

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.Appeal No.879/2010**

% Judgment reserved on: 22nd Sept. 2011
Judgment delivered on: 28th Sept. 2011

+ CRL.A. 879/2010

VINOD @ RAMESH

..... Appellant
Through: Mr. Atul Bandhu and
Mr. Varun Kumar, Advs.

versus

THE STATE

..... Respondent
Through: Ms. Rajdipa Behura, APP
for State.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

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

SURESH KAIT, J.

1. The instant appeal is being filed against the judgment dated 15.10.2009 passed by learned Additional Sessions Judge, Delhi in case FIR No.385/2001 under Section 392/397/34 Indian Penal Code, 1860 registered at police station Nangloi, Delhi whereby the co-accused Rajeev @ Raju has been acquitted by giving him benefit of doubt for

the offence under Section 392/34 Indian Penal Code, 1860 read with Section 397/34 Indian Penal Code, 1860; whereas the appellant has been held guilty and convicted for the offence punishable under Section 392 of Indian Penal Code, 1860 read with Section 397 Indian Penal Code, 1860.

2. Vide order of sentence dated 21.10.2009, the appellant was sentenced to RI for 07 years and fine of ₹ 15,000/- under Section 392 read with Section 397 Indian Penal Code, 1860. Benefit of Section 428 Criminal Procedure Code has also been given.

3. The facts in brief are as follow:-

4. One Sh.Satish Chand was running a PCO booth in Tri Nagar, Delhi; left his shop on his two wheeler scooter No.DL-8S-6036 on 15.05.2011 at about 10:15PM. He was carrying an amount of ₹50,000/- in the form of five bundles of currency notes in the denomination of ₹100/- in the front dickey of his said scooter.

5. When he reached near the house of Dr.Narendera, D-16, Extension – II D, Nangloi, at about 10:45PM; he heard a

voice '*Satish Bhaisaab*'. On hearing, he stopped his scooter and when he turned back, he saw two persons on a two wheeler scooter. One of them get down from the scooter, came near to the complainant and gave slap on his cheek and intimidated him with a knife. The complainant became nervous and left his scooter which was taken by the said persons. Thereafter, he went to the Nagnloi police station and give his statement to the police narrating the entire incident and got the FIR No.385/2001 under Section 392/397/34 Indian Penal Code, 1860 registered at police station.

6. During investigation, the investigating officer prepared the site plan of the place of occurrence and recorded the supplementary statement of the complainant regarding the correct registration of his scooter.

7. On 31.05.2001, appellant was arrested in case FIR No.507/2001 under Section 25 Arms Act at police station Rajouri Garden, Delhi wherein he disclosed his involvement in the present case.

8. On 01.06.2011, co-accused namely Rajeev was

arrested by the police of Operation Cell, North – West District and he also disclosed about his involvement in the present case. On the basis of same, the investigating officer got issued the Production Warrants of both accused persons and they were arrested in the present case on 07.06.2001.

9. The Test Identification Parade of the appellant was got conducted and he was duly identified by the complainant.

10. Both the accused persons made their disclosure statements to the police and pursuant to same, co-accused Rajeev got recovered a mobile phone which was alleged bought by him from the part looted amount; he also got recovered ₹1,100/- in cash which was also a part of the looted amount.

11. The police got recovered the dagger from his house, which was allegedly recovered in the commission of the offence.

12. After the completion of investigation, the charge-sheet was filed against both the accused persons under Section 392/397/34 Indian Penal Code, 1860.

13. Vide order dated 19.03.2002 charge under Section 392/395 Indian Penal Code, 1860 read with Section 397/34 Indian Penal Code, 1860 was framed against both the accused persons, to which both of them pleaded not guilty and claimed trial.

14. In order to prove its case before the Trial Court, prosecution has examined as many as 13 witnesses.

15. The complainant Shri Satish Chand has been examined as PW1. He has deposed on the lines of the complaint made to the police and proved the same as Ex.PW1/A. He has also identified the dagger Ex.P1 which was allegedly recovered from the appellant and has also identified the cash amount of ₹1,100/- as his own, which was allegedly recovered from the co-accused Rajeev.

16. PW2 Shri Baldev Raj Aneja was allegedly the person from whom the accused Rajeev had purchased the mobile phone out of the looted amount, but has completely turned hostile and denied to the fact that the accused had purchased any mobile phone instrument from his shop or that he further executed the receipt of ₹5,000/- as alleged by

the prosecution.

17. PW4 Shri Ashok had deposed that he has given ₹50,000/- to complainant Shri Satish Chand on 15.05.2011 on credit basis, but on the next day, he came to know that Shri Satish Chand was robbed of this money by someone.

18. PW8 Shri Pawan Kumar is the relative of the complainant, who he had given the loan of ₹50,000/- to the complainant and this amount of ₹50,000/- which the complainant had taken on interest from PW4 Shri Ashok had to be returned to him.

19. PW3 HC Virender Kumar has proved the FIR in instant case as Ex.PW3/A. PW5 SI Anil Kumar was the witness of arrest of appellant in case FIR No.507/2001 under Section 25 Arms Act, police Station Rajouri Garden, New Delhi, in which the appellant had disclosed about his involvement in the present case.

20. PW6 Ct.Dalbir Singh was the witness of recovery of mobile phone which was seized vide seizure memo Ex.PW1/D from the shop namely *Aneja Communications*

which was allegedly purchase by the co-accused Rajeev from the part of the looted amount. This witness has also proved the recovery of the dagger at the instance of appellant which was seized vide seizure memo Ex.PW1/E.

21. PW7 SI Sajjan Singh has proved the arrest of the appellant in case FIR No.507/2001 under Section 25 Arms Act, police Station Rajouri Garden, New Delhi. This witness has also proved the disclosure statement made by the appellant in the said case as Ex.PW5/A.

22. PW9 Smt.Seema Maini, the then learned Metropolitan Magistrate, Tis Hazari Courts, Delhi who conducted the TIP proceedings of the appellant in which complainant Sh.Satish Chand duly identified the appellant vide the TIP proceedings Ex.PW9/B.

23. PW10 Ct.Kaptan Singh and PW12 SI Dharmender Kumar were the witnesses of arrest of co-accused Rajeev under Section 41.1 Criminal Procedure Code within the area of police station Saraswati Vihar. They were also the witnesses of the disclosure statement marked PW10/A of co-accused Rajeev, who had disclosed his involvement in the

present case.

24. PW11 Ct. Munda Gyanove had taken the *rukka* Ex.PW1/A to the police station Nangloi.

25. PW13 Inspector Hanuman Sahai was the investigating officer of this case, who had proved his endorsement PW13/A made on the statement of complainant Sh.Satish Chand PW1/A and he has also proved the site plan Ex.PW13/B. He had also arrested both the accused persons including appellant and the disclosure statement of both the accused persons have been proved as Ex.PW13/C and Ex.PW13/D respectively, he had also got the recovery effected from them.

26. On completion of the prosecution evidence, statement of both the accused persons, including the appellant were recorded under Section 313 Criminal Procedure Code, wherein they had denied the prosecution evidence and had stated that they had been falsely implicated in this case. However, no defence evidence was led.

27. I note that the charge was amended on 20.11.2007,

thereafter, on 20.05.2009, both the accused persons finally charged for the offence under Section 392/394 read with Section 397/34 Indian Penal Code; to which they pleaded not guilty. It was further stated that no prejudice has been caused to the accused persons, hence Prosecution Witnesses were not recalled as they had already examined and cross-examined.

28. Learned Trial Judge after hearing both the sides has recorded that PW1 Shri Satish Chand was running a PCO Booth at Tri Nagar, Delhi. On 15.05.2001 at about 10:15PM, he left the shop for his house on two wheeler scooter bearing registration No.DL-8S-6036. He was also carrying cash amount of ₹50,000/- in the front dickey of compartment of the scooter. He had taken this amount on interest from one Sh.Ashok Kumar, which he had to give to one Shri Pawan Kumar.

29. It is further recorded, complainant Sh.Satish Chand heard a noise of '*Satish Bhaisaab*' at about 10:45PM, when he reached near the house of Dr.Narendra. He stopped his scooter and turned back and saw accused Rajeev and

appellant were present on a two wheeler scooter. Thereafter, appellant, got down from their scooter and gave a slap on the cheek of complainant and took out a knife. He further stated that he became puzzled and left his scooter. Complainant raised alarm and accused managed to escape. His cousin made a phone call at 100 Number. PCR Van arrived on the spot and he went to the police station. There, he made his statement Ex.PW1/A. On 17.05.2001 he again went to the police station and asked the police officer to rectify the scooter number i.e. letter 'L', which was left out in his initial statement. The complainant identified the appellant on 08.06.2001 in the TIP proceedings.

30. Mr.Atul Bandhu, learned counsel for the appellant has argued that complainant Satish Chand who was on his two wheeler scooter and was carrying a cash amount of ₹50,000/- at about 10:15PM. He heard a noise '*Satish Bhaisaab*' and stopped his scooter fully knowing that the time was very odd and he was carrying ₹50,000/- and that to money he had taken on loan.

31. Learned counsel for the appellant submitted that in

such a situation, and such at an odd time, especially when a person was carrying ₹50,000/-, who took the same on loan and further had to deliver to someone, will not stop the scooter at an abandoned place.

32. Learned counsel further submitted that none of the accused persons including the appellant was arrested on the spot or that the scooter, as alleged to have been snatched from the complainant, was not at all traced out. However, the police falsely arrested the appellant in a case under Section 25 Arms Act vide FIR No.507/2001 police Station Rajouri Garden, New Delhi. There, the police recorded his disclosure statement. Thus, the appellant was falsely booked in this case, just to solve the untraced case.

33. He has also pointed out, as alleged by the complainant – PW1 Shri Satish Chand – the appellant used knife while robbing said amount ₹50,000/- from him; whereas rest of the witnesses has deposed that the dagger was used in the crime and same has been recovered.

34. In the cross-examination, PW1 Shri Satish Chand has deposed that except preparing the sketch of the knife, police

officer did not prepare any other documents nor done any writing work etc at the house of the appellant. He further admitted that the seizure memo was prepared while sitting in the van about 100 yards away from the site of recovery of weapon of offence.

35. The knife/dagger allegedly recovered from the house of the appellant. The police had not prepared any site plan of that house or the site plan of the spot from where the alleged knife/ dagger was recovered.

36. The two wheeler scooter snatched from the complainant has also not been recovered in the present case.

37. Admittedly, the complainant was not related to the appellant, therefore, there was no question to call the complainant by name as '*Satish Bhaisaab*'.

38. Further, argued, as deposed by the complainant that when he was robbed, he raised alarm, his cousin made a phone call at Number 100; whereas as per the statement recorded by the police, which became the source/base of the

FIR, he stated that after being robbed, he immediately rushed to police station, therefore, the story of his cousin being present at the spot and making phone call at Number 100 is an improvement and has not been explained for his being present at the spot.

39. On the aspect of the TIP, learned counsel for appellant has submitted that on 08.06.2001, the appellant was taken out from the lock-up in the evening and led the police party. Unfortunately, the complainant met them outside the police station and joined the police party for investigation. At that time, the complainant had come to know about the identity of the appellant.

40. He has further submitted that co accused Rajeev has been acquitted in the present case, therefore, the whole story of the prosecution is demolished, as the prosecution could not establish as to who else other person allegedly robbed the complainant with appellant.

41. Ms.Rajdipa Behura, Learned APP for State submits that PW4 Shri Ashok Kumar has proved that the complainant had taken the loan amount of ₹50,000/- from him. PW8 Shri

Pawan Kumar has proved that the money had to be given to him in repayment of the earlier loan taken by the complainant.

42. On the aspect of knife/dagger, learned APP submitted that the complainant being not highly educated persons did not use the proper word, in fact the weapon used in the offence is dagger.

43. She has further argued, the case of the prosecution has also been corroborated by the recovery of ₹1,100/-, four visiting cards and one receipt of the mobile phone issued by *Aneja Communication* from his possession on his pointing out. Co-accused Rajeev purchased the mobile phone, which was got recovered from his possession and same phone was stated to have been purchased from *Aneja Communication* for a sum of ₹6,100/-; out of which ₹1,100/- were still outstanding.

44. Learned counsel for the appellant has argued in rejoinder that PW1 Shri Satish Chand is decoy witness to the police, which is evident from the cross-examination, wherein he had admitted that he did not remember as to how many

times, he had appeared in the Courts i.e. Tis Hazari Courts, Patiala House Courts, or Karkardooma Courts, as a witness. However, said witness had admitted that he visited Courts in some cases.

45. I am of the considered view that the instant case, is a case where neither the complainant had described any description of the accused persons; nor he had the opportunity to see their faces being night time. The complainant was not remembering even the scooter number which was alleged to be snatched by the accused persons. The story of the prosecution seems to be false as if a person who is running PCO Booth, was under debts would leave the shop at odd time with cash amount of ₹50,000/- and further would stop at an abandoned place, while alone carrying said cash amount.

46. The police did not make any efforts to recover the said scooter, rather for the sake of formality, it is brought on the record that the said scooter was thrown in a canal in Haryana. The scooter is not a small object or light weighted that it could not be recovered that too from a very small

canal. It is also not the case of the prosecution said scooter flushed away with flow of water in the canal. Had the story as put forth by the police is true, then definitely, police people would have put their efforts to recover the same. The complainant had deposed that said money was robbed at the point of knife; whereas the police had recovered a dagger, which was not the weapon of offence. Moreso, no site plan was prepared from where the weapon of offence was recovered. Even the cousin of the complainant, who had allegedly made a phone call at 100 Number has not been produced or examined by the prosecution.

47. Even otherwise, the recovery of weapon is a weak evidence, as has been decided in Mani Vs. State of Tamil Nadu; JT 2008(1) SC 191; Deva Singh Vs. State of Rajasthan: 1999 Crl.L.J. 265; Surjit Singh and Anr. Vs. State of Punjab: AIR 1994 SC 110; Narsingbhai Haribhai Prajapati Etc Vs. Chhatrasinh & Ors : AIR 1997 SC 1753; Prabhu Vs. State of UP: AIR 1963 SC 1113, the recoveries of ordinary articles such as knife etc. are treated as weak pieces of evidence.

48. Moreso, co-accused has been acquitted by the Trial

Court by giving him benefit of doubt. The State has not challenged the same.

49. Even otherwise, the total sentence awarded to the appellant is RI for 07 years and fine of ₹15,000/-. As on date, the appellant has undergone more than 05 years, 10 months and 06 days in custody which is evident from the Nominal Roll dated 23.08.2011, as the already undergone sentence of the appellant as on 23.08.2011 is 05 years, 08 months and 14 days. The total remission earned by the appellant is 22 days.

50. Therefore, in view of above discussion, I set aside the impugned judgment dated 15.10.2009 and order on sentence dated 21.10.2009.

51. Consequently, appellant is acquitted in the present case.

52. The Jail authorities are directed to release the appellant forthwith, if not warranted in any other case.

53. Copy of the order be sent to the Jail Superintendent, for compliance.

54. Accordingly, Criminal Appeal No.879/2010 stands allowed and disposed of.

55. No order as to costs.

SURESH KAIT, J

September 28, 2011

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