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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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1. **CRM-27659-2024 in/and**
CRA-S No.2333 of 2024

Sudhir ... Appellant

Vs.

State of Haryana ... Respondent

2. **CRM-42456-2024 in/and**
CRA-S No.2387 of 2024

Vishal ... Appellant

Vs.

State of Haryana ... Respondent

Date of decision: 24.04.2025

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Yashpal Thakur, Advocate,
for the applicant-appellant in CRA-S No.2333 of 2024.

Mr. S.S. Nain, Advocate,
for the applicant-appellant in CRA-S No.2387 of 2024.

Mr. Neeraj Poswal, AAG, Haryana,
for the respondent-State.

MANISHA BATRA, J. (Oral)

1. This common order shall dispose of the aforementioned two appeals which have arisen out of common judgment of conviction and

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order on quantum of sentence dated 01.06.2024 passed in Sessions case No.35 of 2021 titled as *State v. Sudhir and another* arising out of FIR No.567 dated 14.07.2019 registered under Section 379-A of IPC at Police Station City, Panipat whereby the appellants had been held guilty and convicted by the Court of learned Additional Sessions Judge, Panipat for commission of offence punishable under Section 379-A read with Section 34 of IPC and were sentenced to undergo rigorous imprisonment for a period of five years each and to pay fine of Rs.25,000/- each. In default of payment of fine, they were further sentenced to undergo rigorous imprisonment for a period of six months. Fine had not been paid.

2. The prosecution in this case had been launched on the basis of a complaint submitted by the complainant Gaurav on 14.07.2019 alleging that on the night of 09.07.2019 at about 11 PM, he was going from Bus Stand Panipat towards his Village Khozkipur, when two youths riding on a bike came to him and after snatching his mobile phone make VIVO-Y95 containing two sim cards, escaped with the same. A case under Section 379-A of IPC was registered. Investigation proceedings were initiated. An untraceable report was filed. The appellants were arrested on 27.07.2020 on the basis of a secret information. They were

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interrogated and suffered disclosure statement admitting their involvement in the crime and got recovered cash amount of Rs.1600/- and Rs.1400/- respectively. The motorcycle used at the time of occurrence by them had also been got recovered. After completion of investigation, challan was presented in the Court.

3. Copies of challan were supplied to the accused free of cost. On finding a prima facie case for commission of offence punishable under Section 379-A read with Section 34 of IPC, the appellants had been charge-sheeted accordingly, They pleaded not guilty to the charges and claimed trial.

4. To substantiate its case, the prosecution examined five witnessses namely, ASI Rajesh, PW-1 who had joined the investigation, PW-2 Gaurav, PW-3 SI Rajender Kumar who was a formal witness, PW-4 SI Satbir Singh, a formal witness and PW-5 ASI Rajbir Singh, Investigating Officer who deposed about conducting investigation proceedings. Documentary evidence had also been produced.

5. Statements of accused were recorded under Section 313 of Cr.P.C. The appellants abjured their guilt and claimed themselves to be innocent. No defence evidence had been adduced.

6. After hearing the arguments advanced by both the sides and on

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appreciating the evidence produced by the prosecution on record, the learned trial Court held the appellants guilty and sentenced them in the manner as indicated above.

7. Feeling aggrieved, these appeals have been filed by the appellants-accused.

8. It is argued by learned counsel for both the appellants that the impugned judgment of convictin and order on quantum of sentence are liable to be set aside as the findings given by learned trial Court are not sustainable in the eyes of law. The learned trial Court ignored the fact that there was delay of five days in reporting the matter to the police which had not been explained at all by the complainant. The appellants were not named in the FIR. The recovery of money as effected from the appellants was not at all sufficient to connect them with the alleged incident of snatching. The phone allegedly snatched from the complainant had not been recovered from them rather the same was not recovered at all. There was no eye-witness to the occurrence. The appellants had not been identitied by the complainant during investigation as no test identification parade was conducted. Their identifiction for first time in the Court by the complainant cannot be stated to be an identification in the eyes of law. However, all these facts

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had not been taken into consideration by learned trial Court. With these broad submissions, it is argued that the impugned judgment and order on quantum of sentence are liable to be set aside; the appeals deserve to be accepted and further that the appellants deserve to be acquitted of the charge under Section 379-A read with Section 34 of IPC. To fortify their arguments, learned counsel for the appellants has placed reliance upon the cited as ***George v. State of Kerala, 1998 (2) RCR (Criminal) 199***; ***Amrik Singh v. The State of Punjab, 2022 LiveLaw (SC) 582*** and ***Dana Yadav @ Dahu and others v. State of Bihar, 2002 (4) RCR (Criminal) 314***.

9. Per contra, it is argued by learned Assistant Advocate General, Haryana that overwhelming evidence had been produced on record by the prosecution to prove that the appellants were the persons who had snatched the mobile phone belonging to the complainant on the fateful night. He had duly identified the appellants in the Court and his identification was substantive evidence which was admissible in the eyes of law. The credit of testimony of the complainant who was the most material witness had not been shaken. The disclosure statements of the appellants leading to recovery of money received by sale of the mobile phone was sufficient to connect them with the offence under Section 379-

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A of IPC. Accordingly, it is argued that the appeals are devoid of any merit and are liable to be dismissed.

10. On giving due consideration to the arguments as advanced by both the side and on a minute scrutiny of the evidence produced on record of the trial Court file, the question that crops up for consideration before this Court is as to whether the findings as given by the learned trial Court as to the guilt of the appellants are sustainable in the eyes of law or not? The version of the prosecution is that on the night of 09.07.2019, the appellants had snatched the mobile phone of the complainant while he was going towards his house and had escaped with the same. To prove guilt of the accused-appellants, the proseucution has relied upon testimony of the complainant and disclosure statements alleged to be suffered by the appellants leading to recovery of money and a motorbike. The learned trial Court had held that the testimony of the complainant was sufficient to prove that the appellants had snatched mobile phone of the complainant. However, on a careful assessment of the evidence produced on record, this Court is of the opinion that the case of prosecution suffers from several material infirmities thereby rendering the prosecution version doubtful.

11. First of all, there is delay of five days in lodging of the FIR.

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The occurrence had taken place on the night of 09.07.2019 but FIR was lodged on 14.07.2019 by the complainant. Neither in his complaint Ex.P-8 nor in his sworn deposition, the complainant explained the reason for delay in lodging of the FIR. It is well settled proposition of law that FIR in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The importance of above report can hardly be overestimated from the standpoint of the accused. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of the eye-witnesses present at the scene of occurrence. Delay in lodging the FIR quite often results in embellishment which is a creature of afterthought. On account of delay, report not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay in lodging of FIR should be satisfactorily explained. In this case, since the complainant did not utter even a single word giving explanation for the delay of five days in lodging of the FIR, therefore, an

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inference is drawn to the effect that this delay was utilized by the complainant in concocting a false story of offence of snatching having taken place, due to which a doubt had been created that occurrence had either not taken place at all or had not taken place in the manner as alleged by the complainant.

12. That apart, though in the complaint, it was alleged by the complainant that the mobile phone which was snatched from him was of VIVO-Y95 make and was containing two sim cards but no invoice regarding purchase of such mobile phone had been proved in evidence. In his sworn deposition, the complainant did not even disclose the make of his mobile phone. No details qua purchase of the said phone had been given by him due to which the allegations that any mobile phone belonging to/owned by him had been snatched, have not been established beyond doubt.

13. Further, the appellants were undisputedly not named in the FIR. The complainant had identified them as snatchers of his mobile phone while appearing into the witness box before the learned trial Court. No test identification parade of the appellants had been conducted. Before adverting to the evidence led by the complainant with regard to identification of the appellants, in the opinion of this Court, it is just and

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necessary to bear in mind as to how the evidence regarding identification of the accused persons which are totally unknown to the victim, has been dealt with by Hon'ble Apex Court and how their evidence has to be appreciated. In ***Budhsen v. State of Uttar Pradesh, AIR 1970 Supreme Court 1321***, the Hon'ble Supreme Court observed that the facts which establish the identity of accused persons are relevant under Section 9 of the Indian Evidence Act. As a general rule, the substantive evidence of a witness is the statement made in the Court. The evidence of mere identification of the accused persons at the trial for the first time is from its very nature inherently of a weak character. The evidence in order to carry conviction should ordinarily clarify as to how and under what circumstances, the witness came to pick out the particular accused and the details of the part which that accused played qua the subject crime with reasonable particulars. It was held that the purpose of prior test identification, therefore, seems to be to test and strengthen the trustworthiness of that evidence. It was observed that accordingly it was considered as a rule generally to look for corroboration of concerned testimony of a witness as to identity of the accused who are strangers to them, in the form of earlier identification proceedings.

14. Further, in ***Kanand versus State of Kerala, AIR 1979 Supreme***

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Court 1127, the Hon'ble Apex Court observed that where a witness identifies an accused who is not known to him in the Court for the first time, his evidence is absolutely valueless unless there has been a previous test identification parade to test his observations. If no test identification parade is held, then it will be totally unsafe to rely upon the bare testimony regarding the identification of an accused for the first time in the Court. The idea of holding test identification parade under Section 9 of the Evidence Act, is to test the veracity of the witness on the question of his capability to identify an unknown person whom the witness might have seen only once.

15. Yet in another case cited as ***Mohd. Iqbal M.Shaikh and others versus State of Maharashtra, (1998) 4 SCC 494,*** the Hon'ble Supreme Court while dealing with the question of test identification parade and also the effect of the accused persons being shown to the witnesses during the course of investigation by the police held that if the witness knew the accused persons either by name or face, the question of police showing him the accused persons becomes irrelevant. If the witness did not know the accused persons by name, but could only identify them from their appearance, then the test identification parade was necessary, so that, substantive evidence in Court about the identification, which is

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held after a fairly long period could get corroboration from the identification parade. It was held that if the police shows the accused persons in the police lock up to the identifying witness, then the so called identification looses its value, in as much as it is only because of the showing the accused persons that the witness is being able to identify them. If the accused has been shown to him, in the course of investigation, then the so called identification in the Court is of no consequence and cannot form basis of conviction. It was further held that if a witness was called to the police station while accused persons were in police lock up and had been given opportunity of seeing those persons in the police lock up, then the so called identification made by the witness in the Court was of no significance.

16. On a combined meaningful and meticulous reading of the above cited authorities, it is crystal clear that a Court should be very careful in accepting the evidence of the prosecution with regard to the identification of the accused persons, because if the same is not properly appreciated, it is susceptible to miscarriage of justice, if there is an error in identification of the accused. It is well settled proposition of law that before accepting the evidence as to identification of accused persons by a witness in the Court, the Court should observe the credibility of the

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witness, reliable power of observation of such witness, reasonable time within which identification was made and further to observe that whether there was fair opportunity for the witness to observe and identify the accused persons.

17. In the above discussed background, let us analyze testimony of PW-2. Though he had stated that the accused present in the Court were the persons who had snatched his mobile phone, but he had not given details of physical description of the snatchers like their complexion, height or features or about the clothing as worn by them in the complaint. The occurrence took place at 11 PM and it was obviously dark at the time. There is nothing on record to show that he had any chance to interact with the snatchers or had any particular reason to remember the identity of all the accused at the time of occurrence, so that in that event, the case could be considered to be an exception and conviction can be based upon solitary evidence of this witness as to identification of the accused for the first time. It was not explained by this witness as to what was the basis on which he could identify the accused persons. The possibility of this witness having seen the miscreants and identifying them in dark seems very remote. As such, in my considered opinion, on the basis of testimony of this witness, the identification of the accused

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persons has not been established beyond doubt and this fact has created a serious dent in the story of the prosecution with regard to the involvement of the accused in the subject crime.

18. The prosecution has also rested its case upon the evidence as to suffering disclosure statements by the appellants vide memos Ex.P-2 and P-3 respectively suffered by accused Vishal and Sudhir. PW-1 ASI Rajesh who had joined investigation and PW-5 ASI Rajbir Singh, Investigating Officer deposed about suffering of disclosure statements by the appellants Sudhir and Vishal and consequent recovery of sums of Rs.1600/- and Rs.1400/- respectively at their instance. As per the prosecution case, the money so recovered at their instance was part of the money received by them by sale of the snatched mobile phone to some third person. The inculpatory part of these disclosure statements stated to be suffered by the appellants Vishal and Sudhir vide memos Exs.P-2 and P-3 however, cannot be stated to be admissible in evidence being suffered in the custody of police and being confessional in nature. So far as the demarcation of place of occurrence at the instance of the appellants vide memo Ex.P-7 is concerned, the same cannot be stated to be of any relevance in view of the fact that the place of occurrence was already known to the police and Ex.P-11 rough site plan of the place of

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occurrence had already been prepared by PW-4 SI Satbir Singh on the date of registration of FIR itself. As such, no new or distinct fact is proved to have been discovered by the identification of place of occurrence and this piece of evidence cannot be used for the purpose of connecting the appellants with the crime.

19. Further, the currency notes which were allegedly recovered from the appellants are not proved to be having any specific identification mark. Small amount of money is alleged to have been recovered from the appellants which could easily be planted against them. More so, the alleged recovery was effected on 28.07.2020 whereas the occurrence had taken place on 09.07.2019. It does not appeal to reason that the appellants would keep such small amounts of money for such a long time with them fully knowing that the same being incriminating piece of evidence could be used against them for proving commissioin of the subject crime. More so, such like currency notes could be easily available in market. Neither the investigating agency has put any specific mark on these notes at the time of effecting alleged recovery. As such, the recovery of money at the instance of the accused could not be considered to be a circumstance sufficient to prove that the appellants had snatched any mobile phone.

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20. As such, the position which emerges is that the prosecution version suffered from several material infirmities. There has been inordinate and unexplained delay in reporting the matter to the police, it has not been proved beyond doubt that the mobile phone allegedly snatched from the complainant was purchased by him and was infact in his conscious possession at the time of occurrence, evidence as to identification of the appellants by the complainant is not inspiring and hence, their identity as such has not been proved beyond doubt and evidence as to recovery of money is also not sufficient to prove the allegations of snatching. While passing the impugned judgment, the learned trial Court did not take all these facts into consideration. As such, in the considered opinion of this Court, the trial Court had committed a grave error in convicting the appellants-accused and as such the judgment and order passed by the trial Court thereby convicting the appellants for commission of offence punishable under Section 379-A read with Section 34 of IPC are not sustainable and deserve to be quashed and set aside and the appellants deserve to be acquitted for the purpose for which they were tried.

21. In view of the reasons stated above, the appeals succeed, the impuged judgment and order passed by the learned trial Court convicting

the appellants for the offence punishable under Section 379-A read with Section 34 of IPC and order on quantum of sentence are hereby quashed and set aside. The appellants are acquitted of the charges as framed against them subject to their furnishing bonds in compliance with the provisions of Section 437-A of IPC. They be released forthwith, if not required in any other case.

(MANISHA BATRA)
JUDGE

24.04.2025
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Whether speaking/reasoned Yes/No
Whether reportable Yes/No