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

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Date of Decision : September 20, 2023

MUKESH KUMAR

-APPELLANT

V/S

SUNNY KUMAR AND ORS.

-RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

**Present : Mr. Rajat Sheokand, Advocate
for the appellant.**

SURESHWAR THAKUR, J. (ORAL)

1. The instant appeal is directed against the impugned verdict of acquittal, as became recorded by the learned Sessions Judge, Panchkula, on 23.11.2022, upon, Sessions Case No.42 of 2021.

2. The accused faced trial for commission of offences constituted under Sections 326, 379-B, 341, 411, 120-B & 34 of the Indian Penal Code. The prosecution version is encapsulated in the appeal FIR No.416 dated 19.11.2020, registered at P.S. Chandimandir, wherein, it is recorded that on 19.11.2020, ASI Vinod Kumar (PW12) alongwith HC Mahipal and Driver Ct.Sukhwinder was present at Ramgarh town in the Government vehicle bearing registration No.HR-03T-5461 in connection with night patrolling, when telephonic information was received to the effect that after causing knife injuries to one Mukesh Kumar son of Bibat Bhagat on Jaisinghpura turn, his purse and mobile had been snatched by some persons. On the aforesaid information, ASI Vinod Kumar reached the spot and came to know that injured Mukesh Kumar (PW1) had been taken to Civil Hospital, Panchkula. No eye witness was found there. ASI Vinod Kumar then went to

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Civil Hospital, Sector-6, Panchkula and collected rukka and MLR pertaining to Mukesh revealing two injuries caused by sharp edged weapon to him. After obtaining opinion from the doctor, statement of injured/victim Mukesh Kumar (Ex.PA) was recorded, who disclosed that he runs a khokha (kiosk) to sell Bidi and cigarette etc. in front of liquor vend at Sector-28 Panchkula. On 18.11.2020 at about 9:50 p.m., after closing his khokha, he had proceeded towards his house on cycle. When he reached near the turn of Jaisinghpura, a motorcycle came from behind. Four persons were riding the same. They stopped his cycle, caught hold of him and tried to snatch his purse. When he protested, two of them caught hold of him, another gave knife injury on his left hip and left hand finger and snatched his mobile Samsung A-10 having two SIM numbers 92176-15102 & 86995-01035 besides a purse and fled away towards Sector-26, Panchkula. The purse contained his original Aadhar card, PAN card, ATM card and ₹ 7,000/- in cash. He further stated that he could recognize all the assailants-snatchers, if produced before him. Mukesh Kumar further disclosed that after the incident, he went to liquor vend and made a telephonic call to contractor Pawan Bansal, who called the police.

3. The learned counsel appearing for the aggrieved complainant/victim does not dispute the fact, that the accused were previously unknown to the complainant/victim. Therefore, it became imperative upon the complainant/victim to, in his previously made statement to the Investigating Officer concerned, thus reveal therein the characteristics/physical attributes of the accused, so that subsequently a valid Test Identification Parade becomes conducted, rather to enable the complainant/victim to thereins, thus identify the accused.

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4. Though in the previously made statement to the police officer concerned, the complainant/victim unveiled the characteristics/physical features of the accused, but yet there was an imperative necessity, cast upon the Investigating Officer concerned to ensure the holding of Test Identification Parade, inasmuch as, his ensuring the assembling at the relevant prison concerned, but under the supervision of an Executive Magistrate concerned, of other persons with similar physical attributes, so that, from amongst the persons rather having similar physical attributes, as were unfolded in his previously made statement in writing to the police, thus the complainant/victim proceeds to identify the accused.

5. In case, in the above manner, a Test Identification Parade was held and thereins an apt identification was made by the complainant/victim of the accused, resultantly, the identification in Court by the complainant/victim, of the accused, thus would hold evidentiary vigour.

6. Now, it is to be determined from a scanning of the evidence, on record, whether the above mode did become deployed by the Investigating Officer concerned or not. A deep traversing of the records reveals, that the identification, as became made of the accused by the complainant/victim, was when the accused were in the custody of the Investigating Officer concerned. Necessarily hence, the above mode of identification of the accused, by the complainant/victim, is not a valid mode to be employed as such, thus for making apt identification of the accused, by the complainant/victim. The reason being, that the mode, as stated (supra), for thus the complainant/victim proceeding to validly identify the accused, was none other than the Investigating Officer concerned, in the Test Identification Parade, ensuring that other persons with similar

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characteristics/physical attributes, as became described in the previously made statement in writing by the complainant/victim, thus becoming ensured to be assembled along with the accused, and if thereins, the complainant/victim identified the accused, thereupon the said manner of identification would be an efficacious identification and also the subsequent thereto identification in Court, by the complainant/victim, would enjoy evidentiary vigour.

7. Therefore, but obviously, when evidently the above mode has not been employed, rather a contrary thereto(s) invalid mode rather for identifying the accused, has been deployed by the Investigating Officer concerned, inasmuch as, his ensuring the making of identifications of the accused by the complainant/victim, during the period when he was holding the custody of the accused, resultantly, no evidentiary solemnity can be assigned to the above inapt mode of identification, as made by the complainant/victim of the accused, nor the identification as made subsequently of the accused, by the complainant/victim, during the latter testifying before the learned trial Judge concerned, thus can be assigned any evidentiary vigour.

8. The reason for the above apt valid mode for identification being made by the complainant/victim of the accused, is with a holistic purpose, inasmuch as, it ensures that the accused are not ensured to be identified by the complainant/victim, thus under the dictate, tutorings, or, mentorings, as made to the complainant/victim by the Investigating Officer concerned.

9. Furthermore, the necessity of assembling along with the accused other persons with similar features to the accused, is also to ensure,

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that in case the apposite physical attributes, as revealed by the complainant/victim, in the previously made statement in writing by the complainant/victim to the Investigating Officer concerned, thus do hold any aura of truth, thereby obviously there would be a spontaneous apposite identification, but free from tutorings and mentorings by the Investigating Officer concerned to the complainant/victim of the accused.

10. It is but the spontaneity and wants of tutorings or mentorings being made to the complainant/victim by the Investigating Officer concerned, that qua such a validly employed Test Identification Parade, thus law assigns evidentiary worth theretos.

11. For all the reasons aforesaid, it appears that the identification made of the accused, by the complainant/victim, when the accused were in the custody of the Investigating Officer concerned, rather is deemed to be an invented, tutored and manipulated identification, thus merely for falsely implicating the accused in the crime event concerned.

12. Though in pursuance to disclosure statement made by each of the accused to the Investigating Officer concerned, certain recoveries of currency notes were made. However, the said made disclosure statements and the consequent thereto recoveries (supra) are also inapt, nor they relate the said recoveries to the participation of the accused in the crime event concerned. The reason is but simple, that only upon the identity of the accused becoming firmly established, but only through employment of the above mode, that thereby alone the above made disclosure statements and the consequent thereto recoveries, but, would also concomitantly enjoy evidentiary vigour.

13. Even if assuming, that the identification made of the accused,

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by the complainant/victim, during police custody, was prima-facie an apt mode and also assuming, that the disclosure statements and the consequent thereto recoveries were also efficacious, yet it was further imperative, upon, the Investigating Officer concerned, to ensure the collection of IMEI number of the snatched mobile of the complainant/victim, for thus completely linking the mobile phone with the one, which became allegedly snatched by the accused. It was also imperative, upon, the Investigating Officer concerned to ensure the recoveries, at the instance of the accused concerned, of the respective Aadhaar Card, Voter Card, PAN Card and Canara Bank ATM Card of the complainant/victim, as thereby alone the disclosure statements, as also the consequent thereto recoveries, thus would become efficaciously proven.

14. Since the above recoveries did not become effectuated by the Investigating Officer concerned, at the instance of the accused concerned, thereby the recoveries, as became made in pursuance to disclosure statements, as recorded by each of the accused, also do not enjoy any evidentiary solemnity. The reason being that, since there is a trite allegation made in the complaint, in respect of the complainant's/victim's Aadhaar Card, Voter Card, PAN Card and Canara Bank ATM Card also becoming snatched by the accused, thereby thus the ensurings of the recoveries thereof, at the instance of the accused, to the Investigating Officer concerned, thus was imperative.

15. Reiteratedly, for want of recoveries of above articles, the prosecution cannot argue before this Court, nor the complainant/victim, through his counsel can argue before this Court, that merely on the basis of a frail and enfeeble Test Identification Parade, the prosecution has been able

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to establish the participation of the accused in the relevant crime event.

16. Though on examination of the injuries, as became suffered by the complainant/victim, in pursuance to his becoming allegedly delivered knife blow(s), become corroborated by the examining doctor, who stepped into the witness box as PW4 Dr. Manjot Singh, but irrespective of the doctor concerned making a voicing in his examination-in-chief, that the injuries, which he examined to be occurring on the person of the complainant/victim, may be inflictible through employments of a knife blow, on the relevant examined portion of the body. However, when for all the reasons stated (supra), the identity, or, the participation of the accused in the relevant crime event rather remains completely unestablished.

17. Therefore, this Court finds no reason to interfere with the impugned verdict of acquittal. Accordingly, the appeal is dismissed and the verdict of acquittal is affirmed and maintained.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

September 20, 2023
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Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No