

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

% *Judgment reserved on :18.08.2015.*
Judgment delivered on :26.08.2015

Crl. Appeal No. 842/2013

STATE GOVT. OF NCT OF DELHIAppellant

Through: Ms. Meenakshi Dahiya, Additional
Public Prosecutor for State

Versus

ROKINDERRespondent

Through: Mr. Arun Kumar Tiwari, Advocate
alongwith respondent in person.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 This appeal is directed against the impugned judgment dated 21st October, 2011 wherein the sole respondent Rokinder stood acquitted of the charges which had been framed against him under Sections 393/398 of the IPC as also Sections 27/54/59 of the Arms Act.

2 Learned counsel for the State submits that there is ample evidence in the form of ocular version of the complainant as also other witnesses of the investigating team besides the documentary evidence to have convicted the respondent but the trial Judge holding that benefit of doubt

has to be given to the respondent has committed an illegality.

3 Respondent has been served. He did not file any formal reply but addressed his arguments. These arguments have been refuted.

4 Record has been perused.

5 The version of the prosecution was unfolded in the statement of Gulzar Ahmed Sheikh examined as PW-2. He had deposed that on the fateful day i.e. on 20.12. 2010 he had come on Metro from Sadar Bazaar to Sangam Vihar where at about 11.00 pm when he reached the main road in front of Gali No. 8, Sangam Vihar, three boys came out from Gali No.8 and surrounded him. PW-2 had a bag on his right shoulder which contained a laptop and some papers. Shops were mostly closed. The accused dragged him into Gali No.8 and tried to snatch his bag. PW-2 tried to save himself. One of the three boys took out a buttondar knife and tried to hit him. In the meantime, another boy tried to hit him with a screw driver on his back which hit PW-2 on his ankle / shoes. PW-2 raised alarm. He picked up a half burnt wooden stick lying on the road and hit the boy who was having a knife in his hand. One police official who was on his motorcycle caught that boy who was having a knife. Police was also informed at 100 number. Knife was taken from

CrI. Appeal No. 842/2013 Page 2 of 10

the boy. Statement of PW-2 (Ex. PW2/A) was recorded. The knife was seized vide memo Ex. PW1/2 and the sketch of the knife was prepared. In his cross examination the witness admitted that he is running a business of corporate gifting. He had left his house at about 10.30 pm and reached the spot at about 11.00pm. He admitted that there was darkness and no street light in Gali No.8 at the time of the incident. All the three boys were aged about 20 years. The police official, who was on patrol duty had apprehended the boy who was having a knife in his hand. Other two persons managed to flee. The PCR van had come after 10 to 15 minutes after the call was made to them. His statement was recorded in the police station. The father of PW-2 had also come to the police station. Sketch of the knife was also prepared in the police station. Rough site plan was also prepared. He denied the suggestion that he was deposing falsely.

6 PW-1 Constable Karamveer was the person who had apprehended the accused with the knife from Gali No. 8, Sangam Vihar; he was on patrol duty at that time. PW-1 has deposed that at about 11.15 pm he saw two boys scuffling with each other. One boy was having a knife and the other boy was having a wooden danda; he was informed by PW-2

that the person who had a knife was trying to rob him and was snatching his bag. The knife was also seized from him. In his cross examination he admitted that apart from these two boys at that point of time there was no other public persons present. PW-2 had made a call in his presence to the PCR which came to the spot thereafter. He denied the suggestion that he was not present at the spot at that time.

7 Head Constable Gajraj (PW-3) was the Duty Officer at Police Station Sangam Vihar who had received the rukka from Constable Arun Kumar (PW-5) on the basis of which the present FIR had been registered.

8 The FIR has been proved as Ex. PW3/A and the registration time is noted as 1.35am.

9 The investigation was marked to ASI Sajjan Kumar (PW-4) who was accompanied by Constable Arun Kumar (PW-5). PW-4 has deposed that on receipt of DD No. 104-B (regarding the incident) he along with PW-5 reached the spot where he met PW-2; PW-1 was also present there. Complainant had handed over one buttondar knife which as per the complainant was used by the accused to attack him. Statement of PW-2 (Ex.PW2/A) was recorded. The buttondar knife was seized and

CrI. Appeal No. 842/2013

sealed and its sketch was prepared. In his cross examination he admitted that he reached the spot at about mid night and the complainant has told him that three persons attacked him.

10 Testimony of PW-5 is also on the same lines of PW-4. He has corroborated the version of PW-4 who had joined the investigation with him. In his cross examination, he admitted that he reached the spot at midnight where public persons were present. The respondent was taken for his medical examination at about 2.30am to Batra Hospital. Apart from this ocular testimony, the documentary evidence included the seizure memo of the knife and its sketch. These documents proved that the buttandar knife was about 9.25 inches; the blade was 4 inches long and 5.25 inches was the length of the handle. The arrest memo of the accused shows his arrest at 12.05 am on 21st December, 2010 from Gali No. 8, Sangam Vihar was proved as Ex. PW 1/C.

11 Relevant would it be to note that in the statement of the accused recorded under Section 313 Cr.P.C. the defence set up was that he was selling fruits on a rehdi in Sangam Vihar and on 20th December, 2010 at about 9.00 pm two police officials came to his rehdi, handcuffed him and detained him. He has been falsely implicated in this case. Further

relevant would it be to note that this defence set up by the accused in his statement recorded under Section 313 Cr.P.C. did not find any mention in the cross examination of the prosecution witnesses i.e. neither in the version of PW-2 and nor in the version of PW-4 or PW-5. This persuades this Court to hold that this defence is clearly an afterthought and has been set up only at a later point of time on legal advice.

12 This Court is conscious of the legal position that in order to reverse an order of acquittal it is only a glaring illegality which can lead to such an outcome. In *Ramesh Bahulal Doshi v. State of Gujarat (1996) 9 SCC 225* it has been held that while considering an appeal against acquittal, the appellate court is first required to seek an answer to the question whether the findings of the trial court are palpably wrong, manifestly erroneous or demonstrably unsustainable and if the court answers the above question in the negative, the acquittal cannot be disturbed.

13 It has also been held in *Sham Kant v. State of Maharashtra, 1992 Supp (2) SCC 521* that it is now well-settled that where the view taken by the trial Court in acquitting the accused is extremely perverse and is not reasonably sustainable on the evidence on record, then the

appellate Court can interfere with such an order of acquittal and set at naught the injustice done to the parties.

14 In the instant case, the trial Judge has committed an illegality. He has noted the contradictions which apparently on the face of it are not there. He had noted that the evidence disclosed that PW2 had made a substantial improvement in Court; PW-2 had not spoken about any person by the name of Talim in his examination in chief and it was only on the cross examination of the Investigating Officer that the name of Talim had appeared and as per the complaint of the complainant he had identified Talim. This Court notes with pain that this finding returned by the Session Judge was not based on the evidence as no cross examination has been effected of PW-2 on his earlier version; he has not been confronted qua his complaint dated 23rd October, 2010 and as to whether the name of Talim appeared in that statement or not. Even otherwise the cogent version of PW-2 which has described the incident in detail and his version that the respondent had been caught on the spot with the buttondar knife by the police constable who was on patrol duty is fully corroborated by the version of PW-1 who was the police man on patrol duty at that time. PW-1 has corroborated the statement of PW-2

by stating that when he apprehended the accused a buttondar knife was handed over to him by the complainant; a telephonic call was also made to the PCR in his presence who reached the spot at that time.

15 Another reason for the acquittal of the accused as noted by trial Judge was that PW-1 in his statement under Section 161 Cr.P.C. had not stated that he had seen the respondent snatching the bag. He had also noted that the version of PW-1 in his cross examination as to how many public persons were present at the spot was not correctly given.

16 This so called conflict in the version of PW-1 is again a mis-reading of the evidence and whether two or more or less than two public persons were present at the spot would not detract from the otherwise credible version of the complainant who was PW-2. Testimony of PW-1 is only a corroboration of the version of PW-2. This Court also notes that the defence of accused that he has been falsely implicated and picked up when he was selling fruits on a rehdi did not find mention in the cross examination of the prosecution witnesses. This is clearly for the reason that he has no honest defence.

17 The impugned judgment clearly calls for an interference as there is cogent evidence both oral and documentary to nail the respondent for

CrI. Appeal No. 842/2013 Page 8 of 10

the offence under Section 393 IPC which is an attempt to commit robbery; the ingredients of which stand fulfilled in the instant case.

18 The weapon which was recovered was a buttondar knife and the dimensions of which have been noted supra, the length of the blade being 4 inches. A perusal of the sketch and dimensions of the knife does not qualify this weapon to be deadly. Neither is this suggestive from its design.

19 The respondent is accordingly acquitted of the charge under Section 398 of the IPC. However, the ingredients of the offence under Section 25 of the Arms Act are made out.

20 The respondent accordingly stands convicted under Section 393 of the IPC and Section 25 of the Arms Act.

21 This Court also notes that this offence relates to the year 2010. The respondent is accordingly sentenced to undergo Rigorous Imprisonment for a period of three years and to pay a fine of Rs. 5,000/- in default of payment of fine to undergo Simple Imprisonment for three months for his conviction under Section 393 of the IPC; for his second conviction under Section 25 Arms Act he is sentenced to undergo Rigorous Imprisonment for a period of one year. Both the sentences

shall run concurrently.

22 Appeal is disposed of in the above terms.

23 Respondent be taken into custody to serve the sentence.

INDERMEET KAUR, J

26th AUGUST, 2015

gb