

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

%

Date of Decision: 22.01.2014

+

Crl. Appeal No.49/2013

RAJU AND ANR.

....Appellants

Through : Mr Akhilesh Kumar Pandey, Adv.

Versus

STATE GOVT. OF NCT OF DELHI

....Respondent

Through: Mr Feroz Khan Ghazi, APP

CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (Oral)

Though this appeal purports to have been filed by two appellants namely Raju and Pardeep, the learned counsel appearing for the appellant states that in fact the appeal has been filed only by appellant Raju and the *Vakalatnama* filed along with the appeal has also been executed only by him. Accordingly, this has been considered as an appeal filed only by appellant Raju.

1. On 26.02.2008, at about 11.38 PM, the Police Control Room was informed by a person that three persons had committed robbery of a mobile phone, purse, ring and cash amounting to Rs 450/- from the informant and the robbers had run towards Kushak Road. The aforesaid information when given to the Police Station Swaroop Nagar by the Police Control Room was recorded there vide DD No. 20A, which was

given to SI Ravinder Singh for investigation. Constable Anand No. 631/OD, who was on patrol, was also informed and directed to reach the spot.

2. The case of the prosecution, as set out in the chargesheet, is that when the Investigating Officer reached the spot, Constable Anand and the complainant Gurmeet Singh met him there and produced two persons, namely, the appellant Raju and his co-accused Pradeep along with the articles including a mobile phone and a purse and a knife alleged to have been recovered from the accused persons.

3. In his statement to the Investigating Officer, the complainant Gurmeet Singh stated that on that day at about 11.30 PM, he was going to his house after parking his auto-rickshaw and when he reached the street in which his house was situated, he was surrounded by two boys, one of whom waived a knife and asked him to take out whatever he had with him, whereas the other person removed his purse containing driving licence and Rs 450/- from his pocket. He further stated that the boy who was waiving knife, snatched his mobile and the robbers then started running towards Kushak Road. He further stated that he chased the robbers and in the meanwhile, one Constable reached there from the opposite direction and both of them apprehended the accused persons, namely, Raju and Pradeep and his mobile was recovered from the possession of Raju along with a *Buttondar* knife, whereas his purse containing his driving licence and cash amounting to Rs 450/- was recovered from the pant of his co-accused Pradeep.

4. Vide impugned judgment dated 28.8.2012 and order on sentence dated 31.8.2012, the appellant was convicted under Sections 392 and

397 of IPC as well as under Section 27 of Arms Act. He was sentenced to undergo RI for three years and to pay a fine of Rs.2,000/- or to undergo SI for three months in default under Section 392/34 of IPC. He was separately sentenced to undergo RI for seven years and to pay a fine of Rs.2,000/- or to undergo SI for three months in default in Section 397 of IPC. He was also sentenced to undergo RI for five and to pay a fine of Rs.2,000/- or to undergo SI for three months in default under Section 27 of Arms Act. All the sentences were directed to run concurrently.

5. The complainant came in the witness box as PW-4 and stated that on 26.02.2008, when he was coming home at about 11.30 PM and was passing through Gali No. 1, both the accused stopped him near a vacant plot, Raju asked him to handover whatever he had with him and snatched his mobile phone which he was wearing around his neck in a strip, whereas the other accused Pradeep took out his purse containing Rs 450/- and his driving licence. He also stated that Raju was having a knife in his hand. According to the witness, both the accused, after taking his purse and mobile phone, ran towards Kushak Road and he went to his house. When he knocked at the door of his house, his son Sundeep Singh came out. He took the phone of his son and made a call to the Police Control Room. After some time, the control room vehicle reached the spot and local police officials also reached there. He accompanied the police officials to the place of incident, where the accused were seeing coming through the same Gali. The Police apprehended them, gave beating to them and took their search. He further deposed that one *Buttondar* knife was recovered from the pocket of Raju, whereas his purse was recovered in the search of Pradeep. According to the witness, after making statement Ex.PW-4/A to the

police, he had come back to the spot along with the police, where he and his wife searched for the mobile phone and found it lying in the bushes at the place, where it was snatched from him. The witness, however, did not produce the mobile which he had taken on *Superdari* and claimed that the mobile instrument was stolen. He also claimed that the driving licence which he had kept in his purse was got renewed by him. A photocopy of the previous driving licence was produced by the witness and was exhibited. However, when this witness was again examined on 16.01.2012, it transpired that the purse was also taken by him on *Superdari* and at that time he stated that the purse was torn and it had gone missing from his house. Both the accused, however, were duly identified by this witness during the course of trial.

6. PW-3 Constable Anand Singh stated that on 26.02.2008, he was on patrol at Beat No. 5 in Swaroop Nagar. At about 11.30 PM. When he reached Gali No. 1, Khhada Colony, he heard noise of *Pakdo-Pakdo Chor Chor* and noticed two persons running and one person chasing them. On suspension, he apprehended one of them whose name later came to be known as Raju, whereas the other person was apprehended by the person who was chasing him. He further stated that on search of Raju, one mobile having a strip was recovered from the left pocket of his *Pajama* and one knife was recovered from the right pocket of his *Pajama*. According to this witness, one purse containing Rs. 450/- in cash and driving licence of the complainant was recovered during search of the accused Pradeep. He further stated that when SI Ravinder reached the spot, both the accused persons were handed over to him along with the case property.

7. PW5, Constable Bijender and PW7 S.I. Ravinder Singh have stated about the complainant and Constable Anand, meeting them on their reaching the spot and Constable Anand handing over one knife and one purse containing the driving license to S.I. Ravinder Singh and also producing the accused, Raju and Pradeep, before him.

8. In his statement under Section 313 Cr.P.C., the appellant Pradeep denied the allegations against him and claimed to have been lifted from the residence and implicated in this case.

9. As noted earlier, the case of the prosecution as set out in the FIR and the charge sheet is that the complainant had chased both the accused persons after they had robbed him of his mobile phone and purse containing Rs.450/- in cash as well as his driving license and when the complainant was chasing them, Constable Anand came from the opposite direction and both the accused were then apprehended. This, however, goes contrary to the information given by the complainant to the police control room and recorded DD No.20A as well as to the deposition of the complainant in the Court. The version given by the complainant to the police control room was that the robbers had fled away towards Kushak Road after committing the robbery. The same was the version given by the complainant when he came in the witness box. Therefore, the version given by the complainant as regards apprehension of the appellant and his co-accused is diametrically opposite to the version given by Constable Anand. In my view, an altogether different versions of the manner in which the appellant and his co-accused were apprehended cannot be treated as a minor

contradiction and, therefore, cannot be ignored from consideration. A serious question arises as to whether the appellants were arrested when being chased by the complainant or they were arrested when the complainant came back to the spot along with the police officials, after the matter had been reported to the police control room and not only PCR van but the local police also had reached the spot. Considering the information given to the police control room at about 11:38 p.m. on that day the version given in the FIR which is also the version given by Constable Anand cannot be a correct version of the manner in which the appellants were apprehended.

10. As noted earlier the case set out in the FIR and the charge sheet is that the mobile phone of the complainant was recovered from the possession of the appellant, Raju, when he was apprehended while being chased by the complainant. On the other hand, when the complainant came in the witness box he claimed that after arrival of the police he along with his wife had come back to the place where the robbery was committed and the mobile phone was, at that time, found by his wife lying in the nearby bushes. Thus, according to this witness, the mobile phone stolen from his possession was not at all recovered from the possession of the appellant, Raju. This part of his deposition is diametrically opposite to the statement given by him to the Investigating Officer at the time of registration of FIR as well as to the deposition of Constable Anand.

If the mobile phone of the complainant was not recovered from the possession of the appellant, as stated by the complainant, there can be no question of the appellant being convicted for robbery on account

of the alleged recovery of mobile phone of the complainant from his possession. Neither the purse nor the driving license of the complainant is alleged to have been recovered from him.

11. According to the complainant, the appellant as well as the co-accused were apprehended when they came back to the place of incident along with police officials. In my view, it is extremely unlikely that the appellants would have come back to the place of incident soon after committing robbery. In case, they had committed robbery they would be knowing that the complainant was likely to report the matter to the police and in case the matter is reported, the police would bring the complainant to the place of incident and if they visit the place of incident at that point of time, they were likely to be identified by the complainant and thereupon arrested by the police. Therefore, the intent of the robbers would be to run away from the place of incident instead of visiting that very spot soon after the incident. This is more so when the time of the alleged apprehension of the appellant is stated to be around midnight. The appellants knew that they were not in a position to explain their presence on the spot at that odd hours of the night and, therefore, it is unlikely that they would have again come back to the spot carrying a knife as well as the stolen property.

12. For the reasons stated hereinabove, I am of the considered view that the prosecution has failed to establish the guilt attributed to the appellant beyond reasonable doubt. The appellant is, therefore, given benefit of doubt and are accordingly acquitted. One copy of this order be

sent to the concerned Jail Superintendent for necessary information and action.

The appeal stands allowed.

Trial court record be sent back along with a copy of this order.

JANUARY 22, 2014
BG

V.K. JAIN, J.