

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-32 of 2024 (O&M)
Reserved on:15.02.2024
Pronounced on: 19.02.2024

Nirmal Singh

.....Appellant

Vs.

State of Haryana

.....Respondent

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Arshit Goel, Advocate for the appellant.

Mr. Randhir Singh, Addl. AG, Haryana.

DEEPAK GUPTA, J.

In Sessions Case No.7-SC-2023 (CNR No.HRHS01-00 3485-2023) arising out of FIR No.01 dated 01.01.2023 registered at Police Station GRP, Hisar under Section 379A IPC, accused Nirmal Singh (now appellant) has been convicted by the Court of learned Additional Sessions Judge, Hisar vide impugned judgment dated 30.09.2023 u/s 379A IPC. Vide a separate order of the even date, appellant has been sentenced to undergo rigorous imprisonment for a period of five years and also to pay a fine of ₹25,000/- with default sentence of two months' simple imprisonment, for committing the said offence under Section 379A IPC.

2. Against the afore-said judgment of conviction and order of sentence, present appeal has been filed.

3.1 As per prosecution allegations, on 01.01.2023, at about 09:00/10:00 AM, ESI Virender Kumar (PW1) along with ESI Baldev Singh,

Constable Amit, HC Naresh (PW2) and others was present at Main Gate, Railway Station, Hisar for checking. In the meantime, a person, who had covered himself with a sheet of saffron colour, was seen running towards the Main Gate from the side of booking office. He was being chased by another person, who was shouting "*Chor Chor Pakdo Pakdo*". ESI Virender Kumar with the help of accompanying police officials apprehended the person. At the same time, Rohtash (PW3) – the complainant of the case also reached there. The apprehended person (accused- appellant) was enquired about the mobile phone and purse held by him in his right hand in the presence of complainant but the accused kept mum. Mobile phone was of Samsung Mark. Complainant identified the purse and the mobile phone to be belonging to him. He also disclosed that SIM No.99920-42088 was inserted in the mobile. ESI Virender verified the same and found it to be correct. The mobile phone and the purse containing ₹750/- were taken into possession. Accused disclosed his name as Nirmal Singh son of Ishwar. Thereafter, statement of Rohtash Ex.P2 was recorded by the ESI Virender Kumar, who told that on that day, i.e. 01.01.2023 at about 09:00 AM, he was purchasing railway ticket for going to Adampur. As he took out his purse in order to make the payment, all of a sudden, a person came there, snatched his purse and mobile phone and started running. He (complainant) raised alarm and started chasing him. At the Main Gate, Police party apprehended that person and then the proceedings were conducted by the Police at the spot.

3.2 Formal FIR was registered. Accused was arrested. After completion of investigation, final report under Section 173 Cr.P.C was filed. After statutory compliance, case was committed to the Court of Sessions.

Accused was charge-sheeted under Section 379A IPC, to which he pleaded

not guilty and claimed trial.

3.3 To prove the charge, prosecution examined three witnesses. PW1 SI Virender Kumar is the IO of the case, who narrated in detail the entire sequence of events, right from apprehending the accused, making of the complaint by Rohtash and recovery of mobile phone etc. and then recording statement of the complainant, conducting the investigation and filing of the challan. His testimony has been corroborated in all material particulars by PW2 HC Naresh Kumar. However, PW3 Rohtash, the complainant of the case, though proved the occurrence but stated that some unknown person had snatched his purse and that accused is not that person.

3.4 After conclusion of the prosecution evidence, statement of the accused under Section 313 Cr.P.C was recorded. He refuted the incriminating material appearing against him in the evidence produced by the prosecution and pleaded false implication. However, he did not produce any evidence in defence.

3.5 After hearing both the sides, learned trial Court recorded conviction and sentenced the accused as per the details given earlier.

4. It is contended by learned counsel for the appellant - accused that conviction has been recorded despite the fact that complainant – Rohtash did not support the prosecution, indicating the false implication of the appellant. By referring to the testimony of PW3 Rohtash, learned counsel contends that recovery of mobile phone and purse has been planted upon the appellant. Learned trial Court also failed to consider the fact that no independent witness was joined by the Police Party and that whole case of the prosecution rests on the testimony of two official witnesses. Although the Investigating Officer was also accompanied by other police officials but none of them have been examined. Besides, the Investigating Officer did

not note down the serial number of the currency notes as recovered from the accused, which also indicates his false implication and that in all these circumstances, the conviction as recorded by the trial Court along with order of sentence deserve to be set aside. With these submissions, prayer is made for acquittal of the appellant by allowing this appeal.

5. Opposing the appeal, learned State Counsel submits that the learned trial Court was correct in drawing presumption under Section 114 of the Indian Evidence Act to conclude that it is the accused- appellant, who committed the snatching, since immediately after the crime, the accused was apprehended by the Police along with snatched mobile and purse, which were duly identified by the complainant. Learned State Counsel further submits that it is the quality of evidence and not the quantity, which is material and, therefore, non-examination of remaining police officials accompanying the Investigating Officer, is not significant. Learned State Counsel further submits that there was no animosity of the Investigating Officer and the other police officials with the accused- appellant so as to falsely implicate him in this case nor any suggestion to that effect was given and, therefore, there was no reason to disbelieve the testimony of PW1 SI Virender Kumar duly corroborated by PW2 HC Naresh and so, non-joining of the independent witness cannot be a reason to disturb the well-reasoned finding of conviction recorded by the trial Court. With these submissions, prayer is made for dismissal of the appeal.

6. I have considered the submissions of both the sides and have appraised the paperbook carefully.

7. Section 379A IPC, as applicable to Haryana defines ‘Snatching’ as under :

“379A – Snatching - (1) Whoever, with the intention to commit theft, suddenly or quickly or forcibly seizes or secures or grabs or takes away from any

person or from his possession any movable property and makes or attempts to make escape with such property, is said to commit snatching.

(2) Whoever, commits snatching, shall be punished with rigorous imprisonment for a term, which shall not be less than five years but which may extend to ten years and shall also be liable to fine of rupees twenty five thousand.”

8. As the provision of Section 379A IPC reproduced above would reveal, the prosecution is required to prove the following ingredients to prove the offence of snatching:-

- (a) Intention to commit theft,
- (b) Suddenly or quickly or forcibly,
- (c) i) seizing or securing or grabbing or
ii) taking away,
- (d) from any person or from his possession,
- (e) any movable property; and
- (f) making or attempting to make escape with such property.

9. In present case, learned counsel for the appellant has also placed on record copies of testimonies of all three witnesses examined by the prosecution. Perusal thereof would reveal that PW3 – complainant Rohtash duly proved the occurrence by testifying that as he was purchasing the ticket from Railway Counter on 01.01.2023, an unknown person came, snatched his purse and mobile phone and ran away. As per him, he tried to catch hold of that person but that person could not be found and that after some time, police came and showed a person to him and asked him to make a statement against him and then Police obtained his signatures on blank paper. PW3 further stated that accused present in the Court was not the same person, who had snatched his purse and mobile. Since PW3 Rohtash was found to be not supporting the prosecution case and suppressing the truth, he was declared hostile at the request of prosecution. During cross-

examination by the learned Public Prosecutor, PW3 admitted his signatures on his statement Ex.P2, though denied to have made that statement to the Police. However, as he was shown mobile phone Ex.P8 (MO) and purse Ex.P9 (MO) having currency notes of ₹750/-, he admitted that the same belonged to him.

10. It is clear from the afore-said testimony of PW3 Rohtash that though he proves the occurrence of snatching of his mobile and purse on 01.01.2023 but gives clean chit to the accused. At the same time, he admits the mobile phone and purse shown to him during his testimony, as recovered by the police to be the same, which had been snatched from him.

11. In the light of the afore-said statement, when the testimony of PW1 SI Virender Kumar, IO of the case, is appraised, it is found that he specifically deposed that as he along with other police officials was present at Main Gate of the Railway Station, Hisar on 01.01.2023, a person was found coming towards the Main Gate from the booking counter, who was apprehended, as another person was chasing him shouting "*Chor Chor Pakdo Pakdo*". PW1 testified that he enquired from the apprehended person and in the meantime, Rohtash reached near them. The apprehended person was enquired about the purse and mobile held by him but he could not give any satisfactory reply and that Rohtash identified the purse and mobile to be belonging to him. He (PW1) verified the said fact on the basis of SIM number disclosed by Rohtash. PW1 identified the accused to be the same person, who was apprehended at the spot and who had disclosed his name as Nirmal. He also proved Recovery Memo Ex.P1, which was duly attested by the complainant Rohtash as well as HC Naresh. He also proved the statement made by Rohtash Ex.P2, police proceeding Ex.P3, FIR Ex.P4

recorded by SI Harpal Singh, who made his endorsement Ex.P5, rough site

plan Ex.P6, arrest memo Ex.P7, and that after completion of investigation, he had prepared final report under Section 173 Cr.P.C. During his testimony, a mobile phone and purse containing ₹750/- were produced and PW1 identified the mobile phone Ex.P8 (MO) and purse containing ₹750/- Ex.P9(MO) to be the same, which had been recovered from the accused.

12. PW2 HC Naresh was associated with PW1 during the entire proceedings and he has fully corroborated the entire testimony of PW1. Both these witnesses were cross-examined by learned defence counsel but nothing could be elicited to discredit them.

13. Section 114 of the Indian Evidence Act reads as under:-

“114. Court may presume existence of certain facts.

The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

Illustrations

The Court may presume -

(a) that a man, who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession ;

xxxxxxxxxxxxxxxxxxxxx.”

14. It is clear from the Illustration A to be read with Section 114 of the Indian Evidence Act that the Court may presume that a man who is in possession of stolen goods soon after the theft, is either the thief or has received the goods, knowing them to be stolen unless he can account for his possession. Apart from this, Section 106 of the Indian Evidence Act provides that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

15. In the present case, PW3 Rohtash proves the incident of

snatching of his purse and mobile phone by a person and even says that he had chased him and later on, Police had produced a person before him though he denies that mobile phone and purse were recovered from the accused. PW1 SI Virender Kumar and PW2 HC Naresh proves that it is accused, who was apprehended, as he was being chased by the complainant and at that time, accused was holding the mobile phone and the purse, which were identified by the complainant to be his snatched property. As stated above, complainant does not dispute this fact. Complainant has identified the mobile phone and purse produced in the Court, which had been recovered from the possession of the accused as has come in the testimony of PW1 and PW2.

16. The time gap between the incident of snatching and the apprehension of accused is so small that Court can easily draw the presumption under Section 114 of the Indian Evidence Act that it is the accused, who had snatched the purse and mobile phone of the complainant. Apart from this, since the mobile phone and purse of the complainant were found from the possession of the accused as proved by PW1 and PW2, it was for the accused to account for his possession. He was required to discharge the burden of proof in this regard, as per Section 106 of the Indian Evidence Act, as it was in his special knowledge as to how the purse and mobile phone belonging to the complainant had come to his possession. Accused failed to do so.

17. Learned counsel for appellant has assailed the conviction on the ground that no independent witness from the public was joined.

18 The contention is devoid of any merit because there is no such law that to believe the police official, it is *sine-quo-non* to join any independent witness from the public. Simply because no public witness was

joined in the recovery proceedings does not *ipso facto* make the recovery doubtful. Witnesses cannot be disbelieved simply because they are police officials, particularly when no enmity has been alleged. In fact, court cannot start with the presumption that official witnesses will not tell the truth before the Court. The evidence of the official witnesses, cannot be disbelieved and distrusted, if the same is found to be credit worthy.

19. It has been observed by Hon'ble Supreme Court in **State Govt. of NCT of Delhi Vs. Sunil 2001(1) RCR (CrL.) 56** that :

“court cannot start with the presumption that police records were untrustworthy and rather, as a proposition of law, presumption should be other way around and that official acts of the police are regularly performed is a wise principle of presumption and recognized even by the legislature.”

20. In another case titled **Ravinder Vs. State of Maharashtra 2002(3) RCR (CrL.) 598**, the case was based on official witnesses. No independent witness was examined. It was held by Hon'ble Supreme Court that official (police) witnesses cannot be discarded merely on the ground that they belonged to the police force and are interested in the investigating or the prosecuting agency. It was held by Hon'ble Supreme Court further that prudence dictates that their evidence needs to be subjected to strict scrutiny and as far as possible corroboration of their evidence in material particulars should be sought. The desire of such witnesses to see the success of the case based on their investigation requires greater care to appreciate their testimony.

21. Similarly, in **Punjab and Haryana High Court, Chandigarh through its Registrar (General) Vs. Om Parkash Chaudhary and others 2006(2) RCR (CrL.) 426**, it was held by a Division Bench of this Court that testimony of police personnel should be treated in the same manner as testimony of any other witness and there is no principle of law that without

corroboration by independent witnesses, their testimony cannot be relied upon. It was further held that the presumption that a person acts honestly applies as much in favour of a police personnel as of other persons and it is not a proper judicial approach to distrust and suspect them without good grounds. Hon'ble High Court relied upon an authority of Hon'ble Supreme Court titled **Karamjit Singh vs. State (Delhi Administration) 2003(2) RCR (CrI.) 789**. It was further held that it will all depend upon facts and circumstances of each case and that no principle of general application can be laid down.

22. In present case, there is neither any suggestion nor any circumstance pointed out by learned counsel for the appellant so as to show any animosity of the police officials i.e. PW1 and PW2 with the accused so as to falsely implicate him. In these circumstances, mere non-joining of the independent witness from the public, cannot be a ground to disbelieve PW1 and PW2.

23. The contention of learned counsel for the appellant to the effect that only two police officials were examined, though they were also accompanied by other police officials, has no merit, because it is the quality of the evidence, which matters and not the quantity.

24. Having regard to the afore-said discussion, it is held that the learned trial Court did not commit any error in recording the conviction of the appellant.

25. As far as the order of sentence is concerned, Section 379A IPC provides for the minimum sentence of five years' imprisonment and fine of ₹25,000/- though the said imprisonment may extend up to ten years. The Court has already taken the lenient view by imposing only the minimum sentence.

26. As such, this Court finds no merit in the present appeal either against the judgment of conviction or against the order of sentence.

Dismissed.

February 19, 2024

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Whether Speaking/reasoned

Whether Reportable

(DEEPAK GUPTA)

JUDGE

Yes/No

Yes/No