

\$~R-26 to 28

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

% *Date of Decision: 19th May, 2016*

+ **CRL.A.508/2015**
RAVI @ WASIM Appellant
Through: Mr.Imran Khan, Adv.

versus

STATE Respondent
Through: Mr.Amit Ahlawat, APP for State.
SI Pushpendra, PS. Kashmiri Gate.

+ **CRL.A.1135/2015**
SHAHIRUKH Appellant
Through: Mr.Imran Khan, Adv.

versus

STATE Respondent
Through: Mr.K.S. Ahuja, APP for the State.
SI Pushpendra, PS. Kashmiri Gate.

+ **CRL.A.932/2015**
SURESH Appellant
Through: Mr.Imran Khan, Adv.

versus

STATE Respondent
Through: Mr.K.S. Ahuja, APP for the State.
SI Pushpendra, PS. Kashmere Gate.

PRATIBHA RANI, J. (Oral)

1. These appeals have been preferred by the appellants, namely, Ravi @ Wasim, Shahrukh and Suresh impugning the judgment dated 05.01.2015 and

order on sentence dated 13.01.2015 whereby they have been convicted for committing the offence punishable under Sections 392/397/411/34 IPC and sentenced as under :-

Appellant Ravi

- (i) U/s 392 IPC - to undergo RI for 3½ years with fine of ₹2000/-.
- (ii) U/s 397 IPC - to undergo RI for 7 years with fine of ₹3000/-.
- (iii) U/s 411 IPC - to under RI for SI for one year.

Appellant Sharukh

- (i) U/s 392 IPC - to undergo RI for 3½ years with fine of ₹2000/-.
- (ii) U/s 397 IPC - to undergo RI for 7 years with fine of ₹3000/-.
- (iii) U/s 411 IPC - to under RI for SI for one year.

Appellant Suresh

- (i) U/s 392 IPC - to undergo RI for 3½ years with fine of ₹2000/-.
- (ii) U/s 411 IPC - to under RI for SI for one year.

2. Case FIR No.236/2013 has been registered on the statement made by Yogesh Kumar, PW1 whereby he reported that he was working at shop No.2097/28 at Bhaagirath Palace and was resident of Bhajan Pura, Delhi. On 11th September, 2013 at about 9:00 pm, he left his work place for going to his house. When he reached BDS Office near Hanuman Mandir, Jamuna Bazar, three persons came in front of him. One of them caught him and the other two persons, who were having weapons, grappled with him. One of them put knife on his abdomen and other put a razor (ustra) on his neck and asked him to give whatever he had or face consequences. The third person took out mobile phone, purse from his pocket, his purse was containing ₹200/- with R.C. and motor vehicle license DL7SAX5753 as well his

driving license. All those three persons pushed him and started running towards Kalkatia Gate, Jamuna Bazar. He raised alarm and chased those three persons. Police officials on checking duty on hearing the alarm, apprehended all the three persons while they were running.

3. In the meantime, he also reached there. Those three persons were identified as Ravi, Shahrukh and Suresh. On search of Ravi, one mobile phone was recovered from the right pocket of his pant and ustra from the left pocket from Shahrukh, one mobile phone was recovered from the right pocket of his pent and one vegetable cutting knife from the left pocket. From Suresh, his purse containing ₹200/-, RC of motorcycle and driving license were recovered.

4. All those three persons apprehended by the police officials on checking duty alongwith complainant were brought to the police station where they were produced before ASI Muninder Singh, who was on emergency duty. The articles seized from them were also produced before ASI Muninder Singh who recorded the statement of the complainant and after making the endorsement Ex. PW9/A got FIR 236/2013 registered at PS Kashmere Gate, Delhi

5. After completion of investigation, all the accused persons were charge-sheeted. Since the offence allegedly committed were triable by the Court of Sessions, the case was committed to the Court of Sessions.

6. During trial, three accused persons were charged for committing offence punishable under Sections 392/411/34 IPC. Accused Ravi and Shahrukh charged for committing the offence punishable under Section 397 IPC for allegedly using razor (ustra) and knife at the time of committing offence.

7. Believing the testimony of PW1-Yogesh, the complainant and PW4-

Constable Vijay, who was part of the police team which apprehended the accused persons and PW9 ASI Muninder Singh, the learned Trial Court convicted the appellants observing as under:-

“14. PW1 Yogesh Kumar had correctly identified all the accused persons in the Court. He had also deposed that one person caught him and remaining two grappled him while he was coming from his work place to his house and reached near BDS office, Near Hanuman Mandir. He had narrated the incident that one of the persons put knife on his stomach and another razor (ustara) on his neck and took him towards the wall. He Had also deposed that from the possession of accused person two mobile phones, one make Nokia and other Samsung were recovered. One razor was also recovered from the possession of accused Ravi. From the possession of accused Shahrugh, one Nokia mobile phone and one knife was recovered. He further deposed that from the possession of accused Suresh, pocket purse was recovered. Ld. Defence counsel tried to make dent in the testimony of PW1 stating that witness has admitted that there was darkness. However, the witness has explained in the same breath there was electric light coming from the electric pole. PW2 had explained the fact that mobile phone bearing No.8802326133 was in his name and it was give by him to his brother in law Yogesh on 11.09.2013. PW4 had corroborated the fact that these three accused persons were apprehended by him while he was on picket duty near Kalkatia Gate on 11.09.2013 when he had seen three accused persons running and one person chasing him. He had also corroborated the story of PW1.

15. If we read the testimony of PW1, PW4 and PW9, then it has come only conclusion that there accused persons had robbed the complainant after putting ustara and razor on his body. There is no reason to the complainant to depose falsely. Defence of the accused Ravi that he was picked from his house is not tenable particularly when the witness PW1, PW4 and PW9 affirmatively deposed the fact that the accused persons were apprehended at the spot and they were taken to the police station and there the investigating

officer had recorded the statement of the complainant.

16. In view of the above discussions, I am of the view that the prospection had proved its case against accused Ravi and Shahrukh for the offence punishable under Sections 392/34 and 397/211 IPC. Prosecution had proved its case against the accused Suresh for the offence punishable under Section 392/34 IPC and Section 411 IPC. All the accused persons are convicted accordingly.”

8. On behalf of the appellants, it has been submitted that on the date of occurrence, they were under the influence of Alcohol. They were living on footpath at Jamuna Bazar, Hanuman Mandir and have no permanent place of stay. On the date of occurrence, they were taken to the police station for being under the influence of Alcohol. They have no criminal antecedents and they do not know why they have been charged for committing the offence of robbery or using knife or razor.

9. They further submitted that after they were taken to the police station, they were given beatings and taken for medical examination. The appellants have specifically denied committing any robbery or recovery of any razor, knife, mobile, purse of the complainant from their possession. They have further submitted that they are in custody since the date of arrest in this case for the reason that even their family was not informed at their native place and they are languishing in jail for no fault.

10. On behalf of the State, learned APP for the State has submitted that all the appellants are vagabonds. The complainant Yogesh has fully supported the case of prosecution so far as the commission of robbery on knife point and putting razor on neck is concerned. Learned APP has submitted that the complainant raised the alarm and the police officials who were on duty, on hearing the alarm apprehended the three accused persons when they were

running after committing the offence and recovery has been effected from them immediately thereafter.

11. Learned APP for the State has also referred to the statement of constable Vijay who has corroborated the version given by PW1 Yogesh which is further supported by the testimony of PW9 ASI Muninder Singh before whom the complainant, the three accused persons alongwith the recovered case property robbed from the complainant was produced.

12. Learned APP for the State has submitted that taking into consideration the growing number of such types of incidents and that most of the time even public persons do not come forward to lodge the report, it is a case where complainant has fully supported the prosecution case, hence, the impugned order does not warrant any interference.

13. I have carefully considered the rival contentions. Before appreciating the testimony of the material witnesses i.e. PW Yogesh Kumar, PW 4 Constable Vijay Kumar and PW9 ASI Muninder Singh, it is necessary to examine the sequence of events as reported in the complaint Ex. PW1/A and the endorsement made thereon, on the basis of which FIR 236/2013 was registered:

- (i) On the date of occurrence i.e. 11th September, 2013 at about 9:00 PM, Yogesh Kumar was going from Baghirat Place to Bhajanpura, Delhi and near BDS Office, near Hanuman Mandir, Yamuna Bazar he was caught by three persons.
- (ii) One of those persons caught him and other two persons grappled him with one of them putting knife on his abdomen and another putting razor on his neck, asking him to hand over whatever he had.
- (iii) Third person took out mobiles and his purse.

- (iv) Those three persons pushed him and started running towards Yamuna Bazar and he also raised alarm and chased them.
- (v) Police officials on checking duty heard his noise and caught all the three persons while they were running.
- (vi) In the meantime, the complainant also reached there.
- (vii) In the presence of the complainant from the search of Ravi@Wasim one mobile, make Samsung, was recovered from the right pocket of his white pant and from the left pocket razor(ustra) was recovered. From the right pocket of the pant of Shahrukh one mobile phone, make Nokia, and from the left pocket, vegetable cutting knife, was recovered. From third person Suresh his purse was recovered.
- (viii) The endorsement on the rukka i.e. Ex. PW9/A records that Head Constable Gajender and Constable Vijay and Constable Rakesh produced all the three apprehended persons along with the recovered articles and the complainant before ASI Muninder Singh.
- (ix) After recording the statement of the complainant Yogesh Kumar FIR was registered against the three accused persons for committing offence punishable under Section 392/397/411/34 IPC.

14. A bare perusal of the above sequence of events reveal that immediately after taking out the articles from the pocket of the complainant and pushing him, all the three persons started running and at that time they were also being chased by the complainant while raising alarm. They were also apprehended by police officials on checking duty. Thus they hardly had any time to distribute the robbed articles. The MLC of the accused persons have been placed on record which are marked Ex. PW 10/A to 10/C and records as under:

MLC No.	Name	Brought by	Date & Time
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2327/13	<u>Ravi @ Wasim</u>	Ct. Rakesh 1127/N	12.09.13 at 2:10 AM
Alleged History of	- Assault by public approx 2 – 2 ½ hours back near Hanuman Mandir as told by himself. - Opioid addiction x 5-6 yrs. 3-4 times/day.		
Complaint of	Pain in right foot and leg.		
Oral Examination	Conscious, oriented.		
Local Examination	- Tenderness in right ankle. - Superficial abrasion over back. - Old scar mark in left chest wall.		
Referred to	SR Ortho for further evaluation and management.		

MLC No.	Name	Brought by	Date & Time
2326/13	<u>Suresh</u>	Ct. Pawan 1675/N	12.09.13 at 2:00 AM
Alleged History of	- Beaten by public approx 4 hours back near Hanuman Mandir, Kashmere Gate as told by himself. - Opioid addiction – 10 yrs. 4-5 times		
Complaint of	Pain in left forearm and right foot.		
Oral Examination	Conscious, oriented.		
Local Examination	- Swelling in Tenderness over left forearm. - Bruise of size 02” x 01” over upper back. - Bruise of size 02” x 01” over left iliac region. - Tenderness over right foot.		
Referred to	SR Ortho for further evaluation and management.		

MLC No.	Name	Brought by	Date & Time
2328/13	<u>Shahrukh</u>	Ct. Vijay 1342/N	12.09.13 at 2:20 AM
Alleged History of	- Assault by public approx 2 – 2 ½ hours back near Hanuman Mandir, Kashmere Gate as told by himself. - Opioid addiction x 2 ½ yrs. 3-4 times/day.		
Complaint of	Pain at injury site.		
Oral Examination	Conscious, oriented.		

Local Examination	- Tendum over left hand. - Old healing wound over left hand. - Bruise in left thigh size 03'' x 01'' - Multiple cut marks in left forearm.
Referred to	SR Ortho for further evaluation and management.

15. They were referred to SR Ortho for further examination. On local examination by the Ortho it was opined that the injuries were caused by blunt object.

16. The question arises that when the complainant was chasing him while raising alarm and the police officials caught them while they were still running, where was the occasion for public to give beating to them, causing multiple injuries on their bodies by blunt force. Statement of the complainant PW1/A and the endorsement of rukka PW9/A do not mention about any of the accused persons being given beating by the public. Rather there was no intervening time between their alleged escape from the spot after committing robbery and apprehension by the police on checking duty.

17. It may also be noticed that as per the statement of the Nodal Officer, Aircel, Delhi Service Area Ex.PW3, no call was made by the petitioner on 11th September, 2013 hence location of his mobile could not be ascertained. The date of occurrence as per the complainant is 11th September, 2013 at 9:00 PM the rukka in this case has been sent at about 10:50 PM and FIR has been recorded at about 10:55 pm vide DD No. 37A. In ordinary course, after such an incident, a person informs his family about the incident and that he would be late in reaching home. But no such call was made by the complainant from his mobile phone. The complainant PW1, Yogesh Kumar claims that he was robbed on the point of knife and razor but not even a scratch has been reported on his abdomen or his neck by him which makes his testimony doubtful.

18. On critical analysis of the testimony and the statement of material witnesses i.e. PW Yogesh Kumar, PW 4 Constable Vijay Kumar and PW9 ASI Muninder Singh before whom the complainant and the accused persons along with the robbed property were produced, and the MLCs of all the three accused, I am of the considered view that prosecution has failed to prove its case against the appellants beyond reasonable doubts. There are several lacuna, inconsistencies and loose ends in the case of the prosecution which could not have been ignored by the Court while considering the testimony of the complainant.

19. When the entire case is examined with reference to the MLCs which show multiple injuries being caused to all the accused persons by blunt force, there being no occasion for the public persons to intervene and to assault the appellants. It appears to be a case where after giving beating to the appellants, they have been implicated in this case, may be for the reason that all of them are vagabonds. It is also necessary to mention here that the arrest memos Ex. PW1/J, Ex.PW1/K1 & Ex.PW1/L-1 of the three accused persons namely Suresh, Sharukh and Ravi respectively are not mentioning the time of arrest. There is over writing and cutting in Column No. 6 where date of arrest is required to be mentioned. In Column No. 9 which requires the details of the "Persons of the Arrestee to be informed with address and Telephone number, if any", it is mentioned against Column No. 9 as under:

*"Radhey r/o Vagabond Jamana Bazar, K. Gate. Delhi
7838398050 (Friend)"*

20. ASI Muninder Singh in his statement nowhere states as to who called on this telephone number to inform Radhey who himself is a vagabond but having mobile number and at what time it was informed.

21. Thus, I am of the considered opinion that prosecution has failed to

prove its case against the accused persons beyond reasonable doubt. The learned Trial Court wrongly convicted the appellants for the evidence adduced by the prosecution was indicating towards their innocence.

22. Consequently, the impugned judgment dated 5th January, 2015 and order of sentence dated 13th January, 2015 are set aside. Appellants are acquitted of the charge. They be released from custody, if not required in any other case.

23. Copy of the order be sent to the Jail Superintendent for information and compliance.

24. LCR be returned alongwith copy of this order.

PRATIBHA RANI, J.

MAY 19, 2016

'neelam/hkaur'