

**CRA-S-1440-2025(O&M)****-1-****IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH****255****CRA-S-1440-2025(O&M)****Date of decision: 27<sup>th</sup> October, 2025**

Arshad @ Mohd. Arshad

...Appellant

Versus

State of Haryana

...Respondent

**CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**Present: Mr. Munfaid Khan, Advocate  
for the appellant.

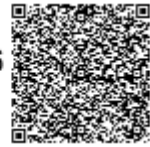
Mr. Neeraj Poswal, AAG, Haryana.

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**MANISHA BATRA, J. (Oral):-**

The instant appeal has been filed against the judgment of conviction dated 09.04.2025 and order on quantum of sentence dated 11.04.2025 passed by the Court of learned Sessions Judge, Nuh in case arising out of FIR No. 129 dated 08.04.2022 registered under Section 379-A of IPC at Police Station Punhana, whereby the appellant had been held guilty and convicted under Section 379-A of IPC.

2. Brief facts of the case relevant for the purpose of disposal of this appeal are that the aforementioned FIR was registered on the basis of a written complaint submitted by the complainant-Hakam alleging that on 08.04.2022, he along with his brother-Rihan had gone to vegetable market Punhana to buy vegetables when two youths came on a motor bike and had snatched mobile phone of his brother Rihan. The complainant alleged that he



had identified the snatchers as Arshad i.e. the present appellant and Shahid. After registration of FIR, investigation proceedings were initiated. The appellant was arrested on 08.04.2022. He was interrogated and suffered disclosure statement admitting his involvement in the crime and got recovered the snatched stolen phone as well as the motor bike used by him in the crime. The co-accused initially could not be arrested. He was subsequently detained. He was found to be a juvenile. He faced inquiry before the Juvenile Justice Board, Nuh and had been acquitted on 02.11.2023.

3. On finding a *prima facie* case for commission of offence punishable under Section 379-A(2) of IPC, the appellant had pleaded not guilty and claimed with trial.

4. To substantiate its case, the prosecution examined seven witnesses in all besides placing reliance upon certain documents and thereafter, the prosecution evidence was closed.

5. Statement of the appellant under Section 313 of Cr.P.C. was recorded wherein he claimed to be innocent and pleaded false implication. No defence evidence had been adduced.

6. After addressing arguments advanced by learned counsel for the parties and appraising the evidence produced on record, the learned Sessions Judge, Nuh held the appellant guilty under Section 379-A(2) of IPC and sentenced him to undergo rigorous imprisonment for a period of five years, to pay fine of Rs. 25000/- and in default of payment of fine, he was further sentenced to undergo simple imprisonment for one year.

7. Feeling aggrieved, the present appeal has been filed.



8. It is argued by learned counsel for the appellant that the impugned judgment of conviction and order on quantum of sentence are not sustainable in the eyes of law as while passing the impugned orders, the learned trial Court did not appreciate the evidence produced on record in a proper manner. The fact that neither the complainant nor his brother Rihan who are the star witnesses of the case, had implicated the appellant in the commission of offence of snatching, had not been appreciated. Both of them had turned hostile and did not identify the appellant as one of the snatchers. The fact that the juvenile in conflict with law was also acquitted by the juvenile justice board had not been taken into consideration. The evidence as to recovery of the alleged snatched mobile phone rested upon the testimonies of the police official interested witnesses which could not be acted and relied upon beyond doubt. Their statements even otherwise were not consistent and hence did not inspire any confidence for proving the guilt for the appellant. The learned trial Court also committed a grave error in holding the appellant guilty for commission of offence punishable under Section 379-A of IPC because even if the testimonies of official witnesses were to be believed, no case for commission of that offence under this Section was made out as no eye-witnessed account qua snatching of the cell phone had been proved on record. With these broad submissions, it is urged that the impugned judgment and order on quantum of sentence are liable to be set aside, the appeal deserves to be accepted and further that the appellant deserves to be acquitted of the charge framed against him.

9. *Per contra*, learned State counsel has argued that there is no illegality or infirmity in the impugned judgment and order and has argued



that the appeal does not deserve to be allowed.

10. Rival contentions submitted by learned counsel for the parties have been considered and perused the record of the trial Court.

11. On a careful appraisal of the evidence produced on record, this Court is of the opinion that the position which emerges is that so far as, the allegation that PW-2 Rihan was having a mobile phone make Vivo Y20 and that had been snatched on 08.04.2022 is concerned, though both PW-1 Arshad and PW-2 Rihan deposed in their examination-in-chief that a phone belonging to PW-2 had been snatched but during cross-examination, PW-2 stated that on the fateful day, he did not have any mobile phone with him. Even PW-1 Arshad admitted during cross-examination that his brother did not have any phone on the day of occurrence. Their sworn depositions to this effect are sufficient to raise a doubt about the authenticity of the prosecution version qua snatching of a mobile phone by the appellant from PW-2 Rihan especially in view of the fact that PW-1 even admitted that mark 'A' bill of the alleged mobile phone was in the name of Mahesh s/o Ganeshi and not in the name of PW-2. As such, in the considered opinion of this Court, factum of snatching of any phone belonging to PW-2 itself had become doubtful but this fact had not been considered by the learned trial Court. Moreso, neither PW-1 nor PW-2 identified the appellant as the snatcher of any mobile phone. Though they were declared hostile and were permitted to be cross-examination by learned public prosecutor but nothing incriminating against the petitioner could be extracted from their statements and as such, the fact that the appellant had snatched the mobile phone belonging to PW-2 had not been established at all.



12. Proceeding further, the learned trial Court had observed that the statements of official witnesses namely PW-4 Constable Javed and PW-7 Sub Inspector Mahender Singh, who was also the Investigating Officer of the case, were sufficient to prove the factum of recovery. Both these witnesses had deposed that the appellant had been arrested on 08.04.2022. He had suffered disclosure statement and recovery of the snatched mobile phone was effected from him. However, on a careful scrutiny of their statements, it is revealed that the same are not cogent and trustworthy enough to prove the factum of recovery of any cell phone from the appellant beyond doubt. PW-7 was not even aware about the exact time when he had received complaint from the complainant. He also could not tell about the time when he had reached at the spot from where recovery was effected. No efforts to join any public and disinterested witness at the time of recovery are shown to have been made. He admitted that the bill of the mobile phone mark 'A' was in the name of one Mahesh and he did not make any inquiry from the complainant about the said Mahesh. It was for the prosecution to bring positive, cogent and convincing evidence of such nature on record which could be relied upon beyond probabilities of all reasonable doubts to prove that any mobile phone belonging to PW-2 had been snatched by the appellant and the co-accused/CCL. The recovery of the same was effected from the appellant but learned trial Court failed to produce the same. The learned trial Court had observed that under Section 114(A) of the Indian Evidence Act, there was a presumption that a person who was found to be in possession of stolen good was either the thief or had retained the same, knowing them to be stolen. In the considered opinion of this Court, no such



inference/presumption could be drawn that the appellant was one who had snatched the mobile phone in question and such presumption could only be drawn being found in illegal possession of some stolen good and in that instance, at the most the appellant could be held guilty and convicted under Section 411 of IPC and not under Section 379-A(2) of IPC. On a careful assessment of the evidence produced on record, this Court is of the considered opinion that since there was no direct incriminating evidence on record to prove that the appellant was the snatcher of the cell phone and infact any such cell phone belonged to PW-2 and had been snatched from him, therefore, the appellant could not be held guilty and convicted under Section 379-A(2) of IPC at all. Moreso, the factum of recovery itself rests upon the testimonies of the police official witnesses which are not of sterling quality and cannot be acted and relied upon for the purpose of proving that recovery of any snatched mobile phone was effected at the instance of the appellant. As such, this Court opines that the appellant could not have been held guilty under Section 379-A(2). Accordingly, the impugned judgment and order on quantum of sentence are set aside. The appeal is accepted and the appellant is acquitted of the charge framed against him under Section 379-A(2) of IPC. He be released from custody forthwith if not required in any other case.

[MANISHA BATRA]  
JUDGE

27<sup>th</sup> October, 2025  
Parveen Sharma

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|-------------------------------|---|----------|
| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable         | : | Yes / No |