

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

RESERVED ON : February 05, 2013

DECIDED ON : February 22, 2013

+ CRL.A. 624/2011

JAVED @ BHURA

..... Appellant

Through : Mr.Gautam Khazanchi, Advocate
with Mr.Aditya Wadhwa &
Mr.Adit S.Pujari, Advocates.

VERSUS

THE STATE (NCT OF DELHI)

.... Respondent

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

CORAM:

MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. The appellant Javed @ Bhura impugns the judgment dated 11.03.2010 in Sessions Case No.48/2009 arising out of FIR No.12/2007 registered at Police Station New Usman Pur by which he was convicted for committing offence punishable under Sections 394/397/34 IPC and sentenced to undergo RI for seven years with total fine of ₹6,000/-.

2. Allegations against the accused were that on 05.01.2007 at about 09:30 P.M. in House No.T-187, Gali No.2, Gautam Puri, he with his associate Naeem committed robbery and deprived Ram Niwas and his wife of ₹2,000/- and ear-rings. The case was registered on the statement of the victim Ram Niwas. During the course of investigation, both the accused were arrested on different dates. One country made pistol was recovered from co-convict Naeem. Pursuant to disclosure statement, he recovered ear-rings. The Investigating Officer recorded statements of the concerned witnesses conversant with facts. On completion of the investigation, a charge-sheet was submitted against the accused and co-convict Naeem. The prosecution examined 13 witnesses to prove the charges. In his statement under Section 313 Cr.P.C., the accused pleaded innocence and stated that he was falsely implicated when he declined to be the informer of the police. On appreciating the evidence and considering the rival contentions of the parties, the appellant and co-convict Naeem were held guilty under Sections 394/397 IPC and sentenced accordingly. Being aggrieved, the appellant has preferred the present appeal. It is relevant to note that co-convict Naeem had also preferred a separate appeal challenging the impugned judgment. Learned

Additional Public Prosecutor informed that the appeal preferred by co-convict Naeem has since been dismissed by this court.

3. Learned counsel for the appellant urged that the Trial Court did not appreciate the evidence in its true and proper perspective. The accused was arrested after about six months of the incident. No recovery was effected from his possession or at his instance. The prosecution witnesses were uncertain about the exact number of assailants who entered the premises. Name of the appellant emerged only in the disclosure statement of co-convict Naeem. The accused explained the circumstances in his statement recorded under Section 313 Cr.P.C. as to how he was implicated in this case. No application for conducting Test Identification Parade was moved. The witnesses had seen him in the police station. Learned Additional Public Prosecutor urged that the conviction is based on fair appraisal of the evidence and no interference is called for. The victim had no motive to falsely rope in the accused in the incident.

4. I have considered the submissions of the parties and have examined the record. The incident occurred on 05.01.2007 at about 09:30 P.M. in the house of the complainant-Ram Niwas. He sustained injuries and was taken to Guru Teg Bahadur hospital. Daily Dairy (DD)

No.27A (Ex.PW-7/A) was recorded at police station New Usman Pur at 10.12 P.M. on getting an information that 3-4 assailants fled after snatching money from House No. T-187, Gali No.2, Gautam Puri. The investigation was assigned to ASI Jawahar Singh. He recorded the statement of the complainant-Ram Niwas and sent rukka on the night intervening 5/6.01.2007 at 01:15 A.M. In the statement the victim disclosed that three assailants in the age group of 22-25 entered in the house and robbed them at the point of kattas and ustra (razor). They also caused injuries to him. There was no delay in lodging the First Information Report with the police. It rules out fabrication of any false story.

5. While appearing as PW-1, Ram Niwas proved the version given to the police at the first instance without any variation. He deposed that on 05.01.2007 at 10:30 P.M. someone knocked at the door. When he opened the door, three assailants entered into the house. Two of them were having katta and one of them was having razor. He identified Javed who pointed katta on his chest and demanded ₹5,000/- from him. When he refused to pay the money, another assailant took ₹2,000/- from his pant hanging on the wall. He identified co-convict Naeem to be the assailant who snatched ear-rings (kundals) from his wife. He implicated Javed who

hit him on his head with the butt of the katta and caused injuries. In the cross-examination, he stated that the incident lasted for 15-20 minutes. He fairly admitted that the accused did not make efforts to take articles from any other place. Night bulb was 'on' at the time of occurrence. Cash of ₹2,000/- consisted of ₹100 denomination currency notes. He was taken to the hospital at 12:00 midnight and remained there for one and a half hour. The 'kundals' were identified after it were recovered. PW-2 (Smt.Mala), Ram Niwas's wife, corroborated his version in its entirety. She also deposed the detailed sequence in which the accused with his associates robbed them at the point of deadly weapons and caused injuries to her husband. She identified ear rings (kundals) in Test Identification Proceedings. In the cross-examination, she denied that the kundals were not of gold. PW-3 (Amar Pal), who was residing as a tenant in the premises was also robbed by the same group of assailants at the point of katta and razor. He was also injured and taken to hospital. The testimony of PWs-1, 2 and 3 is beyond any discrepancies or inconsistencies. They all have attributed specific roles to each accused in committing robbery and causing injury. No ulterior motive was attributed to any of the witnesses for falsely implicating the accused and identifying them in the court. The assailants were not having any acquaintance with them. In the

absence of any animosity, these witnesses having no criminal background are not expected to falsely implicate an innocent person and let the real culprit go scot free. Their ocular testimony is in consonance with medical evidence. PW-1 and PW-3 were taken to Guru Teg Bahadur hospital on 05.01.2007 and were medically examined at 11:55 P.M. One incised wound in the left Pinna was noticed on the body of PW-3 (Amar Pal) in MLC (Ex.PW-4/A). One clean lacerated wound was found on the body of Ram Niwas in MLC (Ex.PW-4/B). PW-4 (Dr. Siddharth) proved two MLCs and the accused did not cross-examine him. PWs-1 and 3 were not expected to self-inflict the injuries for no reasons.

6. The robbed ear-rings (kundals) were recovered pursuant to the disclosure statement of co-convict Naeem and were identified by the complainant and his wife in Test Identification Proceedings conducted by PW-8 (Sh.Ravinder Singh, Ld.MM). The accused did not examine any witness to falsify the positive testimony of the prosecution witnesses. He did not name the police officer who compelled him to be the police informer. No such suggestion was put to the Investigating Officer in this regard. The defence deserves out-right rejection.

7. The conviction of the appellant is based upon fair appraisal of the testimony of independent and natural witnesses and no interference

is called for. The appeal is without merits and is dismissed. The conviction and sentence of the appellant are maintained.

8. Trial Court record be sent back forthwith.

(S.P.GARG)
JUDGE

February 22, 2013
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