(supra) are aptly applicable to the case on hand. In the said matter, this Court disbelieved the detailed extra-judicial confession and acquitted the accused.

8. Hence, we are of the opinion that the extra-judicial confession placed on record cannot be relied upon. However, even if the extra-judicial confession is to be believed, it would be unsafe to convict the accused and award life imprisonment to him based on the sole circumstance of an extra-judicial confession, more particularly since all the other circumstances remain unproved, and since the Investigation Officer and P.W. 12 have not acted impartially, which is evident from the manner of recording the alleged extra-judicial confession as discussed supra.

9. In our considered opinion, the High Court was not justified in convicting the accused based on the sole circumstance of the extra-judicial confession under the facts and circumstances of this case.

10. Accordingly, the judgment passed by the High Court convicting the Accused No.1/Appellant stands set aside. The appellant is acquitted of all the charges levelled against him. He shall be released forthwith, if he is not required in any other case.

The appeal is, accordingly, allowed.

***Result*:-** Appeal allowed.

ABC 2019 (I) 244 SC
ACQUITTAL & BAIL CASES

SUPREME COURT OF INDIA

(R. Banumathi & R. Subhash Reddy, JJ.)

Criminal Appeal No(s). 146 of 2019
(Arising out of SLP (CRL.) No.10418 of 2018)
(From Punjab & Haryana High Court)
Decided On 25 January, 2019

SURAJ PAL ***- Appellant(s).***

Versus

STATE OF HARYANA ***- Respondent(s).***

Law Covered*:-** ***Indian Penal Code, 1860 — Section 379-A — Conviction under — Snatching of mobile phone —No Test Identification Parade was held — First time identification in the

court— Recovery on the confession of the co-accused — Held, when the mobile phone was allegedly snatched the complainant would have seen the accused only for few seconds— doubtful whether he would have been in a position to identify the appellant-accused— Passage of time between the occurrence & the identification for the first time in the court — case becomes highly doubtful — more so, when the said mobile phone was recovered only at the behest of the disclosure statement of the co-accused —Benefit of doubt— Acquittal. (Para 7 & 8)

Facts:- *The complainant stated in his complaint that two persons came on the motor-cycle and snatched away his mobile. The accused persons were arrested in the State of Rajasthan. The Disclosure statement of the co-accused led to the recovery of the said mobile phone. Based upon the evidence of the complainant and the evidence regarding seizure of mobile phone from the co-accused, the Trial Court convicted the appellant u/s 379-A I.P.C. and sentenced him to undergo rigorous imprisonment for five years.*

Law of relief:- ***By passage of time between the occurrence & the identification for the first time in the court prosecution case becomes highly doubtful.***

Held:- 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. (Para-7)

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. (Para-8)

Counsel:- ***For Appellant(s):*** *MD. Shahid Anwar, Adv.*
For Respondent(s): *Vishwa Pal Singh, Adv.*

JUDGMENT

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 SIM 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.

***Result*:-** Appeal allowed.

ABC 2019 (I) 247 SC
ACQUITTAL & BAIL CASES

SUPREME COURT OF INDIA

(A.M. Khanwilkar & Ajay Rastogi, JJ.)
Criminal Appeal No. 859/2018
(From Gujarat High Court)
Decided On 22 January, 2019

KISHAN KHUBCHAND KORANI & ANR. ***- Appellant(s).***

Versus

STATE OF GUJARAT & ANR. ***- Respondent(s).***

Law Covered*:-** ***(A) Code of Criminal Procedure, 1973 — Section 439 — Regular bail — Acquittal by trial Court — on the ground that the accused was named by only two police officials — His name was not mentioned in the FIR — No identification parade — reversal by High Court — Held, the approach of the High court is debatable— the applicant was on bail during the trial — convicted only for offence punishable maximum with ten years —nothing on record to indicate that the applicant had jumped the conditions of bail— applicant is undergoing HIV treatment— Bail granted—Indian Penal Code, 1860 — Section 436.

March 2019