

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

**RESERVED ON : July 12, 2013
DECIDED ON : August 26, 2013**

+ CRL.A. 188/2012

RAKESH @ BENGALI

**..... Appellant
Through : Mr.Avninder Singh with Mr.Aditya
Vaibhav Singh, Advocates.**

versus

STATE (GOVT. OF NCT) DELHI

**..... Respondent
Through : Mr.M.N.Dudeja, APP for the State.**

**CORAM:
MR. JUSTICE S.P.GARG**

S.P.GARG, J.

1. Rakesh @ Bengali (the appellant) challenges a judgment dated 07.03.2011 of learned Additional Sessions Judge in Sessions Case No.113/2010 arising out of FIR No.281/2007 by which he was convicted for committing offence punishable under Section 392 read with Section

397 IPC. By an order dated 01.04.2011 he was sentenced to undergo Rigorous Imprisonment for seven years with fine ₹2,000/-.

2. Daily Diary (DD) No.24 PP Inder Lok (Ex.PW4/A) was recorded at 10.35 P.M. on getting information that PCR had caught hold an individual with a knife. The investigation was assigned to ASI Ram Kishan who with Ct.Chand Singh went to the spot. Rakesh @ Bengali was produced along with khukhri by PCR officers to the Investigating Officer and was arrested. During the course of investigation, his associates Shahbuddin @ Shahabu @ Sonu Khan, Deepak @ Khubi and Sonu @ Tamatar were apprehended and arrested. Statements of witnesses conversant with the facts were recorded. On completion of investigation, a charge-sheet was filed in the court against Rakesh @ Bengali, Shahbuddin @ Shahabu @ Sonu Khan and Sonu @ Tamatar. Deepak @ Khubi was juvenile and was sent before Juvenile Justice Board for trial. The prosecution examined 10 witnesses in all. In their 313 statements, the accused persons pleaded false implication. On appreciating the evidence and considering the rival contentions of the parties, the Trial Court by the impugned judgment held all of them guilty for committing offence under Section 392/34 IPC. In addition, the appellant was convicted with the aid

of Section 397 IPC and sentenced to undergo RI for seven years with fine ₹2,000/-. Being aggrieved, he has preferred the present appeal.

3. Appellant's counsel urged that the Trial Court did not appreciate the evidence in its true and proper perspective. Number of prosecution witnesses examined turned hostile and did not support the prosecution initially. When they were cross-examined by Additional Public Prosecutor and specific suggestions were put to them, they admitted the facts. The vital contradictions and discrepancies in their statements have been ignored without valid reasons. The Investigating Officer did not move application for conducting TIP proceedings to establish the identity of the actual assailants. The recovery of 'khukhri' from appellant's possession is highly doubtful as the dimensions of the 'khukhri' showed that it was not possible to keep it in the pocket. The Investigating Officer was not examined. Learned Additional Public Prosecutor urged that PW-1 (the victim) did not have any animosity with the appellant to falsely implicate him in this case. There are no sound reasons to disbelieve and discard his natural version.

4. I have considered the submissions of the parties and have examined the record. Rakesh @ Bengali was arrested at the spot soon after the incident. The Investigating Officer lodged First Information

Report after recording the victim's statement (Ex.PW-1/A). The incident occurred at about 10.15 P.M. The rukka was sent for lodging FIR at 11.55 P.M. There was no delay in lodging the report with the police. FIR in a criminal case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eyewitnesses, if any. In the instant case, PW-1 (Abdul Wahid) gave graphic detail of the incident and narrated as to how and under what circumstances, four assailants surrounded and robbed him of cash ₹2,500/-, wrist watch make Maxima at the point of khukhri and was given beatings. He also disclosed that he informed PCR officials who were able to apprehend Rakesh @ Bengali. On his search, robbed currency notes of ₹700/- and a khukhri were recovered. Since the FIR was lodged promptly, there was least possibility of the complainant or the police officials to fabricate a false story in the short duration. The appellant was named in the report lodged at the first instance with the police. While appearing as PW-1, the complainant proved the version given to the police without any major variation. He identified Rakesh @

Bengali in the court and attributed specific role to him of having a khukhri, which accused used to extort cash and wrist watch. He also ascribed a specific part played by him to utter 'Tu Jyada Hero Banta Hai'. He identified watch (Ex.P1) recovered from the accused's possession. He also gave detailed account as to how other assailants were apprehended. The witness was tested and cross-examined at length. However, nothing material emerged to disbelieve, to doubt or suspect the value and authenticity of his version. PW-1 (Abdul Wahid) had no prior acquaintance with the appellant to falsely implicate him. No ulterior motive was assigned to the complainant to falsely rope in the appellant in the incident.

5. PW-2 (Ct.Jai Bhagwan), PCR official, supported the prosecution on material aspects and corroborated the complainant's version. He testified that on 01.07.2007 at about 10.30 P.M. Abdul Wahid informed them that three or four boys standing under the Jakhira Fly Over had snatched ₹2,500/- and wrist watch at the point of knife. They rushed to the spot and were successful to apprehend Rakesh @ Bengali and recover a khukhri which was produced to the local police. PW-7 (HC Ram Kumar) another police official in the PCR corroborated his version in toto. He also deposed that on getting information from a public person

about the snatching incident, they were able to apprehend one of them and recovered a khukhri from him. In examination-in-chief, he fairly admitted that he was unable to identify the assailant as he was driving the PCR van. PW-9 (Ct.Suraj Mal), Incharge P-16, PCR van, also deposed that after getting information from Abdul Wahid about the incident they chased and were successful to apprehend one of the assailants whose name was ascertained as Rakesh @ Bengali. It is true that there are some discrepancies in their statements. However, these do not go to the root of the case to disbelieve the core issue about the apprehension of the appellant after chase at the spot and the recovery of khukhri from his possession. The Investigating Officer could not be examined completely as he had expired. However, PW-5 (Ct.Chand Singh), who accompanied him deposed that Rakesh @ Bengali was produced by the Incharge of the PCR van. He also produced 'Khukhri' which was seized vide seizure memo (Ex.PW-1/C). ₹700/- were also seized vide seizure memo (Ex.PW-1/F). Rakesh @ Bengali was examined and his disclosure statement (Ex.PW-1/D) was recorded. The accused did not deny his apprehension at the spot. Specific suggestion was put to PW-1 in the cross-examination that Rakesh @ Bengali was brought by the police officials from his vehicle lying parked near Bhusa (fodder) Mandi. The witness denied the

suggestion that Rakesh @ Bengali was falsely implicated in this case as he had lodged complaints against the police officials. The appellant, however, did not produce any evidence to show as to in which vehicle he was travelling near Bhusa Mandi and what was the purpose of his presence there at odd hours. PW-1 having no prior animosity with the complainant is not expected to falsely implicate him on the mere asking of the police officials. In fact, the appellant was not arrested by the local police. He was chased by the PCR officials and was identified by the complainant then and there as one of the assailants who had committed robbery. PCR officials had nothing to do with the complaints (if any) lodged by the appellant against the local police officials. No such complaints have been brought on record. Mere marginal variations in the statements of the witnesses highlighted by the appellant's counsel do not render the evidence brittle. In the depositions of witnesses there are always normal discrepancies due to normal errors of observation, error of memory due to lapse of time, due to mental disposition such as shock at the time of incident and the like. In the instant case, the court can well understand the shock and trauma of the complainant who had direct confrontation with four assailants, one of them being armed with a deadly weapon. He was surrounded and threatened by the assailants and was

beaten. Number of memos prepared at the spot bears his signatures which establishes his presence at the scene of crime.

6. In the light of the above discussion, I find no compelling reasons to interfere with the impugned judgment which is based upon fair appraisal of the evidence. The appeal is unmerited and is dismissed.

7. Trial court record be sent back forthwith.

(S.P.GARG)
JUDGE

August 26, 2013

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