

In the High Court of Punjab and Haryana at Chandigarh

CRA-S-288 of 2021 (O&M)
Reserved on: 30.8.2022
Date of Decision: 05.9.2022

Arun KumarAppellant

Versus

State of PunjabRespondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Ms. Monita Mehta, Advocate
for the appellant.

Ms. Ishma Randhawa, Addl. A.G, Punjab.

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the impugned verdict, as made on 4.1.2021, by the learned Sessions Judge, Hoshiarpur, upon Sessions Case No. 20 of 6.8.2019. Through the verdict (supra), the learned trial Judge concerned, proceeded to record a verdict of conviction against the accused qua a charge a charge drawn against him, for offences punishable under Sections 379-B, and, under Section 411 of the IPC. Moreover, through a separate sentencing order, drawn on 4.1.2021, the learned trial Court, proceeded to, in the hereinafter extracted manner, impose, upon the convict-accused, the sentence(s) of imprisonment, and, also sentences of fine.

<i>Sr. No. and name of accused</i>	<i>Offence under Section</i>	<i>Sentence of imprisonment</i>
1. Arun Kumar	379-B IPC	To undergo rigorous imprisonment for a period of five years and to pay fine of Rs. 5,000/- . In default payment of fine to further undergo rigorous imprisonment for a period of three months.

	411 of IPC	To undergo rigorous imprisonment for a period of two years and to pay fine of Rs. 1000/- . In default payment of fine to further undergo rigorous imprisonment for a period of one month.
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Factual Background

2. The genesis of the prosecution case becomes encapsulated in the appeal FIR, to which Ex. PL is assigned, wherein narrations are carried, that complainant Nisha Devi, gave a statement to SI Surinder Singh, on 30.4.2019, that she is a private teacher in Arya Kanya Pathshala village Jaijon. On 30.4.2019, at about 2.15 P.M., she was returning to her village Mehdood, after attending school, and, when she reached at Baddowal turning of village Lasara, a motorcycle bearing No. HP-80-0745 driven by a Hindu gentleman came from behind. The said boy brought his motorcycle near the complainant, and, snatched her purse containing cash of Rs. 150/-, mobile phone make i-phone 4S having sim No. 94636-27374, Aadhar card, and, voter card. Complainant went to her house, and, disclosed the incident as well as registration number of motorcycle to her brother Rakesh Kumar, who thereafter verified the registration number of the said motorcycle, and, came to know that the aforesaid motorcycle is owned by Arun Kumar son of Onkar Singh, resident of Kathar Beet, Tehsil Haroli, District Una, Himachal Pradesh. She stated that she can identify the said boy.

Investigation proceedings

4. After registration of the FIR No. 47 dated 30.4.2019 under Section 379-B IPC, the investigating officer concerned, launched investigations into the appeal FIR. The accused was arrested on 1.5.2019, and, recovery of purse, mobile phone make i-phone 4S, and, voter card, was effected, and, offence under Section 411 IPC was added vide DDR No. 27

dated 20.6.2019, and after conclusion of investigations thereinto, he proceeded to institute a report under Section 173 of the Cr.P.C., before the learned committal Court concerned.

Committal proceedings

5. Since the offence under Section 379-B IPC, is triable by the Court of Session, therefore, the learned committal Court concerned, through an order made on 23.7.2019, proceeded to commit the accused for facing trial to the Court of Session.

Trial Proceedings

6. Consequently, the learned Sessions Judge concerned, proceeded to draw the apposite charges against the accused, for the offences punishable under Sections 379, 411 of the IPC, and, also put the afore charges to the accused, to which he pleaded not guilty, and, claimed trial.

5. In support of the prosecution case, five prosecution witnesses stepped into the witness box, and, subsequently, the learned trial Judge concerned, proceeded to draw proceedings, under Section 313 of the Cr.P.C., but therein, the accused claimed false implication, and, pleaded innocence. Though, the accused claimed the granting of leave to him, for leading defence evidence, but yet the above granted leave never became availed by him.

Submissions of the learned counsel for the appellant

6. The learned counsel for the aggrieved convict-appellant herein, has vigorously argued before this Court, that the impugned verdict of conviction, and, consequent therewith sentence (supra), as imposed, upon the convict-appellant, both become ridden with a gross infirmity of gross misappreciation, and, non-appreciation of the evidence, as exists on record.

Therefore, he has argued that the appeal be accepted, and, the verdict, as challenged before this Court, be quashed and set aside.

Submissions of the learned State counsel

7. On the other hand, the learned State counsel has argued before this Court, that the judgment, as challenged before this Court, is well merited, and, does not warrant any interference.

Disclosure statement of the convict

8. During the course of investigations, being carried into the appeal FIR, the convict made a signed disclosure statement, before the investigating officer concerned, and, to which Ex PI is assigned. In Ex. P1, he confessed his guilt, and, also showed his willingness to cause the makings of recoveries of the incriminatory items, from the place of his hiding, and, concealing them, place whereof is but a place, known only to him.

Recovery memo

9. In pursuance to the making of the signed disclosure statement, by the convict, he caused recoveries of mobile I-Phone No. 4S, voter card, a black coloured purse, and, motorcycle make Bullet, bearing registration No. HP80-0745 together with its R.C. The above vehicle, and, the R.C., is proven by the investigating officer concerned, to be owned by the convict.

10. The effect of the above signed disclosure statement, becoming made by the convict to the investigating officer concerned, during the course of the latter launching investigations into the appeal FIR, is that, it carries utmost evidentiary tenacity, and, only if he ably denied his signatures, as occurring thereons, rather than alone it would lose its

evidentiary solemnity. However, the convict has not denied his making his signatures on Ex. PI, resultantly, and, neither when he has either suggested to the PWs concerned, nor has been able to ably prove that Ex. PI, became drawn by the investigating officer concerned, through his exerting pressure, and, coercion, upon him. Therefore, fortified evidentiary vigour, is to be assigned to Ex. PI. Moreover, the recoveries, as made in pursuance to the drawing of Ex. PI, rather through recovery memo, to which Ex. PJ is assigned, acquire evidentiary worth. The reason for making the above conclusion becomes sparked from the factum, that during the course of PW-1 stepping into the witness box, hers identifying in Court, the incriminatory items, as became recovered through recovery memo, to which Ex. PJ is assigned. Therefore, since the incriminatory items, became sealed within the sealed cloth parcel, and, upon their production in Court, in a sealed, and, in an untampered condition, resulted in thereafter the relevant incriminatory recovered items being shown to the victim, who proceeded to identify them to be belonging to her. Resultantly, the identification in Court of the recovered incriminatory items, rather by PW-1, does purvey the completest corroboration to the disclosure statement, to which Ex. PI is assigned, and, also to the consequent thereto recoveries through a recovery memo, to which Ex. PJ is assigned. Conspicuously also when the recovered incriminatory items appertain to the personal voter identity card, and, i-phone of the victim, and, which but do openly reveal, and, an apt identification qua their ownership, in Court, becoming validly made by the victim. Therefore, also it cannot at all be concluded, that the above produced recovered incriminatory items, in Court, at the time of the recording of deposition of PW-1, where she identified them to be belonging

to her, rather being a mis-identification nor engineering an inference, that the recovered incriminatory items not belonging go the victim.

Test identification parade of the convict, during the course of investigation, and, his identification in Court, by PW-1 and, its relevance

11. During the course of investigations, being carried in the appeal FIR, the victim, as revealed by test identification memo, to which Ex. PB is assigned, identified therein, the convict, to be the one who had committed the appeal offence. The test identification parade was preceded by the victim in her previous statement, in writing, not only describing the key characteristic features of the convict, but also hers candidly revealing the number of the motorcycle whereons the convict-accused was atop at the relevant time. Since the above number of the motorcycle, as revealed in the previous statement, recorded in writing, by the victim, is similar to the one, in respect whereof recovery memo Ex. PJ became drawn, besides when it is owned by the convict. Therefore, the above description, both of the key characteristic features of the convict, as also of the crime motorcycle, did ably, and, validly facilitate the victim, to not only identify the convict in a test identification parade, as became conducted during the course of investigations, and, in sequel whereto Ex. PB became prepared, but also ably facilitated her to identify the convict in Court.

Conclusion

12. The result of the above discussion, is that the oral evidence, as also the above documentary evidence, does completely support the validly made identification in Court, of the convict, by the victim. Resultantly, this Court finds no infirmity in the verdict, as drawn by the learned convicting Court.

Final order

13. In sequel, this Court finds no merit in the appeal, and, is accordingly dismissed. The impugned verdict of conviction, as recorded against the convict-appellant, by the learned trial Court concerned, is maintained, and, affirmed.

14. Since the convict is a young offender, hence for ensuring that he is provided an opportunity to reform himself, resultantly, as revealed by the custody certificate, qua his spending one year, and, six months of actual sentence in prison, therefore, the impugned sentence of imprisonment, imposed upon the convict-appellant, is modified, to the term already undergone in prison by him. However, the sentence of fine, if any, imposed, upon him shall remain undisturbed. If he has not already deposited the fine amount, he is directed to forthwith deposit the same, before the learned trial Judge concerned. The personal, and, surety bonds of the convict-appellant shall stand forthwith cancelled, and, discharged. The appellant, if in custody, and, if not required in any other case, he be forthwith set at liberty. The case property be dealt with, in accordance with law, after the expiry of the period of limitation for the filing of an appeal.

15. Records be sent down forthwith.

(SURESHWAR THAKUR)
JUDGE

September 05, 2022
Gurpreet

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No