

233 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-1684-MA-2017
Date of Decision: 08.04.2024

State of Haryana ...Appellant
vs.
Gaurav and another ...Respondent

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present : Mr. Karan Garg, AAG, Haryana.

None for the respondents.

N.S.Shekhawat J. (Oral)

1. The State of Haryana has filed the present appeal against the impugned judgment dated 08.12.2016 passed by the Court of Additional Sessions Judge, Panipat, whereby the respondents have been ordered to be acquitted of the charge under Sections 379-A and 34 of IPC.

2. The FIR in the present case was registered on the basis of the statement made by Krishna Rani wife of Ram Chander Sehgal, resident of House No.127, Ram Nagar, Tehsil Camp, Panipat, by moving an application to Fateh Singh, ASI. The complainant stated that at about 11.00 am on 11.05.2016, she was washing stairs in front of the gate of her house and in the meantime, two young boys came on motorcycle. The boy, who was driving the motorcycle, snatched the gold chain weighing 10 grams from her neck. However, she could not note down the make and the registration number of the motorcycle. When she raised the noise, both the motor-cyclists fled away from the spot and she could identify both the assailants/snatchers and she prayed for

legal action against the accused. On the basis of the complaint moved by the complainant, the FIR was registered under Sections 379-A, 34 IPC against unknown persons.

3. During the course of investigation, on 24.05.2016, Gaurav, respondent No.1 was arrested and the gold chain and the motorcycle used in the commission of crime were recovered from him. After completion of the investigation, the challan was presented against both the respondents.

4. After consideration of the evidence collected during the course of investigation, charge under Section 379-A read with Section 34 of IPC was framed against both the respondents, to which they pleaded not guilty and requested for trial.

5. In support of the charge, the prosecution had examined 7 witnesses, namely, HC Vijender Singh PW-1, Krishna Rani PW-2, EASI Ram Mehar PW-3, C. Umar Mohammad PW-4, ASI Fateh Singh PW-5, Vicky Sehgal PW-6 and Inspector/SHO Suresh Kumar, PW-7.

6. After examination of the prosecution witnesses, the evidence collected during the trial was put to the respondents in the shape of the statement under Section 313 Cr.P.C. However, they denied all the evidence and claimed that they were innocent. The respondents opted not to lead any evidence before the trial Court.

7. Learned counsel for the appellant-State submits that the trial Court had completely brushed aside the evidence led by the prosecution and the respondents have been wrongly acquitted. Learned counsel has referred to the testimony of PW-2 Krishna Rani, complainant, who had pointed towards both the accused in the Court and clearly stated that they were the accused, who had

snatched her gold chain on 11.05.2016. She tried to chase them, however, they had fled from the spot on their motorcycle. Even after the recovery of gold chain, she had identified the case property on 25.05.2016, vide memo Ex. PB. The statement of PW-2 Krishna Rani was duly corroborated by PW-6 Vicky Sehgal, who had also seen the respondents/accused at the time of occurrence and had identified both of them in the Court. Learned State counsel submits that the ocular deposition of witnesses had not been appreciated by the trial Court in the correct prospective. Learned State counsel further submits that in fact in the present case, even though, no test identification parade was got conducted by the police after arrest of both the accused, but the respondents could not have been acquitted on this ground as the victim had identified the accused in the Court. Learned Court failed to appreciate that PW-2 Krishna Rani had no reason to falsely involve both the respondents in a criminal case. Still further, the recovery of gold chain from Gaurav, respondent No.1 and its identification by PW-2 Krishna Rani was enough to bring home the guilt of the respondents. Apart from that, the impugned judgment is passed on misappreciation of evidence and the settled canons of law. Thus, the impugned judgment is legally unsustainable.

8. I have considered the submissions made by learned State counsel in the light of the evidence led by the prosecution. In the present case, the prosecution had primarily relied upon PW-2 Krishna Rani/complainant and her son Vicky Sehgal, who appeared as PW-6. In her deposition, she had pointed out towards both the accused. However, her cross-examination, she had identified only Gaurav and stated that she did not identify Anil alias Kalu.

Even she admitted in her cross-examination that she had disclosed the date of

occurrence as 11.05.2016, after going through the writing on her palm. Apart from that, in the present case, both the accused were not known to the complainant and her son Vicky Sehgal. However, both had claimed that they had seen the accused and they could identify them. Thus, the accused came to be previously known to complainant and her son, the prosecution was under a duty to hold the test identification parade after the arrest of the accused.

9. Still further, even though, the prosecution has claimed that Vicky Sehgal, PW-6 was also at the place of occurrence. However, his statement under Section 161 Cr.P.C. Ex. DA proved that he had not witnessed the occurrence and had approached the spot after hearing the noise of his mother. Apart from that, the respondents were tried by the prosecution for snatching the gold chain of PW-2 Krishna Rani. However, the gold chain was not produced before the Court and such non-production of the case property by the prosecution was fatal for the case. Even the gold chain should have been identified by the complainant and other witnesses before the Court and in the presence of the accused. Even PW-2 admitted in her cross-examination that she had sold the gold chain. Apart from that, the prosecution also failed to examine the MHC of Police Station with whom the gold chain was deposited by the Investigating Officer after recovery from Gaurav, respondent No.1. Thus, the trial Court was right in observing that the prosecution had miserably failed to link both the accused with the commission of offence.

10. Apart from that, I have gone through the findings recorded by the trial Court and the findings do not suffer from any material irregularity, illegality or perversity. Thus, the impugned judgment dated 08.12.2016 passed

by the Court of Additional Sessions Judge, Panipat is upheld and leave to appeal is declined.

11. The present appeal is dismissed.

08.04.2024.
hemlata

(N.S.SHEKHAWAT)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No