

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

Neutral Citation No. 2023:PHHC:060193  
CRA-S-2204-2022 (O&M)  
Date of Decision: April 24, 2023

**Sumit Militry and another**

**... Appellants**

**Versus**

**State of Haryana**

**...Respondent**

**CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA**

**Present:-** Mr. Anil Rathee, Mr. Nitin Rathee, Dr. Rajesh Dahiya,  
Mr. Shobhit Rapria, Advocates for the petitioner.

Mr. Parveen Kumar Aggarwal, DAG, Haryana.

**DEEPAK GUPTA, J.**

The two appellants along with co-accused Pardeep @ Sittu were tried by the Court of learned Addl. Sessions Judge, Sonapat in Sessions case No.SC/355 of 2019 (CNR No.HRSO0101009749-2019) arising out of FIR No.106 dated 27.05.2019, registered at Police Station Baroda, District Sonapat. They have been convicted under Section 379-B IPC vide judgment dated 16.09.2022. Vide a separate order dated 19.09.2022, they have been sentenced to undergo rigorous imprisonment for a period of 10 year and to pay a fine of ₹25,000/- each for committing the said offence, with default sentence. Against this judgment of conviction and order of sentence, present appeal has been preferred by the two appellants.

2. (i) According to the prosecution allegations, Poras S/o Meet Singh, resident of Dashmesh Nagar, Patiala Road, Sangrur (Punjab) is a driver by profession on EICHER canter bearing registration No.PB-13BC-8253. On 26.05.2019 after loading material in his canter, he started from Sangrur for going to Rai, District Sonapat. At about 1 am in

Khera, three youths blocked his way by putting their car bearing registration No.DL-3FAQ-6666, make Toyota Camri, in front of his canter. One of them put knife on his neck and other two gave beatings to him with danda. They snatched ₹1,500/- from his pocket, threw him on the road and sped away taking his canter.

(ii) Said Poras reached Police Post Butana and made a complaint (Ex.PW1/A), stating therein that he can recognize the said unnamed youths, if produced before him. ASI Satish, In-charge, Police Post Butana recorded police proceedings Ex.PW5/A below the complaint and sent ruqqa to the Police Station resulting into registration of formal FIR (Ex.PW4/A), regarding which endorsement Ex.PW4/B was made below the complaint.

(iii) Further prosecution case is that on the same day i.e. 27.05.2019, Poras made supplementary statement Ex.PW1/B, as per which he had come to know the names of snatchers, who were Sumit @ Militry S/o Shamsher, Pardeep @ Sittu S/o Pyare Lal, both residents of village Butana; and Rahul @ Lalu S/o Pale Ram, resident of village Bichpari. He prayed for taking necessary action.

(iv) Spot of crime was visited and its rough site plan PW5/B was prepared. On 28.05.2019, two of the accused, namely Pardeep @ Sittu and Sumit @ Militry were arrested, who suffered disclosure statements Ex.PW5/C and PW5/D and admitted their involvement in the crime. They disclosed that they had concealed the snatched canter in a vacant brick kiln on Gagana Road, Butana for the purpose of selling the same and had distributed the snatched money. Disclosure statements suffered by both these accused resulted into the recovery of snatched canter and

₹500/- each. One danda each was also recovered from them. Accused Pardeep @ Sittu also got recovered the car used in the crime, which was found to be registered in the name of PW2 Narender. Recovery site plan Ex.PW5/I was prepared. All these memos prepared by ASI Satish, were attested by Head Constable Dushyant.

(v) As per further prosecution case, on arrest of other accused Rahul @ Lalu, he was interrogated on 05.06.2019 and he suffered disclosure statement PW5/K resulting into recovery of a knife used in the crime and ₹500/-, which were taken into possession vide memo Ex.PW5/M. Sketch of knife Ex.PW5/L and recovery site plan Ex.PW5/N were prepared. These documents prepared by ASI Satish were attested by H.C. Dushyant. After conclusion of the investigation, final report under 173 Cr.P.C. was filed.

(vi) Case was committed by learned Area Magistrate. All the accused were charge-sheeted by the Court of Sessions under Section 379-B and 411 read with Section 34 IPC, to which they pleaded not guilty and claimed trial.

3. To prove its case, the prosecution examined 8 witnesses.

(a) PW1 Poras is the complainant of the case, who did not support the prosecution case and turned hostile. Although, he proved the incident of snatching and the complaint Ex.PW1/A made to the police, but stated that he is unable to identify the persons involved in the incident; and that the accused present in the Court are not those persons, who had snatched his canter and ₹1,500/- at the night time. After being declared hostile, he denied to have made any supplementary statement Ex.PW1/B. He specifically denied that he ever named the three accused

to be the culprits. He further stated during cross-examination that he had not seen the registration number of the car used in the crime and the same was told to him by some unknown person after the incident. He had seen the accused for the first time in the Court.

(b) PW2 Narender is the registered owner of the Toyota Camri car bearing registration No.DL-3 FAQ-6666, who deposed that he had sold the car to one Kashmira and who had further sold the same to accused Sumit S/o Shamsheer. He proved the copy of R.C. as Ex.PW2/A.

(c) PW3 Mahender Singh, Patwari proved scaled site plan Ex.PW3/A.

(d) PW4 SI Jitender proved recording of the FIR Ex.PW4/A after receiving ruqa from ASI Satish. He also proved his endorsement Ex.PW4/B and dispatch of the special reports.

(e) PW8 H.C. Chand proved certificate Ex.PW8/A under Section 66 B of the Indian Evidence Act regarding registration of the FIR and also the final report under Section 173 Cr.P.C. prepared by Inspector Rajesh.

(f) PW5 ASI Satish is the Investigating Officer of the case, who proved all the steps taken during investigation. He also proved all the documents as have been referred earlier. According to him, he had arrested accused Pardeep @ Sittu and Sumit @ Militry on 27.05.2019, who on interrogation had suffered disclosure statements and recoveries were effected; whereas accused Rahul @ Lalu was arrested on 04.06.2019. During cross-examination, he disclosed that no public witness was joined at the time of interrogating any of the accused. He further disclosed that brick kiln from where the recovery of canter was

effected, is situated on the main road and that 5/7 persons were working there, but he did not call any of them to join the investigation at the time of recovery. Said place of recovery was an open place accessible to all. Recovered danda and knife were easily available in the market.

(g) PW6 Constable Dushyant corroborated PW5 regarding proceedings conducted on 05.06.2019, whereas PW7 Head Constable Sumit corroborated PW5 regarding proceedings conducted on 28.05.2019.

4. Statements of the accused under Section 313 Cr.P.C. were recorded and incriminating circumstances appearing against them were confronted to them. They refuted the allegations and pleaded false implication.

5. After hearing both the sides, the Trial Court held that prosecution had succeeded in proving its charge under Section 379B IPC and so, convicted all the accused thereunder and sentenced them as per details given earlier.

6. Assailing the aforesaid judgment of conviction and order of sentence by way of present appeal, it is contended by learned counsel for the appellants that impugned judgment is based upon statements of official witnesses, which is not corroborated and that Investigating Officer did not make any effort to join any public witness despite availability. Trial Court failed to take into consideration that PW1 Poras, complainant of the case did not support the prosecution case and so charge under Section 379 B IPC is not sustainable. The canter was recovered from a public place, which was open and accessible to everyone. Complainant was never medico legally examined to know any

injury caused to him. Major contradiction appearing in the statement of witnesses have been ignored.

With these submissions, prayer is made to set aside the impugned judgment of conviction and order of sentence.

7. On the other hand, learned State counsel supported the impugned judgment of conviction and order of sentence passed by the Courts below.

8. Having considered submissions of both the sides, I find merit in the appeal.

9. Occurrence took place in the intervening night of 26/27.05.2019 at about 1 am and complaint Ex.PW1/A was made by PW1 Poras on 27.05.2019, in which names of the culprits is not given, though it was stated by the complainant that he could recognize the snatchers, if produced before him. It is surprising that although no names of the culprits were given in PW1/A, but prosecution alleges that on the same day, i.e. 27.05.2019, complainant made supplementary statement Ex.PW1/B, naming the three accused to be the snatchers.

10. During his testimony as PW1, Poras has denied to have made any such supplementary statement before the police. Surprisingly, even the Investigating Officer of the case, i.e. PW5 ASI Satish has not disclosed during his testimony as PW5 about the supplementary statement Ex.PW1/B by PW1 Poras. Here itself, it is important to notice that complainant Poras is a resident of Patiala Road, Sangrur in Punjab; whereas the three accused are residents of villages Butana /Bichpari, situated in Sonapat, Haryana and there is nothing on record that complainant had any acquaintance with any of them. In the

circumstances, the prosecution allegation that supplementary statement Ex.PW1/B was made by complainant Poras, naming three accused, is absolutely not believable.

11. As noticed earlier that in his testimony, PW1 Poras though proved occurrence, but clearly stated that accused are not those persons, who had snatched his canter and ₹1,500/-. As per him, he had seen the accused for the first time in the Court. There is nothing on record to suggest that there was any other eye witness to the occurrence. There is nothing to show that any CCTV was installed in the vicinity, from where the police could have known the culprits. In these circumstance, it is a mystery as to by using what magic of wand, PW5 ASI Satish came to know that accused were involved in the snatching incident and arrested two of them, namely Sumit @ Militry and Pardeep @ Sittu on 28.05.2019. Having regard to the testimony of PW1 Poras, it is evident that there is no direct evidence to connect the accused with the crime.

12. Prosecution has tried to connect the accused on the basis of recovery. Although car bearing registration No.DL3FAQ-6666 is stated to have been used by the culprits in which they had come, as per complaint Ex.PW1/A, but as per testimony of PW1 Poras, said number was disclosed to him by some unknown person after the incident. Although the name of no such person is disclosed, but assuming it to be so, said car is registered in the name of PW2 Narender, as per whom, he had sold the said car to one Kashmira and who further sold the same to accused Sumit @ Militry S/o Shamsher. What type of investigation has been conducted by ASI Satish will become evident from the fact that no document whatsoever was collected by him from said registered owner Narender to

show the sale of the car to Kashmira. There is nothing in the testimony of PW2 Narender as to when he had sold the car to Kashmira. There is nothing to show that said Kashmira was ever joined in the investigation, so as to prove that he had sold the car to accused Sumit @ Militry. In these circumstances, there can be no hesitation to conclude that prosecution failed to prove any connection of the accused with car bearing registration No.DL-3FAQ-6666.

13. Recovery of ₹500/- each from the accused is insignificant as it is not possible to comment that recovered money was the part of snatched money, as there is nothing to show that distinct numbers mentioned on the currency notes were disclosed by the complainant to the police.

14. Prosecution claims to have recovered the snatched canter from the joint possession of accused Pardeep @ Sittu and Sumit @ Militry based on their disclosure statements. However, said recovery is also highly doubtful. Recovery is allegedly effected on 28.05.2019 from a brick kiln located on the main road. As per PW5 ASI Satish, Investigating Officer of the case, although 5/7 persons were working at the time of recovery, but he did not even bother to ask any of them to join the recovery proceedings. Although, joining of an independent person from the public is not a *sine quo non* to believe the testimony of the official witnesses, but in this case, non-joining of any public witness assumes significance having regard to the fact that despite availability, no effort was even made and also keeping in view the fact that place of recovery is an open place, accessible to everyone and situated on the main road, as has come in the testimony of PW5 ASI Satish. Having

regard to these circumstances, recovery of snatched canter pursuant to the alleged disclosure statement of accused, is highly doubtful.

15. On account of entire discussion as above, it is held that prosecution has not been able to prove its charges against accused beyond reasonable doubt. The impugned judgment of conviction and order of sentence as passed by the Court below cannot be sustained. These are set aside and the appellants are acquitted of the charges. They are directed to be released immediately, if not required in any other case.

Present appeal is allowed, accordingly.

April 24, 2023  
sarita

(DEEPAK GUPTA)  
JUDGE

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