

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

**CRM No.4339 of 2018 in/and
CRM-A No.304-MA of 2018 (O&M)
Date of Decision:07.11.2023**

State of Haryana

... Applicant/Appellant

Versus

Deepak @ Mallu @ Sharma and another

... Respondents

CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Vikas Bhardwaj, AAG, Haryana.
for the applicant-appellant.

HARPREET SINGH BRAR, J. (ORAL)**CRM No.4339 of 2018**

Prayer in the application is for condonation of delay of 93 days in filing the present application.

For the reasons stated in the application, the same is allowed and the delay of 93 days in filing the present application is condoned.

CRM-A No.1209 of 2023

1. The present application has been preferred by the State of Haryana under Section 378 (3) of the Criminal Procedure Code, 1973 against the judgment dated 24.07.2017 passed by the Additional Sessions Judge, Kurukshetra whereby the respondents-accused have been acquitted in FIR No.502 dated 07.09.2016 registered under Section 379-A IPC at Police Station Sadar Thanesar.

2. In brief, the facts are that on 07.09.2016, ASI Rishi Pal had received an information regarding chain snatching in House No.321, Sector 5, Kurukshetra. He along with other police officials reached at the spot where the complainant-Sudesh Dhamija wife of Satish Dhamija, resident of H.No.321, Sector 5, Urban

Estate, Kurukshetra made a written complaint stating therein that at 8 AM, she and her sister-in-law (*jethani*) Suman Dhamija wife of Dalip Dhamija, resident of H.No.320, Sector 5, Kurukshetra were coming from a walk when two young boys came on a motor cycle and snatched 1 ½ tolas gold chain from her neck. The said incident had taken place opposite House No.328, Sector 5, Kurukshetra. The complainant requested to apprehend the said unknown persons and recover her chain from them. Ruqa was prepared on the basis of which the FIR No.502 dated 07.09.2016 was registered. Investigating Officer prepared the rough site plan and statements of the witnesses were recorded. Since the accused persons could not be arrested and case property could not be recovered, untraced report was prepared. Thereafter, as per the order of senior officers, further investigation was carried out by ASI Daljit Singh, Crime Branch-I, Kurukshetra. In the meantime, accused Deepak alias Mollu alias Sharma was arrested in case FIR No.470 of 2016 under Section 379-A IPC registered at Police Station Sadar, Thanesar and made a disclosure statement about his involvement in the present case. He was formally arrested in the present case on 09.11.2016 and during interrogation, he made disclosure statement and also pointed out the place of occurrence. However, on 10.11.2016, he retracted from his previous disclosure statement and suffered another disclosure statement, in pursuance thereof one gold chain was recovered from him and seized vide seizure memo. The complainant had also identified her chain. After completing the investigation, police had filed the final report under Section 173 Cr.P.C. against the accused Deepak alias Mollu alias Sharma before the Illaqa Magistrate.

3. On 19.01.2017, co-accused Kallu alias Sanjeev was also arrested, who made a disclosure statement and Rs.500/- were recovered in pursuance thereto. After completion of investigation, final report under Section 173 Cr.P.C. was

filed against accused Kallu alias Sanjeev before the Illaqa Magistrate. After completion of formalities under Section 207 Cr.P.C., charge was framed against the accused persons under Section 379-A IPC to which they pleaded not guilty and claimed trial.

4. The learned trial Court after appreciation of documentary as well as oral evidence adduced by both the parties came to the conclusion that allegations for commission of offence under Section 379-A IPC read with Section 34 IPC are not proved beyond reasonable doubt against the respondents-accused, thus, they were acquitted from the charges levelled against them.

5. Learned counsel for the State of Haryana argues that the learned trial Court has gravely erred in discarding the statement of the complainant, who appeared as PW1. She duly corroborated the prosecution version, identified her signatures on the written complaint Ex.P1 and recovery memo of gold chain Ex.P2. The said witness also identified the accused Deepak @ Mollu @ Sharma and Kallu @ Sanjeev in the trial Court. Similarly, statement of PW2 was also not taken into consideration, who identified both the accused and corroborated the statement of the complainant. Minor discrepancies in the statements of witnesses after a long gap cannot be considered to be fatal to the prosecution case. Furthermore, the learned trial Court had also ignored the statement of PW-6 Constable Harpreet, who proved the disclosure statements made by both the accused persons and recoveries made at their instance.

6. Having heard the counsel appearing for the State of Haryana and after perusing the record of the case with his able assistance, this Court finds no merit in the arguments raised by him.

7. There are stark and glaring contradictions in the statements of material witnesses. PW1 Sudesh Dhamija stated that rider of the motor cycle was wearing

helmet and the flash of headlight of the motor cycle was falling on her face and the face of her sister-in-law. Therefore, they did not get sufficient time and opportunity to see the face of the accused persons. In the said circumstances, it was incumbent upon the Investigating Officer to get conducted the test identification parade of the accused, which was not done in the present case. Thus, the testimony of PW1 Sudesh Dhamija did not inspire confidence in identifying the accused Deepak alias Mollu and Kallu alias Sanjeev, more particularly, when PW2 Suman Dhamij had stated in her statement that at the time of snatching chain, the snatchers came at a high speed due to which she was not sure whether the accused present in the trial court were the same, who snatched the gold chain of PW1. Furthermore, PW2 Suman Dhamija stated that accused Deepak alias Mollu was driving the motor cycle whereas PW1 Sudesh Dhamija deposed that Deepak alias Mollu had snatched the gold chain from her and accused Kallu alias Sanjeev was driving the motor cycle. Moreover, PW6 Constable Harpreet had stated that main gate of the house of Deepak alias Mollu was in the West side whereas PW7 ASI Daljit Singh stated that main gate of the house of the accused was in the North side. Even the perusal of the seizure memo of chain Ex.PW/D indicated that the gold chain was not sealed at the time of seizure, which created a doubt in the veracity of the recovery. The prosecution had not even shown register No.19 showing the deposit of the case property in the Malkhana. The defence has duly proved that ASI Daljit Singh, who was the investigating officer in the present case and six other cases of similar nature had daily visited the house of respondent No.1 from 05.11.2016 to 11.11.2016 and strangely recovered one gold chain in each case daily. The conduct of the investigating officer also raised serious dent in the prosecution version.

8. The power of the Appellate Court to unsettle the order of acquittal on the basis of re-appreciation of the evidence is subject to the settled law that where two views are possible and out of the two, one points towards the innocence of the accused, the view which favours the accused should prevail over the other pointing towards his guilt. Furthermore, the trial Court has the additional advantage of closely observing the prosecution witnesses and their demeanour, while deciding about the reliability of the version of prosecution witnesses. (See *H.D. Sundara and others Vs. State of Karnataka, Criminal Appeal No.247 of 2011 decided on 26.09.2023; Kali Ram v. State of H.P., 1973 (2) SCC 808 and Chandrappa and others v. State of Karnataka, (2007) 4 SCC 415*). A Division Bench of this Court in the judgment passed in *State of Haryana Vs. Ankit and others* passed in CRM-A No.3 of 2022 decided on 06.07.2023 has held that presumption of innocence further gets entrenched and fortified in favour of the accused after earning acquittal from the trial Court.

9. In view of the facts and circumstances of the case, this Court finds that the defence has been successful in making serious dent in the prosecution case and that the prosecution has miserably failed to establish its version beyond reasonable doubt. Learned counsel for the State of Haryana has failed to point out any perversity or illegality in the findings recorded by the learned trial Court, which warrants interference by this Court. As such, there is no merit in the present application and the leave to appeal is declined. Resultantly, the instant application stands dismissed.

(HARPREET SINGH BRAR)
JUDGE

November 07, 2023
Pankaj*

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