

* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on: 22.01.2014

Date of Decision: 27.01.2014

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CRL. APPEAL 589/2013

RAHUL@PARCHA

..... Petitioner

Through: Mr. Jitendra Singh, Adv.

versus

THE STATE (GOVT. OF NCT OF DELHI) Respondents

Through: Mr. Feroz Khan Ghazi, APP for State

CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J.

On 22nd September, 2011 at about 7.05 am, ASI S. Dayal of Police Post Tis Hazari informed Police Station Kashmiri Gate that Constable Hukum Prakash of BSF, who was coming on a rickshaw to Mori Gate had been stabbed in front of Sarvodaya Vidyalaya and 3-4 persons had run away with his belongings. The information was recorded at the police station vide DD No.8A, which was handed over to SI Anuj Kumar for investigation. On reaching the spot, the Investigating Officer came to know that the injured had been taken to Aruna Asaf Ali Hospital. He reached the aforesaid hospital and recorded the statement of the injured. The complainant told him that on that day, he got down at

Old Delhi Railway Station at about 4.30 am and engaged a rickshaw for going to Mori Gate. At about 4.45 am when the rickshaw reached the Gokhle Marg opposite Sarvodaya School, three boys came there all of a sudden. Two of those boys were waiving knives. One of them picked up his bag and when he resisted, the other boy gave him a knife blow which he took on his right palm. The third boy then gave a knife blow on his right thigh and thereafter they ran away towards Mori Gate, along with his bag containing two pair clothes, railway warrant and some documents, photograph of his child as well as his purse which contained Rs.300/- in cash besides railway ticket and some documents.

2. This is also the case of the prosecution that on 1.10.2011, the police officials, on receipt of some information laid a trap near Kashmiri Gate and apprehended two persons at Metro Station, Gate no.3, on the pointing out of the said informer. One of those boys was the appellant – Rahul @ Parcha and the other was one Mohit Kumar.

As per the case set out by the prosecution, a brown purse containing passport size photograph of the complainant as well as his other photographs and the documents was recovered at the instance of the appellant from the bushes of Agrasen Park.

3. Vide impugned judgment and order on sentence dated 2.2.2013, the appellant was convicted under Section 392/394/34 read with Section 397 as well under Section 411 of IPC. He was sentenced to undergo RI for seven years and to pay a fine of Rs.1,000/-, in default SI for two months under Section 397 of IPC. Identical punishment was awarded to him under Section 392/394 of IPC. He was also sentenced to undergo RI for two years under Section 411 of IPC. Being aggrieved from his conviction and sentence awarded to him, the appellant is before this Court by way of this appeal.

4. The complainant came in the witness box as PW2 and stated that on the fateful day, he hired a rickshaw to reach Mori Gate bus stand for taking a bus for Chawla. He was carrying his bag and baggage with him at that time. At about 4.45 am, when his rickshaw reached opposite Sarvodaya Vidyalaya, Mori Gate, three boys suddenly appeared before the rickshaw, stopped it and started snatching his bag. The rickshaw puller ran away and the rickshaw was stopped by those boys. He caught hold of his bag, but, one of the boys who was on the left side hit him with a knife which he (complainant) got over his right hand. At the same time, the other boy who was standing on his right side stabbed him with the knife on the back side of his right thigh and removed the wallet from

his back pocket. They took away his bag which had been kept on the footrest of the rickshaw. According to the witness, the brown colour purse removed from his pocket contained railway ticket, Rs.300 in cash, passport size photograph and photograph of his Identity Card. The witness identified the appellant Rahul as the person who had stabbed him with knife on the back side of his thigh from the right side. He further stated that he had identified the appellant Rahul during Test Identification Parade (TIP) conducted in the jail on 13.10.2011. He also identified his signatures on the TIP proceedings Ex.PW2/D. The witness further identified his photograph, the photocopy of identity card in his name as well as the photocopy of the certificate issued to him by his Commandant, all of which are Ex.P1(colly).

5. PW4, Head Constable Rajesh Kumar, stated that on 1.10.2011, he along with S.I. Anuj and another Constable was on night patrol duty in the area of Mori Gate. At about 3:00 a.m., one secret informer met and informed the IO that the boys who were involved in the incident of 22.9.2011 would come at Boulevard Road, Kashmere Gate Metro Station Gate No.3. On this information, they reached the aforesaid spot. At about 3:55 a.m., they saw two boys standing near Metro Station Gate No.3. On being pointed out by the secret informer, the boys were

caught. The accused Rahul @ Parcha made a disclosure statement Ex.PW4/A3, led them to Agrasen Park, Mori Gate and pointed out a place in the corner of the park in the bushes, where he had thrown the purse of the complainant and on his pointing out and search by the police officials, one brown colour purse containing the photograph of the victim as well as his documents was found. PW5, Constable Neeraj Kumar and PW8, S.I. Anuj Kumar, have corroborated his deposition with respect to receipt of secret information, apprehending the appellant and his co-accused at the pointing out of the informer, making of the disclosure statement by the appellant and recovery of the brown purse containing the photograph and documents of the complainant on being pointed out by the appellant, from the bushes in Agrasen Park.

6. PW6, Dr. Rubi Kumari, examined the complainant in the hospital on 22.9.2011 and found two CIW, one of the size of 4 X .5 X.5 and the other of the size 2 X .5 X. 5 over his right thigh (back side) and a superficial incised wound of the size 4 X .25 X .25 on his right palm.

PW7, Ms. Geetanjali, Metropolitan Magistrate, proved the TIP proceedings in respect of the appellant, Rahul, and stated that during the TIP proceedings the witness correctly identified the appellant.

7. In his statement under Section 313 Cr.P.C., the appellant denied allegations against him and stated that he was innocent and no recovery was effected from him.

8. The impugned order has been assailed by the learned counsel for the appellant primarily on the following grounds:

i. Since, there was darkness on the spot, at the time of robbery, as admitted by the complainant, he was not in a position to see the robbers properly and, therefore, was not in a position to identify him either in TIP or during trial.

ii. The story of the secret informer meeting the Investigating Officer at 3:00 a.m. is highly unnatural.

iii. According to the complainant, the person who gave knife blow on the backside of his right thigh was at his back and, therefore, the complainant could not have seen his face and, therefore, could not have identified the appellant.

iv. No cash or cloth, etc. of the complainant are alleged to have been recovered from the appellant.

v. According to the complainant, he was feeling asleep while in rickshaw and woke up when the boys snatched the bag. Therefore, it would not be possible for the appellant to see the culprits.

9. I have carefully perused the deposition of the complainant, Shri Hukum Prakash, who, at the relevant time, was working with BSF. Though initially he stated that there was darkness at the spot of incident, in the later part of his deposition he stated that there was partial darkness at the time he was stabbed. Moreover the incident of robbery took place on a main road and the court can take judicial notice of the fact that streetlights are available on all the roads in the city though the light may not be very good on every road. In my view, it would be difficult to conceive that there can be absolute darkness on a road in Delhi unless there is a power failure. That precisely is the reason why the witness in the latter part of his deposition clarified that there was partial darkness only. Therefore, the complainant, who was a trained police official, would certainly be in a position to identify the culprits. Tis Hazari Court Complex as well as Sarvodaya School are nearby the place where the incident took place. There cannot be darkness in Tis Hazari Court Complex or in the School. Therefore, some light from the Court Complex and/or the School would also be available at the place where the incident took place.

I also find that in his complaint lodged soon after the incident, the complainant clearly stated that the boys involved in the incident of

robbery were aged about 22-24 years, were of somewhat dark complexion and had a medium built. Had he not seen the culprits, it would not have been possible for him to give the aforesaid description in the FIR.

10. As noted earlier, the complainant identified the appellant in a judicial TIP. A perusal of the TIP proceedings would show that as many as ten (10) under trial prisoners, chosen by the appellant himself were joined in the TIP and the complainant was able to correctly identify the appellant amongst all those under-trial prisoners. Had the complainant not been able to see the culprits it would not have been possible for him to identify the appellant in the judicial TIP amongst ten (10) under-trial prisoners.

11. It has come in the deposition of the complainant that the person who gave knife blow on his right thigh was standing on his right side. Since the injury was caused on the backside of the thigh, he must be standing a little behind the complainant. It can hardly be disputed that if a person is given injury from his backside, his natural instinct and reaction would be to look at his back, so as to know who had caused injury to him. Therefore, on being stabbed on the backside of his right thigh, the complainant would have also looked at his back and,

therefore, he had no difficulty in identifying the person who caused injury on the backside of his right thigh.

12. As regards the complainant feeling sleepy at the time he was robbed, a careful perusal of his deposition would show that he noticed a boy giving knife blow to him and that blow was taken by him with his right hand. This clearly shows that the complainant was not really sleeping though he might be feeling sleepy on account of train journey which he had undertaken. Had he been sleeping, he would not have been able to take the knife blow given by the boy on the left side on his right hand.

13. As regards the secret informer meeting the Investigating Officer at about 3:00 a.m., I find that it has come in the evidence that the secret informer was already in touch with the police officer. Therefore, if the informer came to know of the presence of the appellant and co-accused in late hours of the night, there was nothing unusual in his meeting the Investigating Officer and then identifying the culprits.

14. Though, no cash or cloth of the complainant was recovered from the possession of the appellant that, to my mind, would be of no consequence considering that the stolen purse of the complainant containing his photograph and documents was recovered by the police

pursuant to the disclosure statement made by him. It is the normal practice of the robbers to take out the currency notes and valuable(s), if any, from the wallet of the victim and thereafter throw away the wallet. The photograph and documents of the complainant could have been of no use to the appellant and that precisely would be the reason why he did not remove them from the purse before throwing it in the bushes. Once, it is proved that part of the stolen property had come into the possession of the appellant, soon after the robbery, the failure of the Investigating Officer to recover the remaining stolen articles becomes irrelevant as far as the conviction of the person who came into possession of stolen articles is concerned.

15. Ex.PW4/A3 is the disclosure statement made by the appellant, Rahul, while in police custody. In this statement he *inter alia* stated that the purse of the victim was thrown by him in the bushes of Agrasen Park. Since the police later actually recovered the purse from the bushes of the park, the disclosure statement to the extent extracted above is admissible as evidence under Section 27 of the Indian Evidence Act, 1827 (for short 'Evidence Act'), since the police, from the above-referred disclosure statement discovered the fact that the purse of the complainant was lying in the bushes of Agrasen Park.

16. The disclosure statement made by the appellant coupled with the recovery of the stolen purse of the complainant at his instance, discloses three (3) possibilities. The first possibility is that he had himself thrown the purse in the bushes; the second possibility is that he had seen someone throwing the purse in the park; and the third possibility is that someone had told him that a brown colour purse was lying in the aforesaid park. Since the appellant does not say that he had seen someone throwing the purse in the park or that someone had told him that the purse was lying there, the inevitable inference is that he had himself thrown the purse in the bushes of the aforesaid park, meaning thereby that the appellant had come into possession of the purse of the complainant before it was thrown in the park. Considering that the incident of robbery took place on 22.9.2011 and the purse was recovered on 1.10.2011, it can be safely said that the appellant had come into possession of the stolen purse of the complainant soon after the theft. Therefore, the statutory presumption can be drawn under Section 114 of the Evidence Act that either he had stolen the purse of the complainant or he had received or retained the purse stolen by someone else knowing or having reasons to believe it to be the stolen property. In the facts & circumstances of the case, the presumption should be that the appellant

himself had committed theft of the aforesaid purse from the possession of the complainant.

17. Thus, the involvement of the appellant in the robbery stands proved not only by the direct evidence of the complainant who identified him during judicial TIP as well as during trial but also from recovery of the stolen purse pursuant to the disclosure statement made by him. The appellant, therefore, has rightly been convicted for committing robbery. It has also come in the deposition of the complainant that it was the appellant who had given knife blow to him on the backside of his right thigh, during the commission of robbery. Therefore, the appellant was liable to be convicted under Section 394 read with Section 397 of IPC. Hence, no ground for acquittal of the appellant on the aforesaid charges is made out.

18. As regards sentence, I find that the appellant has been awarded rigorous imprisonment for seven (7) years each under Sections 397 and 392/394 of IPC and has also been sentenced to pay fine of Rs.1,000/- each and in default of payment of fine to undergo SI for two (2) months each. He has also been sentenced to undergo RI for two (2) years under Section 411 IPC. In my view, two separate convictions one under Sections 392/394 and the other under Section 397 of IPC are not

warranted and the appellant ought to have been convicted only under Section 394 read with Section 397 IPC. Since the appellant was convicted for committing robbery no separate conviction under Section 411 of IPC was warranted.

19. For the reasons stated hereinabove, the appellant is convicted under Section 394 of IPC read with Section 397 thereof and is sentenced to undergo RI for seven (7) years and to pay fine of Rs.1,000/- and in default of payment of fine, to undergo SI for two (2) months. The appellant shall be entitled to benefit under Section 428 Cr.P.C.

The appeal stands disposed of in the aforesaid terms.

One copy of this order be sent to the Jail Superintendent for information and necessary action.

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

JANUARY 27, 2014/*rd/b'nes*

V.K. JAIN, J.