



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-539 of 2022 (O&M)
Reserved on:18.05.2024
Pronounced on: 22.05.2024

Abhishek @ Badri

.....Petitioner

Vs.

State of UT, Chandigarh

.....Respondent

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Mukesh Mehra, Advocate for the appellant.

Mr. Akashdeep Singh, Addl. PP, UT, Chandigarh.

DEEPAK GUPTA, J.

In Sessions Case No.29 of 2021 (CNR No. CHCH01-001117-2021), arising out of FIR No.99 dated 15.07.2020 registered under Sections 379-A and 411 IPC at Police Station Sarangpur, Chandigarh, accused Abhishek @ Badri (*appellant herein*) has been convicted by learned Additional Sessions Judge, Chandigarh under Section 379-A IPC vide judgment dated 22.11.2021. By way of a separate order dated 23.11.2021, he has been sentenced to undergo rigorous imprisonment for a period of 05 years and to pay a fine of ₹25,000/- for committing the said offence, with default sentence of rigorous imprisonment for two months.

2 Against the afore-said judgment of conviction and order of sentence, present appeal has been filed. Trial Court record was called and the same has been perused.

3.1 As per prosecution case, on 15.07.2020, ASI Mangat Singh



(PW4) of Police Station Sarangpur, Chandigarh along with other police officials, was on beat duty at Village Dhanas, when he received wireless message that a snatching incident has been committed near Gurudwara, Village Dhanas. Accompanied by other officials, he reached the spot, where Arti (PW1) wife of Satish met him and presented complaint Ex.P1, as per which, on that day, she was returning after taking medicines from Dr. Mahajan at HBC, Dhanas. As she reached near ICICI Bank ATM, a person came from behind, snatched her mobile Red-mi Note 7S, inserted with Sim No.77174-51947 of Jio Company, from her left hand and fled away. As she raised alarm, the snatcher turned around. He was without any mask. It was stated by the complainant that she could identify the snatcher in case he is produced before her.

3.2 On the afore-said complaint Ex.P1, police proceedings Ex.P7 were recorded by ASI Mangat Singh resulting into registration of formal FIR Ex.P8. On the demarcation of complainant, rough site plan Ex.P9 was prepared by ASI Mangat Singh.

3.3 On the same day, during search for the culprit, the accused was apprehended vide Arrest Memo Ex.P11 near Lallanwala Peer Majar, Village Dhanas on the identification of the complainant and from his possession, the snatched mobile was recovered. Recovery-cum-Identification Memo Ex.P2 of the mobile was prepared by ASI Mangat Singh, which was attested by complainant Arti and Constable Paramjit. Site Plan Ex.P10 of the place of recovery was prepared. On the same day, complainant produced Bill Ex.P3 showing the purchase of mobile on 21.10.2019. The said bill was taken into possession vide Recovery Memo Ex.P4. The snatched mobile, as recovered from the accused, was deposited by ASI Mangat Singh in the Malkhana vide



relevant entry Ex.P5. Later on, scaled site plan Ex.P6 of the place of crime was also got prepared.

3.4 After completion of investigation, final report under Section 173 Cr.P.C was prepared and submitted in the Court.

4. After commitment proceedings, the accused was charge-sheeted by learned Additional Sessions Judge, Chandigarh under Section 379-A IPC on 09.03.2021, to which he pleaded not guilty and claimed trial.

5. To support its case, prosecution examined as many as five witnesses.

a) PW1 Arti is the complainant of the case, who deposed about the incident of snatching of her mobile on 15.07.2020 and that the same was recovered on the same day from the accused. She identified the accused in the Court. She also proved complaint Ex.P1 besides recovery-cum-identification Memo Ex.P2 and Bill Ex.P3, which she had handed over to the Police and which was taken into possession vide Memo Ex.P4.

b) PW4 ASI Mangat Singh is the Investigating Officer of the case, who proved all the proceedings conducted during investigation as mentioned earlier. He proved complaint Ex.P1 as presented to him by complainant Arti and his endorsement is Ex.P7, on the basis of which FIR Ex.P8 was recorded by ASI Kulwant Singh. He further proved rough site plan Ex.P9 and that on the same day, when they were searching for the accused along with the complainant, the accused was noticed near Lallanwala Peer Majar, Village Dhanas and that on the identification of the complainant, the accused was apprehended along with snatched mobile. He proved the Recovery Memo Ex.P2 besides the site plan of place of recovery Ex.P10. He also proved Memo Ex.P4, whereby bill Ex.P3 produced by the complainant was



taken into possession. He also proved the other proceedings conducted during investigation.

c) Rest of the witnesses examined by the prosecution are formal, inasmuch as PW2 ASI Darshan Lal was posted as MMASI at Police Station on 15.07.2020, who deposed that on that day, ASI Mangat Singh had deposited with him a mobile make Redmi Note 7S, vide DDR No.70 dated 15.07.2020, regarding which entry was made in Register No.19, copy of relevant extract of which is Ex.P5. He also deposed that later on, mobile was released on superdari vide order dated 27.07.2020 as per orders of learned Court. PW3 ASI Yash Pal proved scaled site plan Ex.P6; whereas PW5 Ajay Kumar proved bill Ex.P3 issued by him regarding sale of mobile make Redmi Note 7S to complainant Arti on 21.10.2019.

6. Thereafter, statement of the accused under Section 313 Cr.P.C was recorded, in which the incriminating circumstances appearing in the evidence of the prosecution were confronted to the accused. He controverted the same and pleaded false implication. He alleged that the alleged recovery was planted on him and that he was not apprehended from the spot. However, he did not lead any evidence in his defence.

7. The matter was then heard by learned Additional Sessions Judge, Chandigarh, who held the appellant to be guilty and convicted & sentenced him as per details given earlier.

8. Assailing the conviction, it is contended by learned counsel that identity of the appellant as snatcher remained unproved; that there are material contradictions in the testimonies of the prosecution witnesses; that there was considerable delay in lodging the FIR; that no public witness was joined during the proceedings; that complaint Ex.P1 was moved after arrest



of the accused as has come in the testimony of PW1 and so, prosecution story is not believable and that in all these circumstances, conviction of the appellant- accused cannot be sustained. Prayer is made to set aside the impugned judgment of conviction and order of sentence and to acquit the appellant.

9. Opposing the appeal, learned State Counsel points out that recovery of the snatched mobile has been effected from the appellant on the date of incident itself and that the appellant was duly identified by the complainant in the Court. Attention is further drawn towards the fact that occurrence had taken place in broad day light and it has come in the testimony of PW1 Arti that snatcher was not bearing any mask and so, she was in a position to see the face of the snatcher, when he had turned back and so, in these circumstances, identification of the accused by the complainant cannot be doubted simply for the reason that Test Identification Parade was not held. Learned State Counsel also pointed out that accused-appellant belongs to the same locality where the occurrence took place and so, it could not be possible to join the public witness from the same locality, as nobody will agree to join the proceedings against him. Learned State Counsel further submits that case of the prosecution is duly proved and simply for some minor contradictions, conviction cannot be set aside. Prayer is made for dismissal of the appeal.

10. I have considered the submissions of both the sides and have perused the record.

11. Statement of complainant – PW1 Arti is most material in this case. Her testimony would reveal that on 15.07.2020, she had gone to take medicines near Housing Board, Dhanas. As she was returning towards home



and reached near ATM of ICICI Bank, the accused present in the Court suddenly came, snatched her mobile Redmi Note 7S and fled. As she raised alarm, accused looked back and she saw his face, as he was not wearing any mask at that time. Police reached the spot and she moved complaint Ex.P1. She testified that the accused was later on apprehended and she identified him near Lallanwala Peer Majar, Village Dhanas and that from his possession, her mobile was recovered, which she identified on the spot itself and that Memo Ex.P2 was prepared. She proved Bill Ex.P3, which was taken into possession by the Police vide Memo Ex.P4. As per her testimony, occurrence took place at about 10:16 A.M. Police reached the spot at about 11:00 A.M.

12. As per her, when the accused was apprehended, she was also present. She made the complaint after arrest of the accused. It is this part of her statement, on which basis, learned counsel for the appellant submits that the prosecution case is not believable because as per PW4 ASI Mangat Singh, IO of the case, complaint Ex.P1 was made earlier and, thereafter, the recovery was effected.

13. It is to be noted that the snatching incident as well as recovery had taken place on the same day. The incident of snatching is duly proved by the testimony of PW1 Arti, who has also proved not only the arrest of the accused in her presence but also the recovery of her snatched mobile from the possession of the accused. The Recovery Memo Ex.P2 contains the IMEI Number of the mobile as recovered from the possession of the accused- appellant, which matches with the IMEI Number as mentioned on the Bill Ex.P3, whereby complainant had purchased the mobile on 21.10.2019 from PW5 and which Bill was taken into possession by the



Police vide Memo Ex.P4 on 15.07.2020 itself. In these facts and circumstances, the mere contradiction to the effect that as to whether the complaint was made prior to arrest of the accused or later, cannot be considered to be material so as to create any dent in the prosecution story.

14. The contention of learned counsel for the appellant to the effect that identity of the accused as snatcher is not proved due to non-joining of an independent witness, has also no merit. It is important to notice that occurrence took place at about 10:16 A.M as stated by PW1 Arti, i.e., in broad day light. Police received the message at 10:30 A.M as has come in the statement of PW4 ASI Mangat Singh, the Investigating Officer of the case. When the complainant had raised alarm, the snatcher had turned back. He was not wearing any mask. Thus, complainant was in a position to see the face of the snatcher. She clearly mentioned in the complaint that she could identify the snatcher, if produced before her. The accused was apprehended on the same day near Lallanwala Peer Majar on the identification of the complainant and snatched mobile was recovered from him. The identity of the accused has been further proved in the Court by the testimony of PW1 Arti.

15. There is neither any suggestion nor any evidence to reveal that there was any enmity of the complainant or that of PW4 ASI Mangat Singh with the appellant- accused so as to falsely implicate him in this case. In these facts and circumstances, non-joining of the independent witness from the public or non holding of the Test Identification Parade, is of no significance. It may be noted here itself that joining of an independent witness from the public is not a Rule of Law and rather, is a matter of caution, which depends upon facts and circumstances of each case.



16. In the present case, there is no reason to disbelieve the testimony of PW1 Arti, which is found to be quite trustworthy. She has faced the test of cross-examination and nothing could be elicited so as to disbelieve her. As such, simply because no person from the locality was joined, cannot be reason to disbelieve the prosecution case. It may also be noted that the appellant belongs to the same locality from where the snatching incident took place and from where he was apprehended and so it can well be presumed that nobody will agree to join the proceedings against the appellant.

17. In view of the afore-said discussion, this Court does not find any merit in the present appeal. The conviction of the appellant- accused has been recorded on proper appreciation of evidence. As such, impugned judgment of conviction is hereby maintained.

18. As far as impugned order of sentence is concerned, the offence under Section 379-A IPC is punishable 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 ₹25,000/-. The appellant has been sentenced by the trial Court for the minimum sentence of five years' imprisonment and fine of ₹25,000/-.

19. Learned counsel for the appellant contends that the appellant has already undergone custody period of over four years and one month and that having regard to his age, he may be sentenced for the period already undergone by him by exercising the inherent powers of this Court under Section 482 Cr.P.C.

20. I do not find merit in the afore-said contention, having regard to the fact that as per the custody certificate, appellant- accused is not only



facing trial in one more case of the similar nature but is also a convict in two more cases arising out of FIR No.96 of 2018 registered at Police Station Mauli Jagraon, Chandigarh under Sections 356, 379, 411/34 IPC; and FIR No.25 of 2019, registered at Police Station GRP, Chandigarh under Section 379/411 IPC. As such, the appellant does not deserve for any lenient view by exercising the powers of this Court under Section 482 Cr.P.C.

Consequently, the present appeal is hereby dismissed.

May 22, 2024
renu

(DEEPAK GUPTA)
JUDGE

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