

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

RESERVED ON : 7th NOVEMBER, 2016

DECIDED ON : 9th DECEMBER, 2016

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CRL.A.552/2016

SHAHRUKH @ SALMAN @ MOTA

..... Appellant

Through : None.

versus

THE STATE (GOVT. OF NCT) DELHI

..... Respondent

Through : Ms.Meenakshi Dahiya, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Aggrieved by a judgment dated 16.05.2015 of learned Addl. Sessions Judge in Sessions Case No. 62/2014 arising out of FIR No. 240/11 PS Seelampur whereby the appellant – Shahrukh @ Salman @ Mota was held guilty for committing offences punishable under Sections 392/411 IPC, the instant appeal has been preferred by him. By an order dated 18.05.2015, he was sentenced to undergo RI for five years with fine ₹2,000/- under Section 392 IPC and RI for three years with fine of ₹1,000/- under Section 411 IPC. Both the sentences were to operate concurrently.

2. Briefly stated, the prosecution case as reflected in the charge-sheet was that on 02.07.2011 at around 9.45 P.M. at G.T. Road, near Dharampura Red Light, the appellant along with his associate – Rocky, who could not be arrested, sharing common intention with him, robbed the complainant – Javed Ahmed of his mobile phone make Nokia 5130 and a purse containing ₹5,000/-, PNB ATM card and Metro Smart card at knife

point. Information was conveyed to the police and Daily Diary (DD) No.30A (Mark PA) came into existence at 09.45 p.m. The Investigating Officer after recording victim's statement (Ex. PW-1/A) lodged First Information Report. The accused was arrested. Statements of the witnesses conversant with the facts were recorded. Upon completion of investigation, a charge-sheet was filed against the appellant in the Court. To prove its case, the prosecution examined seven witnesses in all. In 313 Cr.P.C. statement, the appellant denied his involvement in the crime and pleaded false implication. The trial resulted in conviction as aforesaid. Being aggrieved and dissatisfied, the instant appeal has been preferred by him.

3. I have heard the learned counsel for the parties and have examined the file. The occurrence took place on 02.07.2011 at around 09.30 p.m. The incident was reported to the police promptly without any delay and Daily Diary (DD) No.30A (Mark PA) came to be recorded at PS Seelampur at 09.45 p.m. It was informed therein that near Dharampura Red Light, two individuals had robbed the complainant after showing a pointed object. In the complaint (Ex.PW-1/A), the complainant gave detailed account as to how and in what manner, he was robbed by two assailants armed with a pointed object. Since the FIR was lodged without any delay, there was least possibility of the complainant to fabricate a false story particularly when the assailants were not named by him in the complaint.

4. In his Court statement, recorded on 24.01.2012 as PW-1, the complainant implicated the appellant to be the perpetrator of the crime and identified him to be one of the assailants. He deposed that on 02.07.2011 when he was returning from office and reached Dharampura Red Light at 09.30 p.m. two boys came there; one of them caught hold of him by neck

and pressed it; the other showed him a sharp edged weapon like ice-breaker; they threatened him to hand over the articles or else he would be killed. The boy who had caught hold him by neck pressed it with more pressure, as a result of which, he became unconscious. On regaining consciousness, he found that his mobile phone make Nokia 5130 and purse containing ₹5,000/- ATM and Metro Smart card were missing. He made a telephone call to police at 100 by taking mobile of some passerby. He recorded his statement (Ex.PW-1/A). He accompanied the Investigating Officer for search of the assailants. The appellant was found present and was apprehended at his instance. The robbed mobile was recovered from the right side pocket of the pant.

5. Opportunity was offered to cross-examine this witness on 24.01.2012, however, the accused did not avail it. Subsequently, an application under Section 311 Cr.P.C. was filed to recall PW-1 (Javed Ahmed). He was cross-examined on 18.03.2013. In the cross-examination, he did not opt to support the prosecution and disclosed that the statement recorded on 24.01.2012 was not with his free consent. In re-examination by learned APP, he again disclosed that the memos (Ex.PW-1/C, Ex.PW-1/D & Ex.PW-1/E) contained his signatures. The incident of robbery had taken place and he had deposed about it on 24.01.2012. At the request of the learned APP, re-examination of the witness was deferred and it was again recorded on 27.04.2013. This witness give plausible explanation for retracting from his previous statement recorded on 24.01.2012 and categorically stated that on 18.03.2013 he was threatened by two individuals outside the Court and due to fear / terror, he changed his version in the examination. He volunteered to add that his examination-in-chief was

correct. He further volunteered to state that on the previous date, he could not depose this fact before the Court as he was badly threatened by the two individuals to kill. The witness even prayed for his security from the Court and informed that he was mentally disturbed and had sent his wife and child out of Delhi due to fear.

6. In the cross-examination by learned defence counsel, the witness disclosed that he was mentally fit but terrorized. He volunteered to add that someone knocks door of his house at night. He denied that the threats were extended to him only by the appellant's associate and not by him. The witness further informed that the family members of the accused used to visit his house in his absence and put pressure upon his mother to get the appellant acquitted.

7. Apparently, statement given by the victim in his examination-in-chief recorded on 24.01.2012 about the incident was correct version of what had really happened. The complainant had no ulterior motive to falsely implicate the appellant with whom he had no prior acquaintance or enmity. In the absence of prior animosity, the victim is not expected to let the real culprit go scot free and to falsely rope in an innocent one. Material facts stated by the complainant have remained unchallenged and unrebutted in the cross-examination. The accused did not examine any witness in defence to prove his presence at some other place at the relevant time.

8. The Apex Court in the case of '*Vinod Kumar v. State of Punjab*', (2015) 3 SCC 220, observed that delay in cross examination results in prevarication of truth and also observed that :

“....Adjournments are sought on the drop of a hat by the counsel, even though the witness is present in court, contrary to all principles of holding a trial. That apart, after the examination-in-chief of a witness is over, adjournment is sought for cross-examination and the disquieting feature is that the trial courts grant time. The law requires special reasons to be recorded for grant of time but the same is not taken note of. As has been noticed earlier, in the instant case the cross-examination has taken place after a year and 8 months allowing ample time to pressurize the witness and to gain over him by adopting all kinds of tactics.”

9. Besides this, the testimony of even a hostile witness cannot be effaced / discarded entirely. It is settled law that the part of his testimony where he has supported the prosecution can be relied and the accused can be convicted on the basis of the same (*‘Bhajju @ Karan Singh Vs. State of M.P.’*, 2012 (4) SCC 327).

10. The impugned judgment based upon fair appreciation of the evidence deserves no intervention. The conviction is affirmed.

11. The appeal lacks merits and is dismissed.

12. Trial Court record be sent back forthwith with the copy of the order. A copy of the order be sent to the Superintendent Jail for information.

(S.P.GARG)
JUDGE

DECEMBER 09, 2016 / tr