

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

213

2023:PHHC:156510

CRM-A-2509-MA-2017

Date of decision: December 2nd, 2023

State of Haryana

.....Applicant

Versus

Sagar and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Ms. Trishanjali Sharma, Deputy Advocate General,
Haryana, for the State/applicant.

None for the respondents.

MANJARI NEHRU KAUL, J.

The applicant is impugning the judgment dated 04.07.2017 passed by learned Sessions Judge, Yamuna Nagar, whereby the respondents/accused have been acquitted of the charges framed against them.

2. As per the case set up by the prosecution, on 30.09.2016, Amit Kumar (hereinafter referred to as 'the complainant') was visiting his uncle in Adarsh Nagar, Yamuna Nagar, at about 9:00 PM. While engaged in a phone call, he proceeded towards a vacant plot. While on the call, three boys on a motorcycle approached him from behind and forcibly took away his Samsung Galaxy S Duos mobile phone containing phone Nos.9050953688 and 7056165967. When the complainant resisted, he was struck on the head and was caused an injury. The three assailants also snatched the wallet of the complainant, which contained his Aadhaar Card, Voter Card, Driving Licence and ₹500-600 in cash. A case was thereafter filed under Section 379-A of the IPC against unknown persons. Subsequently, in another incident on 20.02.2017, respondent/accused-Sagar was arrested under Section 25 of

the Arms Act at Police Station City Jagadhri. During interrogation, accused Sagar suffered a disclosure statement inculcating himself, co-accused Rohit and Mahesh Kumar in the occurrence, which took place on 30.09.2016 and wherein the mobile handset etc. of the complainant had been snatched. Consequently, accused Sagar was arrested in connection with the case in hand; upon his arrest, he suffered another disclosure statement. Based on the information provided by accused Sagar, the police laid a *naka* and apprehended co-accused Rohit and Mahesh Kumar while they came riding to the spot on a motorcycle. Recoveries were then effected from both the co-accused; a receipt was found in the pocket of the trouser of accused Rohit, while the mobile phone handset of the complainant was found in the shirt pocket of accused Mahesh Kumar, which were then both converted into sealed parcels. Disclosure statements of accused Rohit and Mahesh Kumar were also recorded. Subsequently, the complainant positively identified the snatched recovered items when shown to him. Additionally, the Driving Licence of the complainant was also recovered from a rented house, by accused Sagar, in pursuance of his disclosure statement.

3. On completion of investigation, challan was presented leading to the framing of charges under Section 379-A of the IPC against all the three respondents/accused, who pleaded not guilty and claimed trial. In support, the prosecution examined as many as seven prosecution witnesses, including the complainant, who testified during trial as PW-6. The accused, on being confronted with all the incriminating evidence led against them, pleaded innocence in their statements recorded under Section 313 of the Cr.P.C. They did not lead

any evidence in their defence.

4. Learned counsel appearing for the State/applicant has argued that despite all the witnesses including the complainant, supporting the case of the prosecution, the accused were erroneously acquitted by the trial Court. It has been contended that merely because the complainant had stated about his inability to identify the three assailants while lodging the FIR in question, could not have been a cogent enough reason to acquit them, more so when the stolen property had not only been recovered from the respondents-accused but in turn had also been identified by the complainant. It has been argued that as per Section 114 of the Evidence Act, once the stolen items had been recovered from the accused and also identified by the complainant, a presumption of guilt would arise against the respondents-accused.

5. I have heard learned counsel for the applicant and perused the relevant material on record.

6. The pivotal issue in the case in hand revolves around the identification of the accused, who allegedly committed the crime in question. The categorical stand of the complainant that he would be unable to recognize the snatchers would be most crucial. No doubt, the prosecution attempted to lean on Section 114 of the Evidence Act for presuming the involvement and guilt of the accused in the crime in question, however, the said presumption would fail on account of the inadequate proof of the recovered mobile handset's ownership as IMEI numbers and conclusive documentation qua the ownership of the complainant were absent. The Court below rightly concluded that the discrepancy arising from the invoice (Ex.PU/PX) of the mobile handset, which was in the name of one Manish Verma, resident of Chennai, cast

a big question mark on its ownership, more so when the complainant had categorically stated that the mobile handset had been purchased by his father from a shop in Ambala, and still further, there was no receipt produced by the prosecution during trial qua the said purchase.

7. Furthermore, some glaring discrepancies with respect to the arrest, disclosure statements suffered by accused and the recoveries effected from them came to the fore during trial. The timeline provided by PW-4 ASI Ashok Kumar (Investigating Officer) clearly conflicted with the account given by the complainant regarding the call received by him from the police, (which he received after the accused were apprehended), the arrival at Garhi Road, Hamida, where a *naka* had been laid by the police and the subsequent sequence of events. This discrepancy, without a doubt, raises suspicion regarding the presence of the complainant and the subsequent identification of the allegedly recovered articles. The inconsistencies within the timeline and communication significantly raise doubts regarding the reliability of the presence of the complainant at the alleged spot i.e. Garhi Road, Hamida, and subsequent proceedings, including the authenticity of the identification process.

8. This Court concurs with the observations made by the learned trial Court that the disclosure statement Exhibits PH, PJ and PL, appear to have been documented by the police to fortify the case in hand. From the perusal of the aforementioned three disclosure statements, it reflects that following the seizure of the mobile handset and the wallet, the accused examined the contents of the wallet and found cash in the sum of approximately ₹600/-, Aadhaar Card, Voter Card, Driving Licence and a chit; the cash was then evenly divided

amongst the three of them; mobile phone was received by accused Mahesh Kumar, wallet with chit was received by Rohit while Aadhaar Card and the Voter Card were discarded en route and the Driving Licence was taken away by accused Sagar. It does not appear to prudence as to why the accused would have abandoned the Aadhaar Card and Voter Card while retaining the Driving Licence. Moreover, the disclosure statements of accused Rohit and Mahesh Kumar were recorded subsequent to the recoveries already effected, which without doubt, rendered them inadmissible and yet again raised a big question mark about the reliability of the prosecution case. The occurrence in question took place on 30.09.2016 and the three respondents-accused were nabbed after a lapse of three months on 20.02.2017. It is indeed puzzling as to why accused Rohit would have retained the empty wallet and the chit Exhibit P1. It is similarly perplexing as to why accused Mahesh Kumar would have retained possession of a mobile handset sans a sim card in his shirt pocket.

9. As a sequel to the above, this Court has no hesitation in concurring with the findings recorded by the trial Court that the prosecution had failed to prove the case against the respondents-accused.

10. The instant application, therefore, stands dismissed.

December 2nd, 2023

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**(MANJARI NEHRU KAUL)
JUDGE**

Whether speaking/reasoned : Yes

Whether reportable : No