

In the High Court of Punjab and Haryana, at Chandigarh

Criminal Appeal No. S-1215 of 2020 (O&M)

Date of Decision: 20.08.2020

Manoj Saini

... Appellant(s)

Versus

State of Haryana

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. J.P.Sharma, Advocate
for the appellant.

Mr. Chetan Sharma, Assistant Advocate
General, Haryana for the respondent.

Anil Kshetarpal, J.

The challenge herein is to the judgment of conviction and the order of sentence passed by the learned Additional Sessions Judge, Narnaul on 09.07.2020 whereby the appellant has been convicted under Section 511 IPC and sentenced to undergo rigorous imprisonment for a period of three years.

In a nutshell, the case of the prosecution is that when the first informant was going to her mother's place, a boy riding a motorcycle, all of a sudden, came from behind and tried to snatch her handbag, however, in that attempt a string of the bag snapped resulting in felling of the handbag. At that time, a mobile phone of the accused also fell on the ground, which was picked up by the first informant and thereafter, she deposited it with the police. She further stated that the bag contained an amount of ₹ 11,490/-

came out.

On the conclusion of the investigation, the final report was submitted before the Court as required under Section 173 Cr.P.C. while supplying a copy thereof to the appellant. The appellant was charge sheeted for the offence punishable under Section 379-A/511 IPC, to which he pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined the first informant as PW.1, a lady from the neighbourhood of the first informant as PW.2, the registered owner of the motorcycle as PW.3 and the police officials as PW.4, PW.5 and PW.6. A Nodal Officer from Vodafone Idea Limited was also examined as PW.7. The statement of the accused under Section 313 Cr.P.C. was recorded while confronting him with the incriminating evidence produced by the prosecution. However, the appellant pleaded innocence, but he did not lead any evidence in his defence.

As noticed above, the learned trial Court convicted the appellant under Section 511 IPC.

This Court has heard learned counsel for the appellant as well as the Assistant Advocate General, Haryana and with their able assistance, gone through the judgment passed as well as the requisitioned record of the trial Court.

Learned counsel appearing for the appellant has contended that the prosecution has miserably failed to prove its case as the first informant/victim did not identify the appellant. He further submitted that the first informant has made a lot of improvements in her stand and therefore, it cannot be relied upon. He further submitted that even PW.2, the

alleged eye witness, did not identify the petitioner. He, hence, contended that the learned trial Court has erred in convicting the appellant.

Per contra, the learned Assistant Advocate General, Haryana has supported the judgment of the learned trial Court.

It is significant to note here that Ex.P1 is the first application filed by the first informant with the police. From the reading thereof, It is apparent that she has neither disclosed the registration plate number of the motorcycle nor its make. She has further not given any description, either about the physical appearance of the boy or the clothes he was wearing at the time of incident. She only stated that a boy came from behind and tried to snatch her bag, but since in that process its string snapped, therefore, the bag fell down and in that attempt, the mobile phone of the boy also fell down, which she picked up and deposited with the police. When we read her statement given in the Court, she has stated that a boy with muffled face came from behind. In cross-examination, she has stated that she does not know the appellant-Manoj who is present in the Court. She also stated that she does not identify the appellant. When she was confronted with her application Ex.P1, she admitted that she has not stated that the alleged boy had muffled his face at the time of alleged incident. Further, in the cross-examination, she admitted that she did not state before the police regarding blue colour of the shirt which the accused was allegedly wearing and the colour of the motorcycle. Similarly, the alleged eye witness has appeared as PW.2. She has also stated that she does not know the person who was riding the bike and she also did not identify the appellant. She has also stated that the police did not conduct the test identification parade.

Keeping in view the aforesaid facts, the defence has successfully created a reasonable doubt about the correctness of the case of the prosecution. In this case, the first informant was the star witness on behalf of the prosecution. She has failed to identify the appellant in the Court. Still further, as noticed above, the statement of the first informant PW.1 does not prove the involvement of the appellant beyond the shadow of reasonable doubt. Further, the first informant has made a significant improvement while deposing in the Court which creates a doubt about the correctness of the case of the prosecution.

Still further, the prosecution has failed to prove as to how and in what manner, the appellant was connected with the alleged incident. Merely because the mobile phone belonging to the appellant was taken into possession by the first informant and handed over to the police does not prove the involvement of the appellant.

Still further, the learned trial Court has overlooked that the first informant did not identify the appellant. The learned trial Court has further committed an error in shifting the onus on the appellant to prove that he was not the accused who had tried to snatch the handbag from the first informant. In a criminal case, the onus to prove its case is on the prosecution. It was for the prosecution to prove that the appellant was the person who had allegedly committed the offence. Still further, the learned trial Court erred while referring to the recovery of the motorcycle (which the appellant was allegedly driving at the time of incident) has observed that since it had been recovered on the disclosure of the appellant, hence it is admissible in the evidence under Section 27 of the Indian Evidence Act, 1872 (hereinafter

referred to as “the 1872 Act”). Section 27 of the 1872 Act is in nature of an exception to the inadmissibility of confession made by the accused while in custody of the police as provided in Section 25 and 26 of the 1872 Act. However, Section 27 of the 1872 Act creates an exception. On careful reading of Section 27, it is clear that any fact discovered in consequence of the information received from the accused is admissible only to that extent. Now in this case, on the disclosure statement of the appellant, the motorcycle was recovered. Therefore, mere recovery of the motorcycle does not connect the appellant to the offence, particularly when the first informant never identified the motorcycle. The Public Prosecutor did not get the motorcycle identified either from the first informant or the alleged eye witness.

Keeping in view the aforesaid facts, this Court is of the considered view that the appellant is entitled to the benefit of doubt. Consequently, the present appeal is allowed and the judgment of conviction followed by the order of sentence is set aside. The appellant is already out of jail on account of the bail granted by the Trial Court.

The miscellaneous application(s) pending, if any, shall also stand disposed of in terms of the main order.

(Anil Kshetarpal)
Judge

August 20, 2020
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No