken in possession. Both the appellants suffered a joint disclosure statement on 10.4.2018, disclosing that both of the incidents of snatching were carried by them. They got recovered both the purses snatched on 3.4.2018 and 6.4.2018 containing the articles except cash in the presence of victims. The victims also identified the accused and the motorcycle. Investigating officer prepared two parcels of bags alongwith articles, sealed them with impression MP and both the parcels were taken into possession vide separate memos. Lay out plan of the place of recovery was also prepared and the appellants were produced before the Court on 11.4.2018.

On completion of the investigation, final report was presented in the Court, copies of the documents relied upon by the prosecution were supplied to the accused free of costs as per provisions of Section 207 Cr.P.C. The Judicial Magistrate First Class committed the case for trial to the Court of Sessions.

After hearing learned counsel for the public prosecutor and defence counsel and on perusal of the contents of the report, charges were framed.

Prosecution in order to prove its case, examined following oral evidence:-

- “PW1: Ms. Divya Rani complainant w/o Parveen Kumar
PW2: Ms. Hanisha D/o Jyoti Parkash other complainant
PW3: Jaswinder Kumar, Data Entry Operator, RTA,
Patiala
PW4: Jarnail Singh s/o Hardam Singh (owner of

motorcycle)

- PW5: HC Mahinder Pal Investigating Officer
- PW6: HC Daler Singh
- PW7: Anil Chopra owner of Gas Agency
- PW8: Balkar Singh, Kanaungo
- PW9: Shridhar Kulkarni, Branch Manager, ICICI Bank”

Prosecution also proved on file following documentary evidence:-

- “Ex.P1- Statement of complainant Divya Rani made before the police on the basis of which this FIR was registered.
- Ex.P2- Memo of recovery dated 10.4.2018 vide which lady purses, voter card, copy of gas cylinder and bunch of keys.
- Ex.PW3/A- Computerised copy of data entry record of motorcycle No. PB-11AL-9011 in the name of Jarnail Singh son of Hardam Singh.
- Ex.P3- Police proceedings on statement Ex.P1.
- Ex.P4- Copy of FIR
- Ex.P5 and Ex.P6- Site plans of place of incident of snatching
- Ex.P7- Memo of arrest of accused Krishan Kumar
- Ex.P8- Memo of personal search of accused Krishan Kumar
- Ex.P9- Memo of arrest of accused Mandeep Kumar
- Ex.P10- Memo of personal search of accused Mandeep Kumar
- Ex.P11- Memo vide which motorcycle No.PB-11AL-9011 was taken into possession.
- Ex.P-12- Disclosure statement of accused u/s 27 of the Evidence Act.

- Ex.P13- Site plan of place of recovery
- Ex.P14- Application moved by the Investigating Officer before the Manager ICICI Bank to verify the ATM
- Ex.P15- Report regarding ATM
- Ex.P16- Report regarding voter card no.WJE1437318
- Ex.P16- (inadvertently repeated number)- Application moved before the Manager Gas Agency Rajpura
- Ex.P17- Report regarding gas connection.
- MO1- Recovered purse of complainant Divya Rani.
- MO2- Voter card of Parveen Kumar husband of Divya Rani
- MO3- Copy of gas connection.
- MO4- Bunch of keys
- MO5- Recovered purse of Hanisha
- MO6- ATM card of Hanisha”

After closing the prosecution evidence, statements of appellants were record under Section 313 Cr.P.C in which the entire incriminating material was put to them, to which they have denied and pleaded innocence. They pleaded that no recovery was effected from them and police has planted a false case. Although they opted to lead defence evidence, however, no evidence was led.

This Court has heard learned counsel for the appellants and learned Additional Advocate General, Punjab at length and with their able assistance has gone through the judgment passed by the Court and the records.

Divya Rani-victim has appeared as PW1 and supported the case

PW 2 and supported the prosecution version. Registered owner of the motorcycle PB-11AL-9011 Jarnail Singh s/o Hardam Singh has appeared as PW4 and supported the case of the prosecution. Apart therefrom Head Constable Mahinder Pal, investigating officer- PW5 also appeared and deposed in line with the prosecution case. Other witnesses as noticed above have been examined including Anil Chopra as PW7, owner of the gas agency who had issued the card as also Branch Manager of the ICICI Bank- PW9, who had issued ATM card.

Learned counsel for the appellants while pointing out contradictions/improvements in the statements of PW1 and PW2 i.e Divya Rani and Hanisha respectively have submitted that the prosecution has failed to prove its case. It has further been submitted that no test identification parade was carried out and the appellants were exposed to the alleged victims in the police station. They further submitted that it is the duty of the prosecution to prove its case beyond shadow of reasonable doubt and hence, the appellants should be granted the 'benefit of doubt'.

On the other hand, learned counsel appearing for the State has supported the judgment passed by the learned Court of Sessions.

This Court has carefully read the submissions of Divya Rani- victim no.1 who has appeared in evidence as PW1. She has deposed in line with the case of the prosecution. Learned counsel for the appellants has tried to point out minor contradictions by picking holes in the case of the prosecution which are insignificant. She has deposed about the incident strictly in line with the case of the prosecution. She has deposed that on 10.4.2018 she was called to the police post, KSM Rajpura where two

persons were sitting and she identified appellants as Mandeep Kumar and Krishan Kumar present in the Court as the persons who had snatched her purse. She has further stated that Hanisha-victim No.2 also identified the accused in the police station. Thereafter, the accused alongwith the police party and the victims reached a vacant plot situated near Liberty Chowk, Rajpura, Patiala Road. Thereafter on being directed, appellants produced one purse before the police. On opening the same one voter I-card of husband of Divya Rani issued in the name of Parveen Kumar, one booklet issued by the gas agency, one bunch of keys were found. She identified the above-said articles at the spot. Similarly, Hanisha also identified her articles lying in her purse at the spot. Learned counsel for the appellants while referring to the cross-examination has submitted that she could not recollect the name of the police officials who recorded her statement and she has stated that her husband also appended his signatures on his statement, which are not there.

In the considered view of this Court, she has deposed in the Court after a period of one year and six months. It depends upon person to person as to how a person remembers and visualize the incident. One cannot expect that the person would exactly remember what happens and how it happened. Still further there is no contradiction or improvement with regard to the date, time and place of snatching and identification of the appellants.

Similarly, PW2 Hanisha-second victim has also deposed on the same lines. She has also stated about the snatching which took place on 3.4.2018 that when she was going towards her house through MLR Road,

Rajpura and reached near Shani Dev Mandir, Rajpura Town, then at about 8:00 P.M two young men came on motorcycle from back side and snatched her purse hanging on her shoulder. Thereafter, she deposed that on 10.4.2018 she was called by the police at police post situated at KSM Rajpura and two persons were sitting who were identified by her as Mandeep Kumar and Krishan Kumar who were also present in the Court on the date of her deposition. Thereafter, she and Divya Rani alongwith police officials on being disclosed by the appellants, went to a vacant plot and got recovered both the purses containing articles noted above. Learned counsel for the appellants have again pointed out improvements with regard to her visit to the police station for recording her statement or availability of complaint made by her in the police file. In the considered view of the Court, such variations would not be material, particularly, when she has deposed about the incident of snatching in accordance with the case set up by the prosecution.

Apart therefrom, PW4 Jarnail Singh s/o Hardam Singh, registered owner of the motorcycle PB-11AL-9011 has been examined who has stated that he had employed Krishan Kumar @ Sonu and Mandeep Kumar @ Kaka on his harvesting combine and for their commuting provided a motorcycle.

As regards argument of the learned counsel for the appellants with regard to failure of the investigating agency to conduct test identification it may be noticed that it is not mandatory that in each and every case, test identification parade is necessary. It would always depend upon the facts and circumstances of the case. In the present case, link

evidence i.e motorcycle, registration number whereof was disclosed in the first information report to the police has been properly connected with the appellants. Still further recovery of the snatched articles have also been made on the disclosure statement of the appellants, admissible in evidence under Section 27 of the Indian Evidence Act, 1872, which is in the nature of exception to the provisions made under Section 25 and 26 of the Indian Evidence Act. It is provided that the statements/confessions given by the accused detenues in police custody cannot be used against them, however, if articles or weapons of offence are recovered, on the disclosure statement, such part of the statement, is admissible in evidence.

Keeping in view the aforesaid facts, this Court does not find any good ground to interfere in the detail judgment passed by the learned Court of Sessions. Hence, both the appeals are dismissed while maintaining the sentence awarded to the appellants, which is the minimum as provided under the Indian Penal Code.

25.11. 2019

rekha

Whether speaking/reasoned

Whether Reportable

(ANIL KSHETARPAL)

JUDGE

Yes / No

Yes / No