



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-514-2023

Reserved on: 18.05.2024

Pronounced on: 24.05.2024

ANOOP SINGH @ ANNU

. . . . Appellant

Vs.

STATE OF PUNJAB

. . . . Respondent

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Tanvir Singh, Advocate, for
Mr. Rahul Bhargava, Advocate,
for the appellant.

Mr. Iqbalpreet Singh, AAG, Punjab.

DEEPAK GUPTA, J.

In Sessions Case No.SC/111/2020 [CNR N: PBAS01-002532-2020] arising out of FIR No.211 dated 07.09.2019 registered at Police Station Civil Lines, Amritsar, accused Anoop Singh @ Annu (*appellant herein*) has been convicted by the Court of Id. Sessions Judge, Amritsar under Section 379-B of the Indian Penal Code, 186 [for short 'the IPC'] vide judgment dated 07.09.2022. Vide a separate order of the even date, appellant has been sentenced to undergo rigorous imprisonment for a period of 5 years and also to pay fine of ₹10,000/- with default sentence of six months, for committing the said offence under Section 379-B IPC.

2. It is against the aforesaid judgment of conviction and order of sentence that present appeal has been filed.
3. Record of the trial Court was called and the same has been perused.

4.1 As per prosecution case, on 07.09.2019, Sukhdev Raj (PW1) along with his wife Smt. Santosh (PW2) was going towards Vijay Bank, Mall Road on his Aactiva. As he reached near the residence of Dr. Raj Kumar situated at Court road, a Sikh gentlemen having covered his face with white cloth came from behind on a motorcycle, snatched the gold chain of his wife weighing 15 gams having *Rudraksh* in it and fled away towards the side of Court road. Complainant could not notice the registration number of the motorcycle, on which the snatcher had come. ASI Lakhwinder Singh (PW9), who along with other police officials, was present at Rialto chowk in connection with patrolling, was approached by complainant-Sukhdev Raj, to whom he made a complaint (Ex.PW1/A), stating therein that he could identify the snatcher, if produced before him. ASI Lakhwinder Singh recorded police proceeding below the complaint, resulting into registration of formal FIR. Rough site plan of the place of occurrence was prepared.

4.2 Further prosecution case is that during the investigation of case FIR No.179 dated 03.11.2019 registered at Police Station, Cantonment Amritsar under Section 379-B IPC, accused Anoop Singh @ Annu suffered a disclosure statement on 16.11.2019, admitting his involvement in snatching incidents of various cases including the present case. On coming to know about the said disclosure statement, production warrants were got issued in the present case. On way to the Court, complainant also reached there and identified the accused to be the snatcher of the chain of his wife. Identification Memo Ex.PW1/B was prepared. Accused was joined in the investigation and was arrested on 16.11.2019. During his interrogation, conducted on 19.11.2019, in the present case, by ASI Lakhwinder Singh, accused suffered disclosure statement (Ex.PW5/A) admitting his involvement

in the crime and that he had concealed the snatched gold chain in the Almirah of his house and that he could get the same recovered. Said disclosure statement led to the recovery of chain weighing 12 gm 810 mg (Ex.MO/1), which was taken into possession vide seizure memo Ex.PW5/B. Recovery site plan Ex.PW9/D was prepared.

4.3 On 20.12.2019, complainant and his wife were called in the Police Station, to whom the recovered chain was shown by MMHC and they identified the same to be their snatched chain. Identification memo Ex.PW1/C was prepared in this regard. The Jeweler, from whom the chain had been purchased by complainant-Sukhdev Raj, was also joined in the examination and his statement was recorded. After completing all other necessary formalities of examination, final report under Section 173 CrPC was presented in the Court of Id. Area Magistrate.

5. After commitment proceedings, accused was charge sheeted under Section 379-B IPC, to which he pleaded not guilty and claimed trial.

6. To prove the charge, prosecution examined 9 witnesses.

a) PW1 Sukhdev Raj proved the incident of snatching, which occurred on 07.09.2019, complaint Ex.PW1/A; identification of the accused by him on 16.11.2019 vide memo Ex.PW1/B and that on 20.12.2019, he along with his wife had identified the chain as recovered from the accused to be the snatched chain and proved identification memo Ex.PW1/C in this regard. He also established identity of the accused in the Court as snatcher.

b) PW1's statement is supported by his wife- Santosh (PW2).

c) PW9-ASI Lakhwinder Singh is the IO of the case, who proved all the steps taken during investigation, including recording the disclosure statement (Ex.PW5/A) of the accused and the consequent recovery of

the chain on 19.11.2019, which was taken into possession vide Memo Ex.PW5/B.

- d) PW9's statement is supported by recovery witness PW5-ASI Daljinder Pal.
- e) PW3 HC Jaspal proved the arrest of the accused in case FIR 179 of 2019 registered at Police Station Cantonment, Amritsar under Section 379-B IPC and that a motorcycle was recovered from his possession vide Memo Ex.PW3/A. He also proved the disclosure statement suffered by the accused in that case, copy of which is Ex.PW3/B.
- f) PW4 ASI Rashpinder Singh proved copy of FIR No.179 of 2019 (*supra*) as Ex.PW4/A.
- g) PW6 ASI Balwinder Singh, posted as MHC at Police Station Amritsar, deposed that on 19.11.2019, ASI Lakhwinder Singh had deposited a parcel containing gold chain weighing 12 gm 810 mg sealed with seal impression 'LS' with him and that on 20.12.2019, complainant Sukhdev Raj and his wife Santosh Rani had come to the Police Station and had identified the chain to be belonging to them, which had been snatched on 07.09.2019. He proved the identification memo Ex.PW1/C in this regard.
- h) PW7 Gurpreet Singh proved that he had sold a gold chain to Sukhdev Raj on 04.06.2018 and proved bill Ex.PW7/A in this regard.
- i) PW8 ASI Balwinder Singh proved the arrest of the accused in this case on 16.11.2019 by ASI Lakhwinder Singh.

7. Thereafter, statement of the accused under Section 313 CrPC was recorded, in which all the incriminating circumstances appearing in the evidence produced by the prosecution were confronted to him. Accused

controverted the same and pleaded his false implication. However, he did not adduce any evidence in this regard.

8. Ld. trial Court heard both the sides and held the accused to be guilty and convicted and sentenced him, as per the details given above.

9. Assailing the conviction, it is contended by ld. counsel that the finding of conviction as recorded by the trial Court is based on complete misappreciation of evidence. Accused is alleged to have suffered a disclosure statement in case FIR No.179 dated 03.11.2019 under Section 379-B IPC registered at Police Station Cantonment, Amritsar and that accused has already been acquitted of the charge in that case. Ld. counsel contends further that occurrence took place on 07.09.2019 and FIR was lodged against unknown snatcher, who had come on a motorcycle, the registration number of which could not be noted by the complainant. However, accused is alleged to have been identified by the complainant and his wife in the Court, despite the fact that no Test Identification Parade was ever conducted. Further attention is drawn by ld. counsel towards the fact that as per the FIR, gold chain of 15 gram had been snatched. However, recovery of a gold chain weighing 12 gm 810 mg is shown to have been effected from the accused, by claiming that it was the snatched chain. Ld. trial Court failed to notice that the chain purchased by the complainant from PW7 was weighing 12 gm 210 mg and thus, in no manner whatsoever, the recovered chain could be connected with the snatched chain. It is also argued that neither at the time of recording alleged disclosure statement of the accused nor at the time of effecting the recovery, any public witness was joined and that in the said circumstances, prosecution case is dependent upon the statement of police officials, who were interested in the success of the case and that statements of

such police officials are not reliable in view of all the aforesaid circumstances.

With these submissions, prayer is made by ld. counsel for setting aside the impugned judgment of conviction and order of sentence and to acquit the appellant-accused, by allowing this appeal.

10. Opposing the appeal, ld. State counsel contends that minor contradictions appearing in the statement of prosecution witnesses are insignificant; that it is not the rule of law so as to join a person from the public and that identity of the accused-appellant has been duly established to be snatcher during trial. Ld. State counsel defended the impugned judgment of conviction and the order of sentence and prayed for dismissal of the appeal.

11. I have considered submissions of both the sides and with the able assistance of ld. counsel for both the sides, have appraised the trial Court record.

12. As the contents of complaint Ex.PW1/A proved by PW1 Sukhdev Raj would reveal that snatching incident took place on 07.09.2019 by some person, who had come on a motorcycle, but he (PW1) could not notice the registration number of the motorcycle, on which the snatcher had come.

13. PW1-Sukhdev Raj claims that on 16.11.2019, he along with his wife had come to the District Court, Amritsar where the accused was in custody of the police in some other case and that he identified by him and regarding which identification memo Ex.PW1/B was prepared. PW9 ASI Lakhwinder Singh also supports him in this regard. However, the said identification of the accused by complainant is no identification in the eyes of

law, as complainant and his wife must have seen the snatcher momentarily on 07.10.2019, as immediately after snatching, he had fled away. Not only this, the snatcher was in muffed face as has come in the testimony of PW1-Sukhdev Raj as well as PW2-Smt. Santosh and in these circumstances, it is highly doubtful that they were in a position to see the face of the snatcher. Even if, it be assumed that they had seen the face of snatcher, it was required by the IO of the case to hold Test Identification Parade, considering the fact that the alleged snatcher was being identified by the complainant and his wife on 16.11.2019 i.e. more than 2 months after the occurrence. Moreover, only one person i.e., accused was seen by the complainant and his wife on 16.11.2019 in the Court premises. It was required for the IO to hold the Test Identification Parade in such a manner that various persons of a similar stature and age etc. are paraded before the witnesses so as to indentify the real culprit. No such procedure was followed. In these facts and circumstances, identification of the accused by PW1 and PW2 either before police on 16.11.2019 or before the Court during trial, is highly doubtful.

14. Proceeding further, prosecution has tried to connect the accused with the crime with the recovery of alleged snatched chain. However, careful appraisal of the evidence on record would indicate that it is absolutely not proved that the chain recovered, at the instance of the accused, is the snatched chain. It is the specific case of the prosecution, as is mentioned in the complaint PW1/A and as also testified by PW1 and PW2, that chain of 15 gm had been snatched. On 19.11.2019, pursuant to the disclosure statement of the accused, a chain weighing 12 gm 810 mg has been recovered, as per the testimony of PW9-ASI Lakhwinder Singh, the IO of the case, supported by PW5-ASI Daljinder Singh, the recovery witness. It has also come in the

statement of both these witnesses that after recovery, the chain was put in a plastic container, which was converted into a parcel and sealed with seal impression 'LS'. Prosecution claims that said snatched chain had been purchased by PW1 Sukhdev Raj from PW7 Gurpreet Singh running a jewelry shop by the name of M/s Shobneet Jewelers in Amritsar.

15. However, this witness i.e., PW7 has totally demolished the prosecution case, when during his cross-examination, he deposed that he had sold the chain weighing 12 gram 210 mg to Sukhdev Raj vide bill Ex.PW7/A. He also stated that logo showing 22 karat was affixed on the chain. However, there is no evidence that the chain as recovered from the accused carries the logo of 22 karat. Not only this, the recovered chain was not produced in the Court during the testimony of PW7 Gurpreet Singh, so as to prove that the recovered chain is the same, which had been sold by him (PW7) to Sukhdev Raj (PW1).

16. Further dent is put in the prosecution case by the testimony of PW6-ASI Balwinder Singh, the MHC in Police Station Civil Lines, Amritsar, who deposed that on 20.12.2019, complainant and his wife had identified the chain, regarding which identification memo Ex.PW1/C was prepared. However, during his cross-examination, he disclosed that he had shown the plastic container, sealed with seal 'LS', to the complainant for indentifying the chain, without opening the same. He admitted that without opening the container, it is not even possible to say as to whether the chain was in intact condition or in broken condition. In these circumstances, by simply looking at the container, it could not have been possible for the complainant or his wife to identify the chain recovered by the police to be the snatched chain. Not only this, as has come in the testimony of PW1 Sukhdev Raj that only

one chain had been shown to him by the Police for the purpose of identification and not by mixing the recovered chain with similar chains.

17. In all the above circumstances, this Court has no hesitation to conclude that prosecution utterly failed to establish that the chain recovered at the instance of the accused-appellant is the same chain, which had been snatched from PW1 & PW2 on 07.09.2019 and therefore, on the basis of recovery of the chain, the accused cannot be connected with the crime.

18. Consequent to the above discussion, it is held that Id. trial Court failed to appreciate the evidence on record in right perspective. The conviction of the accused-appellant, as recorded by the trial Court, cannot be sustained.

19. Consequently, the present appeal is hereby allowed. Accused-appellant is hereby acquitted of the charge by setting aside the impugned judgment of conviction and order of sentence. He be released immediately, if not required in any other case.

Pending application (s), if any, stand disposed of.

May 24, 2024
Vivek

(DEEPAK GUPTA)
JUDGE

Whether Speaking/reasoned *Yes*
Whether Reportable *No*