

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No(s). 146 OF 2019
(Arising out of SLP (CRL.) No.10418 of 2018)

SURAJ PAL

Appellant(s)

VERSUS

THE STATE OF HARYANA

Respondent(s)

O R D E R

BANUMATHI, J.:

(1) Leave granted.

(2) The appellant has been convicted under Section 379-A and sentenced to undergo rigorous imprisonment for five years. Though by Order dated 22nd November, 2018, we have observed that there is no ground warranting interference with the verdict of conviction of the appellant under Section 379-A I.P.C. and notice was issued only limited to the quantum of sentence, upon hearing further submissions today made at the Bar by Mr. Liaqat Ali, learned counsel appearing for the appellant, and Mr. Devender Kumar Saini, learned Additional Advocate General, appearing for the respondent-State of Haryana, we are of the considered view that the matter needs to be examined on its merits including on the verdict of conviction also.

(3) The case in hand is of "mobile snatching". One Vikas Sharma (PW-1) stated that on 15th March, 2016 when he was going to his house after the office work at 7 p.m., two persons came

on the motor-cycle and snatched away his mobile phone of Nexus having SIR of Airtel No.9871395297. The de facto complainant, Vikas Sharma (PW-1), lodged the complaint of the same, based upon which FIR NO.136 of 2016 was registered at Police Station Manesar, Gurugram, Haryana.

(4) The appellant and the co-accused, Javed, were arrested in Rajasthan; subsequently on 20th September, 2016, taken into custody by the Assistant Sub-Inspector (PW-3) on production warrant in connection with the present case in FIR No.136 of 2016.

(5) The Disclosure statement of the co-accused, Javed, led to the recovery of the mobile phone of Vikash Sharma (PW-1). Based upon the evidence of Vikash Sharma (PW-1) and the evidence regarding seizure of mobile phone from the co-accused, Javed, the Trial Court convicted the appellant Section 379-A I.P.C. and sentenced him to undergo rigorous imprisonment for five years which is the statutory minimum prescribed under Section 379-A I.P.C. (Haryana State Amendment).

(6) We have heard learned counsel for the parties and also perused the impugned judgment and other materials on record.

(7) The occurrence was of 15th March, 2016 late evening at 7 p.m. Though the custody of the accused was secured in connection with this case on 20th September, 2016, no Test Identification Parade (TIP) was held to identify the said

accused and for the first time, Vikas Sharma (PW-1) identified the appellant-accused in the court.

(8) When the mobile phone was allegedly snatched from Vikas Sharma (PW-1), he would have seen the accused only for few seconds. It is doubtful whether he would have been in a position to identify the appellant-accused. Having regard to the passage of time between the occurrence and the identification of the accused-appellant for the first time in the court by Vikas Sharma (PW-1) becomes highly doubtful. This is more so, when the said mobile phone was recovered only at the behest of the disclosure statement of the co-accused, Javed. The benefit of doubt has to be given to the accused.

(9) In our considered view, the prosecution has not established the guilt of the appellant beyond reasonable doubt. Accordingly, the appeal is allowed and the impugned order is set aside. The appellant is acquitted of all the charges under Section 379-A I.P.C. and is ordered to be set at liberty forthwith unless his presence is required in connection with any other case.

.....J.
(R. BANUMATHI)

.....J.
(R. SUBHASH REDDY)

NEW DELHI,
JANUARY 25, 2019.