

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

204

CRA-S-1155-2020 (O&M)

Reserved on: 07/05/2022

Pronounced on: 25/05/2022

MONU AND ANOTHER

....Appellants

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Argued by : Mr. Jagmohan Singh, Advocate for
Mr. Sanjeev Majra, Advocate
for the appellants.

Mr. Kanwar Sanjiv Kumar, AAG Haryana.

VINOD S. BHARDWAJ. J.

The present appeal has been preferred against the judgment of conviction and order of sentence dated 03.03.2020 passed by the Additional Sessions Judge/Exclusive Court, Bhiwani in case FIR No. 60 dated 04.03.2019 registered under Sections 379–A and 201 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') registered at Police Station Civil Lines, Bhiwani, vide which the appellants have been convicted to undergo rigorous imprisonment for a period of 5 years and sentenced to pay a fine of Rs.25,000 and in default thereof to undergo rigorous imprisonment of one year.

2. Briefly the facts of the case that require consideration by this Court are noticed hereinafter below: –

i. The case of the prosecution is that on 04.03.2019, the complainant had

submitted an application to the Police that his daughter Sarita was studying B.A. 1st year and that on 14.02.2019, when she was coming to Nehru Colony, Bhiwani from college and had reached near Disposal pump of Sector 13, two boys came on a motorcycle from behind and snatched her mobile phone of VIVO company of golden colour. He submitted that he was searching for the boys at his own level and having failed to trace or identify them, the FIR in question was being gotten registered after some delay.

- ii. On the basis of the above-mentioned application Exh.PW6/B of the complainant, HC Deepak made endorsement Exh.PW6/A over it and formal FIR Exh.PW6/C was recorded under Section 379A IPC by HC Sandeep Kumar. The investigation machinery was set into motion by SI Urmila Devi. On that day, rough site plan Exh.PW6/E was prepared at the place of occurrence, on the pointing out of the complainant. On 26.03.2019, accused Monu and Monu @ Sagar were joined and arrested in the investigation as they were already in custody in another FIR. During interrogation, their disclosure statements Exh.PW4/B and Exh.PW4/A respectively were suffered by them regarding their involvement in the commission of crime. Thereafter, pursuant to disclosure statements of the accused Monu and Monu @ Sagar, Splendor motorcycle and snatched mobile phone Exh.MO/1 were recovered and same were taken in police possession vide memo Exh.PW4/C. Rough site plan Exh.PW6/F of place of recovery was prepared. Pursuant to disclosure statement, memorandum of demarcation Exh.PW4/D was prepared at the scene of crime on the pointing of the accused persons. During interrogation, accused persons disclosed that they had destroyed the SIM of the mobile phone, upon which, Section 201 IPC was added. Both

accused persons were medico-legally examined. On 27.03.2019, scaled site plan Exh.PW2/A was prepared by Dharmender, Draftsman at the scene of crime. Statements of the witnesses under Section 161 Code of Criminal Procedure (hereinafter referred to as 'CrPC') were recorded. Other usual steps, necessary for investigation, were also taken. After the completion of investigation, final report under Section 173 Cr.P.C was prepared on 06.04.2019 and was filed against the accused persons by Vidyanand, Inspector/ SHO on 19.04.2019 for trial in the court.

- iii. That the relevant documents were supplied to the appellants and the case was committed to the Court of Sessions.
- iv. Prosecution, in this case, examined Sarita daughter of Bijender, resident of Nehru colony, Bhiwani as PW1; Dharmender, Draftsman as PW2; Inspector Vidyanand as PW3; HC Manjit as PW4; ASI Vinod Kuamr as PW5; SI Urmila Devi as PW6; and complainant Bijender son of Lekh Ram, resident of near Sector-23, HUDA, Nehru Colony, Bhiwani as PW7. Besides oral evidence, prosecution relied upon certain documents i.e., photocopy of mobile phone Bill Exh.PW1/A; scaled site plan Exh.PW2/A; disclosure statement of accused Monu @ Sagar Exh.PW4/A; disclosure statement of accused Monu Exh.PW4/B; recovery memo of motorcycle and mobile phone VIVO company Exh.PW4/C; demarcation memo Exh.PW4/D; disclosure statement of accused Monu dated 26.02.2019 Exh.PW5/A; disclosure statement of accused Monu @ Sagar dated 26.02.2019 Exh.PW5/B; complaint Exh.PW6/B; copy of FIR Exh.PW6/C; rough site plan Exh.PW6/E and rough site plan of place of recovery Exh.PW6/F.
- v. The evidence of the prosecution was thereafter closed and the entire

incriminating evidence was put to the appellants/accused. The statement under Section 313 CrPC was recorded to which the appellants/accused denied and pleaded false implication. No evidence in defence was however led by the appellants/accused. That upon consideration of the rival submissions advanced by the learned counsel representing the respective parties, the trial Court came to the conclusion that the prosecution had succeeded in establishing its case against the appellants/accused for commission of offence under Sections 379-A of the IPC, however, there was insufficient evidence for establishing commission of the offence punishable under Section 201 IPC. The appellants/accused were accordingly convicted and order of sentence was passed. Aggrieved thereof, the present appeal had been preferred.

3. Learned counsel appearing on behalf of the appellants has argued that the trial Court has failed to appreciate the glaring discrepancies in the evidence of the prosecution and has convicted the appellants on the basis of conjectures and surmises. He has further submitted that as per the case of the prosecution, the incident in question had occurred on 14.02.2019, however, the application in the Police Station was submitted only on 04.03.2019. There is thus an inordinate delay on the part of the complainant to lodge a complaint with the police. He has argued that the explanation tendered by the complainant that he was searching for the accused at his own level is not tenable inasmuch as the complainant had no idea with respect to the identity of the alleged assailants as even his daughter had not given any identification marks as the allegation is that the assailants had come on a motorcycle from behind and snatched the mobile phone. There was thus no question for looking out for the assailants at their own level. He further submits

that no marks of any *prima facie* identification or even registration number of the motorcycle had been mentioned in the said complaint, despite submission of the same after a period of nearly 18 days.

4. It is further argued by the learned counsel for the appellants that there is no evidence to connect the appellants with the commission of the instant offence. The appellants are being sought to be connected to the offence on the strength of recovery of the mobile phone, however, there is no evidence pertaining to the identity or ownership of the said mobile phone and as to whether the same related to the complainant or his daughter Sarita. It is submitted that the prosecution has only submitted a photocopy of the telephone bill and not the invoice pertaining to purchase of the mobile or given any IMEI number, which is a distinct mark of identification of any mobile instrument. Moreover, there is no evidence brought on record that the IMEI number of the mobile phone recovered and claimed so by the prosecution, had the same IMEI number as that of the complainant. In the absence of any document to prove ownership of the victim of the phone number and in the absence of pointing out any evidence to establish the distinct identification marks of the phone in order to relate it to the phone snatched in the incident, it cannot be said that the recovery in question is related to the crime in question.

5. An additional argument has been raised by the learned counsel appearing on behalf of the appellants that the appellants were already in custody of the police when the alleged recovery is stated to have taken place. In support of his arguments, learned counsel has made a reference to the testimony of PW5 ASI Vinod Kumar to contend that the appellants are alleged to have been arrested at 4 PM from Hansi Gate, Bhiwani on 04.03.2019, whereas, as per the version of PW6

SI Urmila Devi, both the appellants had been joined in the investigation at 12/12:30 PM on 04.03.2019. He has argued that there is a material discrepancy with respect to the time when the appellants were arrested and the testimony of the prosecution witnesses is at variance with one another.

6. Learned State counsel has however controverted the submissions advanced by the counsel for the appellants and has pointed out that there is no discrepancy in the statements of PW-5 and PW-6 and the submissions of the counsel for the appellants is based upon misreading of the same. The Sub-Inspector PW6 has stated that the appellants were joined in the investigation at 12/2:30 PM but were arrested at 4 PM. Hence, they were not already under arrest with the police but were associated in relation to the investigation of the offence. He further submits that the mobile phone owned by PW-1/Sarita had been duly recovered as per the disclosure statement of the appellants and that the said victim has fully established her ownership over the telephone and has placed on record the telephone bill as Ex. PW1/A. He has also argued that the appellants could not produce any document to show that they were owners of the said mobile phone or had been using the same. No such defence has been set up by the appellants and no evidence has been led by them to claim any proprietary control or title over the phone in question. It is further argued that the prosecution had brought on record sufficient, cogent, convincing and reliable evidence and duly established and proved the participation of the appellants in the commission of the crime and even the motorcycle involved in the commission of the offence was recovered. The ownership of the said motorcycle was in the name of the appellants. Learned counsel has also made a reference to the custody certificate filed by the prosecution to point out that there are large number of cases registered against the

appellants of having committed similar offences pertaining to theft and snatching. He has thus argued that the appellants have criminal antecedents and as such, no leniency can be shown towards them.

7. I have heard learned counsel for the parties and have gone through the evidence with their able assistance.

8. The entire case of the prosecution is based on the strength of recovery of mobile handset. It is evident that the mobile bill Ex.PW-1/A has been produced by the prosecution which specifically mentions the IMEI number of the handset as 869733030511691 and 869733030511683. The disclosure of the appellants was recorded as Ex.PW-4/A and Ex. PW-4/B, as per which it is stated that the mobile phone snatched by them belonging to Vivo company was hidden by them in the motorcycle of Monu bearing registration number HR 16U 5809, which is parked in a vacant plot adjacent to the house of Monu at Bawani Khera. Recovery of the mobile phone was effected vide recovery memo PW-4/C from the said motorcycle in the toolbox as per the disclosure made by the appellants-accused, duly wrapped in a polythene packet and lying in the toolbox thereof. The IMEI number of the said mobile phone also matched the mobile bill as has been recorded in the recovery memo. Apart therefrom the demarcation of the place of the incident was also done by the appellants-accused as per PW-4/D and it is proved that the place of occurrence also matched with the site plan already prepared.

9. The appellants-accused have not been able to offer any explanation as to how and under what circumstances they were in possession of the said mobile phone. There is also no explanation furnished by the appellants-accused in the statement under Section 313 CrPC about the circumstances under which they were in possession of the said mobile phone. The complainant has duly established the

ownership of the phone recovered from the appellants-accused and the identification of the recovered mobile phone stands established through the unique IMEI number assigned to the instrument. The same would thus be admissible in evidence under Section 27 of the Evidence Act, 1872 and can be read against the appellants.

10. Insofar as the argument of the appellants about delay in informing the Police about the incident is concerned, a mere delay in lodging the complaint with the police would not be fatal to the case of the prosecution in the facts of the instant case as no motive can be attributed to the complainant in taking advantage of the delay in reporting the matter to the Police. Besides, the complainant as well as appellants-accused were not previously known to each other and there is no reason for the appellants-accused being falsely implicated in the present case. Besides, the appellants have not been able to establish how the appellants have been prejudiced by such delay. There is no stand in statement of the appellants recorded under Section 313 CrPC, that there is any previous enmity amongst the parties or there was any oblique motive with either the complainant or the investigating agency to implicate the appellants.

11. Besides, the only suggestion put to the prosecution witnesses is that disclosure statement was not made by them and that the recovery in question was not effected from them. The submission, however, is not established or proved as the witnesses to the disclosure as well as the recovery appeared before the Court, and satisfactorily deposed about the same. The said witnesses were also cross-examined by the counsel representing the appellants-accused. The recovery in question has not been effected from any public place but has been effected from the plot adjacent to the house of the appellants-accused and from the motorcycle of

the appellants. It was from a private place and was not within a passive domain. Besides, as per the case of the prosecution even the motorcycle used in the incident has been recovered. A mere absence of other detailing aspects of the motorcycle would not render the prosecution version suspect as the offence happened at a sharp speed and the appellants-accused fled away. It is only natural that under the shock of the incident, the reaction time of the complainant was reduced and the appellants would have already fled away. The entire episode must have happened in the matter of seconds and being a surprise to the complainant, it cannot be expected for the complainant to note the registration number and it would not be possible to know the colour or make of the motorcycle from behind. The fact, however, is that the complainant identified it to be a motorcycle and the very fact that recovery of the snatched mobile handset was effected from the toolbox of the motorcycle of the appellants rather establishes the prosecution case. It cannot thus be said that there was any discrepancy or shortcomings in the prosecution evidence.

12. In view of the above, the prosecution has been able to satisfactorily explain the case against the appellants-accused beyond a shadow of reasonable doubt and has established that the mobile phone snatched from the complainant was recovered from the appellants-accused. The recovery of the motorcycle used in the commission of the offence and also the snatched mobile from the possession of the appellants-accused pursuant to the disclosure leads to an inevitable conclusion about the involvement of the appellants-accused in the commission of the offence. There is hence no illegality, infirmity or mis-appreciation of the evidence led by the prosecution by the trial Court and the judgement in question does not suffer from any vice of mis-interpretation or mis-reading of any evidence

brought on record. The judgment of conviction and order of sentence dated 03.03.2020 passed by the Additional Sessions Judge/Exclusive Court, Bhiwani is thus affirmed and upheld.

The appeal is accordingly dismissed.

(VINOD S. BHARDWAJ)
JUDGE

May 25, 2022
S.Sharma(syr)

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