

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

Judgment delivered on: July 05, 2011

+ **CRIMINAL APPEAL NO.1073/2008**

**MOHD. RAMJANI**

**....APPELLANT**

Through: Mr. S.M. Chopra, Advocate/Amicus Curiae

Versus

**STATE**

**.....RESPONDENT**

Through: Mr. Sunil Sharma, APP

**CORAM:**

**HON'BLE MR. JUSTICE AJIT BHARIHOKE**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in Digest ?

**AJIT BHARIHOKE, J.(ORAL)**

1. Mohd. Ramjani, the appellant herein has preferred this appeal against the impugned judgment of learned Additional Sessions Judge dated 25.09.2008 and the order on sentence of the even date whereby the appellant has been convicted for the offence punishable under Section 392 read with 397 IPC and sentenced to undergo RI for the period of 07 years with fine of ₹100/-, in default of fine to undergo SI for the period of 07 days.
2. Briefly put, case of the prosecution is that on 24.06.2005 at about 4:30 pm complainant Avdesh Tiwari (PW1) reached at Dhaula Kuan, Delhi from Bhiwani, District Alwar in a Haryana Roadways Bus.

He was to go Nizamuddin Railway Station. He asked certain passersby for direction. Appellant Mohd. Ramjani told him that he was also to go to Nizamuddin and asked the complainant to accompany him. While they were going on foot towards the jungle, the appellant robbed the complainant of his purse containing ₹765/- on the point of knife. The appellant threatened the complainant not to tell anyone about the incident and proceeded towards the jungle. The complainant came back some distance and raised alarm. On this, Satish Kumar, Constable who was on patrol duty in civil dress approached the complainant who narrated the incident to him. Thereafter, constable Satish Kumar and the complainant went towards the direction in which the appellant had gone and he was apprehended. Satish Kumar, Constable searched the appellant and recovered a *churi* as also the purse of the complainant containing ₹765/-. It is further the case of the prosecution that Constable Satish Kumar thereafter informed the police station about the incident on telephone pursuant to which DD No.14A(Ex.PW3/A) was recorded at P.S. Chanakya Puri at 6:10 pm. Copy of DD report was entrusted to SI Brij Mohan, who immediately reached at the spot where Constable Satish Kumar produced the complainant as well as the appellant before him along with the case property i.e. *churi* and the purse containing ₹765/-. SI Brij Mohan prepared the sketch of the knife (*churi*) Ex.PW2/A. He converted the knife as well as the purse containing money into separate sealed packets and took those packets into possession vide seizure memos

Exhibits PW1/B and PW1/C. He also recorded the statement of the complainant Ex.PW1/A, appended his endorsement on the same and sent it to the Police Station for registration of case through Constable Rajbir. FIR No.149/2005 under Sections 392 and 25 of the Arms Act was registered on the basis of said rukka. Other formalities of investigation were completed and thereafter, the appellant was challaned and sent for trial.

3. Learned Additional Sessions Judge charged the appellant for the offence punishable under Section 392 read with Section 397 IPC. Appellant pleaded not guilty to the charge and claimed to be tried.

4. In order to bring home the guilt of the appellant, prosecution has examined three witnesses.

5. PW1 Avdesh Tiwari, complainant has reiterated his version given in his complaint Ex.PW1/A. He has testified that on 24.06.2005 at 4:30 pm, he came to Dhaula Kuan in a Roadways Bus. He was supposed to catch a train for Orissa from Nizamuddin Railway Station. He asked someone to seek direction. In the meanwhile, appellant told him that he was also going to Nizamuddin and asked him to accompany him. Thereafter, they proceeded towards the jungle on foot and on the way, the appellant robbed him of his purse containing ₹765/- on the point of knife. He has further stated that he raised alarm on which Constable Satish Kumar (PW2) came there and he narrated the incident to him. Thereafter, complainant Satish chased the appellant and apprehended him. He has further stated that on search,

one *chura* and a purse containing ₹765/- was recovered from the possession of the appellant. He has proved his complaint Ex.PW1/A and seizure memo of *chura* as also the seizure memo of purse containing money Exhibits PW1/B and PW1/C.

6. PW2 Constable Satish Kumar has also corroborated the version of the complainant by stating that while he was on patrol duty, he noticed PW1 Avdesh Tiwari raising alarm. On this, he asked the complainant as to what had happened and the complainant told him that he was robbed by someone on the point of knife. Thereafter, he along with the complainant ran in the direction towards which the appellant had gone and apprehended him. He also stated that on search, one '*chura*' and a purse containing ₹765/- was recovered from the possession of the appellant and the purse and the money was identified by the complainant as his own. PW2 further stated that thereafter he along with complainant and the appellant went to Taj Palace Hotel and intimated the Police Station from a telephone in a security guard room. Pursuant to said information, Investigating Officer reached at the spot and he produced the appellant along with knife and the stolen purse containing money before the Investigating Officer, who thereafter conducted necessary formalities of the investigation.

7. PW3 SI B.M. Bahuguna is the Investigating Officer who has stated about the investigation conducted by him.

8. The appellant, in his statement under Section 313 Cr.P.C. denied the prosecution version. Defence of the appellant is that the purse and

money belonged to him and he has been falsely implicated by the police with the help of the complainant, who is an informer. No witness in defence has been examined.

9. The learned Additional Sessions Judge, on appreciation of evidence, found the testimony of the complainant and Constable Satish Kumar reliable and convicted the appellant and sentenced him for the offence punishable under Section 392 read with Section 397 IPC.

10. Learned Shri S.M. Chopra, Advocate/amicus curiae appearing for the appellant has assailed the impugned judgment by submitting that it is based upon incorrect appreciation of facts. Learned amicus curiae submitted that the learned Additional Sessions Judge has failed to appreciate that the defence of the appellant is that he has been falsely implicated in this case by the police with the help of the complainant by planting his own purse containing ₹765/- upon him as the stolen property. Learned amicus curiae submitted that in view of the aforesaid defence, the question for determination is whether the purse containing ₹765/- projected as the stolen case property belongs to the complainant or the appellant? In this regard, the testimony of Constable Satish Kumar (PW2) who, as per the case of the prosecution, apprehended the appellant and recovered the case property from him assumes importance. PW2 Constable Satish Kumar has testified that after apprehending the appellant, he casually searched him and found the purse containing ₹765/- and one diary which was recovered from his back pocket. Although the purse and ₹765/- have been produced

as case property, the diary has not been produced before the court. Learned amicus curiae submitted that aforesaid diary which was allegedly recovered from the purse is an important piece of evidence because the entries in the diary particularly regarding the name and address of the owner could have given a clue about the ownership of the case property i.e. purse and money and help the court to come to the conclusion whether the case property belong to the complainant or to the appellant. Leaned counsel submitted that withholding of such an important piece of evidence goes against the prosecution and benefit of the same must go the appellant.

11. Learned amicus curiae submitted that doubt against the prosecution case is further compounded by the fact that the prosecution evidence regarding the time at which the complainant and others reached at the police station is highly contradictory. As per the prosecution case as revealed by DD No.14/A(Ex.PW3/A) and the testimony of the Investigating Officer, Inspector B.M. Bahuguna (PW3), telephonic information regarding the incident was received at the Police Station Chanakya Puri at 6:10 pm, pursuant to which the Investigating Officer reached at the spot where he seized the case property and recorded the statement of the complainant PW1 Avdesh Tiwari at 7:15 pm. The rukka was sent to police station at 7:45 pm. This version is contradictory to the version of PW1 Avdesh Tiwari who has stated in his cross-examination that the incident had taken place at 4:30 pm and he reached at Police Station at 5/5:30 pm. It is argued

that this contradiction raises a grave doubt against the correctness of prosecution story. Learned amicus curiae further argued that otherwise also, the prosecution story regarding the receipt of DD at 6:10 pm is highly doubtful because as per the version of the complainant as well as Constable Satish Kumar, the incident took place at 4:30 pm and the appellant was apprehended within minutes of the same. Thereafter, he was searched casually, which led the recovery one 'chura' and he was taken to nearby security guard of Taj Place from where Constable Satish Kumar telephonically informed the police station about the incident. If the aforesaid version is true, then the telephonic information ought to have been received at the police station within 15 to 30 minutes of the incident i.e. about 5:00 pm, instead of 6:10 pm. This circumstance also casts a doubt against the prosecution version. In view of the aforesaid, learned amicus curiae has urged that the appeal be accepted and the appellant be acquitted of the charge under Section 392 read with Section 397 IPC.

12. Learned APP, on the other hand, has argued in support of the impugned judgment. He has submitted that there is nothing on the record to suggest any enmity or motive on the part of the complainant to falsely implicate the appellant. Otherwise also, the complainant is a resident of Bihar. Therefore, the possibility of the complainant falsely implicating the appellant is ruled out. Thus, it is argued that learned trial Judge has rightly relied upon the testimony of the complainant

which stands corroborated by the testimony of PW2 Constable Satish Kumar. Learned APP has thus urged for dismissal of the appeal.

13. I have considered the rival contentions and perused the record. I find merit in the submissions made by learned amicus curiae. Above noted infirmity pointed out by learned amicus curiae in the prosecution evidence raises a strong doubt against the correctness of prosecution version. Aforesaid doubt is further compounded by the fact that perusal of the sketch of the dagger Ex.PW2/A shows that it does not bear the signatures of the complainant despite of the fact that he was the only non-police witness to the aforesaid recovery. Further, perusal of DD no. 14A, which as per the prosecution is record of first information of incident received at the Police Station, reveals that the DD report records that Constable Satish Kumar informed that he has apprehended a boy near S.P. Marg, Picket while he was snatching money whereas the evidence of Constable Satish (PW2) is to the effect that he came across the complainant after the robbery and he chased and apprehended the appellant with the stolen purse and 'chura'. Further, PW2 Constable Satish Kumar has stated that he was carrying a wireless set. If this is true, then under the natural course of circumstances, PW2 Satish Kumar was expected to convey the information to the police station on the wireless set instead of going to Taj Palace Hotel to use telephone as claimed by him. This circumstance casts a strong doubt against the prosecution story. Constable Satish Kumar has tried to explain this infirmity by stating

that his wireless set was non-functional as its battery was not in working order but the explanation appears to be an afterthought and a make believe story.

14. In view of the aforesaid infirmities, I am of the view that the prosecution evidence does not inspire confidence, as such, it is not safe to base conviction on the aforesaid contradictory and unnatural evidence. Accordingly, the appeal is accepted and the appellant is acquitted of charge under Section 392 read with Section 397 IPC, giving him benefit of doubt.

15. Appellant is reported to be in Jail. He be released forthwith if not required in any other case.

16. Appeal is disposed of accordingly.

**(AJIT BHARIHOKE)**  
**JUDGE**

**JULY 05, 2011**  
pst