

Filed on	:	30/05/2018.
Registered on	:	30/05/2018.
Decided on	:	07/11/2019.
Duration	:	01 Y., 05 M., 08 D.
<u>Exh.</u>	:	_____

IN THE COURT OF THE METROPOLITAN MAGISTRATE,
36TH COURT, MUMBAI CENTRAL, MUMBAI.
(JUDGMENT UNDER SECTION 355 OF CRIMINAL PROCEDURE CODE)

- (a) The serial No. of the case ; : 348/PW/2018.
MHMM26-000871-2018.
- (b) The date of commission of the offence ; : 15/12/2017.
- (c) The name of the informant (if any) ; : The State (Railway Police Station, Bandra, in C. R. No.1500/2017).
- (d) The name of the accused person and his parentage and residence; : Asif Raies Shaikh @ Babloo.
Age :- 35 Years.
Occ. :- Unemployed.,
R/o. :- Patel Nagari, Room No.1,
Near Common Toilet, Bandra (W), Mumbai.
- (e) The offence complained of or proved ; : Punishable under section 379 of Indian Penal Code.
- (f) The plea of the accused and his examination (if any) ; : Accused pleaded not guilty.
- (g) The final order ; : Accused is convicted.
- (h) The date of such order ; : 07/11/2019.

Appearance : Ld. A.P.P. Mr. Gaikwad for the State.
Accused in person.

J u d g m e n t

D a t e :- 07/11/2019

Accused is facing trial for the offence punishable under section 379 of Indian Penal Code.

2. Brief facts of the prosecution case are, as under :-

That, on 15/12/2017, informant Kunal Aanad Zha, was travelling towards Bandra by Churchgate slow local train. The local reached Andheri railway station, at about 11.30 a.m. At that time, mobile handset of informant was in his pocket. Then the local reached plat form No. 3 of Bandra railway station, at about 12.05 noon. When the informant checked his mobile handset, he found that his mobile handset was stolen by someone. His mobile handset was of Lava company and it's model number was LEB 051 and having I.M.E.I. No. 911485401332672 and 911485401355640. The mobile handset had two SIM Cards one of Airtel company bearing No. 9867836971 and second of Idea company bearing No. 8691814406. After the incident informant had been to Vashi for work. Then on next day, informant lodged report, at railway police station, Bandra, where a Crime Bearing No.1500/2017, for an offence punishable under section 379 of Indian Penal Code came to be registered against unknown.

3. On 16/12/2017, Police Constable R. P. Thakur was on duty, at Platfrom No. 3/4 of Khar railway station. At about 08.10 p.m., he found that accused was boarding in a compartment of local and then was alighting within short time. Therefore, police constable Thakur caught him and started inquiry with him. On inquiry accused gave evasive answers. Therefore, he was taken to Bandra railway police station. P. C. Chavan asked the accused his name. He told his name, as Asif Raies Shaikh @ Babloo. During personal search of accused, one mobile handset involved in the crime (Lava Comapny model No. LEB 051) was recovered from accused. After completion of investigation, chargesheet against accused is forwarded to court for trial.

4. Accused jumped over the bail. Thereafter, he was brought before court in execution of Non Bailable Warrant, on 16/05/2019. Since then he is under trial prisoner. Charge (Exh.6) is framed against accused for an offence punishable under section 379 of Indian Penal Code. The Charge was then read over and explained to the accused in vernacular to which he pleaded not guilty and claimed to be tried. His separate plea, at (Exh.7) is recorded, to that effect. Defence of accused from the mode of cross examination of witnesses and from his statement recorded under section 313 of Criminal Procedure Code, at (Exh. 20) appears of denial and of false implication.

5. Considering the facts and circumstances of the case and the evidence placed on record, following points arise for determination. Findings thereon along with reasons are, as follows.

<u>SR. NO.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1	Does prosecution prove that, on 15/12/2017, in between 10.50 a.m. to 12.05 noon, at platform No. 3 of Bandra railway station, while informant Kunal Aanad Zha was travelling in local train, accused intending to take dishonestly Lava mobile handset, out of possession of informant without his consent, moved it in order to such taking and thereby committed an offence punishable under section 379 of Indian Penal Code?	Yes.
2	What order ?	As per final order.

Reasons

6. To bring home the guilt of accused, prosecution has examined in all four witnesses. (PW.-1) Kunal Aanad Zha (Informant), is examined, at (Exh. 11), (PW.-2) Suresh Dagdu Vandre (Panch Witness), at (Exh.15), (PW.-3) Police Constable Ravindra Pralahad Thakur, at (Exh.17) and (PW.-4) Police Constable Nitin Sadashiv Chavan, (Investigation Officer), at (Exh.19). Heard arguments of Ld. A. P. P. Mr Gaikwad and the accused.

As to Point Nos.-1 and 2 : -

7. Evidence of (PW.-1) Kunal, informant discloses that on 15/12/2017, he boarded in a local train from Kandivali station. Said train reached Bandra railway station, at about 11.45 a.m. At that time, informant came to know that his mobile handset was stolen by someone. Therefore, he lodged report (Exh.-12), at Bandra, railway police station against unknown person. Interim custody of mobile handset is given to the informant. During evidence informant had brought the mobile handset with him and he identified the same. Admittedly, informant has not seen the accused, while committing the theft. Report (Exh.-12) is also lodged by him against the unknown. The evidence of informant himself is sufficient to prove that on the relevant day and time his mobile handset is stolen by someone. The evidence of this witness also discloses that, the incident of theft took place, on 15/12/2017 and report of incident was lodged on next day. It is stated by informant that after incident of theft he had been to Vashi for his work and then on next day he lodged the report.

8. Evidence of (PW.-2) Suresh, a panch witness shows that on 16/12/2017, he was called by police to Bandra railway police station

and police took personal search of accused in his presence. His evidence also discloses that during personal search of accused Black colour mobile handset of Lava company was found in possession of accused and the mobile handset was seized by police, as per Seizure Panchnama (Exh.-16). Said witness identified the accused and also stated that, he can identify the mobile handset, if shown to him. The cross examination of said witness discloses that he denied the suggestion of defence that nothing was seized by police, in his presence. Said witness is independent witness having no affinity with informant and no animosity towards accused. No material is on record to discard his evidence or to cast any doubt on his testimony.

9. The evidence of (P.W.-4) Police Constable Ravindra Thakur discloses that on 16/12/2017, he was on duty at Bandra railway police station. His evidence also discloses that at about 08.10 p.m., he was at platform No.3 of Khar railway station and he saw that the accused entered in compartment of local train and soon came out of it. His evidence also discloses that he took the accused in custody. Accused failed to give any satisfactory answer for his act. Therefore, the accused was taken to Bandra railway police station. During personal search of accused mobile handset of Lava company was found in possession of accused. On verifying I.M.E.I. number, of the mobile phone it was noticed that the mobile phone was involved in Crime No.1500/2017. So it came to be seized vide panchnama. He also denied the suggestion given by defence that nothing was seized from accused.

10. Evidence of (P.W.-4) Police Constable Chavan, Investigation Officer, also discloses that on 16/12/2017, accused was produced before him by (P.W.-3) P.C. Thakur. His evidence also discloses that personal search of accused, was taken in presence of panchas and during search

of accused mobile handset of Lava company was found with accused. His evidence also show that said mobile handset was invovled in crime No.1500/2017, therefore, it came to seized vide panchnama (Exh.-16).

11. As such, the evidence of informant is sufficient to prove that on the relevant day, time and place his mobile handset was stolen by someone and therefore, report (Exh.-12) lodged by him against unknown. The evidence of (PW.-3) Police Officer is sufficient to prove that the accused was caught by police, on suspicion and during personal search of accused the mobile handset of Lava company was seized by him. The said mobile handset was produced by informant before court and he identified the same. Admittedly, theft of mobile handset took place on 15/12/2017. Said mobile handset was found in possession of accused, on 16/12/2017. So it is crystal clear that after one day of commission of theft the accused was found in possession of stolen mobile handset.

12. As per section 114 Illustrion (a) of the Indian Evidence Act, when a person is found in possession of stolen property, soon after the theft, the law presumes that said person is either thief or receiver of that stolen property. The accused on his part did not come forward with any explanation regarding his possession of stolen mobile handset. Now the question is, as to whether possession of accused was recent possession. Theft of mobile handset occured on 15/12/2017. The accused was found in suspicious circumstances, at Khar railway station, on 16/12/2017. Therefore he was taken into custody. Thereafter, police took personal search of accused, in presnece of panchas, where the mobile handset of informant was found in possession of accused. Informant identified his mobile handset. Police verified I.M.E.I. number of the mobile handset found with accused and it was noticed that the

mobile handset is required in crime No.1500/2017. These facts clearly indicates that soon after commission of theft, accused was found in possession of stolen mobile handset.

13. As such, though there is no eye witness of the occurrence of theft the circumstantial evidence on record is sufficient in pointing that only the accused and non else committed theft. The prosecution proved that after theft he was found, at Khar railway station, while boarding and alighting the local train in short time. When the accused was caught, he failed to give any satisfactory answer, about his act. During personal search of accused, stolen mobile handset was found in his possession and that also on next day of occurrence. Accused also failed to account his possession of stolen mobile handset. These facts are firmly proved by prosecution. These circumstances are sufficient to point out that only the accused and none-else committed theft. This is also a fit case to draw inference under section 114 illustration (a) of Indian Evidence Act that accused committed theft of mobile handset belonging to informant. As such, the prosecution proved the charge against accused beyond all reasonable doubt. Hence, point No.1 is answered in affirmative.

14. Today accused is produced before me, through video confernece. As accused is held guilty of the offence punishable under section 379 of Indian Penal Code, it is just and proper to hear him on the quantum of sentence. He submitted that he is having three school going children and wife. They all dependent on him. He also submitted that he is repetening for his act and will not commit any offence in future. He prayed that minimum sentence be awared to him. Ld. A.P.P submitted that maximum punishment be awarded to accused. I have given thoughtful consideration to the submission made by both

sides. Since long accused is under trial prisoner. Taking into consideration, all the facts and circumstances on record, lenient view needs to be taken. In my view, following sentence would meet the real ends of justice. Hence, for answering point No.2, following order is passed.

ORDER

1. Accused viz. Asif Raies Shaikh @ Babloo, is convicted vide section 248 (2) of the Code of Criminal Procedure for the offence punishable under section 379 of the Indian Penal Code and he is sentenced to suffer Simple Imprisonment for 07 (Seven) Months and to pay fine of ₹200/- (Two Hundred) and in default of payment of fine he shall further suffer Simple Imprisonment for 02 (Two) Days.
2. Set off under section 428 of the Code of Criminal Procedure be given to the accused in sentence from 17/12/2017 to 27/12/2017 and 16/05/2019 till date.
3. The seized muddemal i.e. mobile handset of Lava company, model No. LEB 051, I.M.E.I. No. 91148541332672 and 911485401355640, is already returned to the informant viz. Kunal Aanad Zha, R/o. Krantiveer Sanjay Chawl, Room No. 83, Gaondevi Road, Kandivali (W), Mumbai. Supratnama bond executed by him stands cancelled.
4. Sentence passed in C.C. No.348/PW/2018 and 521/PW/2017 to run concurrently.

5. Inform jail authority, accordingly.
6. Copy of judgment be supplied to accused free of cost.
7. Dictated and pronounced in open Court.

Sd/-

(G. P. Bawaskar)

Metropolitan Magistrate,
36th Court, Mumbai Central,
Mumbai.

Date : 07/11/2019.
SRD.

Dictated on :- 07/11/2019.
Transcribed on :- 07/11/2019.
Signed on :- 08/11/2019.
SRD.