

**IN THE COURT OF SHRI TARSEM MANGLA,
SESSIONS JUDGE, PATIALA.
(UID No.PB0049)**

CIS No. SC/316/2022
CNR No. PBPT-0101-0858-2022
Sessions case No. 31 of 7.10.2022
Date of decision: **11th April, 2023**

State

Versus

1. Mastan Khan son of Yusuf Khan son of Santri Khan, aged about 24 years, resident of Village Jahlan, PS Passiana.

2. Jarnail Singh @ Raju son of Kartar Singh son of Parsa Singh, aged about 36 years, resident of village Korjiwala PS Passiana.

...Accused

FIR no. 174 dated 9.8.2021
U/ss 379-B, 201 IPC
Police station Passiana, Distt. Patiala.

Present: Sh. Bikram Singh Goraya, Addl. Public Prosecutor for the State
Accused Mastan Khan in custody, represented by Sh. KS Ablowal, Advocate.
Accused Jarnail Singh in custody, represented by Sh. Dixit Raj Kapoor, Advocate.

JUDGMENT

Both the aforesaid accused were sent for trial by SHO, PS Passiana by presenting challan for commitment proceedings before the court of Sh. Davinder Singh, learned Judicial Magistrate Ist Class, Patiala on 17.8.2022.

2. On presentation of challan before Sh. Davinder Singh, learned Judicial Magistrate Ist Class, Patiala, they were supplied copies of documents. After hearing learned APP as well as learned counsel for the accused, vide commitment order dated 23.9.2022 learned Judicial Magistrate Ist Class, Patiala committed this trial to the Sessions Court.

3. Upon its commitment the trial was self-entrusted by this Court.

Vide order dated 26.10.2022, charges u/s 379B/201/34 IPC were settled against both the accused and charge sheet was framed, to which they pleaded not guilty and claimed trial.

4. As per prosecution story on 9.8.2021 Parvinder Kaur wife of Gurdeep Singh reported to the police that she is a household lady. On 4.8.2021 she had visited a market situated near Harbans Clinic, where at about 7.35 pm two Activa borne youngsters snatched ear ring of her right ear weighing two gms. and ran towards Sangrur. Although it was dark but she could read registration number of the Activa as PB-11AP-0786. She had been searching for the snatchers of her own. After registration of the FIR investigation was started.

Subsequently on 17.8.2021 complainant Parvinder Kaur made a supplementary statement thus nominated Mastan Khan and Jarnail Singh @ Raju as snatchers. Both the accused after being arrested were got identified from the complainant.

5. To prove above said charges, prosecution examined complainant Parvinder Kaur as **PW1** in which she reiterated her police statement Ex.P1 and supplementary statement Ex.P2 and also proved her identification memo Ex.P3. She also identified both the accused in the Court.

PW2 is Musa Khan, owner of Activa No.PB-11AP-0786 but he stated that the police had never recorded his statement in this case. At the request of learned Addl.PP the witness was declared hostile and cross-examination conducted upon him could not be of any help to the prosecution.

PW5 is Harwinder Singh, Clerk, RTA, Sangrur who brought computerised record regarding above Activa scooter no.PB11AP-0786 and proved its record Ex.P10 in the name of Musa Khan son of Jang Bahadur.

Investigations of this case were conducted by ASI Balkar Singh (PW7), ASI Paramjit Singh (PW6), HC Harwinder Singh (PW3) and HC SC Jagtar Singh (PW4).

PW4 ASI Paramjit Singh deposed that on 9.8.2021 complainant Parvinder Kaur came present and got recorded her statement Ex.P1. On the basis of the said statement, he initiated police proceedings and scribed ruqa **Ex.P11**, on the basis of which, formal FIR **Ex.P12** was registered by ASI Kulwant Singh. He proved the endorsement over *ruqa* **Ex.P13**. He proved rough site plan **Ex.P14**. During the course of investigation he had recorded the supplementary statement of the complainant on 17.8.2021 and on its

basis, Mastan Khan and Jarnail Singh alias Raju were nominated as accused in this case and special report regarding the same were prepared.

PW4 SC Jagtar Singh corroborated the testimony of PW4 ASI Paramjit Singh and deposed that on 20.6.2022 during the course of interrogation of accused Jarnail Singh alias Raju, he had suffered a disclosure statement that he alongwith Mastan Khan had snatched the ear ring from an old aged lady on 8.4.2021 on scooty bearing no.PB-11-AP-0786. He proved disclosure statement **Ex.P6** prepared by the Investigating Officer and witnessed by him and PC Rakesh Singh. He further deposed that on 23.6.2022 he alongwith ASI Balkar Singh were present at police station, where ASI Balbir Singh disclosed to ASI Balkar Singh that Mastan Khan is already in custody in police station in another FIR. Thereafter he was taken out of the lock up by the Investigating Officer and formally arrested vide arrest-cum-intimation memo **Ex.P7**. Intimation regarding his arrest was given to his father Yusuf Khan over mobile phone. On personal search of the accused, nothing was recovered. His personal search memo **Ex.P8** was prepared. The witness deposed that during the course of interrogation of accused Mastan Khan, he suffered a disclosure statement that he alongwith Jarnail Singh alias Raju had snatched the ear ring from an old aged lady on 8.4.2021 on scooty bearing no.PB-11-AP-0786 at Sangrur road near Harbans Nursing Hospital Market. His disclosure statement **Ex.P9** was prepared by the Investigating Officer and witnessed by him. On the same day accused Mastan Khan was got identified from the complainant vide identification memo **Ex.P3** was prepared. His statement was recorded.

PW7 ASI Balkar Singh, deposed that on 4.6.2022 he was posted at P.S. Passiana. During the course of investigation, on 18.6.2022 he alongwith other police officials reached near village Korjiwala, where he received secret information that accused Jarnail Singh alias Raju was present at his house and if a raid is conducted he could be apprehended. Believing the information to be correct, a raid was conducted at the house of accused Jarnail Singh alias Raju from where one person after seeing the police party ran towards the street. He was apprehended and on inquiry, he disclosed his identity as Jarnail Singh alias Raju. He was formally arrested vide arrest-cum-intimation memo **Ex.P4**. Intimation regarding his arrest was given to

his wife Kulwant Kaur. On personal search of the accused, nothing was recovered. His personal search memo **Ex.P5** was prepared.

Thereafter on 20.6.2022 he alongwith other police officials were present at police station. On that day during the course of interrogation of accused Jarnail Singh alias Raju, he had suffered a disclosure statement that he alongwith Mastan Khan had snatched the ear ring from an old aged lady on 4.8.2021 on scooty bearing no.PB-11-AP-0786. His disclosure statement **Ex.P6** was prepared by him, witnessed by SC Jagtar Singh and PC Rakesh Singh. On 23.6.2022 ASI Balbir Singh disclosed to him that Mastan Khan is in custody in police station in another FIR. Thereafter he was taken out of the lock up by him and formally arrested vide arrest-cum-intimation memo **Ex.P7**. Intimation regarding his arrest was given to his father Yusuf Khan over mobile phone. On personal search of the accused, nothing was recovered. His personal search memo **Ex.P8 was prepared.**

During the course of interrogation of accused Mastan Khan, he suffered a disclosure statement that he alongwith Jarnail Singh alias Raju had snatched the ear ring from an old aged lady on 4.8.2021 on scooty bearing no.PB-11-AP-0786 at Sangrur road near Harbans Nursing Hospital Market. His disclosure statement **Ex.P9** was prepared. On the same day the accused Mastan Khan was got identified from the complainant vide identification memo **Ex.P3**. The provisions of offence U/s 201 Indian Penal Code were invoked. During the course of investigation, he recorded the statements of witnesses and proved the ownership of the scooty.

PW3 HC Harwinder Singh corroborated the testimony of ASI Balkar Singh and proved arrest memo of accused Jarnail Singh Ex.P4 and personal search memo Ex.P5.

6. When the prosecution concluded its evidence, all the incriminating circumstances appearing in the testimonies of various prosecution witnesses were put to both the accused u/s 313 Cr.P.C., to which they denied all the allegations and pleaded false implication. They further submitted tht they want to lead evidence in defence but despite opportunity no evidence in defence was led.

7. I have heard learned Addl. Public Prosecutor for the State as well as Shri KS Ablowal and Sh. Dixit Raj Kapoor, learned defence

counsels.

8. After inviting attention of this Court towards testimony of the complainant, learned Addl. PP submitted that the complainant is an old lady. On 4.8.2021 in the evening when she had visited the market, both the accused snatched her ear ring. Learned Addl. PP submitted that though the accused could not be apprehended at the spot but after being arrested when both the accused were presented before the complainant she duly identified them. After taking this Court through the testimony of Investigating Officer and the police witnesses learned Addl. PP submitted that evidence on record is sufficient to connect both the accused with crime of snatching and that both the accused may be convicted and sentenced accordingly.

Faced with the abovesaid arguments, it was submitted by learned defence counsels that besides enormous delay in reporting the matter to the police all the proceedings have been anti-dated and do not inspire confidence. No recovery of allegedly snatched ear ring ever occurred. During the course of investigation the police did not work out any interse relations between the accused and it was prayed that due benefit of doubt may be extended and the accused may be acquitted.

9. From the above said contentions, following point of determination arise:-

- i) Whether on 04.08.2021 both the accused snatched gold ear ring of the complainant?

POINT NO.1

10. Let us take the first point first. It is a matter of common knowledge that victims of snatching are not acquainted with the snatchers, as most of the time snatchings are committed by unknown snatchers. In the instant case also on 4.8.2021 when complainant Parvinder Kaur suffered snatching, she was not acquainted with any of the accused. Although she claimed that she can identify accused if brought before her but at the same time her statement that it was pitch dark at the time of snatching makes her said claim boisterous.

Let us examine whether the prosecution has succeeded in establishing identity of the accused as snatchers. In this regard testimony of Parvinder Kaur needs a detailed reference which makes enormous improvements. In her police statement Ex.P1 complainant had mentioned an

instantaneous/quick act of the accused whereby after snatching her ear ring both the accused riding Activa scooter speeded towards Sangrur. She nowhere claimed in her police statement Ex.P1 that she saw faces of snatchers so as to identify them but in her court statement she made an improved version by stating that she had seen faces of the snatchers, but at the same time in her statement Parvinder Kaur failed to disclose as to how she could identify any of the accused/snatcher, it being complete darkness at that time. Rather, complainant came up with a strange version that she loudly called name of one of the snatcher as 'Mastan' and also identified him when after committing the snatching he was receding but if it is so why in her belated police statement Ex.P1, she did not mention name of one of the snatcher as Mastan Khan? Indeed testimony of Parvinder Kaur contains an improved version.

Although the police has prepared an identification memo Ex.P3 so as to project that the complainant identified Mastan Khan on 23.6.2022 but such an identification is no identification, in the given circumstances. Our Hon'ble High Court in **State of Haryana vs. Ravi and others** 2017 (3) Law Herald 2425 in similar circumstances has held that if in initial statement made by the complainant, she has not named any of the accused and had stated that some unknown person had killed her son, then her subsequent statement identifying the assailant must be relied upon with caution. In **Sunder vs State of Haryana** 1988(1) RCR (Criminal) 523 our Hon'ble High Court has held that when the accused are not known to the PWs prior to the incident and when no test identification parade is held, identification in the Court is not of much value. Hon'ble Apex Court in **Sheo Shankar Singh v. State of Jharkhand** (SC) 2011(2) R.C.R.(Criminal) 634 has held that identification of accused in court by witness constitutes substantive evidence in a case, although any such identification for the first time at trial may more often than not appear to be evidence of a weak character. It was further observed that as to what weight should be attached to such identification in court, is a matter which court will determine in peculiar facts and evidence of identification in court, even without insisting on corroboration.

Thus there remains a big gap as far as establishing identity of the accused is concerned. Making an improved version by the complainant has further denuded her testimony. Hon'ble Delhi High Court in **State N.C.T of Delhi v. Nazir @ Nanhe**, (Delhi) (DB) 2016(4) JCC 2588 has held that when an eye-witness had made gross improvements in all material particulars in the Court, her testimony deserves to be disbelieved on that short ground alone. Hon'ble Allahabad High Court in re: **Beta @ Vidya Sagar and Ors. Versus State of U.P.** (DB) 2017(3) All. LJ 88 has also held that when improvement is widely perceptible in testimony of the witnesses such testimonies become unreliable.

11. Let us proceed further to address next argument of learned defence counsel concerning delay. In this case snatching for of earring, if any occurred on 4.8.2021 but for another five days this matter was not reported to the police. Matter was reported to the police only on 9.8.2021 but it is not case of the prosecution or complainant that in the meantime she had been searching for the assailants. Hon'ble Apex Court in **Thulia Kali vs The State of Tamil Nadu**, AIR 1973 Supreme Court 501 has laid down that delay in lodging the FIR quite often results in embellishments which is a creature of afterthought. On account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. In **Ramdas & Ors. Versus State of Maharashtra** 2007 (1) Apex Court Judgments-125, Hon'ble Apex Court has held that delayed reporting the matter has to be considered in light of other facts and circumstances as in the given case, Court may be satisfied that delay in lodging report has been sufficiently explained, but in the light of totality of evidence, the delay in lodging the matter adversely affects the case of the prosecution and when no reasonable explanation is tendered to explain the delay, it is fatal.

On this aspect when the complainant was put to cross-examination she replied by stating that on that day itself she visited police station where police recorded her *katcha* statement but no such *katcha* statement is part of the record. She further disclosed that she had been

visiting police station on 5.8.2021 and 8.8.2021 as well but her statement was recorded only on 9.8.2021. If the victim was visiting the police station on the day of snatching and subsequently as well, what prevented the police from recording her statement has not been explained.

12. Although the police has recorded supplementary statement Ex.P2 but it has nowhere been made clear by Parvinder Kaur as to from where she came to know the names of the snatchers as Jarnail Singh @ Raju and Mastan Khan. Interestingly in her statement Ex.P2 not only name and parentage of the snatchers but their address has also been mentioned but the source has not been explained, thus reflecting that it is the police who supplied names of the snatchers to her.

13. Coming to the investigation part, the snatching has occurred on 4.8.2021 but in identification memo dated 23.6.2022 Ex.P3 it has wrongly been mentioned that snatching was committed on 9.8.2021 though on 9.8.2021 complainant had made statement to the police. Similarly in her disclosure statement dated 20.6.2022 Ex.P6 it has wrongly been mentioned that accused Jarnail Singh had confessed having committed snatching at Sangrur road on 8.4.2021. In disclosure statement of accused Mastan Khan dated 23.6.2022 Ex.P9 also similar fact of committing alleged snatching on 8.4.2021 has been incorporated though as per the complainant snatching occurred on 4.8.2021. Interestingly even SC Jagtar Singh PW4 confirmed that in the aforesaid disclosure statement accused had reported commission of snatching on 8.4.2021.

Thus it has to be observed that the standard of investigation is highly deficient. In her police statement Ex.P1 age of Parminder Kaur has been mentioned as 50 years but when on 13.12.2022 she came to depose before this Court, she disclosed her age as 63 years which does match her appearance. Apparently no serious effort was made by the Investigating Officer to examine the facts. Non serious investigation was conducted. Though disclosure statement of both the snatchers Ex.P6 and Ex.P7 were recorded but no recovery on the basis of such disclosure statements could be effected. In these circumstances no such disclosure statement can be taken into consideration.

Interestingly, in the disclosure statement it has been tried to be

projected as if Jarnail Singh had instructed Mastan Khan to commit the snatching though this aspect was not established in the investigation or at the trial.

14. No other arguments were submitted by learned defence counsel.

15. In view of the above detailed discussion, I have no compunction to hold that prosecution has failed to bring home guilt to accused Mastan Khan and Jarnail Singh @Raju under Section 379B/201 IPC and I hereby acquit them from the said charges. However, they are directed to furnish bonds under Section 437 (A) Cr.PC in the sum of Rs. 20,000/-. File be consigned to the record room, after due compliance.

Pronounced.

11.04.2023

Sanjeev Kumar, Executive Assistant

Tarsem Mangla

Sessions Judge

Patiala. (UID No.PB0049)

CIS No. SC/316/2022
CNR No. PBPT-0101-0858-2022

State Versus Mastan Khan etc.

Present: Sh. Bikram Singh Goraya, Addl. Public Prosecutor for the State
Accused Mastan Khan in custody, represented by Sh. KS
Ablowal, Advocate.
Accused Jarnail Singh in custody, represented by Sh. Dixit Raj
Kapoor, Advocate.

Defence evidence closed by both the accused.

Arguments heard. Vide separate judgment of even date, accused
Mastan Khan and Jarnail Singh @ Raju have been acquitted of the charges
framed against them. However, they are directed to furnish bonds under
Section 437 (A) Cr.PC in the sum of Rs. 20,000/-. File be consigned to the
record room.

Pronounced
11.04.2023.
Sanjeev Kumar, Stenographer Gr.I

(Tarsem Mangla)
Sessions Judge,
Patiala. (PB0049)