

\$~R-31

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

Judgment Reserved on: May 31, 2016

%

Judgment Delivered on: June 03, 2016

+ CRL.A.978/2015

MONU@ RICKY @SANDEEP

..... Appellant

Through: Mr.Y.S. Chaudhary, Adv.

versus

STATE

..... Respondent

Through: Mr.Sudershan Joon, APP for State.

PRATIBHA RANI, J.

1. Feeling aggrieved by judgment 13.07.2015 and order on sentence dated 15.07.2015 passed by learned ASJ convicting him for committing offence punishable under Section 395 IPC and sentencing him to undergo RI for five years with fine of ₹10,000/-, the appellant has preferred this appeal praying for his acquittal.
2. The case FIR bearing No.493/2014, PS South Rohini, has been registered on the basis of statement made by the complainant-Deepanshi.
3. On 23.06.2014 at about 5.00 p.m. vide DD No.33-A registered at PS South Rohini on the basis of information received from the PCR to the effect that wireless operator has informed about two snatchers being apprehended at Sector-4, Main Road, Avantika, Rohini who were running away leaving behind their motor cycle.
4. DD No.33-A Ex. PW1/A was marked to SI Sandeep who left for the

spot.

5. He recorded the statement Ex.PW7/A of the complainant and made endorsement Ex.PW12/A thereon to the effect that on the date of occurrence, the complainant was going on her scooty. When she reached on the dividing road of Sectors 3 and 4 Rohini, she was surrounded by three motorcycles make Pulsar, FZS and Apache with two persons on each motorcycle. She stopped her scooty. One person sitting on the pillion seat of Pulsar motorcycle tried to snatch her chain but she managed to cover her neck. In the mean time, the person who was driving the Apache motorcycle, forcibly took away her mobile phone from the right side pocket of her pant. The boy on the third motorcycle FZS slapped her. Thereafter all of them tried to flee from the spot but she chased them on her scooty. She hit the Pulsar motorcycle with her scooty and the Pulsar motorcycle in turn hit the Apache motorcycle driven by Monu – the appellant herein.

6. In the meantime, public persons gathered there and Monu was apprehended by the public persons whereas the other 5 boys managed to escape from there.

7. When Investigating Officer SI Sandeep reached the spot, he found the complainant present there and the public persons handed over to him the custody of Monu. After recording the statement of the complainant and seizing the motorcycle which was without number plate, casual search of Monu was conducted leading to the recovery of mobile phone make Sony Xperia from the right side pocket of his pant which was identified by the complainant to be belonging to her. Apache motorcycle was also recovered from the spot.

8. After the registration of the case, further investigation was completed

and charge sheet was filed.

9. The case was committed to the Court of Sessions and appellant herein was charged for committing offence punishable under Sections 394, 395, 412 and 34 IPC to which he pleaded not guilty.

10. During trial, prosecution examined 13 witnesses in all in support of its case. In his statement under Section 313 Cr.P.C., the appellant pleaded innocence stating that he was beaten by the police as he had some altercation with the police officials. To teach him a lesson he was falsely implicated after obtaining his signature on blank papers.

11. On behalf of the appellant, Mr.Y.S. Chaudhary, Advocate has submitted that it is a case where the appellant has been convicted for committing dacoity despite the fact that he alone was facing trial and there is no trace of other 5 persons or even their identity or description. Mr. Y.S. Chaudhary, Advocate for the appellant has drawn the attention of this Court to the statement of the complainant (PW-7) where she has not fully supported the case of the prosecution. Learned counsel for the appellant submits that even if the statement of the complainant-Deepanshi is believed in respect of the incident, at the most it is a case of an attempt to forcibly take her mobile and thus, the impugned order dated 13.07.2015 convicting the appellant for committing the offence punishable under Section 395 IPC is not sustainable. He has prayed that the appellant is challenging his conviction limiting to the extent that the offence under Section 395 IPC is not proved by the prosecution and the appellant may be convicted for the attempt to commit robbery which is punishable under Section 393 IPC.

12. On behalf of State, learned APP has submitted that the appellant herein has been convicted for committing dacoity as there were 6 persons on

three motorcycles at the time when the offence was committed. Learned APP has further submitted that though the complainant has not fully supported the case of the prosecution but the appellant has been caught at the spot and the mobile of the complainant has been recovered from him. Hence the learned Trial Court rightly convicted the appellant for the offence punishable under Section 395 IPC and the appeal may be dismissed.

13. The statement of the complainant which found basis of registration of FIR has already been noted above.

14. The complainant was examined as PW7. In her statement before the Court she deposed that on the date of incident at about 4.30-5.00 pm, she left home on her scooty DL.....1664 (She did not remember the complete number of her scooty). When she reached the main road (within 5-10 seconds) outside the street of her house she was surrounded by three motorcycles with two boys sitting on each motorcycle. She chased them on her scooty by accelerating the speed and she hit Pulsar motorcycle which in turn hit Apache motorcycle. The Apache Motorcycle fell on the road alongwith its rider. One of those boys hit her with a briefcase and ran away.

15. She became totally hopeless and some public persons gathered to help her. All the boys escaped, she called her brother and some Advocate present in the crowd also informed the PCR. She was taken to the police station where her statement Ex. PW7/A was recorded. Thereafter she was taken to BSA hospital for medical examination. Again she returned to the police station where she signed certain papers. The complainant has stated that the assailant had tried to snatch her mobile but she was able to prevent the snatching. The police officers insisted that she should report that the mobile has been robbed for which she refused but they made her to sign certain

papers and took her mobile which was later on released to her superdari. She has stated that one of the boy who tried to snatch her mobile was later identified as Monu.

16. Regarding identification of the appellant Monu, she has stated that on the same day, some police officials came to her and informed that she had done a good job by assisting in apprehension of Monu. She informed that she had not seen the face of assailants and had not assisted in apprehension of any those persons. She did not identify Monu to be involved in this occurrence. The complainant was cross examined at length by the learned APP for the State but without any success. There is a Court observation that the witness appeared to be scared at that time. Except Court observation, so far as identity and involvement of appellant Monu in committing robbery of her mobile is concerned, PW-7 Deepanshi – the complainant has not deposed anything incriminating against him.

17. During her cross examination by the defence counsel, she stated that all the 6 boys who are on motorcycle were covering their faces with cloth. Though there is observation by the Court that the witness was scared which might be a reason for her not to identify the appellant. However, there is nothing on record to suggest that her version about an attempt being made to take away her mobile phone from her pocket is not correct. She has repeatedly stated that only an attempt was made forcibly to take away her mobile phone and denied the prosecution case that her mobile phone was robbed and recovered from the appellant.

18. The appellant has been convicted for committing the offence of dacoity which was not proved from the statement of the complainant i.e. PW-7 Deepanshi.

19. In the case ***Manmeet Singh @ Goldie vs. State of Punjab*** 2015(2) Crimes 124 (SC), the Apex Court has held as under:-

'27. With reference to the offence of dacoity under Section 391 IPC in particular and the import of Section 149 IPC, this Court in Raj Kumar vs. State of Uttaranchal 2008 (11) SCC 709 had propounded that in absence of a finding about the involvement of five or more persons, an accused cannot be convicted for such an offence. Their Lordships, however, clarified that in a given case it could happen that there might be five or more persons and the factum of their presence either is not disputed or is clearly established, but the Court may not be able to record a finding as to their identity resulting in their acquittal as a result thereof. It was held that in such a case, conviction of less than five persons or even one can stand, but in the absence of finding about the presence or participation of five or more persons, less than five persons cannot be convicted for an offence of dacoity.'

20. In the instant case, despite police remand, there was no trace of other persons involved in the incident. Only the appellant has been apprehended at the spot. There is no clear cut finding by the learned Trial Court about the involvement of five other persons in the occurrence. The complainant in this case was a college going student who was going on scooty. The occurrence has taken place on the main road and for snatching the mobile or chain, six persons on three motorcycles were not required to do the job conjointly. Thus, I am of the considered opinion that no offence under Section 395 IPC has been proved against the appellant.

21. The statement of the complainant as the appellant is to the effect that her mobile was forcibly tried to be taken away by a person. There is enough evidence on record that the said person was apprehended at the spot by the

public and also given beating. PW-13 Jitender had made the PCR call from his own mobile about the incident. Statement of PW-12 SI Sandeep and PW-11 Ct.Vikas is to the effect that the person apprehended from the spot was identified as Monu and he was also got medically examined.

22. So far as defence of the appellant that he was taken from his house by some police officials and falsely implicated in this case is concerned, that has been rightly rejected by the learned Trial Court. The appellant has been apprehended from the spot and given beating by the public collected there. His MLC was also got prepared with history of alleged beating by public persons. His motorcycle has also been recovered from the spot which has been subsequently taken on superdari by his wife Smt.Sitaro Devi – the registered owner. Since the complainant has specifically stated that it was only an attempt to rob her mobile by the appellant, he is liable to be convicted for committing the offence punishable under Section 393 IPC.

23. Coming to the quantum of sentence, taking into consideration all the facts and circumstances including the family circumstances of the appellant, he is sentenced to undergo RI for three years.

24. Accordingly, the judgment dated 13.07.2015 and order on sentence dated 15.07.2015 are modified to the extent that appellant is convicted for committing the offence punishable under Section 393 IPC and sentenced to undergo RI for three years. Sentence of fine of ₹10,000/- awarded by learned ASJ is maintained. In default of payment of fine, he shall undergo SI for one month.

25. Appeal stands disposed of in above terms.

26. A copy of this order be sent to the concerned Jail Superintendent for information and compliance.

27. TCR be sent back alongwith copy of this order.

PRATIBHA RANI, J.

JUNE 03, 2016

'neelam'

