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IN THE HIGH COURT OF DELHI AT NEW DELHI

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

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CRL.A. 121 of 2018

Between: -

STATE (NCT OF DELHI)

.... APPELLANT

(Through: Shri Pradeep Gahlot, Additional Public Prosecutor for the State)

AND

**NARENDER @ BABLOO
S/O SH NATHU RAM,
R/O MSC-112, YOGMAYA,
NABI KARI DELHI,**

.... RESPONDENT

(Through: None)

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Pronounced on: 20.01.2023

J U D G M E N T

1. This appeal under Section 378 of the Code of Criminal Procedure, 1973 (in short "Cr.P.C.") is directed against the judgment of acquittal dated 17.09.2014, passed by the learned Special Judge, Tis Hazari Courts, Delhi, in connection with FIR No.575/2002 registered at Police Station Paharganj, Delhi for offence punishable under Sections 379/356/411 of the Indian Penal Code 1860 (in short "IPC").

2. The prosecution case in short is that on 20.11.2002, complainant Raja Singh was attending the marriage ceremony of his colleague at Ambedkar Bhawan, Rani Jhansi Road, Paharganj, Delhi. At about 11:15 PM, when he tried to take out his mobile phone (make Trium IMH No.382198842868206) from

the mobile cover, which was tied with his waist belt. He realised that the accused had stolen the mobile phone (hereinafter referred to as respondent) from his waist. Further, the complainant stated that after his phone got stolen, he and his associates (friends) chased the respondent and subsequently, with the help of the Constable Budh Singh, the respondent was apprehended. Name of the accused was disclosed as Narender S/o Nathu Ram (respondent) and along with him, the belongings of the complainant were recovered. The FIR for offences punishable under Sections 379/356/411 of the IPC was registered against him. After investigation, charge-sheet for offences punishable under Section 379 of the IPC was filed.

3. The respondent pleaded not guilty and claimed trial. The learned trial court *vide* Judgment dated 17.09.2014 convicted the appellant under Section 379 IPC, and sentenced him to undergo simple imprisonment for 2 year and fine of Rs.10,000/- was imposed. In lieu of fine, further simple imprisonment has been directed.

4. The respondent challenged the conviction and the sentence before the learned Special Judge, Tis Hazari Courts, Delhi, whereby the impugned judgment was reversed in the favour of the respondent and hence the State is in revision before this court.

5. To prove its case, the prosecution had examined the complainant Raja Singh as (PW-1), the associate of the complainant Dr. Atul Kohil was examined as PW-3 and Constable Bedh Singh was examined as PW-4. The witness/complainant, (PW-1) during his cross examination has stated that he when was dancing with his friends, he realised that his mobile phone was not in the mobile cover of his belt. In search for his mobile, he came out of the *Shamiyana* (tent) and he noticed that a person (respondent) under suspicious condition was fleeing the spot. Then, (PW-1) along with (PW-3) chased the respondent and later, he was apprehended by Constable Bedh Singh (PW-4) coming from the opposite side. PW-1, further deposed that his mobile phone

was recovered. When the witness PW-1 was asked whether he can recall the date or month of the incident, PW-1 stated that he does not remember the date or month of the incident, but it was winter season of year 2002 and he was not sure that the incident occurred on 21.11.2002.

6. PW-3 deposed that he was attending the marriage with the PW-1, where the mobile of the PW-1 was stolen. He stated that after the mobile was snatched, PW-1 started running after the respondent and during the chase, Constable Bhud Singh (PW-4) from the opposite side apprehended the respondent. Then the witness PW-3 was asked whether he can identify the accused/respondent, but he failed to do so, due to lapse of time. The other witness PW-4, was examined on 20.11.2022, where he deposed that he heard noise of 'Pakro-Pakro' from opposite end, on which he saw a boy, i.e., respondent running towards him and other men chasing him. Then PW-4 coming from the opposite end apprehended the respondent and the belongings of the complainant (PW-1) was recovered from the respondent.

7. Section 379 of the IPC requires four essentials *viz.* (a) that the accused had taken the movable property dishonestly, (b) property was taken out of possession of the complainant, (c) property was taken out without consent of complainant and (d) the property was moved to such taking. To full-fill the requirements under Section 379 of the IPC, the above mentioned ingredients must be full-filled but the statements of the prosecution witnesses failed to corroborate and full-fill the ingredients of Section 379 of the IPC.

8. In the instant case, if the FIR and evidence are seen, the facts and the statements of the witnesses PW-1, PW-3 and PW-4 have failed to be corroborated together. During cross-examination of (PW-1), the witness stated that he does not remember the date and month of the incident. Further, the PW-1 did not see the respondent stealing his mobile, the same came to his attention while dancing at the function. After review of the cross-examination of PW-3 for corroboration of facts, PW-3 failed to elaborate the whole incident whether

he noticed the respondent stealing the mobile or not. The other witness PW-4 Constable Budh Singh stated that he was only present during the chase and not when the offence was committed. It is observed that there could be allegations of offence punishable under Section 411 of the IPC at the most, i.e., the respondent could have been charged for offence punishable under Section 411 of the IPC. The ingredients of offence punishable under Section 379 of the IPC, are not made out against the accused/appellant, as there is no evidence brought on record on behalf of prosecution, as regards the removal of mobile phone belonging to complainant from the possession of the complainant by the respondent and evidence is only as to the recovery of mobile phone. Since no other witness was examined, therefore, the matter was decided and respondent was acquitted.

9. The Hon'ble Supreme Court in the matter of *State of Maharashtra v. Sujay Mangesh Poyarelar*¹ while considering its earlier pronouncements including the decision in the case of *Chandrappa & Ors. v. State of Karnataka*² has held that the power of the appellate court in an appeal against acquittal cannot be said to be restrictive and the High Court has full power to re-appreciate, review and reweigh at large the evidence on which the order of acquittal is relied and to reach its own conclusion on such evidence. Both questions of fact and of law are open to determination by the appellate court. It has also been held that nonetheless it is not correct to say that unless the appellate court in an appeal against acquittal under challenge is convinced, that the finding of acquittal recorded by the trial court is 'perverse', it cannot interfere. If the appellate court on re-appreciation of evidence and keeping in view the well established principles, comes to a contrary conclusion and records a conviction, such conviction cannot be said to be contrary to law.

¹ 2008 9SCC475

² (2007)4 SCC415

10. The Hon'ble Supreme Court in the matter of *Hakeem Khan & Ors. v. State of M.P.*³ has again considered the powers of the Appellate Court for interference in cases where acquittal is recorded by the trial court. In the said decision, it has been held that if the 'possible view' of the trial court is not agreeable to the High Court, even then such 'possible view' recorded by the trial Court cannot be interdicted. It is further held that so long as the view of the trial Court can be reasonably formed, regardless of whether the High Court agrees with the same or not, verdict of the trial court cannot be interdicted and the High Court cannot supplant over the view of the trial court.

11. Having considered the aforesaid facts and circumstances, this court finds that the prosecution has not been able to successfully prove the charge beyond reasonable doubt. On examination of the material available on record, this court is not inclined to take a different view other than the view which has already been taken by the Court below. Accordingly, the appeal is dismissed.

(PURUSHAINDR KUMAR KAURAV)
JUDGE

JANUARY 20, 2023
'SID'

³ (2017) 5 SCC 715