

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

+ CRL.APPEAL No.898/2009

% Judgment reserved on : 18th January, 2012
Judgment delivered on: 30th January, 2012

MOHD. MEHFUZ Appellant
Through: Ms.Rakhi Dubey, Adv.
versus

STATE (GNCT) OF DELHI Respondent
Through: Mr.Naveen Sharma, APP.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. Instant appeal has been preferred from Jail by appellant against the impugned judgment dated 28.08.2008 and order on sentence dated 30.08.2008 passed by learned Additional Sessions Judge, Delhi in case FIR No.706/2005 under Section 394/397/411/34 Indian Penal Code, 1860 read with Section 27 Arms Act, 1959, police station Darya Ganj, Delhi.

2. Vide impugned judgment dated 28.08.2008 appellant has been held guilty for the offence under Section 392/394 read Section 397 Indian Penal Code, 1860 and vide order on sentence dated 30.08.2008

he has been sentenced to undergo rigorous imprisonment for seven years for all the three offences and fine of ₹ 2,000/- in default thereof to further undergo RI for six months. Benefit of Section 428 Cr. P.C. also extended to him.

3. Before proceeding further, it is to be noted that co-convict Chand Alam, who was also tried with the appellant had been referred to Juvenile Justice Board vide order dated 30.08.2008 due to provision contained in Section 20 of the Juvenile Justice (Care and Protection of Children) Act, 2000.

4. The registration of the present case unfolded from the statement made on 25.10.2005 by one Pradeep Rattan to SI Nand Kishor, police station Darya Ganj, which reads as under:-

“Statement Shri Pradeep Rattan s/o Shri P.C. Rattan R/o A-3, SF-1, Shivashish Apartment, West Joyti Nagar, Shahdara, Delhi – 94, aged 28 years, Ph. No.22120864

I live at the address given above and am working as Senior Copy Editor in Indian Express. Today on 25.10.2005, I was returning to my house via Jawhar Lal Nehru Marg on my motorcycle No.DL-7S-AE-7494 from my office at Qutab Institutional Area after finishing my duties. When I reached in front of gate of ‘Samta Sthal, I saw that two young boys whose name now I came to know as Chand Alam s/o Jumman, r/o Jhuggi No.719, LNJP Colony, I.P. Estate and Mohd. Mehfuz s/o Mehboob Alam, r/o C-4/313, Jhuggi LNJP Colony, Delhi had surrounded one old man and who had told his name as Sudershan r/o Laxmi Nagar and Surdershan was shouting ‘Bachao Bachao’. When I stopped my motorcycle, I saw that Mohd. Mehfuz had a long dragger in his hand and Chand Alam

snatched mobile phone from hands of Sudhershnan and on objection by Sudhershnan, Mohd Mehfuze gave blow with dagger on the buttock of Sudhershnan and Mohd.Mehfuz holding dagger in his right hand and Chand Alam holding mobile phone in his hand ran towards Delhi Gate Chowk. Sudershnan told me that these two boys had robbed him of mobile phone by giving dagger blow. So, I chased both on my motorcycle and in the meantime, one government motorcycle on which Ct.Sanjiv Kumar No.2083/C, PS I.P. Estate and another government motorcycle on which Ct.Naveen Kumar No.1423/C, PS Darya Ganj were riding came in my help and chased those boys and near Telephone exchange, I and Ct.Sanjiv Kumar overpowered Mohd. Mehfuze with dagger and Ct.Naveen Kumar overpowered Chand Alam with mobile phone. In the meantime, Sudhershnan also reached there and identified his mobile phone and told that he was going to his house for treatment and left. The buttock of Sudhershnan was bleeding. I with Ct. Sanjiv and Ct. Naveen produced Mohd. Mehfuze with dagger and Chand Alam with mobile phone and handed over to you. Both Chand Alam and Mohd. Mehfuze in their common intention had looted mobile phone make 'NOKIA' 1108 after attaching Sudhershnan with dagger and causing injury to him."

5. On the above narration of events to police by complainant, police acted and investigated the matter against appellant and other person Chand Alam, since referred to Juvenile Justice Board. Hence forth, we proceed with the case of appellant only and would co-relate, if necessity arises.

6. The investigation carried out by the police culminated into filing of the charge-sheet under Section 394/397/411/34 Indian Penal Code, 1860 read with Section 27 Arms Act.

7. Vide order dated 17.03.2006, charge under Section 392/394/34 Indian Penal Code, 1860 and separate charge under Section 397 Indian Penal Code, 1860 was framed against the appellant, to which he pleaded not guilty and claimed trial.

8. In order to bring the guilt of appellant at home, prosecution examined as many as 13 witnesses. Appellant denied all the allegations and pleaded innocence in his statement under Section 313 Cr. P.C. He particularly took a defence that he was picked up on 25.10.2005 by police from *Sauchalya* and booked falsely in this case.

9. The main four witnesses whose testimony laid the foundation of conviction against the appellant are PW1 Ct. Naveen Kumar, PW3 Sudhershnan and PW4 Pradeep Rattan, PW12 Ct. Sanjiv and PW13 SI Nand Kishore.

10. Remaining nine witnesses are supportive and corroborative or formal witnesses. After considering the material available before the Trial Court and submissions of learned counsel for appellant, impugned judgment and order were passed against him.

11. Ms. Rakhi Dubey, learned counsel for appellant while arguing the matter submitted that in principle she is not disputing way and procedure of trial, however raised the grounds for appeal on merit, such as, there were many persons collected at the spot, however,

except the complainant none other was made witness by the police for the reasons best known to them. The FIR does not contain total details of the robbed articles and it is lacking on account of cash amount and mobile phone.

12. PW5 Dr.Vivek Gautam, admitted in the cross-examination that nature of injury suffered by the victim, could be caused if one falls suddenly or sits on a sharp object, which create doubt as the recovery of the weapon of offence has not been proved.

13. According to learned counsel for appellant, there is no explanation as to why present FIR was registered on the statement of complainant, while the injured himself reached at the spot.

14. I note that all these issues have been dealt with by learned Trial Court in the impugned judgment, which need not be discussed again. However, the ground taken by the learned counsel for appellant are of not much relevance as all of them relate to procedural defect which does not affect the proceedings or trial in any manner.

15. Additionally, learned counsel for appellant has also pleaded that appellant is of young age and there is no one to look after the family as he is running in custody since the date of incident till date.

16. To sum up, learned counsel for appellant submitted that the appellant has already suffered the agony of trial from the year 2005 and he was in custody throughout trial and after conviction till date he is in custody.

17. In view of the family background and the fact that most of the period he has already undergone, in the interest of justice, a lenient view may be taken so that the family of the convict be saved from further rigor and agony which they would certainly continue to suffer, if appellant to undergo remaining sentence.

18. On the other hand, Mr. Navin Sharma, learned APP has contended that since the appellant has been held guilty and convicted by a reasoned and elaborate judgment and he has already taken a lenient view while awarding sentence to him. It would be appropriate if the appellant undergo his remaining sentence.

19. On perusal of the deposition of PW-1 Constable Naveen Kumar, PW-3 Sudhershnan and PW-4 Pradeep Rana and other material on record, I find the prosecution has proved its case beyond reasonable doubts. The contradictions pointed out are not so material which could be proved fatal for the case. Therefore, I find no discrepancy in the impugned judgment/order passed by the learned trial court. Therefore, I confirm the same.

20. However, from the nominal roll dated 02.02.2011, I note that unexpired period of sentence of appellant is one year three months and 18 days. Therefore, in total as on date, it is less than three months.

21. For the reasons mentioned above, while maintaining the conviction of appellant, the sentence order dated 30.08.2008 is modified to the extent already undergone.

22. Since, appellant is in custody, Jail Superintendent is directed to release him forthwith, if not required in any other case.
23. Copy of order be sent to Jail Superintendent, for compliance.
24. Consequently, Criminal Appeal No.898/2009 is partially allowed and stands disposed of.
25. No order as to costs.

SURESH KAIT, J

JANUARY 30, 2012

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