IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

CRA-S-1266-2021 (O &M)
Reserved on: 16.05.2022
Pronounced On: 24.05.2022

RAJ KAUR .....Appellant

Versus

STATE OF PUNJAB .....Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Argued by: Mr. Kamaldip Singh Sidhu, Advocate
for the applicant-appellant.

Mr. Bhupender Beniwal, AAG, Punjab

****

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the impugned verdict of conviction, rendered on 24.08.2021, by the learned Sessions Judge, Rupnagar, with respect to a charge drawn against the accused-convict-apellant qua offences punishable under Section 379-B, and, under 411of the Indian Penal Code, 1860. The convict also becomes aggrieved, from the consequent therewith substantive sentence of rigorous imprisonment extending upto a term of 5 years, and, also, from hers becoming sentenced to pay a fine of Rs. 10,000/-, besides from hers becoming sentenced to undergo rigorous imprisonment extending

KAVNEET SINGH
2022.05.26 09:59
I attest to the accuracy and
authenticity of this order/judgment

upto a term of 3 months, upon hers makes default in the payment of fine amount (supra), qua an offence punishable under Section 379 B IPC.

2. She also becomes aggrieved from the imposition, upon her, by the convicting Court of a substantive sentence of imprisonment extending upto a term of 6 months, qua an offence punishable under Section 411 IPC.

3. Obviously, since she becomes aggrieved from the above drawn verdicts of conviction, and, consequence therewith sentences (supra) as become imposed upon her, by the learned trial Judge concerned, therefore, through hers casting the instant appeal before this Court, she makes an assault with respect to validities thereof.

4. The prosecution case becomes rested upon an FIR, which is Exhibt PW4/B. The contents of the FIR are reproduced as under :-

> "Copy of statement "Statement of Sangina Vashisht W/o Ashutosh Vashisht R/o Malahati Nagar Ward no. 4 (Malahat 206) Safade Wali Gali, near Shiv Mandir, Una, PS and District Una (H.P.) aged about 37 years stated that I am resident of above mentioned address and a housewife. Today I went to Sector 2 of Naya Nangal to attend Satsang of Baba Rudra Nand Ji and when I was standing in queue to pay obeisance, then a woman aged about 50 years was also standing next to me to pay obeisance. Due to huge crown, that woman had snatched my gold chain which I was wearing in my neck, then I promptly held her hand and with the help of other followers who were standing nearby, I caught her and asked about her name and whereabout. Then she told her name as Raj Kaur w/o Mewa Singh R/o Village Tarae, P.S. Patiala, District Patiala. I came to know about that ornaments/jewellery of few other women had also been stolen in the Satsang. Above said Raj Kaur is handed over to you on the spot and my gold chain be recovered from her and necessary action be taken....."

5. Though in support of the narrations carried in the FIR, the prime prosecution witness, inasmuch as the victim, stepped into the witness box as PW-2, and, though in her examination in chief she made

KAVNEET SINGH
2022.05.26 09:59
I attest to the accuracy and
authenticity of this order/judgment

testifications corroborating the genesis of the prosecution case, as becomes embodied in Exhibit PW4/B.

6. Moreover, even though in her cross examination, she did not contradict, the version as became spelt by her in her examination in chief, rather qua the genesis of the prosecution case. However, she did produce the snatched gold chain in court, whose recovery became effected through memo Exhibit PW2/C, after hers identifying the snatched gold chain rather through a memo comprised in Exhibit PW2/B. Conspicuously, the above non production happened, as at the crime site, she after identifying the snatched item in respect whereof, memo Exhibit PW2/B became drawn, she subsequently through memo drawn in Exhibit PW2/C became also hand over the snatched gold chain.

7. Be that as it may, for the reasons to be assigned thereinafter, this court is of the firm view, that this court would yet draw a conclusion, that the charge drawn against the convict/accused/ appellant herein rather becoming sustained, if the above production was caused before the learned trial Judge. The prime reason for making the above conclusion becomes derived from the factum, that it would have happened, through the investigating officer concerned, who became enjoined under law to rather than at the crime site, through memo Exhibit PW2/C, return the purportedly snatched item by the accused from the victim, had evidently taken to prepare a cloth parcel, and, insert therein, the snatched gold chain, and, also to emboss seals thereons, and, thereafter, was to ensure its safe keeping it in the police malkhanna concerned. Moreover, since he also become enjoined under

KAVNEET SINGH
2022.05.26 09:59
I attest to the accuracy and
authenticity of this order/judgment

law to ensure that, since the stage of its becoming safely kept in the police malkhanna, and, upto the stage of production in court, hence of the purportedly snatched item, rather it remaining untampered with, in as much as, through his ensuring that, the seals made thereon, being intact at the time of production of case property, before the trial Court. Emphasizingly even the above did not happen.

8. Retreatedly, and, obviously, the above legal obligation(s) as become cast upon the investigating officer concerned, did not become complied with, as he inaptly proceeded to at the crime site, rather hand over to the victim, the purportedly snatched gold chain, through a memo prepared at the crime site, and, to which Exhibit PW2/C is assigned.

9. The result of the afore gross failures of the investigating officer concerned, does render vulnerable to skepticism, whether the case property as became produced in the court, by the victim, upon hers, stepping into the witness box, and, especially rather not upon its becoming retrieved from the police malkhanna concerned, but hers suo moto producing the same in the court, obviously becoming proven to be the one which became purportedly snatched from her by the accused.

10. If the investigating officer concerned, had not departed from the above procedure, and, had rather ensured, that it becomes produced, in an untampered condition, before the learned trial Judge concerned, thereupon, may be a conclusion, would become fostered, that there is a nexus inter se the purportedly snatched gold chain of the victim, with the one as became recovered through Exhibit PW2/B.

11. Re-emphazingly the above evidence cannot at all become

KAVNEET SINGH
2022.05.26 09:59
I attest to the accuracy and
authenticity of this order/judgment

aroused, as at the crime site itself, it became returned by the investigating officer, to the victim complainant, rather through a memo comprised in Exhibit PW2/C.

12. Irrespective of the above, even there is no cogent evidence adduced qua the item as became produced in court, being gold, and, or it being of no other metal. The above evidence was comprised in the expert concerned opining whether, the purportedly snatched item rather being of gold or it being of some other metal. Obviously, the above would have occurred only after the case property/purportedly snatched gold chain, being under the orders of the learned Magistrate concerned, being sent to the expert concerned, for verifying whether it is gold or of some other metal.

13. Since, even the above evidence is not existing before the court, therefore, it cannot be firmly concluded, that the purportedly snatched gold item was of gold or was of some other metal. Since the charge drawn against the accused was qua the purportedly snatched item, being a gold chain, thereupon, the prosecution was to prove the above charge to the hilt. Whereas, for want of adduction of best evidence (supra), the charge (supra) has not been proven to the hilt.

14. In aftermath, the appraisal of the evidence by the learned trial Judge concerned, suffers from a gross infirmity of mis-appraisal, and, non appreciation of evidence germane to prove the charge drawn against the accused/convict/appellant.

15. In consequence, there is merit in the appeal. The same is allowed, and, the impugned judgment of conviction, and, consequent therewith sentence(s) of imprisonment, as well as of fine are set aside.

KAVNEET SINGH
2022.05.26 09:59
I attest to the accuracy and
authenticity of this order/judgment

The accused stands acquitted of the charge.

16. The personal and surety bonds of the convict are ordered to be forthwith cancelled and discharged. The accused be forthwith set at liberty, if not required in any other case.

17. Since the main case itself has been decided, all the pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

24.05.2022
kavneet singh

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

KAVNEET SINGH
2022.05.26 09:59
I attest to the accuracy and
authenticity of this order/judgment