



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on : 11.12.2023

Pronounced on : 24.04.2024

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+ **CRL.A. 352/2013**

NARESH @ SATYA

.....Appellant

Through : Mr. Sachin Aggrwal, Mr. Aditya
Chaudhary, Advocates.

versus

STATE

..... Respondent

Through : Mr. Amit Ahlawat, APP for the State

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KARNAIL SINGH @ KAKA

.....Appellant

Through : Mr. Sachin Aggrwal, Mr. Aditya
Chaudhary, Advocates.

versus

STATE

..... Respondent

Through : Mr. Amit Ahlawat, APP for the State

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

JUDGMENT

RAJNISH BHATNAGAR, J.

1. By this Judgment, I shall dispose of the present appeals U/s 374 Cr.P.C. read with Section 482 Cr.P.C. which has been filed against the Judgment of Conviction dated 14.02.2013 and Order on Sentence dated 15.02.2013 passed by the Addl. Sessions Judge-01, Patiala House Court, New Delhi vide which both the appellants have been convicted U/s 379 IPC

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and sentenced to undergo rigorous imprisonment for a period of three years each and to pay a sum of Rs. 3000/- each as fine for the offence U/s 379 IPC and in default of payment of fine, simple imprisonment for a period of three months each.

2. In brief, the case of the prosecution is that on 15.03.2012, at about 8:30 a.m. when victim Priya was at Birla Mandir bus stand for going to her office, two boys on the motorcycle came. They stopped the way of victim and snatched her gold chain by showing her pistol and they also threatened the victim that she would be killed, if she raised alarm. After snatching the chain both the boys fled on their silver colour bike bearing number 8351 towards Mandir Marg, P.K. Road.

3. Victim called up her brother Shakti Singh from her mobile, who reached the spot and on coming to know about the incident, he made a call at number 100. Police officials reached at the spot and tehrir U/s 392/34 IPC was sent to the police station.

4. Thereafter, on 18.03.2012, information from SI Man Singh, PS Karol Bagh was received via telephone that two accused persons namely Karnail Singh @ Khanna and Naresh @ Satya (appellants herein) arrested in case FIR No. 40/12, U/s 186/353/411/34 IPC and 27/54/59 Arms Act PS Karol Bagh have disclosed their involvement in the chain snatching incident of Mandir Marg and that they shall be produced before Duty MM Tis Hazari Courts.

5. DD No. 11 A to this effect was recorded and the copy of the same was handed over to IO ASI Tulsi Ram who contacted SI Satyender, PS Karol
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Bagh and collected the copies of the relevant documents i.e. FIR, statements, seizure memos etc. and he also collected the case property of the present case vide RC No. 78/21/12, PS Karol Bagh and deposited the same in the Malkhana, PS Mandir Marg and then conducted further investigation.

6. During investigation, it was found that the bike used in this incident was purchased by appellant Naresh with the registration No. DL-10SA-8659 under the fake name of Gurdayal and the voter identity card of Gurdayal furnished at the time of registration was also fake. The said number (8659) was changed to DL-10SA-8351 by putting a sticker. In view of the same, and as deadly weapon was used by the appellants, sections 482/468/471/397 IPC were added.

7. After the completion of the investigation, challan was filed before the court of Metropolitan Magistrate, who after completing all the formalities committed the case to the Court of Sessions for trial.

8. Vide order dated 15.10.2012, charge for the offence U/s 397 IPC against appellant Naresh @ Satya and charge under Sections 392/34 IPC and 411/34 IPC against both the appellants was framed to which they pleaded not guilty and claimed trial. In order to prove its case, the prosecution has examined 17 witnesses.

9. I have heard the Ld. counsel for the appellants, Ld. APP for the State and have also gone through the records of this case.

10. It is submitted by the Ld. counsel for the appellants that nothing incriminating has been recovered from their possession and the alleged



recovery of chain has been planted. It is further submitted that there is no public witness to the recovery of the alleged gold chain. It is further submitted that the only material witness is PW-2 who is the victim/complainant and she has not supported the case of the prosecution. It is further submitted that PW-2 has failed to identify the appellants in TIP and in the Court. It is further submitted that the Ld. Trial Court has wrongly concluded that the version of PW-2 is corroborated by the version of PW-5 and other evidence on record. It is further submitted that the testimony of PW-5 cannot be relied as he is a hearsay witness. It is further submitted that there are material contradictions in the testimony of PW-5. It is further submitted that there is contradiction in the testimonies of PW-2 and PW-5 on the one hand and PW-7 on the other hand in regard to the presence of the public witnesses at the spot. It is further submitted that there is contradiction in the testimonies of PW-7, PW-8 and PW-11 with regard to the presence of public witnesses at the spot. It is further submitted that the Ld. Trial Court has convicted the appellants on the basis of identification and recovery which the prosecution has failed to prove on record. It is further submitted that as per PW-2 she was called to the police station on the same day for identification of her gold chain which she identified but according to PW-12 he had moved an application on 09.04.2012 for production of the appellants and for TIP of the case property and TIP of the case property was fixed on 10.04.2012.

11. On the other hand, Ld. APP for the State has supported the impugned judgment by stating that there is no infirmity in the impugned judgment. Ld. APP for the State further submitted that minor contradictions between



the testimonies of the witnesses are bound to appear and unless and until those contradictions do not go to the root of the matter, the case of the prosecution cannot be discarded. It is further submitted that the testimony of the hostile witness cannot be discarded in toto. Ld. APP for the State further submitted that non-joining of public witnesses cannot be a ground for disbelieving the case of the prosecution.

12. The present appeals relate to the case where the accused persons have been convicted for the offences under Section 379 IPC. For proper adjudication it is necessary to look into the major aspects of conviction, firstly the Sections 378 and 379 IPC, secondly, testimonies of the main witnesses.

13. To begin with let us first look into the relevant provision, i.e., Sections 378 and 379 IPC. The same is reproduced hereunder: -

378. Theft.—

Whoever, intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.

Explanation 1.— A thing so long as it is attached to the earth, not being movable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

Explanation 2.— A moving effected by the same act which affects the severance may be a theft.

Explanation 3.— A person is said to cause a thing to move by removing an obstacle which prevented it from moving or by separating it from any other thing, as well as by actually moving it.



Explanation 4.— A person, who by any means causes an animal to move, is said to move that animal, and to move everything which, in consequence of the motion so caused, is moved by that animal.

Explanation 5.— The consent mentioned in the definition may be express or implied, and may be given either by the person in possession, or by any person having for that purpose authority either express or implied.

379. Punishment for theft.—

Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Sections 378 and 379 of the IPC requires four essentials viz. (a) that the accused had taken the movable property dishonestly, (b) property was taken out of possession of the complainant, (c) property was taken out without consent of complainant and (d) the property was moved to such taking.

14. The main thrust of arguments of the Ld. counsel for the appellants is that the recoveries effected from the appellants are planted and the Ld. Trial Court has misdirected itself by relying only on the testimonies of the witnesses. During the course of the arguments, it was also argued by the Ld. Counsels for the appellants that the police falsely implicated the appellants as police was clueless about the assailants and nothing has been explained by the IO as to how he zeroed on the appellants as the culprits of this case. The Ld. Trial Court while convicting the appellants has believed the testimonies of the witnesses and has also relied upon the recoveries effected in the present case.



15. It would be profitable at this stage to look into the relevant portion of the impugned judgment dated 14.02.2013 at the point of recovery. The same is reproduced as under: -

*"8.1 PW10 Ct. Sandeep Kumar and PW13 Ct. Amarjeet have testified that on 15.03.2012 they were posted at PS Karol Bagh and were on duty at the Anti Snatching Picket at Z.A. Garden on that day. ASI Surender Pal and Ct. Prem Pradhan were also on patrolling duty in that area. At about 9.00 am on that day, one silver colour motorcycle bearing registration no. DL IF 8351 was seen coming at a great speed from Ajmal Khan road side. They signaled the motor cycle to stop. PW13 has stated that on seeing the police party, the motorcycle riders became perplexed and their motorcycle slipped; both the persons on the motorcycle fell down; another motorcycle which was also approaching towards them took U-turn and sped away. The riders of the bike, which had slipped were overpowered by them. Both PW10 and PW13 have deposed that accused Karnail Singh was driving the bike and accused Naresh @ Sattu was the pillion rider. PW13 has also testified that accused Naresh had waived a country made pistol towards them. **On cursory search of accused Karnail Singh two gold chains and two live cartridges were recovered from him/pocket of his pant; from search of accused Naresh one country made pistol, three live cartridges, one broken chain with locket were recovered from the pocket of his pant. PW10 as well as PW13 identified both the accused persons in the court.***

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*8.1.2 PW10 identified the gold chain Ex. P1 to be the same which was recovered from accused Karnail Singh. PW13 Ct. Amarjeet also identified the gold chain, which was recovered from the accused persons. **Initially he stated that the same was recovered from the possession of accused Naresh. But, immediately thereafter, he clarified that the said chain was recovered from accused Karnail Singh as the chain which was recovered from accused Naresh had a locket.***

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8.2.1 PW11 has further deposed that ASI Surender Pal produced before him two live cartridges and two gold chains, which were recovered from accused Karnail Singh; accused Karnail Singh on inquiry had disclosed that one gold chain was snatched from a lady near Biria Mandir in association with his co-accused Naresh and second gold chain from a lady in the area of Kashmiri Gate.

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8.5 In view of the above, it is established that soon after snatching of chain of the complainant / victim Priya at about 08.30 a.m., at Mandir Marg, the accused persons were nabbed at Z. A. Garden, Karol Bagh, at about 09.00 a.m.; and the snatched chain was recovered from the person of accused Karnail Singh. xxxxxxxxxxxxxxxxxxxxxxxx"

After careful consideration of the testimonies provided by PW10 and PW13, it is evident that the recovery has been affected from accused Karnail Singh and PW11 had also confirmed the recovery of the aforementioned items from accused Karnail Singh, who confessed to involvement in the snatching incidents. Therefore, it is established that the accused were apprehended shortly after the chain-snatching incident, and the stolen chain was recovered from accused Karnail Singh, thereby substantiating the prosecution's case.

16. It was next argued by the Ld. Counsel for the appellants that IO has not joined public witnesses during the investigation and also at the time when the appellants pointed out the place of occurrence. As far as the question of non-joining of public witnesses is concerned, no doubt, the IO has not joined the public witnesses but that by itself does not falsify the entire case of the prosecution. The testimony of the official witnesses cannot be thrown away simply on the ground that IO failed to join public witnesses.



It is a matter of common knowledge that individuals from the public sphere often display reluctance to participate in investigative proceedings. Moreover, the failure of the IO to involve public witnesses can be deemed a procedural lapse on the part of the IO; however, such omission alone cannot serve as the sole rationale for discrediting the entirety of the prosecution's case and the testimony provided by credible official witnesses.

17. In *State of U.P. V. Bhagwan*, AIR 1997 SC 3292, the Hon'ble Apex Court has observed that in legal terms, minor inconsistencies in the testimonies of witnesses are deemed inconsequential unless they substantially undermine the fundamental assertions of the prosecution's case.

18. In the instant case, the statement made by the victim before the police and the statement made in court are consistent. Though the victim was cross-examined, but nothing has come out in the cross-examination to shake her testimony or to make her testimony unbelievable. It has also been argued by the learned counsel for the appellants that the accused persons have been falsely implicated in this case and their identity has not been established by the prosecution on record with positivity. As far as this contention of the learned counsel for the appellant is concerned, the same has no force. The relevant portion of the judgment of conviction as considered by the learned Trial Court with regard to identification of the accused persons reads as under: -

“6.1 PW2 was cross examined by Ld. Addl. PP with regard to identification of accused persons; that she herself had noted silver Pulsar motorcycle number 8351 and also with respect to the accused persons having shown her pistol and threatened to kill her; in case she raised alarm; PW2 was confronted with relevant portions of her statement Ex.PW2/A,

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where she had so stared, without much success. She categorically denied that due to fear she was not identifying the accused persons and for the same reason she did not identify them even during TIP proceedings before the Ld.MM. Rather, in her cross-examination by Ld. defence counsel, PW2 admitted that no threat was extended to her by any of the accused persons.”

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6.2.2 EX.PW2/A, victim/PW2's statement, recorded soon after the incident also corroborates her version that while she was sitting at bus stand, Birla Mandir, two boys on a motorcycle came and snatched her chain and that she became very nervous.

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6.5 PW12 ASI Tulsi Ram, PS Mandir Marg, to whom DD No. 4A was assigned for action has deposed that he had reached the place of incident at about 09.10 a.m. with Ct. Kuldeep; he found victim Priya/PW2 and her brother Shakti Singh/PW5 at the spot; Priya/PW2 was perplexed and was pacified by her brother by giving her water; and thereafter, she narrated the incident and her statement Ex.PW2/A was recorded. PW7 Ct. Kuldeep, who had accompanied PW12 ASI Tulsi Ram also deposed' on the same lines. In his cross-examination, PW12 categorically denied that the complainant had not disclosed about the (number of) motorcycle and the same was incorporated by him on his own. Nothing has been elicited in their cross-examination so as to discredit PW7 and PW12's testimony

6.6 In view of the above, it is established that two boys came on a bike, snatched the chain of victim Priya, while she was sitting on Bus Stand near Birla Mandir and fled. Peopled gathered there had noted the motorcycle number as 8351.

7.0 The victim could not identify the accused persons either during TIP or before the Court. She has deposed that she could not see the accused persons at the time of incident. However, the identity of the accused persons is established from the following facts and circumstances & evidence which has come on record.



8.0 It has come on record (as discussed in paras infra) that within half an hour of chain snatching, the accused persons were apprehended, while fleeing on motorcycle no. 8351 and snatched-chain was recovered from accused Karnail Singh.

8.1 PW10 Ct. Sandeep Kumar and PW13 Ct. Amarjeet have testified that on 15.03.2012 they were posted at PS Karol Bagh and were on duty at the Anti Snatching Picket at Z.A. Garden on that day. ASI Surender Pal and Ct. Prem Pradhan were also on patrolling duty in that area. At about 9.00 am on that day, one silver colour motorcycle bearing registration no. DL IF 8351 was seen coming at a great speed from Ajmal Khan road side. They signaled the motor cycle to stop. PW13 has stated that on seeing the police party, the motorcycle riders became perplexed and their motorcycle slipped; both the persons on the motorcycle fell down; another motorcycle which was also approaching towards them took U-turn and sped away. The riders of the bike, which had slipped were overpowered by them. Both PW10 and PW13 have deposed that accused Karnail Singh was driving the bike and accused Naresh @Satte was the pillion rider. PW13 has also testified that accused Naresh had waived a country made pistol towards them. On cursory search of accused Karnail Singh two gold chains and two live cartridges were recovered from him/pocket of his pant; from search of accused Naresh one country made pistol, three live cartridges, one broken chain with locket were recovered from the pocket of his pant. PW10 as well as PW13 identified both the accused persons in the court.

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8.5 In view of the above, it is established that soon after snatching of chain of the complainant / victim Priya at about 08.30 a.m., at Mandir Marg, the accused persons were nabbed at Z. A. Garden, Karol Bagh, at about 09.00 a.m.; and the snatched chain was recovered from the person of accused Karnail Singh. Illustration (a) of section 114 of Indian Evidence Act, 1872 (IEA) lays down that the Court may presume that a person who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession.

8.5.1 The accused Karnail Singh in his statement u/Sec. 313 CrPC simply denied the recovery of gold chain from his

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possession. The onus was upon the accused to explain as to how he came into possession of the chain snatched from the person of victim Priya, which he has failed to discharge. Further, as per Section 8 IEA, the conduct of accused, having been found in possession of the robbed chain is a relevant fact; the said fact connects him as well as his co-accused Naresh to the snatching of chain, as both were acting as a team, which is borne out from the evidence on record. PW2 also deposed that there were two persons on the motorcycle, and one of them snatched her 'gold chain and thereafter, both the robbers escaped on motorcycle. It has also come in the testimony of PW10 as well as PW13 that both the accused persons were on the motorcycle, which was signaled to stop; the accused persons became perplexed and their motorcycle slipped and they were apprehended. Both the witnesses have also deposed that when they proceeded towards the accused persons, accused Naresh pointed pistol towards the police party.

8.6 From these facts and circumstances, it is established that the accused were the persons who snatched the chain of PW2/victim, Ms. Priya.”

After careful examination of the records, it is evident that PW2 was cross-examined by the Ld. Addl. PP regarding the identification of the accused persons and the events surrounding the incident and hence, considering the totality of the evidence presented, including the identification of the accused, the recovery of the stolen chain, and the conduct of the accused, it is established beyond reasonable doubt that the accused were responsible for the chain-snatching incident involving PW2.

19. As far as the contention of the counsel for the appellants that they were not identified by the victim, the same is misconceived looking into the above observations made by the learned trial court in the impugned judgment. In this regard, the testimony of PW-10, PW-11 and PW-13 is consistent and they had deposed before the court that one silver colour



motorcycle bearing registration no. DL 1F-8351 was seen by PW-10 and PW-13 coming at speed from the side of Ajmal Khan Road and they signaled the motorcycle rider to stop, one pillion rider was also on the motorcycle, the motorcycle slipped and both the persons who were on motorcycle fell down, they over powered both the persons and thereafter it was found that Accused Karnail was driving the motorcycle and accused Naresh @ Satte was pillion rider. Therefore, in such circumstances, there was no further need for the police to get the identification of the appellants conducted. Looking into the facts and circumstances and the manner in which the appellants were apprehended, identification of the appellants cannot be disputed on the basis of presumption under Section 114 Indian Evidence Act as they were in possession of the stolen goods as observed in paras hereinabove.

20. It has also been argued by the counsel for the appellants that the police officials have falsely implicated them as they were having previous involvements. In this regard, it is relevant to note that the appellant-Karnail Singh in his statement recorded under Section 313 Cr.P.C has denied the recovery of gold chain from his possession and the burden rested upon the accused to provide a satisfactory account regarding the acquisition of the chain taken from the victim. Regrettably, the accused has not fulfilled this obligation.

21. Conviction can be recorded on the sole testimony of police officials without corroboration from a public witness, if it inspires confidence. In this regard reliance can be placed upon *Tahir Vs. State (1996) 3 SCC 338*, in which the Hon'ble Supreme Court has held as follows:

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“no infirmity attaches to the testimony of police officials, merely because they belong to the police force and there is no rule of law or evidence which lays down that conviction cannot be recorded on the evidence of the police officials, if found reliable, unless corroborated by some independent evidence. The Rule of Prudence, however, only requires a more careful scrutiny of their evidence, since they can be said to be interested in the result of the case projected by them. Where the evidence of the police officials, after careful scrutiny, inspires confidence and is found to be trustworthy and reliable, it can form basis of conviction and the absence of some independent witness of the locality to lend corroboration to their evidence does not in any way affect the creditworthiness of the prosecution case.”

22. In light of the evidence presented, the legal principles applied, and the thorough analysis conducted, I am, unhesitatingly, of the opinion that both the appellants are guilty of the offence committed and I find no infirmity in the impugned judgment. Accordingly, the impugned judgment dated 14.02.2013 and order on sentence dated 15.02.2013 are upheld. Consequently, the present appeals are dismissed.

23. Both the appellants are directed to surrender before the concerned Trial Court within a period of fifteen (15) days to serve the remaining portion of the sentence.

24. All pending applications (if any) are disposed of. Trial court record be sent back forthwith alongwith a certified copy of this judgment for necessary information.

RAJNISH BHATNAGAR, J

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