

IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 24.02.2020

+ **CRL. A. 731/2016 & CRL. M. (BAIL) 1183/2019**

JAVED

..... Appellant

versus

STATE

..... Respondent

Advocates who appeared in this case:

For the Appellant : Mr Jivesh Kumar Tiwari.
For the Respondent : Ms. Meenakshi Chauhan, APP for
State.

CORAM

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The appellant has filed the present appeal impugning a judgment dated 04.03.2016 and an order on sentence dated 10.03.2016 passed by the ASJ-04 (Central), Tis Hazari Courts. By the impugned judgment dated 04.03.2016, the appellant was convicted for commission of the offences punishable under Sections 392 and 397 of the Indian Penal Code, 1860 (IPC) and was sentenced to serve seven years of rigorous imprisonment and a fine of ₹5,000/- and in default of payment of such fine, to undergo simple imprisonment for a further period of one year.

2. Briefly stated, the case of the prosecution is that on 04.04.2015 at about 08:00 pm, the complainant was pulling his rickshaw at Turkman Gate and on reaching near HDFC Bank, Asaf Ali Road, the accused stopped the complainant and placed a blade on the left side of his head and took out ₹220/- from the complainant's pocket. At this stage, the complainant raised an alarm and the guard of the HDFC Bank ATM arrived at the spot and helped in apprehension of the accused. The security guard, thereafter, made a call at 100 number. The accused threw the blade on the road. The police arrived and on the searching the accused, ₹220/- were recovered and the blade used in the offence was also recovered from the spot.

3. On 10.08.2015, the appellant was charged with committing robbery of ₹220/- with the use of a deadly weapon (sharp edged blade). The accused pleaded not guilty and the matter was set down for trial. The prosecution examined six witnesses during the trial.

Evidence

4. ASI Ajab Singh, PS Darya Ganj deposed as PW-1. He stated that on 04.04.2015, he was working as a duty officer from 04:00 pm to 12:00 midnight. At about 08:13 pm, he received a call from the control room that some unknown person had snatched money from a rickshaw *wala* at blade point and accordingly, DD entry no. 30A (Ex. PW1/A) was recorded and the same was marked to SI Narender Pal who left with Ct. Satbir for further action. At about 10:00 pm, PW1 received a *rukka*

through Ct. Satbir sent by SI Narender Pal on the basis of which, FIR no. 221/15 was registered.

5. Ct. Satyaveer, PS Darya Ganj, deposed as PW2. He deposed that on 04.04.2015, he was posted at PS Darya Ganj. IO SI Narender Pal received DD no. 30A and thereafter, PW2 along with SI Narender Pal reached the spot near HDFC Bank, Asaf Ali Road, where the complainant Safiq Sheikh and the guard of HDFC Bank met them and produced the accused Javed. Thereafter, the IO interrogated the accused and the accused disclosed his name and address to the IO. The IO recorded the statement of the complainant and prepared the *rukka*. PW2 took the said *rukka* to the PS and came back to the spot with a computerized copy of the FIR. PW2 stated that cash amounting to ₹220/- and one surgical blade were recovered from the accused. The IO prepared a *pullanda* of the same and sealed it with seal of VP. The sealed *pullandas* were produced and one of them contained cash worth ₹220/- (two notes of ₹100/- each and 2 notes of ₹10/- each) and the other contained a surgical blade. Both were identified by PW2. PW2 also identified the accused in open court.

6. In his cross-examination, PW2 stated that when they reached the spot, no one except the complainant was present. He stated that he came back to the spot at about 09:00 pm. PW2 stated that the IO had not recorded the statement of any public person, however, he corrected himself and stated that the IO had recorded the statements of the complainant and the guard. He affirmed that the IO had not mentioned

the denomination of the currency in his statement or any other statement.

7. Krishan Kumar, who was posted on duty as a guard at ATM, HDFC Bank, Asaf Ali Road on 04.04.2015, deposed as PW3. He stated on that day at about 7:30/8:00 pm, he saw the accused coming from the Delhi Gate side and one rickshaw puller along with his rickshaw, was coming from the Turkman Gate side. When the rickshaw puller came in front of the aforesaid ATM, the accused caught hold of the rickshaw puller, who was shouting "*isne mera paisa cheen liya*". The rickshaw puller then apprehended the accused and at that time, the accused had some sharp-edged object in his hand. He stated that, thereafter, the rickshaw puller dragged the accused to the middle of the road, near the ATM, and asked him to call the police and stated that the accused had snatched his money and that he had a sharp-edged blade (*isne mera paisa cheen liya aur iske hath mei blade hai*). PW3 stated that he told the accused that he had reprimanded him on 3-4 previous occasions as he would snatch money from rickshaw pullers (*maine tujhe pehle bhee 3-4 baar bhagaya hai kyunki tu roz rickshaw walo ko pakad kar paise cheenta hai*). PW3 stated that, thereafter, the accused requested him with folded hands to not call the police. PW3 then made a call at 100 number after which, two police officials from PS Darya Ganj reached there and the accused was handed over to them. PW3 stated that on seeing the police officials, the accused threw his blade on the road and on PW3 and the complainant pointing to the blade, one of the police

officials lifted the said blade and prepared *pullandas* of the said blade and the recovered currency.

8. In his cross-examination, PW3 stated that the rickshaw puller had apprehended the accused 7-8 steps away from him. He denied that a quarrel was going on between the rickshaw puller and the accused. He stated that when the rickshaw puller brought the accused near the ATM, a number of public persons had gathered there but when the police officials reached there, the public persons had dispersed.

9. Shafiq Sheikh, the complainant, deposed as PW4. He deposed that he did not know the exact date and month of the incident. He stated that he was plying his rickshaw at Turkman Gate and at about 08:00pm, when he was on Asaf Ali Road near HDFC Bank, the accused caught hold of him, restrained him and put a blade on the left side of his head and took out cash worth ₹220/- (two notes of ₹ 100/- each and 2 notes of ₹ 10/- each) from the right pocket of his pants. A guard was present outside HDFC Bank, who informed the police at 100 number. The accused threw the blade on the road. Police officials from PS Darya Ganj arrived at the spot and apprehended the accused and recovered ₹220/- (two notes of ₹100/- each and 2 notes of ₹10/- each) from his person. Further, they also collected the blade from the place where the accused had thrown it. The police officials sealed the articles as recovered by them.

10. In his cross examination, he stated that the police officials reached the spot at about 08:00 pm and remained at the spot for about

ten minutes. He denied that the police officials had called him to the police station after the incident. He affirmed that the police officials had lifted the blade from the road.

11. SI Narender Pal deposed as PW6. He deposed that on 04.04.2015, he was posted at PS Darya Ganj. He along with Ct. Satbir reached the spot where the complainant and the security guard produced the accused along with a blade. Thereafter, PW6 stated that the blade used by the accused in commission of the offence was lying at the spot on the road. He recovered the blade from the road upon the same being pointed out by the complainant. In his cross-examination, PW6 stated that he had requested some passerby to join the proceedings, however, none had agreed. He denied having sent the surgical blade to the FSL or the fingerprint bureau for its examination. He denied having called the complainant or the bank guard to the police station for investigation.

12. The accused, in his statement under Section 281 of the CrPC (conducted in a question-answer format), denied the allegation that he had robbed the complainant at blade-point and stated that he was involved in a quarrel with the complainant on the issue of rickshaw fare and he had slapped him in view of the foregoing. The guard had caught him and called the police. He stated that the money recovered from him belonged to him and that he had no blade on his person. He stated that he was made to sign on blank papers by the police officials. Thereafter, he stated that on the day after the incident, he was taken to the hospital,

from where the IO collected a surgical blade and implanted it in the present case.

Discussions and conclusion

13. The learned counsel appearing for the appellant contended that there are several inconsistencies in the testimonies of material witnesses. He further submitted that the narration of the incident also appears to be highly improbable. He pointed out that whereas Ct Satyaveer (PW 2) had testified that the surgical blade had been recovered from the appellant, the seizure memo indicates that it was found on the road side. He also submitted that the timelines, as stated by the police officials, cannot be believed; inasmuch as, the spot was 2-3 km from the Police Station, yet the witnesses have indicated they went back and forth in almost less than one hour.

14. At the outset, it is apparent that there are certain inconsistencies in the testimonies of the witnesses. PW 2 had stated that cash of ₹220/- and one surgical blade was recovered from the appellant and the IO had prepared a *pullanda* and sealed the same. This fact was also reiterated by PW 2 (Ct Satyaveer). SI Narender Pal, who was the IO, deposed as PW 6. He stated that on reaching the spot, the complainant (PW 4) and Krishan Kumar (PW 3) had produced the appellant along with a blade. However, he changed his stand and stated that the complainant (PW 4) had told him that the blade used by the appellant, in commission of the offence, was lying at a spot on the road and therefore, he had recovered

the same from the spot. It is relevant to note that the complainant (PW4) did not testify that he had pointed out the blade lying on the road.

15. Apart from the above, it is seen that there are certain inconsistencies in the testimony of PW 3 and his statement recorded earlier. In his testimony, PW 3 had deposed that he heard the rickshaw puller (the complainant) shouting that the accused had snatched his money (*isne mera paisa cheen liya*). He deposed that the rickshaw puller had apprehended the appellant (the accused) and had dragged him to the middle of the road and had asked PW 3 to call the police. According to PW 3, the complainant had stated “*isne mera paisa cheen liya he or iske haath me blade he*”. He stated that at that stage, he had told the appellant that he had chased him away on three or four earlier occasions because he used to catch hold of rickshaw pullers and snatch money from them. He stated that at this, the appellant had requested him with folded hands not to call the police. This is another material variation with his statement recorded under Section 161 of the CrPC (Ex. PW 3/D1). In his statement, he had stated that at about 08:00 p.m., he saw that one rickshaw puller (the complainant) had caught one person and the said rickshaw puller was screaming for help. He stated that he immediately went to assist the rickshaw puller and he and the rickshaw puller overpowered the appellant and thereafter, he made a call at 100 number. He stated that the police had arrived and on searching the accused, recovered two notes of ₹100 each and two notes of ₹10 each and on the police searching the spot, they had also found a surgical blade lying there.

16. It is also relevant to note that whereas in his testimony he did not depose that he had overpowered the appellant but had stated that the complainant had already apprehended him and dragged him to the middle of the road. However, in his earlier statement, he had stated that he had overpowered the appellant along with the complainant. Further, he did not say that he had seen the appellant using the surgical blade to rob the complainant. According to his statement, he had merely seen that the rickshaw puller had apprehended the appellant. There is also no statement to the effect that he had chased away the appellant on three or four prior occasions as the appellant used to snatch money from rickshaw pullers (*maine tujhe pehle bhee 3-4 baar bhagaya hai kyunki tu roz rickshaw walo ko pakad kar paise cheenta hai*). There was also no statement to the effect that the accused had pleaded with PW 3 not to call the police. PW 3 also did not state that he or the complainant had pointed towards the spot where the blade was lying. In his earlier statement, he had stated that the police officials had found a surgical blade on conducting the search. In his earlier statement, PW 3 had not stated that the rickshaw puller had shouted that the accused had snatched his money or that the accused had a blade in his hand.

17. In his testimony, PW 3 had deposed that the appellant had thrown the blade on the road upon seeing the police officials. No such assertion had been made by him in his statement recorded earlier. This Court also finds it difficult to believe that the appellant would continue to hold a blade in his hand without inflicting any injury whatsoever on either the complainant or PW 3 while being detained by them for a considerable

period of time. If the testimony of PW 3 is to be believed, it would mean that the complainant had apprehended the appellant while he was holding a sharp object in his hand and the appellant had pleaded with PW 3 to not call the police. But, PW 3 had not acceded to the said request because he had on prior three or four occasions chased away the appellant. All this while, the appellant would continue to possess the money that he had allegedly snatched from the rickshaw puller as well as the blade used in the offence. This does not seem probable.

18. The police officials had arrived there from a distance of 2-3 km by foot (which would take at least thirty minutes) and all this while, the appellant would have remained in the custody of the rickshaw puller but no efforts were made by them to disarm him or recover the amount of ₹220/- (the amount allegedly snatched by him). It is difficult to believe that the appellant would keep the surgical blade in his hand – which, according to the complainant, had been used by the appellant to hand over the money in his possession (₹220/-) – but the said blade would now not pose any threat to him.

19. There is also a certain inconsistency as to the time of the incident and the time when the police officials had arrived at the spot. PW 1 ASI Ajab Singh had deposed that he had received a call at about 8.13 p.m. reporting that some unknown person had snatched money from a rickshaw puller and a DD Entry No. 30A (Ex. PW 1/A) was recorded. The same was marked to SI Narender Pal (PW 6) who left for the spot along with Ct Satyaveer (PW 2). The complainant had deposed that the

incident had happened at about 8.00 p.m. and he had caught hold of the appellant and a guard from the HDFC Bank ATM (PW 3) had informed the police. PW 3 had stated that he had made a call to police at about 07.30 - 07.45 P.M. but no PCR came at the spot. He stated that two police officials reached the spot within five to seven minutes. PW 2 Ct Satyaveer had stated that the IO Narender Pal (PW 3) had called him at 8.15 p.m. and he along with the IO had proceeded to the spot, on foot. He also stated that the spot was about 2-3 km from the Police Station. He further stated that the *rukka* was handed over to him at about 08.45 p.m. and he had come back to the spot at about 09.00 p.m., after registration of the FIR.

20. Clearly, is not possible to believe the above because it would take at least fifteen minutes for any person on foot (who is not running) to cover a distance of about a kilometer. Thus, it would have taken PW 2 and PW 6 at least thirty to forty minutes to cover the distance between the Police Station and the spot. If the call had been received at 8.13 p.m., as stated by PW 1, it would not be possible for Ct. Satyaveer (PW2) and SI Narender Pal (PW6) to reach the spot before 8.45 pm or 9.00 p.m. It would have taken a similar amount of time for PW 2 to return back to the Police Station with the *rukka* for getting an FIR registered. In addition, it would take at least five to ten minutes for the IO to prepare an FIR and record the statement. Thus, in any event, even if PW 2 and PW 6 had acted with immediate dispatch, the FIR could not be registered before 9.30 p.m. and Ct. Satyaveer could not have returned with the copy of the FIR before 10.15 p.m.

21. PW 1 had deposed that he had received the *rukka* at about 10.00 p.m. and had registered the FIR. Thus, Ct. Satyaveer could not have returned to the spot along with the FIR before 10.30 p.m. However, he testified that he came back to the spot at 9.00 p.m. He stated that he and the IO came back to the Police Station at 9:5 p.m. [Sic 9.05 p.m. or 9:50 p.m.]. PW 6 had deposed that he and Ct. Satyaveer remained at the spot till about 11.30 p.m.

22. There are material inconsistencies in the statement of PW6, PW2 and PW3 as to the recording of the seizure memos and the statement of other witnesses. According to PW 6 (the IO), all the documents were prepared at the spot. He testified that he had obtained the statement of the complainant (PW 4/A), prepared the site plan (Ex. PW 3/A); seizure memos (Ex. PW 2/A and PW 2/B); recorded the disclosure statement (PW 2/6); and the statement of witnesses. According to PW6, all this was done at the spot and after doing so he and the accused, along with the case property, were brought back to the Police Station. In his cross-examination, PW 6 stated that he had not taken any of the public persons to the Police Station from the spot and he had never called the complainant as well as the bank guard (PW 3) to the Police Station for investigation. This is contrary to the testimony of PW3. He had stated that the police officials (PW 3 and PW 6) had arrived at the spot. One of the police officials was carrying the sealing material in his hand. They were not carrying anything else and the second police official only had a *lathi* in his hand. He stated that the police officials remained at the spot for about ten to fifteen minutes and during the said time, they

sealed the blade and the money recovered and left for the Police Station. He stated that they also asked him to accompany them to the Police Station and he along with two police officials and the appellant went to the Police Station and no other person accompanied them. He also stated that he had not signed the documents after reading them and affirmed that the said documents had been signed at the Police Station. Thus, all the documents exhibited on behalf of the prosecution including the seizure memos, arrest memo, site plan and the statement of the complainant were not recorded at the spot, but at the Police Station.

23. The above testimony raises a considerable doubt as to the manner in which the incident had occurred and whether the appellant had committed the offence for which he was charged. There is a doubt as to whether PW 3 had witnessed the appellant snatching money from the complainant by using a blade. PW3's initial statement does not record any such assertion. In his examination-in-chief, he had deposed that when the rickshaw puller had come in front of the ATM, the appellant had caught hold of the rickshaw puller and started a scuffle (*hatapai*) between them. He further stated that the rickshaw puller had dragged the appellant to the middle of the road near the ATM. It does not appear probable that PW3 could have witnessed the appellant taking money from the pocket of the complainant.

24. In view of the aforesaid inconsistencies, this Court is of the view that the prosecution has failed to establish, beyond reasonable doubt, that the appellant had committed the offence for which he was charged.

25. Accordingly, the appeal is allowed. The pending application is disposed of.

26. The appellant is, accordingly, acquitted.

27. The appellant has already served eleven months and five days in custody as an undertrial and as on date, has served three years, eleven months and fifteen as a convict (since 10.03.2016). He shall be released forthwith, if he is not required in any other case.

FEBRUARY 24, 2020
RK/pkv

VIBHU BAKHRU, J

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