



247 **Criminal Revision No.1731 of 2021 (O&M)**
Date of Decision: 27.08.2024

Versus

U.T. Chandigarh ... Respondent

Present: Mr. Rahil Mahajan, Advocate,
for the petitioner.

Mr. Abhinav Gupta, Addl. P.P. U.T., Chandigarh.

1. The instant revision petition has been filed by the petitioner against the judgment of conviction and order on quantum of sentence both dated 01.08.2017 passed by the Court of learned Judicial Magistrate 1st Class, Chandigarh in case bearing No.611 of 2016 titled as *State v. Arun and another* arising out of FIR No.516 dated 09.12.2015 registered under Sections 356, 379 read with Section 34 of IPC at Police Station Sector 39, Chandigarh, whereby the present petitioner and co-accused Vishal were held guilty for commission of offences punishable under

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Sections 356, 379 and 411 of IPC and were sentenced to undergo rigorous imprisonment for a period of six months each in each offence as well as the judgment dated 26.11.2021 passed by the Court of learned Additional Sessions Judge, Chandigarh in Criminal Appeal No.502 of 2017 titled as *Arun v. State of U.T.*, whereby the judgment of the trial Court had been upheld.

2. For the sake of continuity and coherence, the parties shall be nominated as per their original nomenclature as given during the course of trial.

3. Shorn of unnecessary details, the facts relevant for the purpose of disposal of this petition are that on 09.12.2015, on receipt of a telephonic information regarding an incident of snatching having taken place near St. Peter School, Sector 37, Chandigarh, a police party headed by ASI Neeraj Kumar had immediately rushed towards the spot and on reaching there recorded the statement of victim-complainant Gurdeep Kaur to the effect that at about 8:15 PM, she was coming back from market and when he reached near St. Peter School, suddenly two youths riding on an Activa vehicle came from behind and after snatching her mobile phone Samsung Galaxy S-2 bearing sim card No.7837196699 which she was carrying in her hand, they had fled away. She also recorded that she could identify the snatchers. A case under Sections 356 and 379 read with Section 34 of IPC was initially registered. Investigation proceedings were initiated. On 16.12.2015, the accused were apprehended on the basis of identification of the complainant from the area of Sector-37, Chandigarh. The Activa vehicle

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bearing No.CH-01-BB-8040 in which they were riding, was also taken into custody. On interrogation, both of them disclosed their names as Arun and Vishal respectively. On conducting search, the snatched mobile phone was recovered from the right side pocket of pant of accused Arun whereas one mobile cover, memory card and passport size photo of the complainant was recovered from the pocket of pant of the accused Vishal and the same were identified by the complainant as her belongings. They were taken into custody. The accused were formally arrested. Offence under Section 411 of IPC was added. After completion of necessary investigation and usual formalities, challan under Section 173 Cr.P.C. was presented against both the accused.

4. Copies of challan were supplied to the accused free of cost. On finding a prima facie case for commission of offences punishable under Sections 356 read with Section 34 of IPC, 379 and 411 of IPC, they were charge-sheeted accordingly. They pleaded not guilty to the charges and claimed trial.

5. To substantiate its case, the prosecution examined six witnesses, namely, PW-1 MMHC Head Constable Harbans Singh, PW-2 ASI Neeraj Kumar, the Investigating Officer of the case, PW-3 Jitender Sekhon, PW-4 Constable Sunil, PW-5 Constable Naveen, a witness to the recovery and PW-6 Gurdeep Kaur, complainant, besides placing reliance upon certain documents and thereafter the prosecution evidence was closed by learned Public Prosecutor.

6. Statements of accused were recorded under Section 313 of

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Cr.P.C. wherein they abjured their guilt and pleaded innocence. No defence evidence had been adduced.

7. After hearing arguments advanced by both the sides and appraising the evidence produced on record, the learned trial Magistrate held the accused guilty for commission of aforementioned offences and sentenced them in the manner already indicated above.

8. Feeling dissatisfied, the accused-petitioner filed an appeal against the order passed by learned Magistrate which had been dismissed vide judgment dated 26.11.2021.

9. It will be relevant to mention here that at the time of passing of judgment by the Appellate Court, the co-accused Vishal was absent.

10. Feeling aggrieved from the orders passed by learned Additional Sessions Judge as well as by Judicial Magistrate, the present petition has been filed by accused Arun.

11. Learned counsel for the petitioner-accused has argued that the impugned judgment of conviction and order on quantum of sentence dated 01.08.2017 is liable to be set aside as the same is not sustainable in the eyes of law. The learned trial Magistrate did not apply his judicious mind. The findings reflect non appreciation of the evidence produced on record and are based on conjectures and surmises. There was no cogent, convincing and reliable evidence on record to prove that the petitioner had snatched and committed theft of mobile belonging to the complainant and the same was recovered from his custody. The statements of prosecution witnesses with regard to the alleged recovery were highly unreliable and contradictory in

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material particulars and did not inspire any confidence for connecting the petitioner with offence under Section 411 of IPC. No test identification parade of the petitioner had been conducted in accordance with law. He had been identified by the complainant for the first time in Court and the same was not a proper identification. The learned First Appellate Court had also not appreciated the evidence, in a proper manner and ignored the contentions raised by the petitioner. Glaring inconsistencies which were revealed from the record, were ignored. With these broad submissions, it is urged that the impugned judgments are liable to be set aside, the revision petition deserves to be accepted and the petitioner deserves to be acquitted of the offences for which he had been held guilty and convicted.

12. Per contra, it is argued by learned Additional Public Prosecutor for UT Chandigarh that there was cogent, convincing and trustworthy evidence on record in the form of testimonies of the complainant herself as well as of investigating officer and eyewitness to prove that the phone and photograph belonging to the complainant was snatched from her custody and the same had been recovered from the custody of the petitioner and the co-accused respectively. PW-6 complainant had duly identified the petitioner as one of the persons who had snatched/stolen her mobile on the fateful day. Her statement had remained unshattered. The statements of police witnesses were also worthy of full reliance. Therefore, it is urged that there is no illegality or infirmity in the orders passed by the Courts below and it is urged that the petition being devoid of any merit, is liable to be dismissed.

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length and have gone through the record.

14. The case of the prosecution was that on 09.12.2015, the present petitioner-accused along with the co-accused Vishal had snatched the mobile phone belonging to the complainant while she was walking on the road and had fled away. Though in the complaint as well as in the recovery memo, the make of the said mobile phone was mentioned as Samsung Galaxy S-2, however, no bill/receipt qua purchase of the said mobile by the complainant had been produced in evidence and in the absence of the same, it cannot be stated beyond doubt that any mobile phone belonging to the complainant had been snatched. Then, so far as the identification of the accused as snatchers is concerned, they were not named in the FIR. The complainant had mentioned in her statement that she could identify the snatchers. However, on a careful perusal of her testimony, it is revealed that she stated that the driver of the vehicle was wearing a helmet and the face of pillion rider had been half covered with a handkerchief. Though she still stated that she had seen their faces, however, in view of her own testimony to the effect that the faces of the snatchers were covered by helmet/handkerchief, it is quite unnatural and improbable that they could have been seen by the complainant at that time. There is no mention of their height or features etc. in the FIR. Though in her examination-in-chief, PW-6 Gurdeep Kaur did not utter even a single word to the effect that any test identification parade of the accused was got conducted but during cross-examination, she stated that she had been called at the police station for identification of the accused persons.

Still she did not say that she had identified them at that time. It is material to

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mention here that no formal test identification parade of the accused was got conducted. He had been identified for the first time by the complainant in the Court and such identification cannot be considered to be proper identification in the eyes of law especially in the circumstance when the complainant stated that the faces of the snatchers were covered.

15. With regard to the identification of the accused, the prosecution had also come up with the plea that the complainant had identified them when they were apprehended along with the snatched mobile while they were going on a scooty on 16.12.2015. However, the complainant categorically denied in her cross-examination that the present accused along with the co-accused was apprehended on 16.12.2015 in her presence. As such, the position which emerges is that the evidence produced on record by the prosecution could not be considered to be sufficient and reliable enough to prove that the accused was one of the snatchers and had committed the subject offence.

16. That apart, there are some other material infirmities in the case of the prosecution which are in the form of inconsistencies in the statements of the prosecution witnesses. As per the prosecution case, the accused were apprehended from the area of Chowk of Section 37/38, Chandigarh on 16.12.2015 where they had come while riding an activa vehicle. PW-5 Constable Naveen deposed that on 16.12.2015, naka was laid by them at the spot between 11:00 to 11:15 AM and complainant had also reached there at the time of laying naka itself. PW-2 ASI Neeraj Kumar, Investigating Officer of the case, on the other hand, stated that they had reached at the

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place where naka was formed between 11:30 to 12:00 PM. PW-5 stated that apart from himself and ASI Neeraj Kumar, no other police official was present at the naka but PW-2 contradicted him by saying that Constable Rajbir and HC Ganga Parshad were also present at the naka. PW-5 stated that the complainant had identified the accused when they had reached at the spot and then they were arrested in his presence whereas PW-2 did not say so and stated that the memo of identification was prepared by him on the asking of the complainant at 10:30 PM. He admitted that the same had not been signed by the complainant. PW-6 i.e. complainant contradicted the statements of both these witnesses by denying that she was present at the time when the accused were apprehended. She also denied that the mobile phone was recovered from the accused in her presence. Rather as per her version, she was called at the police station by giving information that her mobile phone had been recovered. These contradictions cannot be considered to be minor ones, rather they go to the very root of the matter and create a doubt as to the veracity of the version of the police official witnesses with regard to the recovery of the mobile phone from the custody of the accused and his retention of the said mobile phone and this fact has rendered the entire prosecution case doubtful.

17. It is also important to mention here that the version of the prosecution was that it was activa vehicle which were used by the snatchers at the time of committing the subject offence but the complainant in her examination-in-chief stated that the snatchers had come on a motorcycle.

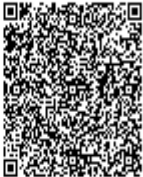
The registration number of the vehicle had not been mentioned in the FIR.

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The prosecution witnesses have remained totally silent on the point as to how the fact that it was the vehicle bearing registration No.CH-01-BB-8040 which was used at the time of occurrence, had come to the knowledge of the investigating officer. Though the complainant stated that she had disclosed the vehicle number to the police officials but she did not remember the same nor it is shown to be mentioned anywhere. PW-2 and PW-5 did not render any explanation as to how they came to know that it was the vehicle bearing No.CH-01-BB-8040 which were used by the accused and as to how only this vehicle was apprehended when they had laid naka on 16.12.2015. It is not their case that they had laid naka on the basis of any secret information or they were already aware about the registration number of the vehicle used at the time of occurrence. On account of this material inconsistency also, a reasonable doubt has been created about the truthfulness of the prosecution story as well as about recovery of the aforementioned vehicle as well as mobile allegedly belonging to the complainant from the accused and in my considered opinion, the benefit of the same must be given to the accused. The Courts below while recording the finding of guilt of the accused did not take all the above discussed points into consideration and, therefore, the findings given by the Courts below are not sustainable and are liable to be reversed. As such, the same are set aside, the petition is allowed and the petitioner-accused Arun is acquitted of the offences for which he has been charge-sheeted, held guilty and convicted. It is, however, clarified that this order shall have no bearing so far as the conviction of co-accused Vishal is concerned.

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18. Miscellaneous application(s), if any, also stand disposed of.

27.08.2024
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(MANISHA BATRA)
JUDGE

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