

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

CRA-S-2389-2022 (O&M)

Reserved on: 01.02.2024

Pronounced on: 06.02.2024

2024:PHHC:015703

LOVEPREET SINGH

. . . . APPELLANT

Vs.

STATE OF HARYANA

. . . . RESPONDENT

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr.HPS Rakhra, Advocate, for the appellant.

Mr.Randhir Singh, Addl. AG, Haryana.

DEEPAK GUPTA, J.

In Sessions case No.9 of 2021 (*CNR No.HRKH01-005768-2021*) arising out of FIR No.155 dated 30.03.2021 registered at Police Station, Pundri, two accused namely, Lovepreet Singh (*appellant herein*) and Ravi were put to trial by the Court of Id. Sessions Judge, Kaithal and have been convicted under Section 379B read with Section 34 IPC vide judgement dated 20.09.2022. Vide a separate order of the even date, both of them were sentenced to undergo rigorous imprisonment for a period of 10 years and also to pay fine of ₹25,000/- each with default sentence of one year.

2. It is against the aforesaid judgment of conviction and order of sentence that the present appeal has been filed.

3. The appeal was initially admitted on 21.11.2022. However, at the time of hearing application bearing CRM-44289-2022, moved under Section 389 CrPC for suspension of sentence, Id. counsel prayed for

hearing the appeal itself on merits. Said request was accepted. The trial Court record was called and the main appeal itself has been heard.

4.1 FIR was lodged on the complaint (Ex.P1) made on 30.3.2021 by Pardeep (PW1) son of Rameshwar Saini, resident of Pundri in District Kaithal. As per him, on 29.03.2021, at about 08:30 PM, he was standing in the street, when two boys came on motorcycle No.HR-41A-8891 and asked him for some directions. In the meantime, the youth sitting on the pillion seat snatched mobile from his hands and after causing injuries to him, they fled away. Complainant tried to search for the snatchers, but in vain. He got the treatment from Civil Hospital, Kaithal. He also stated that he could identify the snatchers.

4.2 FIR Ex.P8 was registered. Investigation was carried by ASI Suresh Kumar (PW7), who reached the spot and prepared rough site plan (Ex.P18) on the demarcation of the complainant. On the same day i.e. 30.03.2021, ASI Suresh Kumar accompanied by the complainant reached at Pharal Chowk, Pundri. A motorcycle was seen coming. Complainant told him that the persons riding the motorcycle were the same, who had snatched his mobile and identified them. Those persons were apprehended, who disclosed their name as Lovepreet and Ravi. The motorcycle No.HR-41A-8891 was taken into possession vide memo Ex.P10. The two accused were arrested. They suffered disclosure statement Ex.P11 admitting their involvement in the crime. On the same day i.e. 30.03.2021, complainant-Pardeep produced mobile bill Ex.P2, besides MLR Ex.P3, which were taken into possession vide memo Ex.P4.

4.3 Further prosecution case is that on 31.03.2021, ASI Suresh Kumar again interrogated both the accused. Accused Lovepreet & Ravi

suffered disclosure statements Ex.P12 and Ex.P13 respectively and both of them got recovered snatched mobile from the disclosed place i.e. in the bushes on the side of a wall of the office of Electricity Department. The said mobile was taken into possession vide recovery memo Ex.P14. The two accused also demarcated the place of occurrence. On the same day i.e. 31.3.2021, complainant- Pardeep again identified both the accused besides motorcycle used in the commission of crime and the recovered mobile to be the same, as was snatched from him. An identification memo Ex.P5 was prepared in this regard.

4.4 After completing all other necessary formalities of investigation, including recording of the statements of witnesses under Section 161 CrPC, final report under Section 173 CrPC was submitted before Id. Area Magistrate, who committed the case to the Court of Sessions after compliance of Section 207 IPC. The two accused were charge-sheeted under Section 379-B read with Section 34 IPC, to which they pleaded not guilty and claimed trial.

5.1 To prove its case, prosecution examined as many as 9 witnesses. PW1 Pardeep-complainant, though proved the occurrence, but could not identify the accused to be snatchers and thus, did not support the prosecution. PW2 Preeti, wife of the complainant-Pardeep, who claimed to be present along with her husband at the time of occurrence, also proved the occurrence, but in some different way and could not identify the accused to be assailants. PW3-ASI Isham Singh proved FIR Ex.P8 besides his endorsement Ex.P9 below the complaint Ex.P1. PW4 Dr. Mahesh proved the medico legal report qua the examination of complainant on 30.03.2021. PW6 EHC Krishan Kumar deposed about deposition of the

motorcycle and the mobile phone as recovered by ASI Suresh Kumar, in the malkhana of the Police Station. PW8 Sandeep Kaushik proved bill Ex.P2, whereby mobile phone in question was sold by him to complainant-Pardeep. PW9 Ram Niwas Draftsman proved scaled site plan Ex.P19. PW7 ASI Suresh Kumar is the Investigating Officer of the case, who proved various steps taken during investigation and his testimony was corroborated by PW5 EHC Jarnail Singh, who remained associated with the IO during investigation.

5.2 The incriminating material appearing in the evidence produced by the prosecution was confronted to both the accused in their statements recorded under Section 313 CrPC. They controverted the same and plead innocence. No defence was however, produced by any of them.

5.3 The matter was then heard by Id. Sessions Judge, Kaithal, who though noted that complainant and his wife had not supported the prosecution case, but presumption was raised against the accused under Section 114 of the Indian Evidence Act, from the fact that incident had occurred on 29.03.2021, whereas the accused were arrested on 30.03.2021 and then the snatched mobile was recovered from them on 31.03.2021. It was also noticed that IMEI number of the mobile, as mentioned in the Bill Ex.P2, was the same as mentioned in the recovery memo Ex.P14. The testimony of complainant Pardeep regarding non-identification of the accused as snatchers was discarded. Id. Sessions Judge concluded that prosecution has successfully proved its charge and accordingly held the accused to be guilty under Section 379-B read with Section 34 IPC and convicted them thereunder by way of the impugned judgment and sentenced them as per the details given earlier.

6.1 Assailing the aforesaid judgment, ld. counsel contends that PW1 Pardeep-complainant did not identify the appellant to be the snatcher. He could not even tell the registration number of the motorcycle, on which the snatchers had come. Though he identified the mobile Ex.MO/2 belonging to him and to have handed over the bill Ex.P2 of the said mobile to the police, but clearly stated that during the scuffle, the mobile had fallen down at the spot. Similarly, PW2 Preeti, the wife of the complainant, did not identify the appellant to be one of the snatchers. Ld. counsel contends that rest of the witnesses examined by the prosecution were police officials, who were interested in the success of the case. Attention is further drawn towards the fact that the occurrence took place at night at about 08:30 PM and there is no evidence of any source of light, but still no test identification parade was conducted, when the accused were allegedly identified by the complainant on 30.03.2021. Moreover, no identification memo was prepared at that time. It is only on 31.03.2021 that identification memo was prepared, but still without holding any test identification parade.

6.2 Ld. counsel further submits that there was no reason to discard the testimony of complainant; that occurrence of snatching was not at all proved; that recovery of mobile from the possession of the accused is highly doubtful in the light of the statement of PW1 Pardeep and therefore, ld. trial Court wrongly held the accused including appellant to be guilty. In the last, ld. counsel also submits that even if two views are possible, the view favorable to the accused should have been adopted in light of the statement of PW1-Pardeep, who had not supported the prosecution.

6.3 With these submissions, prayer is made for setting aside the

impugned judgment of conviction and order of sentence and to acquit the appellant, by accepting his appeal.

7. On the other hand, ld. State counsel has defended the impugned judgment of conviction and order of sentence to be based on reasoning and has prayed for dismissal of the appeal.

8. I have heard submissions of both the side and have appraised the record carefully.

9. The case largely hinges on the testimony of PW1-Pardeep, the complainant of the case, on the basis of whose statement, the FIR was registered. Therefore, it is necessary to reproduce the statement made by him during trial. It reads as under: -

“Prosecution Witness No.1 Deposition of Pardeep, aged 34 years son of Rameshwar Saini, resident of Ward No.8, Saini Mohalla-Pundri, District Kalthal, illiterate, on solemn affirmation, recorded before me (Naresh Katyal) Sessions Judge, Kaithal, at my dictation, on this 17th day of November-2021.

Stated that on 29.3.2021 at about 8.30 p.m., I was standing in street in front of my house. In the meantime, two boys came on a motorcycle and stopped near me and enquired from me about path leading to village Pai. In this process, an altercation had taken place between us and I sustained injuries and my mobile phone make Samsung had fallen from my pocket, which could not be found. Thereafter, I went to Government Hospital-Kaithal and got myself treated. I cannot tell registration number of motorcycle. I could not identify those assailants as it was dark at that time. I have seen accused present in court. They are not the persons who inflicted injuries to me.

(At this stage, learned Public Prosecutor stated that the witness was suppressing the truth and he might be allowed to cross- examine the witness. Heard. Request is allowed).

Cross-examination by Shri Janak Raj, Public Prosecutor.

I have heard and understood the contents of application Ex.P1. Volunteered, no such application was submitted by me to the police. Ex.P1 bears my signature. Volunteered, police had obtained my signature on blank paper and

later on, converted the same into application Ex.P1. Application Ex. P1 was not written by me. It is neither a fact nor I have got recorded in my application Ex.P1 that registration number of motorcycle was HR-41A-8891. Confronted with portion A to A1 of Ex.P1, wherein it is so recorded. It is neither a fact nor I have got recorded in my application Ex.P1 that pillion rider of motorcycle had snatched my mobile phone make Samsung from my hand and absconded from there while inflicting injuries to me. Confronted with portion B to B1 of Ex.P1, wherein it is so recorded. I have seen motorcycle Ex.MO1 parked outside the court room. It contains number plate bearing registration No.HR-41A- 8891. It is not the same motorcycle, on which assailants were riding. Volunteered, due to darkness, I could not note down registration number of motorcycle.

At this stage, sealed parcel containing two seals of monogram SK opened and its contents i.e. mobile phone Ex.MO2 taken out. I have seen mobile phone Ex.MO2. It belongs to me. I had handed over bill of mobile phone Ex.P2 and my MLR Ex.P3, to police, which were taken into police possession vide recovery memo Ex.P4. Ex.P4 bears my signature. I have seen identification memo Ex.P5. It bears my signature. Volunteered, I had never identified accused in police custody and I had appended my signature without gone through contents Ex.P5. Police had obtained my signature on blank paper and later on, converted the same into identification memo. I have heard and understood statement Ex.P6. No such statement was made by me to police. It is neither a fact nor I stated to police that on 29.3.2021 at about 8.30 p.m., when I was standing in street, accused came on motorcycle bearing registration No.HR-41A-8891 and enquired from me about path leading to village Pai and when I was telling them about the path, they snatched my mobile phone while inflicting injuries to me and on their arrest, I identified them in police custody. Confronted with Ex.P6, wherein it is so recorded. It is incorrect to suggest that accused present in court had inflicted injuries to me and had snatched my mobile phone and absconded on motorcycle bearing registration No.HR41A-8891. It is further incorrect to suggest that while accused were enquiring from me about path leading to village Pai, I had Identified them and later on, I identified those accused in police custody. It is further incorrect to suggest that I moved application Ex.P1, which is in my handwriting and also bears my signature. It is further incorrect to suggest that I have been won over by the accused due to compromise outside the Court, after taking consideration from accused with a view to saving them from legal punishment. It is further incorrect to suggest that I have deposed falsely.

Cross-examination by Shri Mandeep Singh, Advocate for accused Ravi and Shri Parwinder Singh, Advocate for accused Lovepreet Singh.

On 30.3.2021 in the morning, a police official asked me on telephone to

take him to the place of above said altercation. I along with that police official reached there at about 7.30 a.m. My mobile phone was found lying there in dirty water drain and same was taken in police possession at that time. Today, I have deposed without any pressure, coercion or any kind of compromise while understanding all facts and circumstances of the case.”

10. As is evident from the above said testimony of PW1 Pardeep, he was standing in the street in front of his house, when two boys came on a motorcycle, stopped near him and inquired about the path leading to village Pai. An altercation took place, in which he sustained injuries and his mobile phone make Samsung had fallen from his pocket, which could not be found. His testimony further reveals that in the morning of 30.03.2021, he had accompanied the police officials to the spot of occurrence, where the altercation had taken place and that his mobile was found lying in the dirty water drain, which was taken into possession by the police. The witness clearly stated that neither could he notice registration the number of the motorcycle on which the two young boys had come nor could he identify them, as it was dark at that time. He saw the two accused facing trial in the Court and clearly stated that they are not the person, who had inflicted injuries to him. After being declared hostile, though he admitted his signature on Ex.P1, but explained that the same were taken on the blank paper.

11. Similarly PW2 Preeti, the wife of the complainant-Pardeep, supporting the version given by her husband, testified that the two boys, who had come on the motorcycle, were asking the path leading to village Pia and an altercation had taken place and in that process, her husband had sustained injuries and his mobile had fallen down from the pocket, which could not be found. She also stated that she could not notice the

registration number of the motorcycle, as it was dark at that time and that accused present in the Court are not those persons.

12. Simply because in the complaint Ex.P1 made to the Police, PW1 had alleged snatching of his mobile by the two youths, who had come on motorcycle No.HR-41A-8891 and that he could identify them if produced before him, could not be a reason to discard the testimony of complainant-Pardeep made before the Court, having regard to the fact that statement Ex.P1 made before the police was not on oath. Besides, occurrence took place in the night time and in the FIR, no source of light is disclosed in which the complainant could have noted the registration number of the motorcycle or the faces of the snatchers.

13. Moreover, as per the prosecution version and as testified by PW7 ASI Suresh Kumar, on 30.3.2021, when the FIR was got registered by Pardeep, he went to the spot along with the complainant and prepared a rough site plan Ex.P18. He denied the suggestion that at that time, mobile was found lying in the dirty water drain and due to insertion of water, the battery of the mobile got dead. It is also stated by PW7 that after preparing the site plan, he accompanied by complainant reached Pharal Chowk, Pundri, where at the sight of the motorcycle, complainant identified the riders to be the snatchers, who were apprehended and disclosed their identity and then the motorcycle was taken into possession.

14. Surprisingly, though the two accused (including appellant) are stated to have been apprehended on the date of registration of the FIR itself i.e. 30.03.2021, on the identification of the complainant, but still no identification memo was prepared at that time. So much so, in the joint disclosure statement (Ex.P11) allegedly suffered by accused on

30.03.2021, there is no reference as to where the snatched mobile has been concealed. There is reference only about the snatching and that they had come on motorcycle No.HR-41A-8891. No effort was made to hold test identification parade. Despite the fact that motorcycle was allegedly recovered in the presence of complainant-Pardeep, but the recovery memo Ex.P10 would reveal that it does not bear the signatures of complainant, which fact has been admitted by the recovery witnesses.

15. Not only above, the two accused were again interrogated on 31.03.2021 and as per prosecution, this time they disclosed that they had concealed the mobile near Pharal Chowk, Pundri in the bushes on the side of a wall of the office of Electricity Department. Pursuant to the said disclosure statement, recovery of mobile is effected and recovery memo Ex.P14 is prepared, signed only by the accused, IO ASI Suresh Kumar and EHC Jarnail Singh (PW5). Despite the fact that complainant has been associated in the investigation all along as per the IO, he was not called either at the time of interrogating the accused on 31.03.2021 or at the time of effecting the recovery. No independent witness was joined at either of the time, though the recovery was allegedly effected from Pharal Chowk, Pundri, near a public office from an open place.

16. In view of the aforesaid discussion, the case of prosecution is highly doubtful. In the light of deposition of PW1 Pardeep and his wife PW2 Preeti, the incident of snatching is not at all proved. As far as the fact that IMEI number of the mobile in question is the same, as mentioned on the Bill (Ex.P2) and in the recovery memo, it has been clearly testified by PW1 that his mobile was found from a dirty water drain in the morning of 30.03.2021 itself and the same was taken away by the Police. In view of

this statement, accused clearly deserved to have been given a strong benefit of doubt.

17. On account of the entire discussion as above, the conviction recorded by the trial Court cannot be sustained. Consequently, the impugned judgment of conviction as well as the order of sentence are hereby set aside. Present appeal is allowed. The appellant is hereby directed to be released forthwith. Necessary warrant to that effect be sent to the concerned Superintendent of Jail.

06.02.2024
Vivek

(DEEPAK GUPTA)
JUDGE

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| 1. Whether speaking/reasoned? | Yes |
| 2. Whether reportable? | No |