

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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Criminal Appeal-S-801 of 2019 (O&M)

Date of Decision: January 29, 2020.

Ravi @ Bittu and another

.....Appellants

versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR.JUSTICE VIVEK PURI.

Present: Mr.Madan Sandhu, Advocate, for appellant No.1.

Mr.Amit Choudhary, Advocate, for appellant No.2.

Mr.B.S.Virk, Deputy Advocate General, Haryana.

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Vivek Puri, J.

The present appeal has been preferred against the judgment of conviction dated 15.02.2019 vide which the appellants were convicted under Section 379-A and 201 read with Section 34 IPC and vide order dated 16.02.2019 they were sentenced to undergo rigorous imprisonment of eight years and to pay a fine of Rs.25,000/- each for having committed the offence punishable under Section 379-A read with Section 34 IPC and in default of payment of fine, to further undergo rigorous imprisonment of two years. They were also sentenced to undergo rigorous imprisonment of two years each for committing the offence punishable under Section 201 read with Section 34 IPC. Both the sentences were directed to run concurrently.

Briefly, the facts as put-forth by the prosecution are to the effect that on 02.08.2018, Dev Kumar-complainant submitted an application to the Incharge, Police Post Bus Stand, Fetehabad, to the effect that he is a student of 12th standard. On 23.07.2018 at about 3.00 p.m., he alongwith his father Sanjay Kumar were present in the street in front of their house. He was carrying a mobile phone bearing IMEI No.867159036308993 and 867159038308991 having SIM No.9518493758. The complainant was holding the mobile phone in his hand. Two young persons arrived at the spot on a motorcycle and the person sitting on the pillion snatched the mobile phone of the complainant and fled away on the motorcycle. The complainant alongwith his father tried to chase them but to no effect. The complainant had been trying to locate the mobile phone at his level but could not get any clue. The unknown persons were aged about 20-22 years who can be identified by the complainant and his father. On the basis of said complaint, the present case has been registered.

On presentation of challan, the accused were charge-sheeted under Sections 379-A and 201 read with Section 34 of IPC, to which they pleaded not guilty and claimed trial.

To substantiate its case, the prosecution has examined as many as 11 witnesses besides producing documentary evidence. The statements of the accused-appellants under Section 313 Cr.P.C. were recorded but no defence evidence has been adduced by them.

The appellants were convicted and sentenced as aforesaid.

Aggrieved from the aforesaid judgment of conviction and order of sentence, the present appeal has been preferred by them.

I have heard learned counsel for the parties and perused the

record.

While assailing the judgment of the trial Court, it has been argued by learned counsel for the appellants that Dev Kumar-PW-1-complainant and his father Sanjay Kumar-PW-3 have not identified the appellants during the course of deposition in the Court. The prosecution has sought to put-forth a case that the appellants had sold the mobile phone to PW-11-Rinku who further sold the same to Jagsir Singh PW-8. It has been contended that even PW-11 Rinku has not supported the prosecution version and there is lack of reliable evidence to indicate that PW-8 Jagsir Singh had purchased the mobile phone from PW-11 Rinku or the appellants had sold the same to PW-8 Jagsir Singh as they had snatched the same from Dev Kumar PW-1.

On the contrary, while supporting the judgment of the learned trial Court, it has been contended by the learned State counsel that it is true that the complainant and his father have not supported the prosecution version but during the course of investigation, they had identified both the appellants vide identification memo Exhibit P-4. Even the mobile phone has been recovered from Jagsir Singh PW-8 and motorcycle has been recovered in pursuance to the disclosure statement of the appellant Harjeet Singh @ Kuldeep. At the instance of the appellants, the place where they had thrown the SIM was identified and site plan Exhibit P-27 has been prepared.

The prosecution has built up a case to the effect that on 02.08.2018, both the appellants while they were travelling on motorcycle have snatched the mobile phone being carried by Dev Kumar-PW-1. His father is also eye witness to the occurrence. It may be mentioned here that first version of the case has been unfolded in the complaint Exhibit P-1

submitted by the complainant Dev Kumar PW-1 which has been submitted on 02.08.2018 after a lapse of a period of about 10 days from the occurrence. Moreover, PW-1 Dev Kumar and his father PW-3 Sanjay Kumar while appearing in the witness box have categorically and specifically stated that they could not identify the assailants as they were in muffled faces. As such, both of them do not implicate any of the appellants in any manner. Furthermore, the version of the prosecution to the effect that the appellants had sold the mobile phone to PW-11 Rinku cannot be accepted as PW-11 Rinku has testified while appearing in the witness box that he does not know anything about the case. Neither PW-1 Dev Kumar nor PW-3 Sanjay Kumar nor P-11 Rinku have supported the prosecution version nor uttered any word incriminating against any of the appellants with the commission of crime. All the three witnesses have also been put questions in the form of cross-examination by the learned prosecutor but nothing material could have be from their deposition.

In the event, Dev Kumar PW-1 and Sanjay Kumar PW-3 had identified the appellants during the course of investigation vide identification memo exhibit P-4, it cannot be termed to be a substantive evidence against the appellants. At the most, it can be construed as a circumstance which may provide lead during the investigation. Significantly, they have not identified the appellants during the course of their deposition in the Court.

The learned trial Court has observed that the appellants have got recovered the snatched mobile phone in pursuance to the disclosure statement. However, it is significant to note that disclosure statements exhibit P-21 and P-22 do not lead to any recovery of mobile phone at the

instance of any of the appellants. The mobile phone has been produced by Jagsir Singh PW-8. He has testified to the effect that the same has been purchased by him from PW-11 Rinku. It is significant to note that neither any bill nor receipt nor any document evident of said sale transaction is coming forth. Jagsir Singh PW-8 has testified to the effect that he has been asking PW-11 Rinku for the bill of the mobile phone but he did not give the same to him. Even no rough receipt was procured. In such circumstance, there is lack of satisfactory and reliable evidence to conclude that the appellants had sold the mobile phone to PW-11 Rinku, who further sold the same to Jagsir Singh PW-8.

Although the motorcycle was recovered in pursuance to the disclosure statement of appellant No.2-Harjeet Singh @ Kuldeep, but such recovery cannot be termed to be sufficient to fasten the appellants with the criminal liability in the instant case. The motorcycle is the ownership of PW-4 Balwinder Singh who is father of appellant No.2-Harjeet Singh @ Kuldeep. Such recovery of the motorcycle does not in any manner connect the appellants with the commission of crime. Furthermore, the place where the appellants had allegedly thrown the SIM was identified by them but, no SIM has been recovered in the instant case.

In order to secure the verdict of conviction, the prosecution is required to prove and establish the guilt of the accused-appellants beyond the shadow of a reasonable doubt. On evaluating the evidence on record, the case of the prosecution cannot be termed to be free from a reasonable doubt, it stands short of demanding degree of proof required to establish criminal case and the appellants are entitled to acquittal.

In these set of circumstances, finding sufficient merit in the instant appeal, the same is accepted and the impugned judgment of conviction dated 15.02.2019 and order of sentence dated 16.02.2019 are set-aside. The appellants are ordered to be released forthwith if not confined in any other case. The amount of fine, if deposited by the appellants, be refunded to them.

January 29, 2020 <i>mohinder</i>		(VIVEK PURI) JUDGE
Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No