

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

RESERVED ON : February 20, 2014

DECIDED ON : February 25, 2014

+ CRL.A. 216/2012 & CRL.M.B. 1879/2013

MANGAL SAIN @ MONU Appellant

Through : Mr.Sanjeev Kumar, Advocate.

Versus

STATE Respondent

Through : Mr.Lovkesh Sawhney, APP.

+ CRL.A. 254/2012

MONU Appellant

Through : Mr.Vivek Bansal, Advocate.

Versus

THE STATE (NCT OF DELHI) Respondent

Through : Mr.Lovkesh Sawhney, APP.

AND

+ CRL.A. 217/2012

TINKU Appellant

Through : Mr.Sanjeev Kumar, Advocate.

Versus

STATE Respondent

Through : Mr.Lovkesh Sawhney, APP.

CORAM:
MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Mangal Sain @ Monu (A-1), Monu (A-2), Tinku (A-3) and Krishan @ Changa (A-4) were arrested in case FIR No.120/2008 registered at Police Station Gokal Puri and sent for trial alleging that on the night intervening 12/13.05.2008 at about 12.30 a.m. at fly-over near Kanpur, Delhi, Goods Carrier Ltd., Gokul Puri, they in furtherance of common intention robbed Ripunjay Kumar Dubey of ₹4,500, credit card, driving licence, mobile phone make Samsung having connection No.9958394446 at knife point and inflicted injuries to him. ASI Ramvir (PW-7), PS Nand Nagri, recorded complainant's statement (Ex.PW-2/A) on 13.05.2008. When he went to the place of occurrence, it transpired that the area was within jurisdiction of police station Gokul Puri. They all went to police station Gokul Puri and First Information Report was lodged there. Further case of the prosecution is that on 16.05.2008, on the basis of secret information, all the accused persons were apprehended at 04.20 p.m. when they were travelling in a TSR bearing registration No.DL1RK5343. Some recoveries were effected from their possession. Statements of witnesses conversant with the facts were recorded. The

complainant was able to identify A-1 to A-3 in Test Identification Proceedings. After completion of investigation, a charge-sheet was filed against the accused persons; they were duly charged and brought to trial. The prosecution examined 13 witnesses to establish their guilt. In 313 statements, the accused persons denied their involvement in the crime and pleaded false implication. The trial resulted in their conviction under Sections 392/394/34 IPC. A-4 was acquitted of all the charges. A-1 was, in addition, held guilty under Section 411 IPC. It is relevant to note that the State did not challenge acquittal of A-4.

2. I have heard the learned counsel for the parties and have examined the record. Conviction of the appellants is based upon the sole testimony of the complainant. The occurrence took place in the night intervening 12/13.05.2008 at about 12.30 a.m. First Information Report was lodged on 14.05.2008. Delay in lodging the FIR has not been explained with cogent reasons. It has come on record that earlier statement of the complainant (Ex.PW-2/A) was recorded by ASI Ramvir Singh (PW-7). He did not register any case. When he went to the spot, he came to know that the area where the occurrence took place was within the jurisdiction of Police Station, Gokul Puri. Again, the FIR was not lodged then and there. Information was conveyed to PCR at 100 soon

after the occurrence, however, daily diary recorded in this regard has not been placed on record. No PCR official to whom the information was conveyed and who went to the spot was examined. The complainant did not lodge any report from the spot. He first went to his house and then with his brother came on a motor-cycle and set the police machinery in motion. There is inconsistency between the statements of the witnesses as to where the statement of the complainant was recorded i.e. whether at the police station or at the spot. The inconsistency has not been explained.

3. In the complaint (Ex.PW-2/A), the complainant disclosed that when at about 12.30 (night), he reached near Bhajanpura in the auto hired by him, its driver made three individuals to sit in the TSR. After some distance, two assailants sitting adjacent to him put a rope around his neck and the third individual hit him with a heavy object on head. The assailant sitting along with the driver stabbed him as a result of which he sustained injuries on his left hand. Thereafter, he was robbed of cash and other articles detailed therein. In the complaint, the victim did not give description of the assailants; no broad features, ages or other particulars were described. The complainant even did not claim if he was able to identify the assailants. Registration number of TSR or its description was not mentioned in the complaint. It was also not disclosed as to which of

the assailants had robbed the articles. While appearing as PW-2 in examination-in-chief, the victim deposed that when the TSR reached Bhajanpura, the TSR driver made three more persons to sit in it. When the TSR was near Loni Flyover, A-1 sitting besides him held his neck and pushed him down inside the TSR. A-3 and A-4 sitting on the side put a rope around his neck. The boy sitting besides him tried to stab him with a knife and it resulted in scratch on his palm. The assailant sitting besides the driver on the front seat hit him with some hard object on head. Thereafter, the purse containing driving licence, credit card, mobile phone and ₹4,500 were robbed. He was pushed out of the TSR and the assailants fled the spot. He categorically stated that he was unable to identify the TSR driver as he had seen him from back. Learned Additional Public Prosecutor cross-examined the witness after seeking court's permission. He admitted that in his supplementary statement recorded on 22.05.2008, he had stated that A-1 sitting on the left side in the TSR and A-4 sitting on the right side had pulled his neck with the rope. He admitted that in the supplementary statement, he had disclosed that A-2 sitting on the left side of the driver seat had attacked him with a knife. He further admitted that A-3 was TSR driver who had made his associates to sit in the TSR.

4. On scrutinizing the testimony of the witness, it reveals that he has given entirely inconsistent and conflicting statement and has made vital improvements. The witness was unable to narrate as to how many assailants were there in the TSR beside him and the driver. He was also unable to disclose the seating pattern of the assailants in the TSR. The complainant could not ascribe specific and definite role to each of the assailants. He did not disclose as to which of the assailants had inflicted injuries to him and with what weapon. He was not sure as to which of the assailants had taken out his articles. The prosecution alleged that A-3 was the TSR driver. The complainant in his deposition stated that he was unable to recognize the TSR driver as he had seen his back only. In his testimony before the court, he gave a conflicting version that A-3 and A-4 were sitting on the rear seat and they put rope around his neck. A-4 to whom he had attributed similar role as that of A-3 was acquitted by the trial court. The complainant was unable to recognize him (A-4) in test identification proceedings. However, he identified him in the court as the assailant who along with A-3 had put rope around his neck. The complainant admitted that he was unable to identify the assailant who had stabbed him with a knife. When cross-examined by learned Additional

Public Prosecutor, he admitted that in the supplementary statement dated

22.05.2008 he had told that A-2 sitting on the left side of the driver seat had attacked him with a knife. As per his testimony, there were five assailants, three sitting on the rear seat with him and one sitting along with the driver in the front. The complainant was not certain as to who had hit him by a hard object on his head. He merely stated that the person who was sitting besides the driver on the front seat had hit him on his head. It is at variance with the supplementary statement recorded on 22.05.2008. In nutshell, the complainant has given entirely conflicting statement as to the number of assailants, their place of seating in the TSR, weapons in their possession and the role played by each of them in the incident. Since the occurrence had taken place at night time and the complainant had not noted the broad features of the assailants, it was highly improbable for him to identify and recognize them in court and attribute definite and certain role to them.

5. PW-1 (Irfan) who purchased the TSR in question from one Rajinder Kumar and got it on superdari vide superdarinama (Ex.PW-1/A), did not support the prosecution and claimed that at the time of incident, the vehicle was at Kalu's shop for repairing. He was cross-examined by learned Additional Public Prosecutor but it yielded no fruitful result to establish that A-3 was in possession of TSR at the time of occurrence.

The investigating officer did not collect any evidence to find out if A-3 used to take the vehicle on hire from its registered owner or whether the vehicle was in his possession at the relevant time. The police of police station Gokul Puri was not aware about the suspects. In the absence of any clue about their identity, strange enough, all were apprehended and arrested on 16.05.2008 in the same TSR within the jurisdiction of police station Gokul Puri. No independent public witness including the victim was associated at the time of effecting recoveries from them. The recovery of cash as part of stolen amount was not believed by the trial court. No evidence was collected to show that this mobile allegedly robbed was used by A-1 after the crime. No call details of this mobile phone have been proved on record. Mere identification of A-1 to A-3 in test identification proceedings is not enough to base conviction particularly when the assailants have alleged that soon after their apprehension, they were shown to the prosecution witnesses. The prosecution was unable to produce the crime weapon with which the injuries were inflicted to the complainant.

6. In view of major discrepancies and conflicting statements, the conviction of the appellants on the sole testimony of the complainant, cannot be sustained. They deserve benefit of doubt. The appeals are

accepted and their conviction and sentence are set aside. The appellants be set at liberty forthwith, if not required to be detained in any other case.

7. Trial Court record along with a copy of this order be sent back forthwith. A copy of the order be sent to Jail Superintendent, Tihar Jail for intimation. CRL.M.B.No.1879/2013 stands disposed of.

(S.P.GARG)
JUDGE

FEBRUARY 25, 2014

sa