



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

265

CRA-AS-8-2019

Date of decision: 05.09.2024

STATE OF HARYANA

...Appellant

V/s

RAHUL AND ANOTHER

...Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Yuvraj Shandilya, AAG, Haryana, for the appellant.

Mr. Shiva Khurmi, Advocate,
Amicus Curiae on behalf of respondent No.2.

MANJARI NEHRU KAUL, J. (ORAL)

1. The State of Haryana is before this Court to challenge the judgement/order dated 28.11.2017 vide which the learned trial Court acquitted the respondent-accused by extending the benefit of doubt to them.

Since none is appearing on behalf of the respondent, Mr. Shiva Khurmi, Advocate, enrolment No.1453-2015, who is present in Court, is appointed as amicus curiae to assist this Court on behalf of respondent.

3. The brief facts of this case as alleged in the FIR bearing No. 369 dated 20.07.2016, under Section 379-B of the Indian Penal Code, 1860, registered at Police Station, Shahbad, (Exhibit P-23) maybe summed up as thus :

Complainant PW-3-Ravi Dutt, a resident of Village Khaspur, District Mahendergarh, was employed as a Surveyor for a private company at the warehouse in Shahbad, District Kurukshetra. On the night of 19.07.2016, at about 9:15 p.m., after finishing dinner, the complainant was walking outside the gate of the warehouse, when two young men



approached him on a black splendor motor-cycle. One of them was fat and the other one was slim. The fat-man suddenly pressed a sharp edged object against the back of the complainant and threatened him, demanded his mobile handset and wallet. When the complainant refused, the fat man forcibly snatched his mobile handset, which had sim No.9050972715, along with his wallet containing Rs.900/-, his Aadhar Card, Voter ID Card and ATM Card. The two men then fled from the scene on their motorcycle. The complainant stated that he could identify the culprits if he saw them again. Based on these allegations, FIR in question was registered. After the challan was presented, the accused were charged under Section 379(B) of the IPC to which they pleaded not guilty and claimed trial.

3. In support of his case, the prosecution examined as many as 6 witnesses including complainant-Ravi Dutt, who deposed as PW-3 and Investigating Officer-ASI Ashok Kumar, who deposed as PW-6. Besides, the prosecution also tendered various documents in its evidence including the documents pertaining to the recoveries allegedly affected from the respondent-accused and the disclosure statements of both the respondent-accused.

4. In the statements recorded under Section 313 Cr.P.C., both the respondent-accused pleaded their innocence.

5. In defence, the respondent-accused neither examined any witness nor produced any documentary evidence. On the basis of the material on record and the evidence adduced, the learned trial Court



acquitted the respondent-accused of the charges framed against them in the present FIR by extending the benefit of doubt.

6. Learned counsel for the State has argued that the learned trial court erred in acquitting the accused by granting them the benefit of doubt vide impugned judgment dated 28.11.2017, it has been contended that the impugned judgment is liable to be set aside for the following reasons:

(i) That the impugned judgment is contrary to law and the facts of the case as the trial Court failed to properly appreciate the testimony of PW-3- Ravi Dutt, complainant, who specifically testified under oath regarding the occurrence that took place on 19.07.2016 at about 09:15 p.m. near the gate of the warehouse in Shahabad.

(ii) That the complaint was lodged promptly with the police on 20.07.2016 and, thus, there was no undue delay that could cast doubt on the version of the prosecution. Hence, the Court erred in placing undue emphasis on the alleged delay.

(iii) That the trial Court also erred in holding that the presence of the complainant near the *naka* at Shahbad on 21.07.2016 at about 6:30 p.m. was unnatural. The testimony of the complainant, PW-4 H.C. Naresh Kumar and PW-6 ASI Ashok Kumar, all of whom testified about the apprehension of the respondent-accused, was disregarded.

iv. That the trial Court further erred in not properly considering the identification of the respondent-accused by the complainant. The complainant specifically identified both the respondent-accused as the individuals who had threatened him and stolen his wallet and mobile



handset. During his testimony, complainant also identified his stolen articles which were recovered from the respondent-accused.

(v) That the trial Court relied heavily on certain discrepancies in the testimonies of the witnesses by failing to appreciate that these inconsistencies were inevitable due to the passage of time and would not in any manner cast a shadow of doubt on the case of the prosecution.

(vi) That the trial Court also erred in acquitting the accused for the alleged failure to conduct a test identification parade.

7. Learned amicus curiae, on the other hand, has vehemently opposed the submissions made by the counsel for the State by arguing that the impugned order comes across as a well reasoned one which does not warrant any interference. It has been further argued that rather the case of the prosecution is most improbable; the trial Court rightly took into account the material discrepancies in deposition of both the complainant as well as the Investigating Officer which without doubt create a serious dent in the case of the prosecution.

8. I have heard learned counsel for the parties and perused the relevant material placed on record.

9. The key facts of the case are as follows:

PW-3, Ravi Dutt-complainant, testified that on 20.07.2016, around 4:00 p.m., he reported the incident to the police, who happened to be just passing by the warehouse where he was employed. Rather than going to the police station immediately after the occurrence in question, strangely the complainant waited until the evening of the following day to



report the crime. This delay indeed raises serious doubt about the credibility of the prosecution case. Any reasonable person, especially one whose belongings such as Aadhar Card, Wallet, ATM Card, Voter ID Card and mobile handset had been stolen, would promptly approach the police to lodge an FIR.

10. As per the case of the prosecution, on 21.07.2016, at about 6:30 p.m., a police *naka* was set up at Mandi Shahbad, where PW-3-Ravi Dutt encountered officers and enquired about his case. However, this sudden urgency is in sharp contrast with his earlier delay, making his conduct appear inconsistent and raising doubts about the credibility of his identification of the respondent-accused at the police check point.

11. Complainant PW-3-Ravi Dutt's testimony is further undermined by inconsistencies. He could not recall details such as the dates of signing documents, the presence of witnesses or whether the accused wore helmets during the alleged chase. These lapses in memory suggest that he may not have been at the scene during key moments, casting further doubt on the case of the prosecution particularly on his identification of the respondent-accused.

12. Furthermore and pertinently, there are also significant contradictions in the testimonies of the other key witnesses regarding the apprehension of the respondent-accused. PW-3 Ravi Dutt, PW-4 H.C. Naresh Kumar and PW-6 ASI Ashok Kumar, each came varying accounts of how the respondent-accused were stopped and arrested which severely undermines the case of the prosecution.



13. Additionally, despite living at the warehouse and having a security guard on duty, PW-3 Ravi Dutt, did not immediately report the incident to the guard or even his Manager. This inexplicable delay in informing those close to him further weakens the narrative of the prosecution.

14. In addition, the absence of a test identification parade is a major flaw. While PW-3 identified the respondent-accused in Court, this identification is unreliable without a test identification parade, particularly since his initial statement did not provide any identifying details of the suspects. The short duration of the crime also makes it unlikely that he could have accurately identified the suspects days later. Additionally, there is a significant discrepancy regarding the colour of the recovered mobile handset which further undermines the credibility of the evidence led. Furthermore, even the charge under Section 379-B of the IPC (snatching with hurt, wrongful restraint or fear of hurt) is not substantiated as PW-3 Ravi Dutt did not claim that the accused inflicted any injuries on his person. Even if the prosecution’s evidence is accepted, the evidence does not support the charge under Section 379-B of the IPC. Hence as a sequel to the above, this Court does not find any merit in the instant appeal and the same is accordingly dismissed.

(MANJARI NEHRU KAUL)
JUDGE

September 05, 2024
poonam

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