

* IN THE HIGH COURT OF DELHI AT NEW DELHI
Judgment delivered on : July 18th, 2017

+ Crl. A. No. 1120/2016
AKRAM & ORS Appellants
Through: Mr.Pankaj Kumar, Adv.

versus

STATE (GOVT NCT OF DELHI) Respondent
Through: Mr. Panna Lal Sharma, APP for the
State

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

JUDGMENT

P.S.TEJI, J.

1. The present appeal has been filed by the appellants-Akram, Shahid, Fazlu and Noor Alam @ Noora being aggrieved by the judgment of conviction dated 29.07.2016 passed by the learned Additional Sessions Judge, Delhi convicting the appellants for the offence punishable under Section 452/392/34 of Indian Penal Code (hereinafter referred to as I.P.C.); convicting the appellant Shahid under Section 397 IPC, and order on sentence dated 30.07.2016, whereby the appellants have been sentenced to undergo rigorous imprisonment for a period of six years and fine of Rs.4,000/- each for the offence under Section 452/34 of IPC and in default of payment of fine they were further sentenced to undergo simple imprisonment for two months; to undergo rigorous imprisonment for seven years for the offence punishable under Section 392/34 IPC. Appellant Shahid had

been sentenced to undergo seven years rigorous imprisonment for the offence punishable under Section 397 IPC.

2. The present case was registered against the appellants on the statement of complainant-Vidhya Devi who had stated in her statement that on 08.05.2006 she was present at the shop of her husband. As her husband had left for market, she was looking after the shop. At about 3.30-4.00 p.m., three customers came to the shop. Out of them, two persons came inside the shop and thereafter two more customers came inside. Those persons asked the complainant whether she cared for her reputation due to which she got scared. Those persons cut the wires of the telephone and directed her to give her earrings to them. She removed her chain, earrings and ring and gave it to them. Those persons asked for cash and in total Rs.30,000/- were taken by the accused persons. At that time, the accused persons were armed with pistols. They also snatched the mobile phone of one customer while another customer was robbed of his cash. The accused persons ran away from the shop. Thereafter, the complainant connected the telephone wire and called the police. Police reached the spot and recorded her statement.

3. On the basis of statement made by the complainant, FIR of the present case was registered. Accused persons were arrested. Accused Fazlu got recovered robbed one gold earring from his house. Accused Noor Alam @ Noora got recovered other robbed gold earring from his house. Shahid got recovered robbed Rs.740/- from the house of one Mariham Khatoon. Accused Akram got recovered robbed Rs.260/-

from the same house. During Test Identification Parade, the complainant identified her earrings.

4. After completion of investigation, charge sheet was filed before the trial court. The appellants were charged with the offence punishable under Sections 452/392/34 of IPC and accused Shahid was also charged for the offence punishable u/s 397 IPC, to which they pleaded not guilty and claimed trial.

5. To bring home the guilt of the appellants, the prosecution examined as many as 15 witnesses. They are, Constable Vinod Kumar (PW-1); Constable Harender Kumar (PW-2); Constable Anil Kumar (PW-3); Constable Satbir Singh (PW-4); Head Constable Yashpal (PW-5); Smt. Vidya Devi (PW-6); Neerja Bhatia, Metropolitan Magistrate (PW-7); Constable Gaj Raj (PW-8), Constable Raj Kumar (PW-9), Amit Kumar, Sr. Civil Judge (PW-10), Shri P.S. Malik (PW-11); SI Om Pal Singh (PW-12); Head Constable Rohtash Kumar (PW-13); Jagdish (PW-14) and SI Ajay Kumar (PW-15).

6. After conclusion of prosecution evidence, statements of the accused persons were recorded under Section 313 Cr.P.C.

7. After considering the facts, evidence led on behalf of both the sides and the material on record, the learned Additional Sessions Judge held the appellants guilty for an offence punishable under Section 452/392/34 of IPC and accused Shahid was also held guilty under Section 397 IPC vide judgment and sentenced the appellants vide order on sentence, as indicated above. Hence the present appeal

has been preferred against the impugned judgment and order on sentence.

8. Learned counsel for the appellants—contended that the appellants namely Akram and Shahid were arrested in case FIR no. 352/2006 and appellants Fazlu and Noor Alam in case FIR no. 355/2006 and only on their disclosure statements all the appellants were impleaded in this case but factually the appellants had no concern with the said case. The learned Trial Court had failed to appreciate the testimony of the witnesses who joined the investigation with the IO who had a different view in mind qua the recovery of articles and money as well as the presence of the family members of the appellants and other witnesses.

9. On the other hand, learned Additional Public Prosecutor for the State has vehemently opposed the contentions of the appellants and submitted that the testimony of the complainant is alone sufficient to hold the appellants guilty of their offence. Therefore, the judgment and order on sentence as passed by learned Additional Sessions Judge do not suffer from any irregularity or illegality and is passed with a reasoned order; therefore, the same is not liable to be interfered with.

10. I have heard the submissions made on behalf of both the sides and also gone through the evidence as well as material placed on record.

11. The relevant testimony is that of complainant PW6 Smt Vidya Devi, who has deposed in her testimony that on 08.05.2006 at about

01.30/2pm, she reached the shop of her husband along with food for him. After taking his lunch, her husband went to the market while she sat on the counter of the shop. At about 3.30/4.00 pm, three customers came to the shop out of whom two came inside and thereafter two other customers came inside the shop. They questioned her whether she cared about her reputation on which she got scared and the said persons cut the wires of the telephone and directed her to give them the earrings she was wearing. She removed her chain, earrings and ring and gave it to them, and they asked her where the cash had been kept and forced her to get up from her seat. They subsequently took Rs.7,000/- kept in the gaddi, Rs.600/- kept in her purse and she gave them money she had kept inside her clothes. In all, she stated that they took Rs.30,000/- from the shop. This witness stated clearly that the intruders were armed with pistols and had aimed the same at her. They also snatched the mobile phone of one of the customers who was present in the shop at that time and another customer was robbed of cash. When the intruders fled from the shop, this witness connected the telephone lines and raised an alarm and called the police control room. After about an hour and a half, police reached the spot and this witness lodged her report with them which is Ex. PW6/A. This witness after about a month visited the police station to inquire about the progress of her case and saw the four offenders in the police station. Thereafter, during her deposition, she is said to have identified her earrings (Ex. P1 and P2) and also identified the four accused persons as the robbers who had come to her shop while explicitly stating that accused Shahid was the one carrying the katta.

12. PW 15 is SI Ajay Kumar who stated in his testimony that on 08.05.06 at about 5.15 pm he received a DD No. 23-A Ex. PW15/1 regarding the robbery in the present case. This witness stated that he reached the spot and met the complainant PW 6 Vidya Devi who made allegations of robbery. This witness recorded the statement of the complainant vide Ex. PW 6/A which bears his signatures at point B. This witness then prepared site plan vide Ex. PW15/A and made inquiries from the nearby place and recorded the statements of the witnesses. This witness further stated that on 22.05.06, two accused namely Shahid and Akram were arrested in FIR No. 352/06 of PS Gokulpuri and they made disclosure statement of the present case. On 23.05.06 this witness interrogated both accused persons Shahid and Akram and thereafter arrested them. This witness thereafter moved an application of TIP of both accused persons and the same was fixed at a later date. On 25.05.06 other accused Fazlu and Noor Alam @ Noora were arrested in case FIR No. 355/06 PS Gokulpuri and IO of the said case informed this witness. On 26.05.2006 this witness arrested accused Fazlu and conducted his personal search vide Ex. 15/H and arrested accused Noor Alam vide Ex. PW15/J and took his personal search vide Ex. PW 15/K. This witness moved an application of TIP for these two accused persons also. Subsequently, this witness recorded disclosure statements of all accused vide Ex. PW1/A-D. On 07.06.06 accused Fazlu took this witness and his team to his house wherein one earring was recovered. Thereafter, from the house of accused Noor Alam, one gold earring was recovered and some cash recovered from accused Shahid's house and accused Akram's house.

13. From the testimony of complainant/eye witness PW6 Vidya Devi, it is clear that on the day of incident while she was present at her shop and her husband was away, four persons entered her shop armed with pistols who questioned her whether she cared about her reputation on which she got scared and the said persons cut the wires of the telephone and directed her to give them the earrings she was wearing. She removed her chain, earrings and ring and gave it to them, and they asked her where the cash had been kept and forced her to get up from her seat. They subsequently took Rs.7,000/- kept in the gaddi, Rs.600/- kept in her purse and she gave them money she had kept inside her clothes. In all, she stated that they took Rs.30,000/- from the shop. This witness stated clearly that the intruders were armed with pistols and had aimed the same at her. They also snatched the mobile phone of one of the customers who was present in the shop at that time and another customer was robbed of cash. When the intruders fled from the shop, this witness connected the telephone lines and raised an alarm and called the police control room. After about an hour and a half, police reached the spot and this witness lodged her report with them which is Ex. PW6/A. This witness after about a month visited the police station to inquire about the progress of her case and saw the four offenders in the police station. Thereafter, during her deposition, she is said to have identified her earrings (Ex. P1 and P2) and also identified the four accused persons as the robbers who had come to her shop while explicitly stating that accused Shahid was the one carrying the katta.

14. This court is conscious of the fact that the main witness in the present case is complainant–Vidya Devi (PW-6) on the basis of which the appellants have been convicted. In **Anil Phukan vs State Of Assam 1993 SCR (2) 389** the apex court observed that :

“Indeed, conviction can be based on the testimony of a single eye-witness and there is no rule of law or evidence which says to the contrary provided the sole witness passes the test of reliability. So long as the single eye-witness is a wholly reliable witness the courts have no difficulty in basing conviction on his testimony alone.”

Also, in **Kalu @Amit v State of Haryana AIR 2012 SC 3212** the apex court reiterated that it is well settled that conviction can be based on the evidence of a sole eye witness if his evidence inspires confidence.

15. In view of the above discussion, this Court is of the considered opinion that the prosecution has successfully established on record the guilt of the appellants that on the day of incident they entered the shop of the complainant and aimed a pistol at her while threatening her to give all her cash and earrings, while disconnecting the telephone wires preventing her from raising an alarm. The eye witness and also complainant in the present case successfully identified all accused in the police station and also identified her pair of robbed earrings that the accused persons had taken away from her. Further, she specifically mentioned while identifying accused Shahid that he was the one who pointed the katta at her. Therefore, the conviction of the appellants

under Section 452/392/34 IPC and additional conviction of appellant Shahid under section 397 IPC deserves to be upheld.

16. Keeping in view the above mentioned facts and circumstances, the judgment of conviction awarded to the appellants is hereby upheld.

17. With the above view, the present appeal is hereby dismissed.

18. A copy of this order be sent to the Trial Court for information and necessary steps.

19. With aforesaid directions, the present appeal is disposed of.

JULY 18, 2017
dd

(P.S.TEJI)
JUDGE

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