

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

Date of Decision: June 02, 2017

(i) + **CRL.A. 437/2015**

MOHD. SAMEER @ RAGHU Appellant

Through: Mr. Amar Nath, *Amicus*
Curiae Counsel with Mr.
Neeraj Bhardwaj, DHCLSC
Panel Advocate

versus

STATE OF NCT OF DELHI Respondents

Through: Ms. Meenakshi Chauhan,
Additional Public Prosecutor

(ii) + **CRL.A. 821/2015**

MOHD. MUSTAFA @ VICKY Appellant

Through: Mr. Amar Nath, *Amicus*
Curiae Counsel with Mr.
Neeraj Bhardwaj, DHCLSC
Panel Advocate

versus

STATE Respondent

Through: Ms. Meenakshi Chauhan,
Additional Public Prosecutor

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

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Impugned judgment of 19th January, 2015 holds appellants-
Mohd.Mustafa@Vicky and *Mohd. Sameer@Raghu* guilty of offences

under Section 457 of IPC read with Section 34 of IPC and under Section 392 of IPC read with Section 34 of IPC as well as for the offence under Section 397 of IPC and vide impugned order of 22nd January, 2015, the aforesaid two appellants have been sentenced to RI for 05 years with fine of ₹5,000/- each for the offence under Section 392 read with Section 34 of IPC and for the offence under Section 457 read with Section 34 of IPC. They have been sentenced RI for 03 years each and for the offence under Section 397 of IPC, they have been sentenced RI for 07 years and the above said sentences are to run concurrently.

The facts as noted in the opening paragraph of the impugned judgment are as under:-

“Akhlq Ahmed Qureshi was residing at Flat No.B-82, Ground Floor, Lajpat Nagar-I. On 7th July, 2012, after finishing his work at Chandni Chowk, he reached at his house at 12.30 pm (midnight) and slept after having dinner. He was alone in the house as his both children were at Dehradun. Complainant was slapped by somebody, when he was sleeping on his bed. He saw four persons. Two were having knife and two were having pistols in their hands. They were in muffled faces. Those boys showed him weapons and asked him to hand over whatever valuable things he was having at home. Complainant was frightened. He pointed out towards locker of almirah, in which keys were already inserted. Two boys took out ₹27,000/- cash, two wrist watches

(Rolex and Raymond Will) from the locker of almirah. They abused and beaten him. They also took away his purse having ₹2,500/- and three mobile phones and other valuable things. While going, four boys removed muffle from their faces. In this way robbery was committed by four boys by forcibly entering into his house at midnight on the point of pistol and knives."

While relying upon the evidence of complainant-Akhlaq Ahmed Qureshi (PW-12) and the evidence of other police witnesses, both the appellants have been held guilty for the afore-mentioned offences.

Both the appellants in their statements under Section 313 of Cr.P.C. have denied the prosecution case and have asserted that they have been falsely implicated in this case. The specific stand taken by appellant-Mohd. Sameer is as under: -

" I am innocent and have been falsely implicated. My actual name is Mohd.Umar. My father is having scarp shop at house no.9, Nehru market, behind chotti masjid Badarpur. My father had scolded me and due to anger, I had gone out of the shop and sat in a bus and reached near pulia at Sarai Kale Khan. It was about 10:00/11:00 pm and I was sitting pulia and police officials took me and implicated me in this case."

What has been specifically stated by appellant-Mohd. Mustafa@Vicky in his statement under Section 313 of Cr.P.C. is as

under:-

" I am innocent and have been falsely implicated. Police had taken me in front of my house on 07.07.2012. I was having my mobile phone make Samsung having SIM number 9718546372. Police took away the SIM number of the said phone. I had given the mobile phone to my brother Mushtaq, at the time police took me away. I was beaten and confined by the police and implicated falsely in this case. I did not know co accused Mohd. Sameer @ Raghu and other accused."

In his defence, appellant-Mohd. Sameer has got examined his father-Mohd. Yasin (DW-1) who has deposed that name of appellant-Mohd. Sameer is Mohd. Umar and he has placed on record copy of birth certificate, Voter Identity Card of Mohd. Umar and a copy of Admit Card of Mohd. Umar of the tenth class examination as well as copy of his Ration Card.

Since the above-captioned two appeals arise out of common impugned judgment, therefore, with the consent of learned counsel for the parties, these appeals have been heard together and are being decided by this common judgment.

With the assistance of learned *Amicus Curiae* as well as Delhi High Court Legal Services Committee's Panel Advocate, I have gone through impugned judgment, order on sentence and the evidence on record. The precise submission advanced on behalf of appellants is that the identity of appellants is very much in dispute because as per the evidence of

complainant, at the time of incident, there was darkness in the room and the faces of the assailants were muffled and it is highly unlikely that assailants would un-muffle their faces while leaving the spot, to get identified.

Learned counsel for appellants submits that there is discrepancy in the evidence regarding the recovery of weapon of offence i.e. *knives*. It is submitted by appellants' counsel that it is highly unlikely that the knife would be kept by appellants in the pocket of their pants and that too, in the right pocket. It is next submitted by learned counsel for appellants that the chance prints lifted from the spot have not matched with the fingerprints of appellants and the blood found on the newspaper lying on the spot does not connect appellants with the crime as the blood samples of appellants were not taken.

Regarding the recovery of Rolex watch from appellant-*Mohd. Sameer*, it is submitted that recovered watch was not mixed with the sample watches and so, the identification of the recovered watch becomes doubtful. It is asserted by learned counsel for appellant-*Mohd. Sameer*, that there is apparent contradiction in the evidence of police officials (*PW-9 & 10*) as one of them had stated that the Rolex watch in question was recovered from the pant pocket of appellant-*Mohd. Sameer* whereas other witness has deposed that it was recovered from his shirt pocket. Thus, it is submitted that the prosecution case is riddled with discrepancies and is rendered doubtful and so, benefit of doubt deserves to be given to appellants and they be acquitted.

On the other hand, learned Additional Public Prosecutor for

respondent-State supports impugned judgment and the order on sentence and submits that the conviction of appellant is borne out from the evidence on record and the so-called discrepancies pointed out by learned counsel for appellants does not go to the root of the matter as the substratum of prosecution case stands proved from evidence on record and that minor shortcomings in the prosecution, cannot be made the basis to acquit the appellants.

After having heard learned counsel for the parties and on perusal of impugned judgment, order on sentence and the evidence on record, I find that both the appellants have been identified in the court by complainant (PW-12) who has categorically deposed that he has seen the recovered knives in the hands of these appellants. It is relevant to note that in the cross-examination, it has not been put to complainant (PW-12) as to how he could identify appellants when there was darkness in the room. All that has come in the cross-examination of complainant that initially the faces of assailants were masked and when complainant asserts in his evidence that while two assailants were leaving, he could see them because at that time, their faces were not masked, then there is no reason to disbelieve the version of complainant (PW-12) because there is no searching cross-examination of complainant (PW-12) on this vital aspect. In such a situation, it would not be fair to extend the benefit of doubt to appellants-accused persons because I find that the version put forth by complainant (PW-12) is quite natural and probable and it has got the ring of truth in it.

It is pertinent to note that the detailed version of complainant (PW-

12) is crystal clear. So, it would be unfair to extend benefit of doubt to accused persons merely because there is some discrepancies in the evidence regarding recovery of Rolex watch from the pant pocket or shirt pocket. It is a matter of record that the evidence of police witnesses were recorded after a substantial time gap between the incident and the recording of the evidence and in such a situation, such like inconsequential discrepancies (*which do not go to the root of the matter*) are likely to arise.

So far as the question of identity of appellant-Mohd. Sameer@Raghu is concerned, I find that it has not been put to complainant in cross-examination by this appellant that this appellant is known by the name of Mohd. Umar and is not known by the name of Mohd. Sameer. In such a situation, the self-serving evidence of Yasin (DW-1) i.e. father of appellant-Mohd. Sameer does not clinch the issue of identity for the reason that Mohd. Yasin (DW-1) has not clarified in his evidence that he has only one son and the said son is known by name of Mohd. Umar and so, reliance placed upon copy of birth certificate, voter identity card, etc., is of no avail. Such a view is being taken for the reason that there was no occasion for the complainant to falsely implicate appellants as accused in this case.

In the face of the evidence on record, the conviction and the sentence awarded to appellants for the offences under Sections 457/34 and Sections 392/34 of IPC is well merited. Recovery of robbed articles in pursuance to the disclosure statement made by appellants-accused persons provides credence to the prosecution version and the recoveries

effected. Since the knives recovered at the instance of both the appellants were used in the commission of offences in question, therefore, their conviction and the sentence for the offence under Section 397 of IPC is well merited.

In the considered opinion of this Court, there is no substance in these appeals and so, the conviction and sentence awarded to appellants is maintained. Both these appeals are accordingly dismissed.

JUNE 02, 2017
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(SUNIL GAUR)
JUDGE