

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 06.01.2020

+ **CRL.A. 230/2017**

NASEEM

..... Appellant

versus

STATE

..... Respondent

Advocates who appeared in this case:

For the Appellant: Mr Jivesh Kumar Tiwari, Advocate.

For the Respondent: Mr Tarang Srivastava, APP for State with SI
Puran Singh, PS Gokul Puri.

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HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The appellant has filed the present appeal impugning the judgment dated 23.12.2016 passed by the Learned ASJ (NE), Karkardooma Courts, whereby the appellant had been convicted for the offences under Sections 392/34 and Section 397 of the Indian Penal Code, 1860 ('IPC'). The appellant also impugns an order dated 24.12.2016, whereby the appellant has been sentenced to rigorous imprisonment for a period of seven years and fine of ₹10,000/- for the offence punishable under Sections 392/3 and Section 397 of the IPC

and in default, simple imprisonment for six months. All the sentences were directed to run concurrently and the accused was granted the benefit under Section 428 of the Cr.P.C.

2. The prosecution's case is that on 18.03.2016, the complainant produced the accused before the Duty Officer of PS Gokul Puri, who was apprehended by her with the help of the public persons. On personal search of the accused, an *ustra* was recovered from his pocket which was seized after the preparation of its sketch. The complainant made a statement thereby alleging that she boarded an auto from Khajoori Khas to Ashok Nagar and the appellant, along with his associate, had also sat in the said Auto. During her transit, the appellant put an *ustra* on her neck and the other assailant forcefully took her tablet. Both the assailants ran away by jumping out of the auto after committing robbery of the tablet of the complainant. The auto driver raised an alarm, along with the complainant, and the appellant was apprehended by the public persons in front of the police station, but the other associate ran away with the robbed tablet.

3. Pursuant to the aforesaid events, a FIR was lodged under Sections 392/394/397/34 of the IPC. Charges were framed against the appellant under Sections 392/397/34 of the IPC.

4. To prove its case, the prosecution examined eight witnesses. The Trial Court, after perusing the evidence, held the appellant guilty under Sections 392/397/34 of the IPC. The Trial Court observed that the prosecution has duly proved its case beyond reasonable doubt, as there

were no material contradictions in the testimonies of the witnesses. The Trial Court further observed that it stood proved that the accused was involved in the incident since he was apprehended soon after the incident and was found in possession of the weapon used during the incident. The Trial Court held that the recovery of the stolen object, that is, the complainant's tablet is not relevant to prove the charges against the appellant, as complainant has duly proved before the court that her tablet was robbed by the appellant. The Trial Court further held that the appellant had also failed to establish any doubt as to his involvement in the incident by his statement under Section 313 of the Cr.P.C., wherein he had stated that he was falsely implicated in the present case.

5. The appellant challenges the impugned judgment on the ground that the Trial Court had erred in not taking into consideration that the prosecution has failed to present any public witness of the alleged incident despite the prosecution witnesses claiming the participation of a large number of public persons. Further, the driver of the alleged TSR has not been cited as witness by the prosecution. The Trial Court also failed to appreciate the contradictions and discrepancies in the testimony of the witnesses regarding the apprehension of appellant. PW-4 had stated that she herself, along with the help of police, apprehended the appellant, whereas PW-6 stated that he was told by the complainant that accused was apprehended by public persons.

Evidence

6. Before proceeding further, it is important to examine the

depositions of the witnesses.

7. Madhu, the complainant was examined as PW-4. She deposed that she took sharing TSR from Khajuri Red Light to go to Ashok Nagar, in which three persons were on the back seat of the TSR, including her and one other passenger was sitting beside the auto driver. When the TSR reached near the Jal Board/BSES office, Yamuna Vihar Road/ Wazirabad Road, near Red Light Crossing, Delhi, the appellant, who was sitting on the left side of the complainant in the TSR took out the *ustra* and put the same on her neck and uttered '*Kaat Dunga, Tab De Dijeye*'. At that time, she was holding a tablet, grey in colour, of I ball company, having sim 8376049727. Immediately, the boy sitting on the right side of the complainant in the TSR snatched the tablet from her hands and both the assailants jumped from the TSR and ran away. The appellant ran towards Gokul Puri Police Station, while his associate, who was having the tablet in his hands, ran towards Yamuna Vihar side. PW-4, along with the driver, chased the appellant and she raised an alarm. Consequently, some public persons and the driver of TSR overpowered the appellant and gave beatings to him. PW-4 deposed that one police official reached there and brought the appellant to PS Gokul Puri, followed by her. PW-4 further deposed that the appellant at that time was under the influence of intoxication and a bad smell was coming from of his mouth. When the police officials had taken a personal search of accused, the *ustra* used in robbery was found in the pocket of his pants. It was during interrogation of the appellant by the police, when the name of the appellant came to the notice of PW-

4 and her statement was recorded by the police. PW-4 deposed that during the interrogation, the appellant had run away from the Police Station and within 10-15 minutes, the police officials traced him and hand cuffed him.

8. HC Yashpal, who was on duty of MHCM, was examined as PW-1. He deposed that HC Shopal has deposited one sealed parcel containing exhibits in the Malkhana. He took custody and kept the same in the Malkhana room and made the entry in register 19. He further deposed that the sealed parcel has not been tampered till it remained in his custody.

9. HC Sandeep Kumar, who was on duty as Duty Officer at PS Gokul Puri from 4 PM to 12 midnight, was examined as PW-2. He deposed that at about 8 PM, *rukka* was recorded by HC Shopal and was presented before him for registration of FIR upon which he made endorsement. Thereafter, he registered the FIR and after going through *rukka*, handed over the same to Computer Operator Ct. Satish to type the FIR, which was later checked and tallied by him. The certificate regarding correctness of FIR and computer system was issued by PW-2. PW-2 further deposed that the investigation of this case was assigned to SI Om Pal and *rukka* and the copy of the FIR were given to him at the Police Station.

10. Ct. Budh Prakash, who was present outside the main gate of PS Gokalpuri and was on emergency duty along with HC Shopal from 8 AM to 8 AM, was examined as PW-3. He deposed that he heard a noise

‘chor chor pakdo pakdo’ and then saw the appellant being beaten by the public at a place near service road at a distance of 100 metres towards Ghaziabad from PS Gokalpuri. He then reached there and brought the appellant at the Police Station and produced him before the Duty Officer. He further deposed that a lady also followed PW-3 to the police station and gave her statement to HC Shopan that one tablet of the I-Ball make was robbed by two boys at the point of *ustra* and the aforesaid lady (complainant) then, narrated the incident. HC Shopan took search of the appellant in the presence of complainant and one *ustra* was recovered from his right pocket of the lower, of which HC Shopan took measurement and prepared its sketch. The *ustra* measured 22 cm in length and *‘Mukesh No 1’* was written on the green coloured handle of the weapon. PW-3 deposed that HC Shopan, thereafter, sealed the *ustra* with the seal of SPS and took it into possession vide seizure memos (Ex. PW3/B) and thereafter, made endorsement to get FIR registered and presented the *rukka* before the Duty Officer. After the registration of FIR, the investigation was assigned to HC Shopan. IO arrested the appellant and inspected the place of the incident at the instance of complainant and prepared a site plan. He further deposed that the case property was deposited with the MHC (M) and accused was put in lock up.

11. Dr Nadeem, who was the medical officer of GTB Hospital, Delhi, was examined as PW-5. He deposed that he has been deputed to depose for Dr Manik Tikoo, then Jr. Resident (at the time of the incident) since Dr Manik left the service from hospital and his whereabouts were not

known. PW-5 deposed that as per the MLC, injured appellant was brought at about 11 PM on 18.03.2016 by Ct. Nikesh with the alleged history of being beaten by public at Gokul Puri Bus Stop at around 9 PM on the aforesaid date. He further deposed that general condition of the accused was conscious and oriented. On examination, abrasion and bruises were noticed on the appellant. After giving first aid, he was referred to Ortho and Optha. He deposed that the injuries were caused by a blunt object and the injured person was fit to make statements as per MLC.

12. HC Shopal Singh, who was on duty at P.S Gokul Puri from 8 am to 8 pm during the day of incident, was examined as PW-6. He deposed that at about 7 PM, the complainant came at the Police Station alongwith the appellant. He further deposed that the complainant produced the appellant before him complaining of theft of her tablet by him at the point of weapon. The complainant further stated that the appellant was overpowered by her with the help of TSR driver, when he was running along with his associate. PW-6 recorded the statement of Madhu and presented *rukka* before the Duty Officer for registration of FIR. He deposed that the investigation in this case was assigned to SI Om Pal Singh. Prior to registration of the FIR, PW-6 took search of accused and recovered one *ustra* from the right pocket of the wearing lower of the accused. He then made the sketch of the aforesaid weapon (Ex. PW3/A) and sealed the same with the seal of SPS and took into the possession vide seizure memo (Ex. PW3/B). The sealed parcel of weapon along with the sketch was produced to the IO.

13. SI Om Pal Singh Rathi was examined as PW7 and he deposed that the investigation of the case was assigned to him. The Duty Officer HC Sandeep Kumar had delivered the *rukka* and the copy of FIR to him and HC Shopal had produced the appellant before him along with the sketch of the *ustara* and the weapon. PW-7 interrogated the complainant and in her presence, he arrested the accused and conducted a personal search of him and also recorded the disclosure statement of the appellant. He further deposed that through the FIR, it came to his notice that the incident of robbery had taken place with the complainant when she was travelling in TSR and her tablet was robbed by two robbers, one of whom was the appellant. PW-7 inspected the place of the incident and prepared the site plan at the instance of the complainant and in presence of Ct. Budh Prakash, who had joined the investigation with him. The appellant was put in lock up after his medical examination and next day was produced before the concerned court and was taken into Police Custody for one day. He further deposed that he made all efforts to track the accused's other associate and the Tablet which was robbed but could not find the same. The complainant furnished the copy of the bill of the case property (Ex. PW4/B), which was verified by the proprietor of 4Square Computer, at C-56/A, Thana Road, Bhajanpura, Delhi. The aforesaid tablet had a mobile sim connection no. 8376049727 and to collect the CDR of the same, moved a written request in the office of the DCP. He further collected MLC of the accused and certificate under Section 65B of the Indian Evidence Act, 1872 to prove correctness of the FIR. He completed the investigation and then prepared the charge-sheet against the appellant.

14. Gaurav was examined as PW-8. He deposed that he has been running his shop under the name and style of '4 square Computer' at C-56/A, Thana Road, Bhajanpura, Delhi for last sixteen years. He has seen the original bill of the tablet, which had been generated/ issued by him in the favour of customer against the sale of one tablet. He had received a total payment of ₹7,100/- from the customer. The aforesaid bill bore signatures of Sales Manager Sabha along with the seal of the shop.

Reasons and Conclusion

15. The complainant had, in her initial statement (Ex.PW-4/A), narrated the incident. She had stated that on 18.03.2016, at about 6:45 PM, she had boarded an auto TSR at Khajuri Khas for going towards Ashok Nagar. Two other boys had also sat on her either side. She stated that when the auto reached the Wazirabad main road red light crossing at Delhi Jal Board, one of the boys had placed a *ustara* and the other boy had pressed her neck and had snatched her tablet, which was grey in colour and of the make of I-Ball. She stated that both the boys had gotten out of the auto and had run away. One of the boys had run towards Yamuna Vihar after crossing the road while, the other boy had run towards Gokul Puri. She stated that when the boy reached in front of Gokul Puri Police Station, she and the auto driver had raised an alarm (*chor chor pakdo pakdo*). The persons from the public who were standing there, with the assistance of the police staff, had apprehended the boy (appellant herein). She further stated that persons from the public had also beaten him, which resulted in the boy suffering injuries. She further stated that the boy who was apprehended, was the one who

had placed an *ustra* on her neck. Her testimony before the court conformed to the statement recorded on the date of the incident (Ex.PW-4/A) in all material aspects. However, there is a minor discrepancy as to how the appellant was apprehended. In her statement, she had stated that the accused (appellant) was apprehended by persons from the public with the assistance of the police staff; whereas, she testified that some persons from the public and the driver of the TSR had overpowered the accused and one police official had also reached there. In her cross-examination, she stated that she had nabbed the accused about 100 meters away from where he had alighted from the auto to escape. She also volunteered that police officials present near the Police Station had also assisted her in apprehending the accused besides two or three other persons from the public and the auto driver.

16. However, this Court is of the view that the aforesaid discrepancy is not material. On the contrary, the statement made by the complainant and her testimony must be read together to clarify the manner in which the appellant was apprehended. The appellant had alighted the TSR and had tried to escape. It is clear from the complainant's statement recorded on the date of the incident, as well as her testimony, that she and the auto driver had followed him. She and the auto driver had raised an alarm and the public had apprehended the accused. Her testimony also indicates that she and the TSR driver were party to apprehending the accused. This is obviously the natural recourse, as they were chasing the accused and had raised an alarm. Ct. Budh Prakash (PW-3) was also available near the spot on an emergency duty. He had heard

the noise “*chor chor pakdo pakdo*” and had seen one person being beaten by the public. This also indicates that PW-3 had also arrived there almost simultaneously. It is, thus, clear that there exists a minor discrepancy between the statement of the complainant (PW-4), as recorded at the material time and her testimony, regarding the manner in which the incident was narrated. This Court is unable to accept that the testimony of the complainant (PW-4) is unreliable and is required to be discarded on the basis of the said discrepancy.

17. There is merit in the appellant’s contention that the TSR driver and the other co passenger (who is sitting alongside TSR driver) were material witnesses and ought to have been examined by the prosecution. However, the failure on the part of the prosecution to include them as witnesses does not, in any manner, raise any doubts as to the incident in view of the unequivocal testimony of the complainant (PW-4) and PW-3. Further, there is no reason to doubt that the weapon (*ustra*) used by the appellant was recovered from him. PW-3 had testified that HC Shopal Singh (PW-6) had searched the appellant in the presence of the complainant and one *ustra* was recovered from the right-side pocket on his lower (trouser). PW-6 had deposed that he had searched the appellant and had recovered a *ustra* from the right-side pocket of the lower worn by the appellant. He had seized the said weapon (Ex.PW-3/B) and had sealed the same in a cloth parcel. The cloth parcel was produced before the court and PW-6 had identified the *ustra* (razor) as the one which was recovered by him from the appellant. The testimony of PW-4 corroborates the testimony of PW-3 and PW-6.

18. In view of the above, this Court is unable to accept that the prosecution has not established its case beyond the reasonable doubt. Thus, the appeal is unmerited and is, accordingly, dismissed.

VIBHU BAKHRU, J

JANUARY 06, 2020
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