

2024:PHHC:159714



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

249 two cases

CRR 2131 of 2009
Date of Decision: 02.12.2024

(1) Rajesh ...Petitioner
Versus
State of Haryana ... Respondent

CRR 2541 of 2009

(2) Rajesh ...Petitioner
Versus
State of Haryana ... Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Arun Singal, Advocate
for the petitioner(s).

Mr. Rajinder Kumar Banku, DAG, Haryana.

N.S.SHEKHAWAT, J. (Oral)

1. This order shall dispose off two revisions, i.e., CRR-2131-2009 titled as “**Rajesh Vs. State of Haryana**” and CRR-2541-2009 titled as “**Rajesh Vs. State of Haryana**”, whereby, the petitioners have challenged the common impugned judgment dated 05.08.2009 passed by the Court of Additional Sessions Judge, Panipat and common impugned judgment and order dated 01.10.2007 passed by the Court of Additional Chief Judicial Magistrate, Panipat,

whereby, the petitioners had been convicted for the offences under Sections 379/356 of IPC and sentenced to undergo rigorous imprisonment for a period of one year each and to pay a fine of Rs. 200/- each under Section 356 IPC alongwith default stipulation. The petitioners had also been sentenced to undergo rigorous imprisonment for a period of one year and six months each and to pay a fine of Rs. 300/- each under Section 379 IPC alongwith default stipulation.

2. The FIR in the present case was registered on the basis of the statement made by Rajesh Kumar son of Som Nath resident of House No. 21/15, Nanak Pura, Kachcha Camp, Panipat, wherein, he alleged that he was doing a private job. At about 09.00 p.m., on 30.01.2007, he was present in his house and his wife Rajni was coming back from her parental home, situated in Devipura Panipat to their residence at Nanakpura in a rickshaw and when she reached near railway fly over, Shiva Complex, two young boys came from the backside on a Hero Honda motorcycle. Out of them, one was wearing a helmet and the other was wearing a cap. They brought their motorcycle near the Rikshaw, in which his wife was sitting, snatched the gold chain from her neck and sped away on the motorcycle. He had come with his wife to report the matter to the police and on the basis of his statement Ex.PW2/A, the formal FIR Ex.PW3/C was registered and the investigation started.

3. During the course of investigation, sufficient evidence was found against both the petitioners/accused and they were arrested. In pursuance to the disclosure statements suffered by them, the gold chain was also recovered and after concluding the investigation, the challan was presented before the Court for holding the trial against both the petitioners. The trial Court found the commission of offence punishable under Sections 379 and 356 IPC and both the petitioners/accused were charge sheeted accordingly. The petitioners pleaded that they had been falsely involved in the present case and claimed to be tried by the trial Court.

4. During the course of trial, the prosecution placed reliance on five prosecution witnesses. PW1 Ms. Rajni reiterated the averments made in the FIR and clearly stated that the accused, who were present in the Court had snatched her chain. PW2 Rajesh Kumar also supported the prosecution story and stated that after 2/3 days of snatching of the chain, he and his wife were called to identify the accused and they were identified. Even, the gold chain was duly identified by them and was taken on *superdari* from the Court. He identified his signatures on recovery and identification memo Ex.PW2/B. PW3 ASI Jai Kishan was the Investigating Officer initially and proved the initial investigation. PW4 EHC Surender Singh proved the disclosure statements made by both the petitioners as PW4/A and PW4/B, wherein, both the petitioners had admitted that

they had snatched the chain from the neck of a woman, which had been concealed by them in their house and could get the same recovered. Even, the accused got recovered the chain, which was identified by the complainant and was taken into possession by the police. PW5 ASI Kanwar Singh also proved the disclosure statements Ex.PW4/A and Ex.PW4/B and also supported the statement of PW4 EHC Surender Singh.

5. Learned counsel for the petitioners vehemently argued that the impugned judgments are based on misappreciation of evidence and the law. Learned counsel contended that the entire prosecution case was based on disclosure statements made by the petitioners, however, the statements were made in police custody and no independent person was joined at the time of the said statements. Still further, PW2 Rajesh Kumar had deposed that the police had not recovered any chain from the accused in front of him. Even, at the time of recovery of chain, no independent witness was examined. Further, the gold chain was not produced before the trial Court by the prosecution at the time of leading the evidence. Even, the alleged stolen property had not been produced before the trial Court nor any explanation had been given by the prosecution.

6. On the other hand, learned State counsel vehemently argued that both the Courts have already examined and discussed the prosecution evidence in detail. The Courts have taken into

consideration the testimonies of the prosecution witnesses, which could not be shattered by the defence in any manner. Thus, the impugned judgments are legally unsustainable.

7. I have heard the learned counsel for the parties and perused the record carefully.

8. In the present case, the prosecution case is primarily based on the testimony of Ms. Rajni, the victim. She appeared in the witness box and stated that she had identified both the accused before the police station as well as before the Court. While appearing as PW1, she clearly stated that the accused, who had snatched her chain were present in the Court. Similarly, Rajesh Kumar PW2 had also duly identified both the accused before the Court. He had also stated that he had made the statement Ex.PW2/A initially and his signatures were there on the statement. Even, he had identified both the accused. He stated that both the accused had identified the place of occurrence as well as the place of recovery and they had got the gold chain recovered. Even, PW3 ASI Jai Kishan had proved the investigation in the present case, which has been supported by the statement of PW4 EHC Surender Singh. The prosecution had further examined PW5 ASI Kanwar Singh, who deposed that the disclosure statements Ex.PW4/A and Ex.PW4/B were made by both the accused and they had sent their respective statements. Not only this, in pursuance to the disclosure statements, the place of occurrence was duly identified by

both the accused and they got recovered a gold chain in pursuance to that. Thus, after evaluating the evidence, it is proved beyond the shadow of reasonable doubt that both the petitioners/accused had snatched the gold chain from the neck of PW1 Ms. Rajni. Still further, the Courts have correctly recorded that the accused had dishonestly snatched the gold chain from the possession of PW1 Rajni without her consent and it constituted the offence under Section 379 IPC. Similarly, while committing the theft of chain, the petitioners had applied force and committed the offence punishable under Section 356 IPC. The impugned judgments do not suffer from the vice of any irregularity or illegality and the impugned judgments are upheld.

9. Now advertent to the order of sentence, this Court has noticed that Rajesh son of Nathi Ram (petitioner in CRR 2041 of 2009) has already undergone 08 months and 28 days (including remission) out of total maximum sentence of 01 year, whereas, Rajesh son of Pale Ram (petitioner in CRR 2131 of 2009) has undergone 03 months and 08 days out of maximum sentence of 01 year and, thus, both the petitioners have already undergone substantial period of sentence. Still further, even though, other cases were registered against the petitioners in the past, but no criminal case was registered against the petitioners for more than 17 years. Both the petitioners were young boys at the time of the occurrence and now have faced the agony of the trial/appeal for the last more than 17 years. Thus, no

purpose will be achieved by sending both the petitioners behind bars and the sentences imposed on the petitioners are reduced to the period already undergone by them. However, the sentence of fine shall remain the same.

10. With the above modifications, the revisions are partly allowed and the impugned judgments of conviction are upheld, whereas the order of sentence is modified to the extent that the sentences imposed on the present petitioners are reduced to the period already undergone by them. However, the sentence of fine shall remain the same.

11. All pending applications, if any, are disposed off, accordingly.

12. The case property, if any, may be dealt with as per the rules after expiry of period of limitation for filing the appeal.

13. Records of the Court below be sent back.

02.12.2024

amit rana

(N.S.SHEKHAWAT)

JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No