

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

CRA-S-448-2021 (O&M)
Date of decision: 16.03.2022

SURAJ

...Appellant

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Manvinder Sidhu, Advocate
for the appellant.

Mr. Pradeep Prakash Chahar, DAG, Haryana.

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the verdict of conviction, as, made upon the convict-appellant by the learned Sessions Judge, Sirsa, Haryana, upon, Sessions Case No.SC-04 of 2021. The afore made verdict of conviction was drawn by the learned Sessions Judge concerned, upon a charge drawn against the convict-appellant herein for an offence constituted under Section 379-A, IPC.

2. Through a separate sentencing order drawn on 10.03.2021, by learned Sessions Judge concerned, the latter proceeded to sentence the convict-appellant to undergo rigorous imprisonment, for a term extending upto a period of 5 years, and, also imposed, upon, him sentence of fine carried in a sum of Rs.25,000/-, and, in default of payment of fine, he sentenced the convict, to undergo simple imprisonment for a period of 3 months. Moreover, the period spent by the convict in police or judicial custody, was under the mandate carried in Section 428 Cr.P.C., ordered to be set off from the afore imposed substantive sentence of imprisonment, and, of default sentence.

3. The convict-appellant becomes aggrieved from the afore drawn verdict of conviction, and, also from the afore drawn sentence of imprisonment, as, respectively made upon him by the learned Sessions Judge concerned, on 10.03.2021, upon CIS No. SC-04 of 2021. Consequently, he is led to constitute thereagainst the instant appeal before this Court.

4. The brief facts in the case are that a case was registered on a complaint made by Harkaran Lal son of Shri Ramdhan stating therein that on 2.10.2020 at about 8.00 pm he was sitting on bench lying in Chaudhary Devi Lal Park. He was listening news on mobile make MI Redmi Note Pro. One boy came there and all of a sudden, he snatched mobile from his hand and fled away. He raised hue and cry. Upon hearing his noise, two/three persons who were present in the park came to him and inquired as to why he was making noise. Upon inquiry, he pointed towards one boy who was running away along with mobile and told to them that he had snatched mobile from him. The persons to whom he narrated the incident ran after him and also raised hue and cry. Upon hearing their noise, 7-8 persons who were present in the park apprehended the boy along with snatched mobile. He also reached place of apprehension. Mobile was recovered from that boy and then handed over to me. Persons by whom accused was apprehended started beating him but he stopped them from doing so. Police was informed. After some time, police arrived at spot. Police apprehended accused in his presence. He handed-over to police snatched mobile for investigation purpose which was taken into police possession. Police took accused in custody. He then went to police post, HUDA and moved an application. On the basis of this application, an FIR was registered under Section 379-A IPC. Investigation commenced. Spot was inspected. Statements of witnesses were recorded. Accused Suraj was arrested in this case. Accused

suffered disclosure statement admitting his complicity in the commission of crime. In pursuance thereto he demarcated the place of occurrence. After completion of investigation, challan was presented under Sections 379-A IPC against accused person for trial. Copy of challan and documents attached thereto were supplied to accused as per Section 207 Cr.P.C. Case was committed to Court of Session by Ms. Reetu, Ld. Judicial Magistrate Ist Class, Sirsa vide commitment order dated 23.12.2020. Finding a *prima-facie* case for commission of offence punishable under Sections 379-A IPC against accused person, he was charge-sheeted accordingly vide order dated 05.01.2021 by this Court, to which he pleaded not guilty and claimed trial. In order to prove its case, prosecution has examined as many as four witnesses besides placing reliance upon several documents.

5. The learned counsel appearing for the convict-appellant herein has contended, with much vigor before this Court, that the verdict challenged through the instant appeal is vitiated, and, requires interference, as it is based upon, mis-appreciation, and, non-appreciation of evidence germane to the charge.

6. On the other hand, the learned State counsel argues, that the verdict challenged before this Court is well merited, and, it does not require any interference being made by this Court.

7. The predominant evidence for determining whether therethrough the charge against the accused became unflinchingly proven, becomes comprised in the testimony of PW-2. PW-2 is the complainant/informant. In his deposition. as. comprised in his examination-in-chief, he has made a narration which bears consonance with the genesis of the prosecution case, as is carried in the FIR lodged with respect to the penal incident, and, to which Ex.PW-1/A is

assigned. Moreover, in his examination-in-chief he has made a testification qua his application Ex. PW2/A in sequel whereof the FIR was lodged, bearing his signatures. Moreover, he has also in his examination-in-chief stated, that he had handed over to the police, the mobile bill to which Ex. PW-2/B is assigned, and, that it was taken into custody by the police, through a seizure memo embodied in Ex. PW-2/C. In addition, he has testified that on his apposite application, to which Ex. PW-2/A is assigned, and, which he deposes to carry his signature(s) at point 'A', the incriminatory mobile phone was released rather on superdari to him. He continues to depose, that he was carrying alongwith him, on the date, when his testification was recorded, hence the incriminatory mobile phone. However, he failed to candidly identify the accused who was present in Court, for the reason, that at the relevant time there was darkness. Consequently, he was declared hostile, and, the learned trial Judge concerned, permitted the learned Public Prosecutor to conduct cross-examination upon him. Though, in his cross-examination he has proven the recovery memo through which the incriminatory mobile phone was recovered. The recovery memo prepared by the investigating officer appertaining to the recovery of the incriminatory mobile phone, is assigned PW2/E, and, in his cross-examination, as made upon him, by the learned Pubic Prosecutor concerned, he has admitted that at point 'A', it carries his signatures. Though, he has also stated, that he had named the accused, in his application PW-2/A, in sequel whereof FIR became registered against the accused, but he has attributed the naming therein of the accused, to be at the instance of the police.

8. Be that as it may, the factum of proven signatures of the complainant existing on Ex. PW1/A, in sequel whereof the FIR against the accused became registered, besides the factum of the proven signatures of the

complainant existing at point 'A', upon, the recovery memo comprised in Ex. PW2/E, as became drawn with respect to the making(s) of recovery of the incriminatory mobile phone by the investigating officer concerned, does *prima-facie* comprise incriminatory evidence, of immense probative vigor. Moreover, also hence the effect of the complainant-informant while stepping into the witness box, rather in his examination-in-chief refusing to identify the accused, in Court on the plea, that there was prevailing darkness at the relevant time, may also hence *prima-facie* become paled. Nonetheless when he has also testified, that the mentionings by him, in Ex. PW-2/A hence of the name of the accused, was at the instance of the police, thereupon unless there was evidence surging forth, rather in display, that the apprehension at the spot of the accused was false, and/or, that the name of person apprehended person at the spot was not Suraj. Consequently, rather there was no necessity for a valid test identification parade, being conducted by the investigating officer, to therethroughs his establishing the identity of the accused, at the stage of investigations, and, nor the failure of the victim to, upon his stepping into the witness box rather failing to identify the accused in Court, would assume any exculpatory effect vis-a-vis the convict-appellant herein.

9. However, since it is apparent on a reading of the testification of PW-2, as, carried in his examination-in-chief, that he had brought to Court, the incriminatory mobile phone, on the date when his testification was recorded. Thereupon, it became imperative, upon, the learned trial Judge concerned, to make apposite observations, during the course of the recording of the deposition of PW-2, specifically with respect to their existing the completest *inter-se* congruity *inter-se* the bill appertaining to the mobile phone, as, carried in Ex. PW-2/B, with the description of the seized phone, as made in the recovery

memo, and, as became drawn with respect to its seizure, and, besides importantly with the mobile phone carried in Court, by PW-2. In case the relevant *inter-se* similarities were not at first glance hence decipherable from the mobile phone, thereupon the learned trial Judge concerned, could seek the opinion of an expert. However, the learned trial Judge concerned, not only failed to make the afore observations but also failed to seek the opinion of an expert qua the above imperative *inter-se* incriminatory linkage. The effect of the afore, is that the prosecution has failed to connect Ex. PW-2/B, and, PW-2/C rather with the purportedly seized incriminatory mobile phone.

10. In aftermath the prosecution, has failed to prove to the hilt the charge drawn against the accused. Moreover, the further effect thereof, is that there is merit in the appeal, and, the same is allowed. The impugned verdict, as, drawn by the learned trial Judge concerned, hence convicting, and, sentencing the accused is quashed, and, set aside. The personal, and, surety bonds of the convict-appellant herein are directed to be forthwith cancelled, and, discharged. The convict-appellant, if in custody, and, if not required in any other case, is directed to be forthwith released from prison. Release warrants be accordingly prepared. Records of the trial Court concerned, be sent down forthwith.

11. Pending miscellaneous application(s), if any, also stand(s), disposed of.

16.03.2022

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(SURESHWAR THAKUR)
JUDGE

Whether speaking/reasoned:-
Whether reportable:

Yes/No
Yes/No