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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRA-S-2249-2022 (O&M)
Decided on:- 04.09.2024

JAI SINGHAppellant

VERSUS

STATE OF HARYANA ...Respondent

CORAM:- HON'BLE MRS. JUSTICE AMARJOT BHATTI

Present:- Mr. Madhur Singh, Advocate
Legal Aid Counsel for the appellant.

Ms. Aditi Girdhar, AAG, Haryana.

* * * * *

AMARJOT BHATTI, J.

1. Appellant – Jai Singh has filed present appeal against judgment of conviction dated 04.07.2022 and order of sentence dated 06.07.2022, passed by learned Additional Sessions Judge, Faridabad, in Sessions case bearing No. 162 of 2020, titled as “State Versus Jai Singh”, vide which Jai Singh was held guilty and convicted under Section 379A of Indian Penal Code, 1860 (for short ‘IPC’) and was sentenced to undergo rigorous imprisonment for a period of five years and to pay fine of ₹25,000/-, in default of payment of fine, to further undergo simple imprisonment for a period of one month.

2. Brief facts of the case are that on 02.04.2019, complainant Barkha made a complaint to SHO, Police Station Sector-58, Faridabad, alleging that she was resident of village Jajru, Police Station Sadar



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Ballabgarh and doing B.Ed at Shiv College, Tigaon. On 01.04.2019, at about 02:20 pm, she alighted from an auto rickshaw at Jajru turn and started walking towards bypass road. At about 2:25 pm, when she reached near ACE Company, Sector 59, a boy came from her behind on a motorcycle, snatched her mobile phone and fled away from there. She could not note down the number or marka of said motorcycle. Her mobile phone was Samsung J5 Prime, color black, with IMEI numbers 351676/09/567677/3 and 361677/09/567677/1 and it contained Airtel SIM No. 9818963110 and Jio SIM No. 8384049709 and she had also kept cash of ₹6000 in the cover of said mobile phone. She further stated that bill of said mobile phone was in the name of her brother Amit Dagar. On the basis of this complaint, present FIR was registered.

3. Investigation was commenced. Rough site plan of place of occurrence was prepared. During further investigation, on 14.07.2019, on the basis of secret information, accused Jai Singh was arrested from the area of Good Year Chowk and recovery of alleged mobile phone was effected from his trousers, which was taken into police possession. After completion of all formalities, challan was prepared and it was presented in the Court of learned Illaqa Magistrate.

4. Accused was supplied complete set of copy of challan report as provided under Section 207 of Cr.P.C. Since the offence under Section 379-A of IPC is exclusively triable by the Court of Sessions, therefore, learned Judicial Magistrate 1st Class, Faridabad committed the case to the Court of learned Sessions Judge, Faridabad for trial vide commitment order dated 19.02.2020.



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5. Learned Additional Sessions Judge, Faridabad after hearing arguments framed charge-sheet against accused Jai Singh under Section 379-A of IPC which was read over and explained to him in simple language to which he pleaded not guilty and claimed trial.

6. In order to prove the facts of case, learned Public Prosecutor for State examined HC Manoj Kumar as PW-1, Constable Kuldeep as PW-2, Investigating Officer SI Jagbir Singh as PW-3, complainant Barkha as PW-4 and HC Pawan Kumar as PW-5. Thereafter, learned Public Prosecutor for State closed prosecution evidence.

7. Statement of accused was recorded under Section 313 Cr.P.C. to which he pleaded innocence and false implication. However, he stated that he does not want to lead any evidence in defence.

8. After hearing arguments advanced by learned Public Prosecutor for State and learned counsel representing accused, accused Jai Singh was convicted and sentenced under Section 379-A of IPC, as referred above and feeling aggrieved of this judgment of conviction dated 04.07.2022 and order of sentence dated 06.07.2022, present appeal has been filed.

9. I have heard arguments advanced by learned counsel for the appellant/convict as well as learned counsel representing State and have gone through the record carefully.

10. Learned counsel for appellant/convict argued that judgment of conviction and order of sentence passed by learned trial Court is not on sound footing. Evidence on record was not rightly considered by trial Court. Version put forward by prosecution regarding the manner in which occurrence took place is not convincing. As per prosecution case, alleged



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occurrence took place on 01.04.2019 at about 02:25 pm. However, matter was reported to police on 02.04.2019. Therefore, there is delay of one day in lodging report to police. Complainant did not mention physical features of the person who snatched her mobile phone. Appellant/convict was apprehended in this case on the basis of secret information on 14.07.2019, after a period of more than three months. Complainant Barkha did not identify accused when he was arrested by police. As per prosecution case, she identified accused for the first time when her statement was recorded in Court. No test identification parade was conducted. In support of his arguments, learned counsel for appellant has relied upon the judgment of **Hon'ble Supreme Court of India in 2019(1) R.C.R.(Criminal) 919**, case titled "Suraj Pal Versus State of Haryana", where in that case also *"occurrence had taken place on 15.03.2016 late evening at 7:00 p.m. and accused was arrested on 20.09.2016. Even then no test identification parade was held to identify said accused. In that case, it was further appreciated that when mobile phone was allegedly snatched, he (victim in that case) would have seen the accused only for a few seconds and it is doubtful whether he would have been in a position to identify appellant/accused. In that case, identification of accused for the first time in Court was held to be doubtful and in that case accused was acquitted by giving him benefit of doubt."*

Even in the case in hand, Barkha complainant as PW-4 identified accused for the first time in Court. There is no independent corroboration to the version of complainant. Complainant alleged that she had called her father. He is also not cited as a witness. Without considering the aforesaid facts, learned trial Court has wrongly held present



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appellant/convict guilty under Section 379-A of IPC and has wrongly sentenced him to undergo rigorous imprisonment for five years and to pay a fine of ₹25,000/-, and in default of payment of fine, to undergo simple imprisonment for one month. Judgment of conviction and order of sentence passed by learned trial Court may kindly be reversed by accepting the present appeal and appellant/convict may be acquitted of the charge framed against him by giving him benefit of doubt.

11. On the other hand, learned counsel representing state argued that prosecution led convincing evidence on file to prove the guilt of accused who was duly identified by Barkha complainant PW-4. Snatched mobile phone was recovered from the possession of appellant/convict. Bill of said mobile phone was also produced by complainant, which is Ex. PF. SI Jagbir Singh PW-3 and Constable Kuldeep Singh PW-2 have proved recovery of said mobile phone from the possession of appellant/convict. Arguments advanced by learned counsel for appellant/complainant are without any basis. Therefore, appeal preferred by appellant/convict may be dismissed.

12. I have considered the arguments advanced by learned counsel for appellant as well as arguments advanced by learned counsel representing State and have gone through the record carefully with their able assistance. In the case in hand, FIR was registered on the written complaint of Barkha complainant addressed to SHO, Police Station Sector 58, Faridabad. She alleged that on the day of occurrence i.e. 01.04.2019, at about 2:20 pm, she alighted from an auto rickshaw at Jajru turn and was going towards bypass road on foot. At about 2:25 pm, when she reached in front of ACE company, Sector 59, a boy came from her behind on a



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motorcycle, snatched her mobile phone and fled away from there. She could not note down the number or marka of motorcycle. Her mobile phone was of Samsung J5 Prime, color black, with IMEI numbers 351676/09/567677/3 and 361677/09/567677/1 and it contained Airtel SIM No. 9818963110 and Jio SIM No. 8384049709 and she had also kept cash of ₹6000/- in the cover of said mobile phone. She further stated that bill of said mobile phone was in the name of her brother Amit Dagar, which was annexed with application. On the basis of this complaint, present FIR was registered. In order to prove these facts, complainant Barkha stepped into witness box PW-4. She has proved her complaint Ex. PE alongwith bill of mobile phone Ex. PF bearing her signatures. She further identified accused facing trial in this case. Said mobile phone was also produced in Court. Complainant was cross-examined by learned counsel for accused. Complainant admitted that recovery was not effected in her presence. She categorically denied false implication of accused. Incident took place when she was going on foot. She had called her father after the occurrence. Therefore, no purpose would have been served by examining father of complainant. It has come in the statement of Barkha PW-4 that on the arrival of her father, they tried to call the police by dialing No. 100 but police did not come there. Therefore, they returned home and on the next day, they filed a written complaint along with bill of mobile phone. Therefore, delay in giving information to police is well explained by complainant. Appellant/convict is not named by complainant obviously, he was not known to her. There is no reason for complainant to falsely implicate appellant/convict in this snatching incident. Therefore, stand taken by learned counsel for appellant/convict regarding false implication



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of Jai Singh does not convince the mind of this Court.

13. As per record, appellant/convict was apprehended by SI Jagbir Singh on 14.07.2019. SI Jagbir Singh stepped into witness box as PW-3, who stated that on 14.07.2019, he along with police party was present at Good Year Chowk, where he received secret information that Jai Singh was a habitual offender indulging in snatching of mobile phones and was present near Petrol Pump, Sector-3, Ballabgarh. On the basis of this information, he along with police party reached there and apprehended Jai Singh on the signal of said secret informer. Jai Singh was apprehended and on his personal search, one mobile phone was recovered from his trousers which was bearing Marka Samsung J5 and it was taken into police possession vide recovery memo Ex. PB. Said mobile phone was duly identified by complainant who came along with her brother Amit, memo regarding identification of mobile phone is Ex. PE. Version of SI Jagbir Singh PW-3 is supported by Constable Kuldeep Singh PW-2. Jai Singh, appellant/convict, failed to give any explanation as to how he came into possession of said mobile phone belonging to complainant Barkha. During the course of evidence, Barkha as PW-4 identified accused as the person who had snatched her mobile phone. Therefore, recovery of mobile phone from the possession of appellant/convict further connects him with the said snatching incident.

14. Therefore, considering the evidence led by prosecution, I find sufficient evidence on record to establish that appellant/convict on 01.04.2019 snatched mobile phone of complainant Barkha, while she was going on foot in front of ACE company, Sector 59. Therefore, charge framed against appellant/convict is duly proved on record. However,



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learned trial court, while deciding this case wrongly mentioned the offence as under Section 379-A IPC. In fact, Section 379-A IPC defines snatching, and punishment is provided under Section 379-B IPC. Therefore, judgment of conviction dated 04.07.2022 and order of sentence dated 06.07.2022 passed by learned trial court may be read as under Section 379-B IPC, and accordingly appeal preferred by appellant/convict Jai Singh is dismissed, being without merits.

15. There is application for suspension of sentence imposed upon appellant. As the matter has been adjudicated upon on merits, question of suspending the sentence of appellant is rendered academic. Application is disposed of accordingly.

16. The appeal is accordingly, declined.

17. Pending application(s), if any, also stands disposed of.

04.09.2024

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**(AMARJOT BHATTI)
JUDGE**

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