

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

**CRA-S No. 691 of 2019 (O&M)**

**Reserved On: 25.04.2022**

**Pronounced On: 13.05.2022**

Rakesh alias Bilala

..... Appellant

**Versus**

State of Haryana

..... Respondent

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR**

Present: Mr. Gaurav Tyagi, Advocate  
for the appellant.

Mr. Sumit Gupta, Additional Advocate General, Haryana

\*\*\*\*

**SURESHWAR THAKUR, J.**

1. The accused-appellant herein faced charged for an offence constituted under Section 379-A of the IPC, and, as, becomes embodied in FIR No. 527 of 23.06.2018, registered at Police Station Civil Lines, Karnal.

2. After conclusion of evidence, the learned trial Judge concerned, through a decision drawn on 04.01.2019, upon, Sessions Case No. 36 of 2018, returned a verdict of conviction, upon, the afore drawn charge. Moreover, he has, through separate sentencing order drawn, on 05.01.2019, proceeded to sentence the convict to undergo rigorous imprisonment for a term of seven years, and, also imposed a fine of Rs. 50,000/-, besides upon default of payment of fine, he sentenced, to him, to undergo rigorous imprisonment of six months, *qua* commission of an offence punishable under Section 379-A of the IPC.

3. The above made verdict brought pain to the convict, and, led him to institute thereagainst the instant appeal before this Court.

4. The genesis of the prosecution case is embodied in FIR lodged qua the occurrence, to which Ex. P-6, is assigned. The FIR is of 23.06.2018, and, therein the informant - Saroj Devi, though has mentioned the penal incident appertaining to her gold chain being snatched, but had not named therein the accused, nor, therein occur any narration with respect to the key characteristic physical attributes of the accused concerned.

5. The recovery of the snatched gold chain was made through Ex.P-2 (recovery memo), rather much belatedly therefrom, inasmuch as, on 10.07.2018.

6. The prosecution case qua the charge drawn against the accused, would become unclinchingly proven, if a valid test identification parade, as, conducted at the police station concerned, by the Investigating Officer (IO) concerned, resulted in the informant therein identifying the accused. Though it is deposed by PW-1 (ASI Surender Kumar), that after his making the arrest of the accused-appellant, his summoning the informant at the police station concerned, to not only identify the gold chain, whose recovery was made through Ex.P-2, but also to identify him from amongst 5-6 persons, who were inside the police station concerned to face the above test identification parade. In the above test identification parade, she not only identified the purportedly snatched gold chain, but also identified from amongst 5-6 persons, as, present at the police station concerned, rather the accused-appellant.

7. However, the afore made identification of the appellant, as occurred, in a test identification parade conducted by the IO concerned, at the police station concerned, wherein he ensured the participation(s) of the

thereto, but only if in FIR (supra), the aggrieved – informant, had described the key characteristic physical attributes of the accused. However, in the FIR, the aggrieved – informant has not described, the key characteristic features or attributes of the accused, therefore, and, also when the hiatus *inter se* the lodging of the FIR, and, the holding of a test identification parade, is about a fortnight, thereupon it rather begets a sequel, that the identification of the accused, by the informant, in a test identification parade, conducted by the IO concerned, cannot become assigned any credence.

8. Be that as it may, in the FIR, there is a reference about two persons unknown to the informant arriving at the crime site, on a motor-cycle, but neither the registration number of the motor-cycle became revealed, nor, the motor-cycle concerned became recovered, at the instance of the accused, whereas, it comprised the best evidence to, irrespective of the above lack of credence qua the identification of the accused by the complainant – informant, in a test identification parade, rather to sustain the charge. In sequel, the above wants also cannot sustain the charge drawn against the accused.

9. As above stated, the snatched purported gold chain of the victim, was done on 22.06.2018, whereas, its recovery from the accused through memo Ex. P-2, occurred on 10.07.2018. In case the prosecution had succeeded in adducing cogent proof in respect of the valid drawings of Ex. P-2, thereupon, irrespective of all the above conclusions, this Court yet may have proceeded to sustain the charge drawn against the accused.

10. This Court would assign credence to Ex. P-2, if the recovery, as, became made therethrough, did also result in PW-6 (Saroj – informant),

on hers stepping into the witness box, and, upon, the gold chain, purportedly, snatched by the accused-appellant, becoming shown to her, in Court, unfolding then, that the gold chain, was the one, which was snatched by the accused, and, that in respect thereof recovery memo, Ex. P-2, became drawn.

11. The aggrieved – informant, stepped into the witness box, as, PW-6, and, during the course of her testification, she produced the apposite gold chain, in Court, which had been released to her on *sapurdari*, through an order comprised in Ex. P-12. Though the produced, at her instance, the apposite gold chain became testified, by her, to be the case property, but the afore deposition of PW-6, does not carry any evidentiary vigour, as, neither the gold chain concerned, as, became recovered through memo Ex. P-2, from the pockets of the accused, by the IO concerned, nor, the produced, in Court, gold chain, by PW-6, become opined, by the expert concerned, to be of gold, and, of no other metal.

12. In the absence of the afore best expert evidence, it cannot be firmly concluded, that the recovery of the apposite item, as, became effected through Ex. P-2, was of gold, nor, it cannot be concluded, that the produced, in Court, chain, by the aggrieved, was also of gold, and, was of no other metal.

13. Significantly, the case property concerned, unless subject to deterioration, and, decay rather is required to be kept in a sealed condition, at the *malkhana* concerned. However, since the chain concerned, was not amenable to decay or deterioration, yet it became released on *sapurdari* to the informant, whereas, it was required to be kept in a sealed condition, in

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. P-2, 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-6. 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 only gold, and, no other metal. 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. P-2, has resulted in making the charge to founder.

14. 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, the analyses thereof, by the learned trial Court, hence suffers, from a gross absurdity of mis-appreciation and non-appreciation, of evidence, on record.

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

16. The appellant is acquitted of the charged offence(s) (*supra*). The personal and surety bonds of the appellant are ordered to be forthwith cancelled and discharged. The accused-appellant herein, if in custody, and, if not required in any other case, be forthwith set at liberty. Records be sent

17. 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 13, 2022**  
'dk kamra'

**( SURESHWAR THAKUR )**  
**JUDGE**

|                                  |            |
|----------------------------------|------------|
| <i>Whether Speaking/reasoned</i> | <i>Yes</i> |
| <i>Whether Reportable</i>        | <i>Yes</i> |