

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

RESERVED ON : 11th NOVEMBER, 2016
DECIDED ON : 08th DECEMBER, 2016

+ **CRL.A.1461/2014 & CRL.M.B. 1058/2016**

VIKAS Appellant

Through : Mr.Puneet Singhal, Advocate with
Mr.Ankur Chaudhary, Advocate.

versus

STATE (GNCT OF DELHI) Respondent

Through : Ms.Meenakshi Dahiya, APP.

CORAM:
HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Challenge in this appeal is a judgment dated 12.08.2014 of learned Addl. Sessions Judge in Sessions Case No. 160/1/14 arising out of FIR No. 38/2014 u/s 392/397/411 IPC PS Model Town whereby the appellant – Vikas was held guilty for committing offence punishable under Section 392 read with Section 397 IPC. By an order dated 12.08.2014, he was sentenced to undergo RI for seven years with fine ₹2,000/-; default sentence being SI for two months.

2. Briefly stated, the prosecution case as set up in the charge-sheet was that on 15.01.2014 at about 10:30 p.m. the appellant robbed the complainant – Kamal of his mobile at knife point at Gurmandi, Band Market, Jain Colony. After recording the victim's statement (Ex. PW-4/A),

Investigating Officer lodged First Information Report. The appellant was arrested. Statements of the witnesses conversant with the facts were recorded. After completion of investigation, a charge-sheet was filed against him in the Court. In order to substantiate its case, prosecution examined six witnesses. The incriminating evidence appearing against the appellant was put in 313 Cr.P.C. statement whereby he denied his involvement and pleaded false implication. The trial resulted in conviction as aforesaid. Being aggrieved and dissatisfied, the instant appeal has been preferred.

3. I have heard learned counsel for the parties and have examined the file. Appellant's counsel urged that the Trial Court did not appreciate the evidence in its true and proper perspective and fell into grave error to base its conviction on the testimonies of PW-4 (Kamal) and other police witnesses. He urged that the appellant has been falsely implicated at the instance of Gaurav and Chotu with whom the appellant had inimical terms. Section 397 IPC is not attracted as no crime weapon was used. Learned Addl. Public Prosecutor urged that no sound reasons exist to disbelieve the testimony of the victim who had no prior animosity with the appellant to falsely implicate him in the crime.

4. The occurrence took place at about 10:30 p.m. on 15.01.2014. Information was conveyed to the police promptly and Daily Diary (DD) No. 89B (Ex. PW-3/A) came to be recorded at PS Model Town at 11.10 p.m. It was informed therein that a boy who had attempted to snatch purse after knife-stab had been caught hold at the spot. In the complaint (Ex. PW-4/A), the victim gave vivid description of the incident and disclosed as to how and under what circumstances he was robbed of his mobile when he was going on his battery rickshaw. He further disclosed that on his raising alarm, the

appellant was arrested by some individuals and the robbed purse was recovered from his possession. Rukka (Ex. PW-6/A) was prepared and First Information Report was lodged at 00.55 a.m. There was no delay in lodging the report. Early reporting of the occurrence by the informant with all its vivid details gives an assurance regarding truth of the version. There was least possibility to falsely rope in the appellant in this short duration. The complainant was not having acquaintance with him to falsely implicate him. Being a victim he was not expected to allow the real culprit go scot free. While appearing as PW-4 he proved the version given to the police at the first instance without major variation. He deposed that on 15.01.2014 at around 10.30 p.m. when he was going on his battery rickshaw being its driver and reached Band Market, near Tripolia Gate, Gur Mandi, GTK Road, Delhi, the accused got the rickshaw stopped by giving a signal. When he stopped the rickshaw, the accused took out a knife and threatened to hand over his mobile and cash. He took out his mobile kept in the pocket of his pant to make a call to his brother but he (accused) snatched it and started running away threatening him. On his raising alarm, some public persons chased and apprehended him. He was thrashed by the public persons. They took out the robbed mobile phone from the accused and handed over it to him. He made a call at 100. PCR van and local police arrived at the spot. In the cross-examination, he elaborated that no passenger was sitting in the battery rickshaw at the time of occurrence. He fairly admitted that there was no money available in the purse carried by him. He was unaware if the accused was under the influence of liquor. He was not known to the individuals who had apprehended the accused. He denied that the accused was implicated due to instigation by Chotu and Gaurav. He further denied

that false implication was due to denial to carry the accused to a particular destination.

5. On perusal of the entire statement it stands established that despite searching cross-examination, no material discrepancy or infirmity could be extracted to disbelieve the complainant's version. Identity of Gaurav and Chotu has not been established. None of them was examined. It has not been elaborated as to how and since when the accused had any enmity with Gaurav and Chotu; no particulars or instance has been disclosed. Nothing has emerged if the victim was acquainted with Gaurav and Chotu and he falsely implicated the accused at their behest. The defence deserves outright rejection. The appellant was arrested at the spot. He did not specify as to where exactly he intended to go and the accused declined to take him there.

6. Complainant's testimony has been corroborated by police officials PW-5 (Const.Ram Kumar) and PW-6 (SI Amit Rathee) in material particulars and there are no sound reasons to disbelieve them in the absence of prior animosity.

7. The testimony of police personnel have to be treated in the same manner as testimony of any other witnesses and there is no principle of law that without corroboration by independent witnesses their testimony cannot be relied upon. The presumption that a person acts honestly applies, as much in favour of police personnel as of other person and it is not a proper judicial approach to distrust and suspect them without good ground. It depends upon the facts and circumstances of each case and no principle of general application can be laid down as held in *Karamjit Singh Vs. State (Delhi Admn.)* 2003 5 SCC 291, *C. Ronald & Anr. Vs. Union Territory of*

Andaman & Nicobar Islands, (2012) 1 SCC (CrL.) 596. In Sunil Clifford Daniel vs. State of Punjab, 2012 11 SCC 205, Apex Court referred to State Govt. of NCT of Delhi v. Sunil and Anr., (2001) 1 SCC 652, wherein Court held as under:-

“20.... But if no witness was present or if no person had agreed to affix his signature on the document, it is difficult to lay down, as a proposition of law, that the document so prepared by the police officer must be treated as tainted and the recovery evidence unreliable. The court has to consider the evidence of the investigating officer who deposed to the fact of recovery based on the statement elicited from the accused on its own worth.

21. We feel that it is an archaic notion that actions of the police officer should be approached with initial distrust.... At any rate, the court cannot start with the presumption that the police records are untrustworthy. As a proposition of law the presumption should be the other way round. That official acts of the police have been regularly performed is a wise principle of presumption and recognised even by the legislature. Hence when a police officer gives evidence in court that a certain article was recovered by him on the strength of the statement made by the accused it is open to the court to believe the version to be correct if it is not otherwise shown to be unreliable. It is for the accused, through cross-examination of witnesses or through any other materials, to show that the evidence of the police officer is either

unreliable or at least unsafe to be acted upon in a particular case. If the court has any good reason to suspect the truthfulness of such records of the police the court could certainly take into account the fact that no other independent person was present at the time of recovery. But it is not a legally approvable procedure to presume the police action as unreliable to start with, nor to jettison such action merely for the reason that police did not collect signatures of independent persons in the documents made contemporaneous with such actions.”

Record reveals that no ill-will or animus has been alleged against any of the police officials for which reason they will falsely implicate the accused. Under the circumstance, recovery of mobile phone and knife having multiple blades from his personal search stands proved.

8. In 313 Cr.P.C. statement the accused admitted his presence at the spot. He, however, failed to prove any nexus between the victim, Gaurav and Chotu. The impugned judgment based upon fair appreciation of the evidence deserves no intervention. The conviction is affirmed. Since knife was used at the time of commission of crime conviction with the aid of Section 397 IPC cannot be faulted. Sentence of RI for seven years cannot be modified as it is the minimum one under Section 397 IPC.

9. The appeal lacks merits and is dismissed. Pending application also stands disposed of.

10. 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 08, 2016 / *tr*

