

\$~ R-41 to 43

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

% *Date of Decision : May 18, 2016*

+ **CRL.A. 712/2014**

RAMAN Appellant

Represented by: Mr.Neeraj Bhardwaj, Advocate

versus

STATE Respondent

Represented by: Mr.Varun Goswami, APP with SI
Afaque Ahmed, PS Maurya Enclave

CRL.A. 1687/2014

SONU @ CHHOTU Appellant

Represented by: Mr.Mohammad Faraz, Advocate

versus

STATE Respondent

Represented by: Mr.Varun Goswami, APP with SI
Afaque Ahmed, PS Maurya Enclave

CRL.A. 40/2015

RAKESH @ NIPAL Appellant

Represented by: Mr.Puneet Singhal, Advocate

versus

STATE Respondent

Represented by: Mr.Varun Goswami, APP with SI
Afaque Ahmed, PS Maurya Enclave

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

PRADEEP NANDRAJOG, J. (Oral)

1. Rakesh @ Nipal, Sonu @ Chhotu and Raman @ Firoz, the three appellants were sent for trial and a charge for having, in furtherance of a common intention, robbed Bal Mukund of a mobile phone at 8:35 PM on January 31, 2013 at District Park, Pitampura, Delhi and in the robbery using deadly weapons to assault him i.e. for offences punishable under Section 392/394/397/34 IPC was framed against the three; and vide impugned judgment dated January 03, 2014 whereas Rakesh and Raman have been convicted for offences under Section 392/394 IPC, Sonu has been convicted for offence punishable under Section 394/397 IPC. Vide order on sentence dated January 13, 2014 all of them have been sentenced to undergo imprisonment for 7 years and pay fine in sum of ₹5,000/-; in default to undergo simple imprisonment for 7 days.

2. The conviction has been sustained on the findings:-

- That the identity of the accused Rakesh @ Nipal, Sonu @ Chhotu and Raman @ Firoz stands established and proved.
- That on January 31, 2013 at about 8.30 P.M. the victim Kumar Bal Mukund had, as usual gone for a walk at District Park, Pitampura when suddenly the accused Rakesh @ Nipal, Raman @ Firoz and Sonu @ Chhotu came from behind the bushes.
- That the accused Rakesh asked the victim Bal Mukund the time which he (victim) ignored but accused Rakesh again asked victim the time and also abused the victim who scolded Rakesh on his behaviour.

- That the accused Raman was having a knife while the accused Sonu was having a danda.
- That the accused Raman attacked and assaulted the victim with said danda on his right arm and thereafter the accused Rakesh exhorted Raman and Sonu to kill and throw him (victim) there itself and thereafter they continued giving beatings to the victim with danda, kicks and fists blows.
- That the victim requested the accused persons for mercy saying that he was newly married having a minor child of six months but they did not pay any heed to his requests and continuously attacked on him with kicks, fists and with dandas.
- That the accused persons also intended to attack the victim with a knife after covering his face with the cap of jacket which he was wearing at that time.
- That thereafter the accused persons removed the belongings of the victim including his mobile phone make Alkatel of black colour having IMEI No.860350011854187 and 860350011854195 (Ex.P1) and thereafter they went away while threatening the victim by saying '*Seedha chala ja, agar peeche muda to chaku maar ke gad denge*'.
- That the victim who was badly injured, somehow managed to reach his house and made a call to a 100 number pursuant to which the police came and took him to the Munni Maya Ram Hospital and thereafter was shifted to Max Hospital where his statement was recorded by the police.
- That the injuries inflicted by the accused persons on the person of the victim Bal Mukund have been opined to be as 'grievous' in nature.

- That the apprehension and the arrest of all three accused stand established and proved in accordance with law.
- That the recovery of the stolen mobile i.e. having double SIM with mobile Nos.9718006817 and 8447744049 IMEI No.860350011854187 and 860350011854195 from the possession of accused Raman @ Firoz stands established and proved and duly identified by the victim in the Court.

3. It strikes the reader at the outset that if it has been held that the prosecution has proved that Raman was having a knife and Sonu was having a danda and further having proved that Raman assaulted the victim with a danda, it does not stand to reason that whereas Sonu has been held guilty for the aggravated form of robbery i.e. under Section 397 IPC but Raman has been convicted for robbery i.e. offence under Section 392 IPC.

4. It all commenced when Ct.Rakesh PW-3, posted on duty at PS Maurya Enclave recorded DD No.72B, Ex.PW-3/A that a person has been assaulted and money snatched from him after stabbing at WP-114C, Pitampura. Investigation being entrusted to ASI Raju Yadav PW-9, he left for the spot in the company of Ct.Uday and learnt that a person had been robbed and severely beaten in the District Park, Pitampura adjoining House WP-114C, Pitampura, who was removed to Munni May Ram Hospital where they reached but were informed that the injured had been referred to Max Hospital, Netaji Subhash Place, after administering first-aid, and thus the two proceeded to Max Hospital where they found Bal Mukund Singh admitted in the casualty. Dr.Rohit had examined Bal Mukund and had drawn up the MLC Ex.PW-5/A, proved at the trial by Dr.Shivani PW-5, because she had worked with Dr.Rohit and was conversant with his handwriting and signatures and Dr.Rohit was not available. The MLC

records that the patient was referred for x-ray because a bilateral fracture was feared in the forearm, knee and ankle. There was swelling and tenderness in the forearms near elbow; multiple scratch marks on the face; nose and left cheek; multiple bruises on both lower limbs. Tenderness and swelling in the right knee and ankle respectively. ASI Raju Yadav recorded Bal Mukund's statement Ex.PW-6/A in which he informed that he was a resident of House No.WP-114C, Pitampura and he went for a late evening walk at the District Park Pitampura at around 8:35 PM when suddenly, from behind the bushes, three boys accosted him, one of whom asked the time. He did not respond because he was speaking on the phone, therefore, one boy abused him. He turned back and scolded the boys at which the three lunged at him and gave merciless beating using a wooden stick and inflicting fist blows and kicks. One boy took out a big knife to subdue him and threatened to face consequences if he yelled. He was carrying with him his mobile phone, Alkatel make, having double sim with numbers 9718006817 and 8447744049. They took away the phone and left. One boy was of medium height and of stocky built. His complexion was wheatish. Two boys were tall and thin, of whom one was wheatish and the other was fair. Their height was around 5'8". If they were produced before him he could recognize them. Making the endorsement Ex.PW-9/A beneath Ball Mukund's statement ASI Raju Yadav got FIR Ex.PW-2/B registered for the offence punishable under Section 394/34 IPC. He collected the MLC of Bal Mukund.

5. It is apparent that the Investigating Officer has a very loose descriptions of three males, which would fit the description of 90% of the males in the Northern part of the country, and breakthrough would only be if

either Bal Mukund chanced to see all or two or the three assailants together. As deposed to by Bal Mukund, on March 25, 2013 he saw his tormentors when he was going to the District Park and therefore he rushed to the police picket near Gopal Mandir where SI Rajpal PW-11 and Ct.Ram Chander PW-10 were present. He told them of having seen the three boys who had robbed him on January 31, 2013. The two immediately accompanied him to the place where he had seen the three boys. Bal Mukund pointed out the three to the two police personnel and on seeing the police personnel the three boys ran but one : appellant Rakesh, was apprehended which was recorded in the arrest memo Ex.PW-6/B. SI Rajpal recorded disclosure statement Ex.PW-6/D of Rakesh, and suffice it to note that no recovery being made pursuant to the statement, its contents need not burden my judgment. He disclosed therein the names of the two co-participants. Further investigation was conducted by SI Rajpal who apprehended Sonu in Pitampura on March 30, 2013 and recorded the same in the arrest memo Ex.PW-7/A. His disclosure statement Ex.PW-7/C was recorded pursuant where to Sonu got recovered two mobile phones, but not that of Bal Mukund. On April 22, 2013 Raman was seen roaming in the District Park and was apprehended by SI Raj Pal as recorded in the arrest memo Ex.PW-8/A. Personal search memo Ex.PW-8/B records an Alkatel mobile phone Ex.P-1 recovered from him.

6. The investigating officer seized the bill Ex.PW-6/F evidencing that Bal Mukund had purchased an Alkatel mobile phone on June 23, 2012, having IMEI No.860350011854187 from 'One Mobile', a retailer of the company Future Value Retail Ltd.

7. The case of the prosecution obviously hinged on the testimony of Bal

Mukund who deposed facts in sync with his statement Ex.PW-6/A and additionally identified the three appellants who had assaulted him stating that Raman had a knife with him. Sonu had a danda. During the assault he remembered Raman attacking him with a danda. He said that at that time he was overwhelmed due to the assault and his memory failed to recollect the exact sequence of the assault. He deposed that he suffered fracture on his left leg. Having a infant aged 6 months and being recently married he pleaded for mercy but the accused mercilessly kicked him and inflicted fist blows besides hitting him with the danda. His mobile phone and purse was snatched. The mobile phone had been taken by him on superdari after it was recovered and had been brought by him in the Court. He further deposed having seen the three accused going towards the District Park on March 25, 2013, and therefore he went to the police picket near Gopal Mandir and informed SI Rajpal and Ct.Ram Chander of said fact who accompanied him to the District Park where he pointed out the three accused, of whom two escaped on seeing the police but Rakesh was arrested and arrest memo Ex.PW-6/B bears his signatures at point A. He said that after the third accused was arrested he went for TIP proceedings but the accused refused, and in respect of which I find that though TIP proceedings were filed along with the charge sheet but have not been proved. Nothing therefore turns on Raman allegedly refusing to participate in the TIP proceedings because the proceedings have not been proved.

8. I have perused the testimony of Bal Mukund and the cross-examination. Learned counsel for the appellants have not been able to point out any contradiction or material improvement with reference to his statement Ex.PW-6/A on basis whereof the FIR was registered and thus with

reference to the testimony of the victim I find sufficient material to hold that the three appellants accosted Bal Mukund at around 8:35 PM when Bal Mukund was taking a stroll in the District Park at Pitampura. They assaulted him using a wooden stick. They kicked him. They inflicted fist blows on him. Raman threatened him with a knife to quieten him. The three robbed him of his mobile phone which was recovered from the person of Raman when he was apprehended. Corroboration to Rakesh being apprehended as deposed to by him is found in the testimony of SI Rajpal and Ct.Ram Chander, both of whom have withstood successfully the cross-examination.

9. The MLC Ex.PW-5/A needs a little comment. Dr.Rohit seems to a person living in the future and simultaneously in the past. He records on the MLC that he examined Bal Mukund on March 31, 2013 and simultaneously that the report was sent to the police on March 31, 2012. PW-5 who proved the MLC has not been put any question regarding the discrepant dates and especially keeping in view the fact that the date when Bal Mukund was examined at Max Hospital is January 31, 2013. This discrepancy has not been brought to the notice of the Court below and neither to my notice during by learned counsel for the accused, but has been noticed by me while dictating the judgment. It is apparently a case of a writing mistake. The date January 31, 2013 has been written firstly as March 31, 2013 and at the second instance at March 31, 2012.

10. Two defence witnesses Nathu Ram DW-1 the father of Raman and Sita Devi DW-2 the mother of Rakesh have been examined. The former has deposed that his son was in his house on the date of the incident and was not arrested as claimed by the prosecution but was picked up from the house and

the mobile phone was planted upon him. I find that no such suggestion being given either to Bal Mukund or SI Rajpal or Ct.Ram Chander. As regards Sita Devi she claimed that her son was picked up by the police from her house. The testimony of the two defence witnesses does not inspire confidence, not because they are relations of two out of the three accused, but because no suggestion of planting as noted above was given to either Bal Mukund or SI Rajpal or Ct.Ram Chander. Sita Devi's statement that her son was picked up from the house is but a statement and I have no reason to disbelieve Bal Mukund.

11. There is another important aspect in the testimony of Bal Mukund and his statement Ex.PW-6/A. He has given a description of the accused persons and none of them brought to the notice of the Court when the accused were identified by the victim that their description, as given in the statement Ex.PW-6/A, does not match with them. It may be true that the learned Trial Judge has not recorded a Court observation to said effect, but if the description of any or all the accused did not match that disclosed by Bal Mukund in his statement Ex.PW-6/A the witness ought to have been confronted with said fact.

12. Now, it is apparent that all accused have committed the offence punishable under Section 394/34 IPC. Raman threatened Bal Mukund with a knife when Sonu was standing with a wooden stick. The wooden stick was yielded at Bal Mukund by Raman and thus not only Sonu but even Raman would be liable to be convicted for the punishable under Section 397/34 IPC. But that hardly matters because for the offence punishable under Section 392 or Section 394 or Section 397 IPC, a sentence of 7 years rigorous imprisonment has to be imposed by the learned Trial Judge and I

note that the punishment for robbery can be up to 10 years, and for causing hurt while committing robbery it could be up to imprisonment for life and for the aggravated form of robbery, if a deadly weapon is used or grievous hurt is caused, the same has to be not less than 7 years.

13. On the quantum of sentence the learned Trial Judge has given good reasons, thereby not warranting any interference on the quantum of sentence because the three accused mercilessly gave beating to the victim without any provocation, who pleaded for his life. It is a case of robbery with brutality. Such kind of incidents shake the confidence of the society on the maintenance of law and order. But the three would be entitled to the benefit of Section 428 Cr.P.C.

14. The appeals are accordingly dismissed.

15. TCR be returned.

16. Appellant Sonu and Raman are on bail. The bail bond and surety bond furnished by the two are cancelled. They shall surrender to suffer the remaining sentence. Rakesh is still in jail. He shall serve the remaining sentence.

17. Copy of this decision be sent to the Superintendent Central Jail Tihar for updation of the jail record and to be handed over thereafter to Rakesh.

(PRADEEP NANDRAJOG)
JUDGE

MAY 18, 2016

mamta