

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

% *Judgment reserved on : 09.09.2014.*

Judgment delivered on : 12.09.2014.

+ CRL.A. 360/2006
MAHENDER SINGH

..... Appellant

Through Mohd. Faraz, Adv.

Versus

STATE NCT OF DELHI

..... Respondent

Through Mr. Ravi Nayak, APP for the
State

+ CRL.A. 495/2006
RAKESH

..... Appellant

Through Mohd. Faraz, Adv.

Versus

STATE NCT OF DELHI

..... Respondent

Through Mr. Ravi Nayak, APP for the
State

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 There are two appellants before this Court namely Mahender Singh and Rakesh. They have both been convicted under Section 392

read with Section 34 of the IPC and have been sentenced to undergo RI for a period of three years and to pay a fine of Rs.2,000/- and in default of payment of fine, to undergo SI for two months.

2 Nominal roll of the appellants have been requisitioned. Appellant Mahender Singh as on the date, when he had been granted bail, has suffered incarceration of about one year and 10 months. Nominal roll of co-appellant Rakesh reflects that as on the date when he had been granted bail, he has suffered incarceration of three months and 26 days.

3 Record shows that the present FIR i.e. FIR 74/2001 had been registered at Police Station Hazrat Nizamuddin on the statement of the complainant Nand Kumar (PW-4). His version was that on 08.02.2001 while he was driving his TSR No. DL 1RE 7397, he was asked by two passengers i.e. the appellants to stop the vehicle asking him to transport them from ITO Express building to Ashram. At about 10:15 PM, the appellants robbed the complainant of Rs.200/- cash; this was on the point of knife; thereafter the appellants fled to the other side of the road. PW-4 raised alarm. Appellant Rakesh was apprehended at the spot; from his personal search, one buttondar knife and Rs.200/- (which he had robbed from the complainant) were recovered. The co-appellant

Crl. Appeals No.360/2006 & 495/2006

Mahender Singh was arrested on the following day i.e. 09.02.2001.

4 Five witnesses were examined by the prosecution. The complainant as noted supra was examined as PW-4. The Investigating Officer SI Rajeshwar Rao (PW-5) was joined in the investigation by Constable Dharambir (PW-1) and Constable Samarvir Singh (PW-2). The arrest memo of Rakesh Ex.PW-1/DA evidenced his arrest on the same day i.e. on 08.02.2001 at 10:30 PM. The arrest memo of Mahender Singh evidenced his arrest on the following day i.e. on 09.02.2001 at 02:45 PM. The buttandar knife which had been recovered from appellant Rakesh had been taken into possession vide memo Ex.PW-1/B; the sketch of the knife was proved as Ex.PW-1/A.

5 On the aforementioned oral and documentary evidence collected by the prosecution, the accused persons were convicted as aforementioned.

6 On behalf of the appellants, arguments have been addressed in detail by learned amicus curiae Mohd. Faraz. It is pointed out that the case of the prosecution suffers from inherent infirmities; attention has been drawn to the complaint Ex.PW-4/C wherein the details and address of co-appellant Rakesh had been recorded. It is pointed out that as per the version of the prosecution, the appellants were unknown persons.

The complainant did not know their details, and how the name of Rakesh including his parentage and address find mention in the complaint Ex.PW-4/C has not been explained. The version of the prosecution that Mahender Singh was arrested on the following day i.e. from Patiala House Courts is again unbelievable as it would be difficult to perceive such a situation that an accused who had committed a crime on the previous night would have gone to the Courts on the following afternoon and had allowed the Investigating Officer to arrest him; the situation appears to be highly improbable; it is a clear case where the accused has been falsely implicated. Attention has also been drawn to the arrest memo of appellant Rakesh (Ex.PW-1/DA); submission being that in this document, the FIR has been written in the same ink; the arrest of Rakesh was admittedly prior to the registration of the FIR and how the FIR number came to be written in the same ink again throws a doubt on the veracity of version of the prosecution. Learned counsel for the appellants has relied on judgment reported as 2000 (53) DRJ Prithvi Pal Singh @ Munna Vs. State to support his submission that where the FIR had been found noted in the documents which were allegedly prepared prior to the registration of the FIR, the Court had not accepted

the version of the prosecution. Testimony of PW-4 is also full of improvements; it could not be relied upon. On all counts, the appellants are entitled to benefit of doubt and a consequent acquittal.

7 Arguments have been refuted by the APP for the State. It is pointed out that the version of the prosecution is fully cogent and coherent; it has been corroborated by the version of Investigating Officer (PW-5); the documentary evidence which includes the arrest memos and the personal search memos of the accused also advances the version of the prosecution. The accused Rakesh was apprehended at the spot and a buttondar knife was also recovered from him. He has no answer as to how this knife came to be recovered from him or the sum of Rs.200/- which as per the version of the complainant was the amount which had been stolen from him. On no count, does the impugned judgment suffer from any infirmity.

8 Arguments have been heard. Record has been perused.

9 The star witness of the prosecution is PW-4. He is the complainant. His allegation is that he was a TSR driver of TSR No. DL 1RE 7397 and while plying it on the road, when he reached near the ITO Express building, the appellants stopped his vehicle; they boarded his

vehicle and asked the complainant to transport them to Ashram. It was 10:00 PM. When the TSR of PW-4 reached near the Zoo, both the appellants stopped his TSR and inquired about his residence; they again stopped his TSR at the Nizamuddin crossing; appellant Mahender Singh got down from the TSR and appellant Rakesh started touching his neck with something sharp; PW-4 was asked to hand over his money. PW-4 had Rs.200/- with him which he had handed over to the accused. On PW-4 raising alarm, people gathered there and apprehended Rakesh. One buttondar knife was recovered from him.

10 On the following day, when the complainant had gone to Patiala House Court for release of his vehicle, he saw Mahender Singh in Court No.14. On his pointing out, the police arrested Mahender Singh. This witness was permitted to be cross-examined by the learned public prosecution wherein he admitted that from the personal search of Rakesh one buttondar knife was recovered as also Rs.200/-. In his cross-examination, he admitted that he had given his complaint Ex.PW-4/C. He admitted that the incident lasted only for two minutes. His statement was recorded at about 10:30 pm. No other supplementary statement of his was recorded. He reiterated that he had come to Patiala House Court

Crl. Appeals No.360/2006 & 495/2006 Page 6 of 11

on the following day in the afternoon at 02:30 pm. He had gone there alone to take back his vehicle on superdari. He identified Mahender Singh and at his pointing out, the Investigating Officer arrested him. He denied the suggestion that he was deposing falsely. He admitted that public persons had gathered on the spot at the time of occurrence. He denied the suggestion that a dispute had arisen about the rate of payment of TSR.

11 The contents of ExPW-4/C which was the complaint given by PW-2 has also been perused. This statement as per the version of PW-4 was recorded at 10:30 PM on 08.02.2001. Time of incident has been reported as 10-10:15 PM. While reiterating the incident, the complainant, in this complaint, has stated that “Rakesh s/o Prahlad, House No. K-749, Gali No. 1, Gautam Vihar, Usmanpur, Delhi was one amongst his two assailants. This information as given by PW-4 in his complaint is surprising. As per the version of PW-4, the accused persons were unknown to him. They had boarded his TSR in their capacity as passengers. The fact that the appellants were unknown to the complainant has been reiterated by PW-4 on oath wherein he has stated that the accused persons were strangers and he did not know them. How

PW-4 knew not only the name of Rakesh but also details of his parentage and his address is unexplained. This raises a suspicion in the mind of the Court and the possibility of false implication by the complainant of the accused cannot be ruled out. It is also surprising as to how Mahender came to be apprehended and arrested on the following day i.e. on 09.02.2001. It is improbable for the reason that Mahender Singh was admittedly unknown to the appellant and in a crowded Court i.e. Patiala House Courts which is a busy Court complex where sometimes persons are present not in hundreds but in thousands, the complainant having recognized the appellant Mahender Singh amongst such throngs of people is again unbelievable. Such an exact coincidence of the complainant going to Patiala House Court at the same time when appellant Mahender decided to go there throws a doubt on the credibility of the version of the prosecution.

12 The version of the accused persons in their statements recorded under Section 313 of the Cr.PC is that they have been falsely implicated in the present case.

13 Both the accused persons have categorically stated that they have been falsely implicated in the present case. The version of Rakesh in his

Crl. Appeals No.360/2006 & 495/2006

statement recorded under Section 313 of the Cr.PC is that while he was easing himself at the Nizamuddin bridge, an auto driver (the complainant) asked him not to ease himself there; that auto-driver was under the influence of liquor; there was hot exchange of words and thereafter he was picked up by the Police and falsely roped in.

14 The version of Mahender in his statement recorded under Section 313 of the Cr.PC was that he had gone to Patiala House on 09.02.2001 to prepare an affidavit of his son for the purpose of admission; he saw Rakesh and started talking to him. He was thereafter picked up and falsely implicated in the present case.

15 Accused Mahender had not denied that he had gone to Patiala House Court. A man who has a guilty mind and has committed a crime on the previous night would not have gone to the Court on the following afternoon where he could easily be arrested as had happened on that day. Moreover, PW-4 has categorically stated that at the time of the incident, Mahender Singh had managed to escape and he had taken advantage of the darkness. Time of incident was past 10:00 PM.

16 The well known principle of criminal jurisprudence is that the prosecution must prove its case beyond reasonable doubt. In the instant
Crl. Appeals No.360/2006 & 495/2006

case, although admittedly public persons had gathered at the spot when the incident had occurred and this has come in the version of all the witnesses (PW-4 the complainant, PW-5 the Investigating Officer and also PW-1 and PW-2 other members of the raiding party) yet no public person had been joined. At the cost of repetition; both the accused persons were strangers to the complainant; how the details of the name, parentage and residence of Rakesh came to be known to the complainant at the very inception i.e. at the time when he gave his complaint at 10:30 PM has not been explained. It is also hard to believe that on the following day i.e. on 09.02.2001, the co-accused Mahender was arrested from Patiala House Court where he (as per his version) had gone to prepare an affidavit of his son for the purpose of his admission in a school; a guilty mind would not have dared to venture near the Court where there was every possibility of his being nabbed.

17 All these circumstances create a suspicion in the mind of the Court on the veracity of a fair investigation. The prosecution thus having failed to prove its case beyond reasonable doubt, benefit of doubt must accrue in favour of the accused persons. Consequently the next corollary is that the accused are entitled to an acquittal. They are accordingly

acquitted. Their bail bonds cancelled. Surety discharged.

18 Appeals allowed in the aforementioned terms.

INDERMEET KAUR, J

SEPTEMBER 12, 2014

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