

* IN THE HIGH COURT OF DELHI AT NEW DELHI
% Judgment delivered on: 22nd December, 2010

+ **CRIMINAL APPEAL NO. 677 OF 2007**

SALEEM Appellant
! Through: Ms. Sahila Lamba, Advocate

versus

\$ **STATE OF NCT OF DELHI** Respondent
^ Through: Mr. Pawan Behl, APP

WITH

CRIMINAL APPEAL NO. 167 OF 2008

SHEKHAR Appellant
! Through: Ms. Anu Narula, Advocate

versus

\$ **STATE OF NCT OF DELHI** Respondent
^ Through: Mr. Pawan Behl, APP

AND

CRIMINAL APPEAL NO. 46 OF 2009

MOHD. AKHTAR @ RAHUL Appellant
! Through: Mr. Sumit Verma, Advocate

versus

\$ **STATE OF NCT OF DELHI** Respondent
^ Through: Mr. Pawan Behl, APP

CORAM:

* **HON'BLE MR. JUSTICE P.K.BHASIN**

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

JUDGMENT

P.K.BHASIN,J:

These three appeals have been filed by the three accused-appellants challenging their conviction and punishment awarded to them by the Court of Additional Sessions Judge in Sessions Case No.50 of 2006. Vide judgment dated 17th September,2007 accused-appellants have been convicted under Section 392 read with Section 34 of the Indian Penal Code('IPC' in short) and accused-appellant Mohd. Akhtar @ Rahul has been additionally held guilty under Sections 411 and 397 IPC also and vide order dated 24th September,2007 all the three accused-appellants were awarded 10 years' rigorous imprisonment and fine of Rs.5000/- each with a default stipulation that they shall have to undergo further simple imprisonment for a period of one year in case of default in payment of fine. For the conviction under Section 411 IPC accused-appellant Mohd. Akhtar @ Rahul was separately awarded sentence of rigorous imprisonment of three years and his substantive sentences of imprisonment were ordered to run consecutively.

2. The case of the prosecution was that on 21st December,2005 at about 3 p.m. PW-1 Rajan Chaudhary alongwith his employee PW-2 Kashi Nath was going towards New Delhi Railway station on foot. At that time Kashi Nath was carrying with him a black coloured brief of Goldman Company case having Rs.1,25,000/- in it which amount he had withdrawn

from the bank account of his employer's firm M/s Sri Enterprises Ram a day before. When they reached Kundewalan gali in Ajmeri Gate one fat boy(accused-appellant Saleem) came and caught hold of the hand of Kashi Nath with which he was holding the brief case containing money and that boy also kept a knife on the neck of Kashi Nath and another boy(accused-appellant Shekhar) started giving fist blows to Kashi Nath and their third companion snatched the brief case from Kashi Nath. Therafter all the three boys ran towards Kuch Pati Ram. On hue and cry being raised by Rajan Chaudhary some public persons collected there and those boys were chased. Accused-appellant Saleem and accused-appellant Shekhar could be apprehended at some distance from the place of incident by PWs 1 and 2 with the help of public persons while the third person who had snatched the brief (accused-appellant Mohd. Akhtar @ Rahul) managed to escape. The two apprehended accused were beaten by the public. PW-14 Sub-Inspector Ho Ram Singh alongwith two constables posted at Hauz Quazi police station, within whose jurisdiction the robbery had taken place, happened to be on patrolling duty at that time and hearing the commotion came to the place where accused Saleem and Shekhar had been apprehended. PW-1 Rajan Chaudhary narrated to SI Ho Ram Singh what all had happended with PW-2 Kashi Nath and the two accused were handed over to him. The statement of PW-1 was reduced into writing by SI Ho Ram Singh meanwhile the police also reached there and on this statement of Rajan Chaudhary and a rukka was prepared by SI HO Ram Singh he sent constable Karambir with that rukka to the police station

Hauz Quazi for registration of the FIR under Sections 392/397/34 IPC which was accordingly registered.

3. As per the further prosecution case during his interrogation at the spot accused – appellant Salim volunteered to get recovered the knife used by him while robbing the complainant and which he claimed to have thrown on the roadside while running away from the place of incident and at his instance knife Ex. PW-6/C was recovered from a nali and the same was taken into police possession vide seizure memo Ex. PW-6/D. Accused- appellant Mohd. Akhtar @ Rahul @ Rahul was then arrested by the police on 24th December, 2005 from his house in village Balipada(in Bihar) on the pointing out of a secret informer. He also made a disclosure statement and pursuant to that he also allegedly got recovered a part of the robbed money which was kept lying under the bedding of a takht in his house. The total recovered amount was ₹ 53,000 consisting of currency notes of different denominations. Those currency notes were taken into police possession vide memo Ex. PW-7/B. The police also seized one motor-cycle which was lying parked in the courtyard of the house of the accused Mohd. Akhtar @ Rahul since it was claimed to have been purchased out of the remaining robbed money. This accused was then brought to Delhi and the police applied to the concerned Magistrate for holding test identification parade in respect of accused – appellant Mohd. Akhtar @ Rahul. However, that accused refused to participate in the test identification parade for the reason that he had been shown to the witnesses. As per the further prosecution case this accused made another

disclosure statement and pursuant to that he also got recovered the black coloured briefcase(Ex.P-1) which was snatched from the hand of PW-2 Kashi Nath at the time of robbery. That recovery was from the factory of PW-5 in some place in District Katiyar(Bihar). During investigation the police confirmed from the bank from where the complainant had withdrawn case amount of Rs.1,25,000/- from their account a day before the incident.

4. After completion of investigation, all the three accused appellants were charge-sheeted by the police and after committal of the case to Sessions Court the Additional Sessions Judge framed charge under Section 392/34 IPC against all the three accused persons. Separate charges under Sections 411 and 397 IPC were also framed against accused Saleem. All the accused pleaded not guilty and claimed to be tried. The prosecution then examined 14 witnesses including the complainant Rajan Chaudhary and his employee Kashi Nath.

5. Learned trial Court after considering the evidence adduced by the prosecution passed the impugned judgment holding all the three accused-appellants guilty and sentenced them, as has been noticed already. Feeling aggrieved, the three convicted accused filed separate appeals which were however heard together and are now being disposed of also together by this common judgment.

6. The prosecution had relied upon the evidence of the complainant and his employee Kashi Nath, as eye witnesses of the incident, for proving its case against the three accused persons and against accused

Mohd. Akhtar @ Rahul the prosecution had also adduced evidence of recovery of part of the robbed money from his house and the complainant's briefcase at his instance from the factory of PW-5. The evidence in that regard was of the police officials and PW-5 Afsar.

7. PW-1 Rajan Chaudhary and PW-2 Kashi Nath had narrated the incident almost exactly as had been informed to the police immediately after the incident. They corroborated each other's version on all aspects and gave the role of each of the three accused persons. Both of them claimed that three accused persons were culprits who had committed robbery. They also deposed that accused Saleem and Shekhar were apprehended at the spot while attempting to run away after committing robbery. The police officer PW-14, PW-6 constable Karambir and PW-8 constable Tapsi who were on patrolling duty at the time of the incident in that area where the incident had taken place had also deposed that these two accused were handed over by the public to them at the place of the incident. It was suggested by the accused to PW-6 that the accused were severely beaten by the public which shows that these two accused were accepting the narration PWs 1 and 2. Learned counsel for these two accused – appellants had submitted that when the prosecution claims that these two accused were apprehended by the public persons then at least one of them should have been produced and examined by the prosecution to corroborate the evidence of PWs 1 and 2 but none has been examined and their non-examination renders the prosecution case doubtful. However, I do not find any merit in this argument since the complainant

Rajan Chaudhary in his cross-examination stated that none of the public persons had come forward to give their statements before the police stating that they would not indulge in Court cases. Similarly PW-6 Constable Karambir also stated so in his cross-examination. There is nothing to disbelieve this explanation given by PWs 1 and 6. Nothing could be elicited from PWs 1 and 2 in their cross-examination which could discredit them. No reason for their falsely implicating the accused persons was suggested to them in their cross-examination. Learned trial Court had found the evidence of both these witnesses to be reliable and this Court also sees no reason to disbelieve their evidence and to differ with the findings rendered by the learned trial Court.

8. The evidence of PWs 1 and 2 gets corroborated from the prompt registration of the FIR in which the entire incident had been narrated by the complainant Rajan Chaudhary as and the names of the accused Saleem and Shekhar which they had come to know during their interrogation by the police were also mentioned. Therefore, I have no hesitation in upholding the conviction of accused—appellants Saleem and Shekhar for the offence of robbery. As has been noticed already, the prosecution case further was that accused—appellant Saleem had got recovered one vegetable knife Ex. P-5 pursuant to his disclosure statement. There is no doubt that PWs 1 and 2 as well as the investigating officer PW-14 and the two constables with him on patrolling duty, PW-6 constable Karambir and PW-8 Tapsi have also deposed about the recovery of knife at the instance of accused Saleem but in my view, and as was rightly submitted by the

learned counsel for accused Saleem also, that recovery of the knife will be of no significance since neither PW-1 nor PW-2 had deposed that Ex. P-5 was the same knife which had been used by accused Saleem at the time of incident of robbery.

9. As far as accused Mohd. Akhtar @ Rahul is concerned, his involvement is also fully established from the evidence of PWs 1 and 2 both of whom had identified him also in Court as the third culprit who had managed to escape with the robbed brief case containing money. I have found these two witnesses wholly trustworthy and the identification of accused Akhtar @ Rahul by these two eye witnesses in Court which was preceded by the refusal of this accused to participate in the test identification parade established beyond doubt his complicity also in the incident of robbery. Because of his refusal to participate in the test identification parade an inference has to be drawn against him that he was guilty. Learned trial Court has rightly observed in the impugned judgment that nothing had been brought on record during the cross-examination of any of the witnesses from which it could be inferred that there was even a possibility of his being shown to PWs 1 and 2 before the test identification parade and so his plea that he had refused to participate in the identification parade was not justified.

10. It was also the prosecution case is that from the house of accused Mohd. Akhtar a part of the robbed money was recovered. Learned counsel for this accused had submitted that the recovery of robbed money from his house is doubtful since the prosecution had not produced during evidence

the currency notes and only some photocopies were produced and exhibited which is no legal evidence. And as far as the recovery of one briefcase at his instance is concerned the same is also of no help to the prosecution since PWs 1 & 2 themselves deposed that that briefcase had been shown to them by the police at the police station and consequently the identification of that briefcase by these two witnesses in Court has no value. On the other hand, learned additional public prosecutor appearing for the State had contended that the original currency notes had been taken on superdari by the complainant and their photocopies had been retained and that is why their photocopies were exhibited. Regarding the identification of the briefcase Ex. P-1 by PWs 1 and 2 at the police station, as claimed by them, the learned additional public prosecutor did not claim that that briefcase had not been shown to these two witnesses by the police at the police station. It was however contended that the involvement of accused Mohd. Akhtar @ Rahul in any event stood proved from the evidence of PWs 1 and 2 and which stood corroborated also by the refusal of this accused to participate in the test identification parade.

11. I am of the view that as far as the prosecution evidence regarding recovery of currency notes at the instance of accused Mohd. Akhtar @ Rahul and the briefcase is concerned there is force in the submission of his counsel that because of non-production of the original currency notes and the police showing the brief-case to PWs 1 and 2 at the police station that evidence cannot be availed of by the prosecution in support of its case against accused Mohd. Akhtar @ Rahul. No witness had claimed that the

original notes had been taken on superdari by anyone and in any case there is no explanation as to why the same had not been got produced from the superdar during the prosecution evidence. There is also no explanation as to why the brief case was shown to PWs 1 and 2 at the police station. So, its identification in Court by these witnesses loses all significance. However, I am in full agreement with the submission of learned additional public prosecutor that even if that evidence is ignored the conviction of this accused on the basis of his identification in Court by PWs 1 and 2, who have been found to be wholly reliable witnesses and whose evidence is corroborated also by the circumstance of refusal of this accused to participate in the test identification parade. Therefore, the conviction of accused Mohd. Akhtar @ Rahul is also upheld under Section 392/34 IPC. However, since the evidence of recovery of robbed money from this accused has not been accepted his conviction under Section 411 IPC cannot be sustained.

12. It had also been argued on behalf of the three appellants by their learned counsel that in the event of this Court not accepting their appeals at least their sentence of imprisonment should be reduced since there were no circumstances justifying imposition of the maximum sentence of imprisonment provided under Section 392 IPC and considering the fact that they had remained in jail for sufficiently long period their sentence of imprisonment should be reduced to the period already undergone by them in jail. Considering all the facts and circumstances and particularly the fact that this is a case of daylight robbery in a market place and the

accused had acted like dare-devils this Court is not inclined to reduce the period of sentence of imprisonment awarded to the three appellants by the trial Court to the already undergone period. However, I consider then years' imprisonment to be quite excessive and that period deserves to be reduced.

13. These appeals are accordingly disposed of by maintaining the conviction of all the three accused- appellants under Section 392/34 IPC. However, the sentence of imprisonment awarded to each one of them is reduced from ten years to six years. The sentence of fine is, however, maintained as it is. Accused Mohd. Akhtar @ Rahul is acquitted of the charge under Section 411 IPC.

As far as appellants Saleem and Shekhar are concerned they are already in jail serving out their sentence while sentence of imprisonment awarded to appellant Mohd. Akhtar @ Rahul was suspended during the pendency of the appeal. Since his conviction under Section 392 IPC has been maintained and he has not completed full term of his sentence his bail bonds stand cancelled and he shall now be taken into custody by the police and lodged in jail to complete remaining period of sentence of imprisonment.

P.K. BHASIN,J

December 22, 2010
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