

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

CRA-S No. 369 of 2019 (O&M)

Reserved On: 07.05.2022

Pronounced On: 24.05.2022

Manvinder Singh @ Munny and another

..... Appellants

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Ranjit Saini, Advocate
for the appellants.

Mr. Pradeep Prakash Chahar, DAG, Haryana.

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the impugned verdict of conviction, rendered on 03.01.2019, upon CIS No.56 of 2018, by the learned Additional Sessions Judge, Yamuna Nagar at Jagadhri, with respect to a charge drawn against the accused qua an offence punishable under Section 379-A of the Indian Penal Code,. In consequence to the verdict of conviction, as made upon the accused and, qua the above drawn charge, by the learned Additional Sessions Judge, Yamuna Nagar at Jagadhri, he proceeded to impose, upon the convicts' a consequent therewith sentence of rigorous imprisonment extending upto a tenure of 5 years each, and, also imposed upon each of the convicts sentence of fine of Rs. 25,000/- each, besides upon default of payment of fine, he sentenced them, to undergo rigorous imprisonment upto six months.

2. Both the convicts are aggrieved from the above drawn verdict of conviction, and, the consequent therewith sentence(s) (supra), and, as made upon them by the Additional Sessions Judge, Yamuna Nagar at Jagadhri,

and, have cast thereagainst the instant criminal appeal before this Court.

3. The brief facts of the case are that as per complainant, she was working with Wrangler Clothes/garments showroom situated in Model Town, Yamuna Nagar. On 09.07.2017 at about 9:00 pm, after finishing her job, she was going to her house on foot via Santpura Road. When she reached near Santpura Gurudwara, a call was received on her phone, and, while she was attending the phone call while walking, and, upon reaching near Selfie Beauty Parlour on Chhoti Line, two young boys came on a bike of black colour, snatched her mobile phone of LYF company, containing one sim of TATA company bearing No.7206076760, and, another sim of Jio company bearing No.8708966893, and, thereafter they fled away. Her mobile phone was of white colour. She prayed that her mobile phone may be got recovered, and, legal action may be taken against them.

4. On the basis of aforesaid application Ex.PA, FIR Ex.PD was registered under Section 379-A IPC by ASI Bhupinder Singh. Thereafter, ASI Bhupinder Singh along with the complainant, and, her uncle visited the place of occurrence, and, prepared rough site plan Ex.PE, at the instance of the complainant.

5. The star prosecution witness, is the aggrieved-victim-complainant who lodged FIR(s) carried in Ex. PD, before the police station concerned. Therefore, a keen analyses of her deposition is required to be made. If in her testification as made, before the learned trial Judge concerned, she has neither made gross embellishments or improvements from her previously recorded statement in writing, and, nor, has contradicted the version qua the genesis of the prosecution case, as echoed

this Court would proceed to assign credit to her testification, whereas, if she has made the above stained deposition, thereupon this Court would not assign probative worth to her testification.

6. The gravamen of the penal occurrence, is embodied in the FIR, as, became lodged qua the occurrence, to which Ex. PD is assigned. The narrations carried therein are necessarily required to be reproduced hereinafter, as therefrom, the above factum of her testification in Court, rather suffering or not suffering from the above stains would rather emerge.

“Copy of writing is as under: To SHO, PS City Yamuna Nagar, Respected Sir, it is requested that I, Parminder Kaur, D/O Late Ram Singh, Caste Ramgadiya Sikh, am resident of House no. 209, East Bhatia Nagar, Yamuna Nagar. I am doing service in a Showroom of wrangler clothes situated in Model Town. I used to go to the shop and return in the morning and evening by foot. Today, in the evening, at about 09.00 PM, after finishing work at shop, I was going to my house by foot via Santpura Road. When I reached near Santpura Gurudwara, then a phone call was received on my phone, I was attending the phone call while walking and reached near SELFIE BEAUTY PARLOUR at Chhotti Line then two young boys came on a bike of black colour from backside and they went away after snatching my mobile phone from my hand. MY mobile phone was of LYF company, in which one SIM of TATA company bearing no. 7206076760 and another SIM of JIO company bearing no. 8708966893 were inserted. My mobile is of white colour. My mobile may be got searched and action be taken against accused. I have come with my uncle (Chacha) Rajinder Singh son of Sewa Singh, SD Parminder Kaur, 9034377265. At police station- on receipt of above said application in the police station, after registration of Case FIR no. 363, dated 09.07.2017, under section 379 IPC, PS City Yamuna Nagar, copies of FIR were prepared through

computer, which are being sent as special report through EMAIL to illaqua Magistrate, Superintendent of police, Yamunanagar, Deputy Superintendent of police, Yamunanagar. I, ASI, along with C-1 Shakti and complainant, after taking the copy of police file along with original writing, am departing to the spot. Entries made in record as per law.”

7. A reading of the afore narration carried in her previously recorded statement in writing, reflects, that therein she had not narrated the key characteristic physical attributes of the accused persons. However, she has echoed therein, that the accused persons came on a bike of black colour, and, after making the incriminatory snatching, they fled from the crime site. The snatched material, was a mobile phone of LYF company, in which one SIM of TATA company bearing no. 7206076760, and, another SIM of JIO company bearing no. 8708966893, rather were inserted. Though, the entire prosecution case becomes rested, upon the identification of the accused, as became made on 19.11.2017, rather by the victim, in a test identification parade, as, became conducted by SI Sukhdev Singh near Madhu Chowk, Yamuna Nagar. Therefore the validity of the afore identification obviously is to be tested. The identification made of the accused, by PW-1, and, as deposed to be made on 19.11.2017, and, at the instance of the investigating officer concerned, resulted in the drawing of a memo Ex. PB. Nonetheless, the above identification would carry immense evidentiary vigor, only when prior thereto, in her previously recorded statement in writing, rather PW-1 had disclosed the key characteristic physical features of the accused, otherwise not. However, as unfolded in the above reproduced contents of the FIR, she has not described therein, the key characteristic physical

attributes of the accused. Therefore, the identification as made by PW-1, of the accused, to be the persons who purportedly snatched the hereinabove mobile phone, cannot be concluded to hold any vigor. Moreso, when the penal occurrence is of 09.07.2017, and, the identification, as made by PW-1, of the accused occurred much belatedly therefrom inasmuch as, it happened on 19.11.2017, and, that too without hers' in her previously recorded statement in writing, explicitly spelling the key characteristic physical attributes of the accused, hence, rendering her completely incapacitated to make any valid identification of the accused in any test identification parade, as became conducted, during the course of investigations by the investigating officer concerned nor hers identifying the accused in Court carries any evidentiary weight.

8. As above stated, the purportedly snatched mobile phone of the victim, was done on 09.07.2017, whereas, its recovery from the accused through memo Ex. MO-1, occurred on 19.11.2017. In case the prosecution had succeeded, in adducing cogent proof in respect of the valid drawings, of Ex. MO-1, thereupon, irrespective of all the above conclusions, this Court yet may have proceeded to sustain the charge drawn against the accused.

9. This Court would assign credence to Ex. MO-1, if the recovery, as, became made therethrough, did also result in PW-1 (Parminder Kaur – informant), on hers stepping into the witness box, and, upon, the mobile phone as became, purportedly snatched from her by the accused-appellants, upon, becoming shown to her, in Court, hers unfolding then, that the mobile phone, was the one, which was snatched by the accused, and, that in respect thereof recovery memo, Ex. MO-1, became drawn.

deterioration, and, decay rather is required to be kept in a sealed condition, at the *malkhana* concerned. However, since the mobile phone concerned, was not amenable to any decay or deterioration, yet it became released on *sapurdari* to the informant, whereas, it was required to be kept in a sealed condition, in the *malkhana* concerned. Moreover, even the IO concerned, failed to make seals thereon(s), rather it became released on *sapurdari* to the victim – informant, resulting in intrusion of suspicion about / qua the making of recovery of the apposite item through Ex. MO-1, and, also qua it being owned by the victim, and / or qua it being similar to the one, as, became produced, in Court, by PW-1. If the case property was sealed, then also, it was possible for the learned trial Judge concerned, to seek an opinion, from the expert concerned, about the item concerned, being the same in respect whereof recovery memo carried in exhibit (supra) became drawn. The above endeavour of the learned trial Judge concerned, as afore stated, to rather order for release of the seized item, on *sapurdari* to the victim – informant, which otherwise, also on its production, in Court, is for, reasons (supra), not relatable to the seizure, as, made to Ex. MO-1, has resulted in making the charge to founder.

11. Be that as it may, the best evidence in respect of connecting the recovery memo Exhibit M.O.-1 with the accused, became comprised in the investigation officer concerned, collecting call details from the service provider concerned, and, or from the cyber crime cell, and, therein revelations sprouting qua the calls emanating from the cell phone becoming made to persons who were known or acquainted with the accused, and, became also comprised in the investigating officer concerned, collecting the apposite tower locations, in respect thereto, and, the above evidence

suggesting that wheresoever the snatched mobile became carried, rather the accused also being present at such places. However, the above evidence has not come on record, and, consequently the benefit of doubt is to be given to the accused.

12. Therefore, for the reasons, which have been recorded hereinabove, this Court holds that the learned trial Court has not appraised the entire evidence, on record, in a wholesome and harmonious manner, and, also the analyses thereof, by the learned trial Court, hence suffers, from a gross absurdity of mis-appreciation and non-appreciation, of evidence, on record.

13. Consequently, there is merit in the extant appeal, and, it is accordingly allowed. The impugned judgment of conviction, and, the consequent therewith sentence (supra), as, becomes imposed, upon the accused-appellants, is quashed, and, set aside.

14. The personal and surety bonds of the appellants are ordered to be forthwith cancelled and discharged. The accused-appellants herein, if in custody, and, if not required in any other case, be forthwith set at liberty. Records be sent down forthwith.

15. Since, the main appeal itself has been decided, therefore, no order is required to be passed in the pending miscellaneous application(s), if any, and, the same also stand(s) disposed of.

May 24th, 2022

'Ithlesh'

**(SURESHWAR THAKUR)
JUDGE**

<i>Whether Speaking/reasoned</i>	<i>Yes / No</i>
<i>Whether Reportable</i>	<i>Yes / No</i>