

**CRR-175-2019(O&M)
and connected case**

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

1.CRR-175-2019(O&M)

Roshan

.....Petitioner

Versus

State of Haryana

.....Respondent

2.CRR-3749-2018(O&M)

Ajay Kumar

.....Petitioner

Versus

State of Haryana

.....Respondent

Date of decision:06.12.2019

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.Bhisham Kumar, Advocate for the petitioner
in CRR No. 175-2019

Mr. Munfaid Khan, Advocate for the petitioner
in CRR No. 3749-2018

Mr. Anmol Malik, AAG, Haryana

ANIL KSHETARPAL, J.

By this order criminal revision petitions CRR No. 3749 of 2018 and CRR No. 175 of 2019 shall stand disposed of. Both the revisions are arising from a common judgment of conviction passed by the learned Judicial Magistrate, affirmed in appeal by the Court of Sessions.

On the information supplied by Sandeep Sharma, FIR No. 216 dated 29.5.2014 under Section 379, 356 IPC P.S Sarai Khawaja, Faridabad

was registered. In nutshell the case of the prosecution is that on 29.5.2014 the first informant-victim boarded a CNG Auto of green colour to come to his house from Badarpur Border. Although he did not note its registration number, however, apart from driver, one person was already sitting inside the auto. When they reached near cremation ground then the driver of the auto parked it on one side. Complainant got panicked and jumped from the auto, however, both of them snatched his Rexene bag of black colour containing his lenovo laptop of Sr. No.201901, two mobile phones- Samsung and Nokia, bearing SIM No.9910021165 and 8130071704, three credit cards (HDFC, ICICI and SBI Banks) and the keys of the house. Wallet containing copy of the driving licence, cash amount of Rs.2500/- and metro card was also taken away. On registration of the FIR, initial investigation was conducted by SI Mahender Kumar who prepared lay out plan of the site and recorded statement of the witnesses. Later on investigation was handed over to Jagbir Singh, Crime Branch, Sector 48. On 6.7.2014, the petitioner Ajay Kumar was arrested and on his disclosure statement snatched mobile phone Nokia was recovered. On 11.7.2014, Roshan was arrested and on his disclosure statement CNG auto used in the alleged offence bearing no.HR-38-D-3821, a bag, a copy of the driving licence and Rs.1000/- (two notes in the denomination of Rs.500/- each) were recovered. He also suffered a disclosure statement that he had destroyed the laptop and has thrown it in Agra Canal. The spot where case property was destroyed and thrown was also got identified and demarcated.

On conclusion of the investigation, the police report was filed.

Prosecution in order to prove its case got recorded deposition of six

witnesses including Sandeep Kumar Sharma, the first informant-victim. As noticed above, the learned Judicial Magistrate as well as learned Court of Sessions have recorded a concurrently finding of facts with regard to conviction of the petitioners.

This Court has heard learned counsel for the petitioners in both the petitions and with their able assistance have gone through the record and the judgments passed by the Judicial Magistrate, affirmed in appeal by the Court of Sessions.

Learned counsel for the petitioners has submitted that prosecution has miserably failed to establish its case as there are contradictions in the statement of first informant-Sandeep Sharma. They drew attention of the Court to the complaint submitted to the police and his deposition in the Court. In the first information report, it has been averred by Sandeep Sharma that the laptop bag was snatched whereas when he appeared in evidence he stated that his bag fell in the Auto. They further submitted that the laptop bag and Samsung phone has also not been recovered. They also while pointing out to the evidence of Constable Mahesh Kumar-PW2, submitted that petitioners have been falsely implicated as all the documents were prepared by the Investigating Officer in the Police Station only.

On the other hand, learned State counsel has supported the judgment passed by the Courts below.

No doubt in the application, Ex.PW1/A, first informant has stated that his laptop bag has been snatched. Whereas while deposing in Court as PW1, he has stated that his laptop bag fell in the Auto. However,

the deposition of Sandeep Kumar Sharma is read to be in the context it has been made. He has stated that when the Auto was taken to a bye lane near cremation ground, he panicked and after jumping started to run but the petitioners caught hold of him and started pulling him inside the Auto and that's when the laptop bag fell in Auto. The statement as made by Sandeep Kumar Sharma cannot be said to be giving a different version than what has been stated in the First Information Report.

Now, as regards non-recovery of Samsung Mobile and laptop, it would be noted that it is the case of the prosecution that the laptop after having been destroyed, was thrown in Agra Canal by Roshan-petitioner. On his identification, the site was demarcated as PW2/E. No doubt there is no explanation with regard to Samsung phone, however, when the investigating officer appeared in evidence his attention was not drawn by the counsel for the petitioners on this aspect.

As regards, the argument of the learned counsel for the petitioners that Constable Mahesh Kumar has admitted that all documents have been prepared at Police Station and not at the spot also does not have substance because Constable Mahesh Kumar-PW2 is not the investigating officer. Investigation has been carried initially by the then SI Mahender Kumar-PW5 and thereafter by Assistant Sub Inspector Jagbir-PW3. When they were given suggestion, they specifically stated that the documents, recovery memo etc. were prepared at the spot.

In this case, the Auto is owned by mother of Roshan. She has come in evidence and deposed that her son Roshan used to drive Auto.

Apart therefrom, the recovery of Nokia mobile on the disclosure of Ajay

and recovery of laptop bag, copy of driving licence and Rs.1000/- corroborated by evidence of first informant and the investigating officer proved the case set up by the prosecution.

In view thereof, there is no ground to interfere. However, before parting it has been noticed that learned Judicial Magistrate has awarded sentence as under:-

Sr.No	Offence	Imprisonment	Fine	Imprisonment in default of fine
1.	356 IPC	Two years Simple each	Rs.1000/- each	20 days
2.	379 IPC	Three years Simple each	Rs.1000/- each	20 days
3.	411 IPC	Three years Simple each	Rs.1000/- each	20 days.

The maximum sentence under Section 379 and 411 IPC is 3 years. In the facts of the case, it is considered appropriate to reduce the sentence to 2 years under Section 379 IPC as well as 411 IPC. All sentences shall run concurrently. With these observations, revision petitions are disposed off.

06.12. 2019
rekha
Whether speaking/reasoned
Whether Reportable

(ANIL KSHETARPAL)
JUDGE
Yes / No
Yes / No