

HIGH COURT OF DELHI: NEW DELHI

+ CRL. APPEAL NO. 144/2001

RAHIS AHMED

..... Appellant

Through: Mr. A.J. Bhambhani,
Ms. Nisha Bhambhani and
Ms. Lakshita Sethi, Advs.

Versus

STATE

.....Respondent

Through: Mr. M.P. Singh, APP for the
State.

% Judgment reserved on: 23RD November, 2009
Judgment delivered on: 30th November, 2009

Coram:

HON'BLE MR. JUSTICE A.K. PATHAK

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| 1. Whether the Reporters of local papers
may be allowed to see the judgment? | No |
| 2. To be referred to Reporter or not? | No |
| 3. Whether the judgment should be
reported in the Digest? | No |

A.K. PATHAK, J.

1. The appellant has been convicted under Sections 392/397 of the Indian Penal Code (for short hereinafter referred to as "IPC") by the learned Additional Sessions Judge, New Delhi and has been sentenced to face rigorous imprisonment for a period of three years and to pay fine of

Rs. 5,000/-; in default of payment of fine, to further undergo simple imprisonment for two months for the offence under Section 392 IPC; sentence to undergo rigorous imprisonment for a period of seven years for the offence under Section 397 IPC. Both the sentences have been ordered to run concurrently.

2. Aggrieved by his conviction and sentence appellant has filed this appeal.

3. In brief, prosecution case is that complainant Dilshad Ahmed was sleeping in front of factory premises bearing No. B-114, Mohadpur Village, R.K. Puram, New Delhi in the night intervening 18th/19th June, 1994. He was working in a leather factory. Aneez Ahmed, brother of the proprietor of leather factory, was also sleeping nearby him. At about 2:30 am, Dilshad Ahmed woke up, on hearing some noise of breaking of lock, complainant saw appellant Rahis Ahmed carrying away two suit cases. When he asked as to what was he doing Rahis Ahmed gave a knife blow on his chest. Dilshad Ahmed raised alarm at which Aneez Ahmed, who was sleeping nearby, also woke up. In the meanwhile, the appellant gave another knife blow to

Dilshad Ahmed on his leg. Thereafter, Rahis Ahmed ran away, leaving the said two suit cases behind. Dilshad Ahmed was removed to All India Institute of Medical Sciences (for short hereinafter referred to as "AIIMS") where he was medically examined.

4. Information regarding incident was received in the Police Station R.K. Puram vide D.D. No. 4B, dated 19th June, 1994 and was handed over to SI Mohan Singh (Investigating Officer) for enquiry, who reached AIIMS along with Constable Jagbir Singh and recorded statement of Dilshad Ahmed wherein the incident was described by him in the manner as narrated in para No. 3 hereinabove. Pursuant to his statement, FIR No. 339/1994 was registered. Site plan was prepared. Aneez Ahmed, who was present in AIIMS, handed over blood stained *baniyan* of Dilshad Ahmed, which was seized by the Investigating Officer. Investigating Officer went to the spot with Anees Ahmed and Constable Jasbir Singh and seized two suit cases and one *plass* which was lying outside the house. He also found door of the said house broken. At the

instance of Aneez Ahmed appellant was apprehended and arrested.

5. Appellant made a disclosure statement and got recovered the knife used in the crime. Knife was taken in possession and its sketch was prepared and thereafter, it was seized.

6. After completion of investigation charge sheet was filed before the learned Metropolitan Magistrate, who in turn took cognizance of the offence and committed the case to the sessions court.

7. Charge under Sections 392 and 397 IPC was framed against the appellant on 9th January, 1997 to which he pleaded not guilty and claimed trial. Prosecution examined six witnesses in all. Dilshad Ahmed was examined as PW1. Aneez Ahmed was examined as PW2. Mohd. Hanif was examined as PW3. Constable Jagbir Singh was examined as PW4. Dr. S.K. Gupta of AIIMS was examined as PW5 and SI Mohan Singh (Investigating Officer) was examined as PW6.

8. After prosecution closed evidence, statement under Section 313 Cr.P.C. of the appellant was recorded on 13th

July, 2000 wherein entire incriminating evidence, which had come on record, was put to him. Appellant denied his complicity in the crime and claimed himself to be innocent. He stated that he was having his own leather factory within the premises. He used to manufacture leather goods for Hanif and Aneez Ahmed. That Hanif and Aneez Ahmed owed him Rs.50,000/-. Dilshad Ahmed received injuries at the hands of his brother Sarfaraz. Taking advantage of this fact, Dilshad Ahmed and Mohd. Hanif involved the appellant in this false case in order to avoid payment of outstanding dues of the appellant. However, no evidence was led by the appellant in his defence.

9. Learned trial court found the testimony of PW1 Dilshad Ahmed and PW2 Aneez Ahmed, trustworthy and reliable. From the testimony of PW5 and the MLC on record, the trial court was satisfied that injuries received by Dilshad Ahmed on his chest and his lower thigh were caused by a sharp object and were duly supported by the statement of Dilshad Ahmed coupled with the factum of recovery of knife pursuant to the disclosure statement of

the appellant. Recovery was believed to be correct. Consequently, learned trial court held that the prosecution had succeeded in proving its case against the appellant.

10. I have heard learned counsel for the parties and have perused the entire record including the record of the learned trial court. I have carefully gone through the testimonies of star witnesses of prosecution namely Dilshad Ahmed and Aneez Ahmed, who have been examined as PW 1 and PW2 respectively. I am satisfied that from their testimonies, it is proved that the appellant had stolen suit cases after breaking the lock of the door of the factory and when Dilshad Ahmed noticed this fact and challenged the appellant, he gave a knife blow on his chest and thigh after which he ran away. Testimony of PW1 Dilshad Ahmed has remained unshattered in his cross-examination, on material points and has rightly been accepted by the learned trial court. Testimony of PW1 Dilshad Ahmed has also been corroborated by PW2 Aneez on material points. PW2 has deposed that on hearing alarm raised by Dilshad Ahmed he woke up and saw

appellant grappling with Dilshad Ahmed and thereafter running away.

11. Learned counsel for the appellant has contended that PW2 Aneez was declared hostile by the learned APP for the State and was cross examined. Since PW2 was declared hostile, his testimony cannot be looked into for any purpose whatsoever. In absence of his testimony only testimony of PW1 was available, which was not sufficient to base the conviction more so, when PW1 was an interested witness. No independent witness was joined during the investigation. Accordingly, it would not be safe to place reliance on the sole testimony of PW1 for convicting the appellant.

12. I do not find any force in this contention of the learned counsel for the appellant. It is well settled that even testimony of hostile witness can be read to the extent it supports the prosecution case. PW2 Aneez Ahmed has corroborated the incident. He has deposed that he was sleeping outside the factory along with Dilshad Ahmed. In the intervening night of 18th or 19th June, 1994 at about 2:30 am he heard a call from Dilshad

Ahmed and got up and saw appellant grappling with Dilshad Ahmed and thereafter running away. He also noticed Dilshad Ahmed had sustained knife injuries on his chest and leg. He removed Dilshad Ahmed to AIIMS and got him admitted there. The Police arrived there and recorded statement of Dilsahd Ahmed. His this version clearly show that he has corroborated PW1 regarding the main incident. PW2 has also deposed about the two suit cases being taken into possession by the Police, vide seizure memo Ex. PW2/A. He has identified his signatures on the said seizure memo. To this extent, his testimony can be accepted.

13. Merely because PW2 had deposed that he did not see any knife in the hand of appellant will not make much difference in the peculiar facts of this case. PW2 has categorically deposed that he saw the appellant grappling with Dilshad and that he noticed knife injuries on the chest and leg of Dilshad Ahmed immediately after the incident. This version of PW2 clearly supports statement of PW1 that he had received injuries by a knife and the same were inflicted by the appellant.

14. In his cross examination by the learned APP for the State, PW2 had admitted that after the accused was arrested he made disclosure statement and got recovered the knife from the flush of the toilet of B-114, Mohadpur, R.K.Puram, New Delhi. He had also deposed that sketch of the knife Ex. PW2/C was prepared and the same bears his signatures. He has categorically deposed that the knife was sealed in a packet and was taken into possession vide seizure memo Ex. PW2/D, which also bears his signatures. He also identified the knife in the Court. His version is also supported by the statement of the Investigating Officer. Recovery of the knife at the instance of the appellant had been duly proved. Merely because PW2 was declared hostile and cross examined by learned APP for the State, his testimony cannot be thrown away from consideration as a whole. The portion which supports the prosecution case can be read in evidence against the appellant.

15. Accordingly, I am of the view that learned trial court had rightly accepted the testimony of PW1 Dilshad Ahmed and PW2 Aneez Ahmed in concluding that the appellant in

the intervening night of 18th/19th June, 1994 had stolen two suit cases, after breaking the lock of the factory of Hanif Ahmed and when he was taking away the same with him, PW1 Dilsahd Ahmed woke up and challenged him, at which appellant gave knife blows to Dilshad Ahmed on his chest and leg causing injuries to him.

16. Section 390 of the Indian Penal Code provides that theft is “robbery” if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint. In this case the appellant had committed the theft and while he was carrying away the property obtained by theft he was noticed by Dilshad Ahmed and was challenged, pursuant to which, appellant voluntarily caused hurt to him by a knife. Thus, his this act falls within the ambit and scope of robbery, as defined under Section 390 of the Indian Panel Code and is punishable under Section 392 of IPC.

17. Section 397 of the Indian Penal Code further provides that if at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years.

18. In this case, the appellant, at the time of committing robbery, used a knife, which is a deadly weapon within the meaning of Section 397, and the same had caused hurt to the complainant Dilshad Ahmed, thus, appellant was liable to be punished under Section 397 IPC.

19. In the light of the above discussions, I am of the view that learned trial court has rightly convicted the appellant under Section 392 as well as 397 of the Indian Penal Code and has awarded proper sentence to him which needs no interference by this Court.

20. Dismissed.

A.K. PATHAK, J

November 30, 2009
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