

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

RESERVED ON : 7th February, 2013

DECIDED ON : 25th February, 2013

+ CRL.A. 870/2001

SHAMSHAD ALI @ NATURIA Appellant

Through : Ms.Nandita Rao, Advocate.

versus

THE STATE (GOVT. OF NCT OF DELHI) Respondent

Through : Mr.M.N.Dudeja, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. The appellant- Shamshad Ali @ Naturia impugns judgment and order on sentence dated 29.03.2001 in Sessions Case No. 62/1996 arising out of FIR No. 268/1992 PS Civil Lines by which he was convicted with his associates- Ashwini Kumar and Bhushan Kumar for committing offence punishable under Section 398 IPC and sentenced to undergo RI for seven years.

2. Allegations against the accused were that on 20.08.1992 at 02.45 A.M. at North End Road near Flag Staff Road, he and his associates- Ashwini Kumar and Bhushan Kumar robbed Ram Kishore of ₹1,500/- at the point of knife.

3. The prosecution examined six witnesses. In his 313 Cr.P.C. statement, the accused pleaded false implication. On appreciating the evidence and considering the rival contentions of the parties, the Trial Court, by the impugned judgment, convicted and sentenced the appellant and his associates. Being aggrieved, the appellant has preferred the appeal. It is relevant to note that co-convict Ashwini Kumar had also challenged conviction by Crl.A.221/2001 which was dismissed by HMJ Mukta Gupta vide order dated 13.01.2011. The copy of the judgment is on record.

4. Learned counsel for the appellant urged that the Trial Court did not appreciate the evidence in its true and proper perspective and fell into grave error to base conviction on the sole testimony of complainant-Ram Kishore. The appellant was a TSR driver and had taken the passenger on payment of ₹ 30 as fare. On the way to the destination, Ashwini Kumar and Bhushan Kumar boarded the TSR with whom the appellant had no concern. He was apprehended the next day of the incident and no robbed article was recovered from his possession. The Investigating Officer did not move any application for conducting Test Identification Parade. The prosecution failed to examine nephew of the complainant. In his 313 Cr.P.C. statement, the accused explained

circumstances for false implication as he did not oblige the Investigating Officer for free ride. Learned APP urged that the appellant fled the spot while his associates Ashwini Kumar and Bhushan Kumar were apprehended at the spot and robbed articles were recovered from their possession. The appellant was arrested at the instance of the complainant. There was no necessity to conduct TIP.

5. I have considered the submissions of the parties and have examined the record. The present case was registered on 20.08.1992 on the statement of victim Ram Kishore. The occurrence took place at 02.45 A.M. The First Information Report (FIR) was lodged at 04.00 A.M. There was no delay in lodging FIR. In his statement (Ex.PW-2/A), Ram Kishore gave detailed account as to how and under what circumstances he was robbed at the point of knife by the appellant and his associates. He further stated that when they raised alarm Ashwini Kumar and Bhushan Kumar were apprehended by the police at the spot. Cash of ₹1,500/- was recovered from their possession. He claimed to identify the TSR driver. Number of TSR in which the complainant had boarded was mentioned in the statement. Since the FIR was lodged promptly without any delay, there was least possibility of the complainant to fabricate a false story.

6. While appearing as PW-1, the complainant proved the version given to the police at the first instance without any variation. He deposed that on 20.08.1992 he and his nephew Ram Rattan came to Delhi from village and got down at ISBT at 02.30 A.M. He gave signal to a three wheeler scooter who demanded ₹ 60 from him for going to Jagir Nagar. The fare was settled for ₹ 30. The driver started the scooter and made two passengers sit in the TSR on the way. The driver told them that those passengers would be dropped at Karol Bagh. The TSR driver drove the scooter here and there and when he confronted him as to where he was taking them, he stopped the scooter at a deserted place and took out a knife. He threatened to kill them if they raised alarm. Ashwini Kumar removed his purse from his pocket. It contained ₹ 1,500/- and a visiting card. The other assailant Bhushan Kumar searched him and his nephew Ram Rattan. When they raised alarm, the police reached and apprehended Ashwini Kumar and Bhushan Kumar. The TSR driver ran away with the scooter. Cash of ₹ 1,500/- was recovered from Ashwini Kumar. Police recorded his statement (Ex.PW-2/A). He further deposed that on the second day of occurrence on 22.08.1992, he accompanied the police and at his instance, the appellant was arrested. The TSR was seized vide seizure memo Ex.PW-2/E. He identified Shamshad Ali as the driver of the

TSR who pointed out a knife at him. In the cross-examination, he disclosed that he had given the description of the driver of the TSR to the police. Shamshad Ali was not known to him prior to the incident. He denied that accused Ashwini Kumar had given fist blows to him. He fairly admitted that he did not notice if any knife was recovered from the accused's possession.

7. On scrutinizing the testimony of the complainant, it reveals that no material discrepancies have emerged to discard his natural version. The complainant had no prior acquaintance with the accused. He had returned from his village in the night intervening 20/21.08.1992 at about 02.30 A.M. On the pretext of taking the passenger to its destination, the accused agreed to charge ₹ 30 despite demand of ₹ 60/-. Instead of taking to their of residence, the accused made his associates Ashwini Kumar and Bhushan Kumar sit in the TSR on the pretext that they would be dropped at Karol Bagh. However, on the way, he stopped TSR at a deserted place and with the assistance of his associates robbed the complainant of a purse containing ₹ 1,500/-. It was good luck of the victim that the police officials reached the spot on hearing their noise and Ashwini Kumar and Bhushan were apprehended at the spot. The appellant succeeded in fleeing from the spot and could be arrested the next day at the instance of the

complainant. The prosecution examined PW-4 (Krishan Lal Bajaj), the owner of the TSR and in his testimony, he deposed that the TSR was in the possession of the appellant at the time of occurrence. The accused did not deny in the cross-examination that he had not taken complainant and his nephew as passengers on the TSR. He did not offer any explanation as to why he absconded from the spot leaving them there and why he did not take them to the destination. The accused did not claim that Ashwini Kumar and Bhushan were not known to him. He did not plead if he had charged any fare from them or they were genuine passengers. There are no good reasons to disbelieve the cogent and reliable testimony of the victim who had no prior enmity or ill-will with the accused and his associates. The robbed articles were recovered from the possession of Ashwini and were identified by the complainant. His appeal against conviction was also dismissed. Since the appellant was arrested at the instance of the complainant and he identified him in the Court to be the TSR driver who used knife in the incident, there was no question of moving application for TIP.

8. In '*Shyamal Ghosh Vs. State of West Bengal*', AIR 2012 SC 3539, the Supreme Court observed :

“56. The whole idea of a Test Identification Parade is that witnesses who claim to have seen the culprits at the time of occurrence are to identify them from the midst of other persons without any aid or any other source. The test is done to check upon their veracity. In other words, the main object of holding an identification parade, during the investigation stage, is to test the memory of the witnesses based upon first impression and also to enable the prosecution to decide whether all or any of them could be cited as eyewitnesses of the crime.

57. It is equally correct that the Code of Criminal Procedure does not oblige the investigating agency to necessarily hold the Test Identification Parade. Failure to hold the test identification parade while in police custody, does not by itself render the evidence of identification in court inadmissible or unacceptable. There have been numerous cases where the accused is identified by the witnesses in the court for the first time. One of the views taken is that identification in court for the first time alone may not form the basis of conviction, but this is not an absolute rule. The purpose of the Test Identification Parade is to test and strengthen the trustworthiness of that evidence. It is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of the witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. This rule of prudence is, however subjected to exceptions.”

9. The complainant attributed specific role to the each accused. Non-examination of nephew of the complainant is not fatal as the statement of complainant inspires confidence and is sufficient to establish the guilt of the accused. It is the quality and not the quantity of evidence which matters. The cogent and convincing statement of the complainant

without any infirmity cannot be discredited due to failure of the prosecution to examine his nephew.

10. In the light of the above discussion, I am of the considered view that the conviction is based upon fair appraisal of the evidence and no interference is called for. The appeal lacks merits and is dismissed. The conviction and the sentence of the appellant are maintained.

11. The Trial Court record be sent back forthwith. A copy of this order be sent to the appellant through Jail Superintendent.

(S.P.GARG)
JUDGE

FEBRUARY 25, 2013

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