

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

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Reserved on: 17th October, 2016

Decided on: 11th January, 2017

+ **CRL.A. 866/2012**

RAJENDER SINGH @ MONU

..... Appellant

Represented by: Mr. A.K. Dubey, Mr.
Divyanshu Pratap, Advs.

versus

STATE

..... Respondent

Represented by: Ms. Meenakshi Chauhan, APP
with ASI Devender Kumar, PS
Uttam Nagar.

+ **CRL.A. 932/2012**

VIJAY

..... Appellant

Represented by: Ms. Neelam Singh, Adv.

versus

STATE

..... Respondent

Represented by: Ms. Meenakshi Chauhan, APP
with ASI Devender Kumar, PS
Uttam Nagar.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By the common impugned judgment dated May 18, 2012 Rajender Singh, Naresh and Vijay have been held guilty for offence punishable under Sections 392/34 IPC besides Rajender Singh was also held guilty for offence punishable under Section 397 IPC. Vide order on sentence dated May 25, 2012 Rajender Singh has been awarded sentence of rigorous imprisonment for a period of seven years besides imposing a fine of ₹10,000/- in default whereof to undergo simple imprisonment for a period of six months for the

offences punishable under Sections 392/397 IPC and Vijay has been awarded sentence of rigorous imprisonment for a period of five years besides the fine of ₹10,000/- in default whereof to undergo simple imprisonment for a period of six months for the offences punishable under Sections 392/34 IPC . Since Naresh has been acquitted by this Court in CrI.A. 867/2012 decided on 1st April, 2014, this Court is only concerned with the conviction of Rajender Singh and Vijay in the present appeals.

2. Challenging the conviction learned counsel for the Rajender Singh contends that there are contradictions in the testimony of PW-4 and PW-7. PW-4, Inderjeet Singh stated that he received the call from the police station around 8 P.M., however as per the testimony of PW-7 HC Manoj Kumar, the SIM was recovered at 9:30 P.M. PW-4 is a planted witness. No test identification parade was got conducted. While placing reliance upon the decision reported as 1952 CriLJ 986 Kartar Singh v. State of Vindhya Pradesh, it is submitted that identification in the police station has no evidentiary value. There is delay in lodging the FIR and no plausible explanation has been given by the complainant. Reliance is placed upon AIR 1973 SC 501 Thulia Kali v. State of Tamil Nadu. The recovery of the dagger is doubtful from the statement of PW-7. While placing reliance upon the decision reported as AIR (29) 942 All 426 Ramain Rai v. Emperor, it is submitted that the police officer has no authority to search a person until he has been arrested. There is no reason to discard the defense witness. Alternatively, it is prayed that the appellant be released on the period already undergone.

3. Learned counsel for Vijay contends that no complaint was lodged on 28th March, 2007. No public witness was joined at the time of recovery. No

call detail records have been placed on record to show whether PW-4 actually received the phone call from the police station. Mobile phone was planted by the complainant himself. There is no specific allegation against the appellant as per the statement of PW-1, Rakesh.

4. Learned APP for the State on the other hand contends that there is no motive on the part of the complainant Rakesh or PW-4 Inderjeet Singh to falsely implicate the convicts. Testimony of PW-2 Prabha Devi further proves that the prosecution version is not concocted. Recovery memos with respect to recovery of the dagger and mobile phone were prepared. It is well settled that non-joining of the public witnesses is not fatal to the prosecution case when the public witnesses are not willing to join the investigation. Specific role has been attributed to Rajender Singh and Vijay and dagger and mobile phone were recovered pursuant to their arrest. The original receipt book with respect to the purchase of Nokia mobile phone by the complainant has been produced by PW-3, Puneet Arora corroborating the version of the complainant.

5. The sequence of events leading to registration of FIR No. 226/2007 at PS Uttam Nagar under Sections 411/34 IPC Ex. PW-5/A are that on March 29, 2007 at 4:00 P.M. PW-9 HC Rakesh Chand, along with PW-7 HC Manoj Kumar and HC Shivshankar were on duty for checking incidents of snatching near Uttam Nagar West Metro Station, main Najafgarh Road when around 5:10 P.M., one three wheeler bearing no. DL- 1RD- 3218 of greenish yellow colour coming from Najafgarh side and going towards Uttam Nagar was stopped for checking. When the TSR stopped, two boys sitting at the back tried to run but were stopped by the police officials. The names of those two boys were revealed as Vijay and Rajender Singh and TSR driver was

named Naresh. On search, one dagger was recovered from the right side pocket of pant of Rajender Singh. One mobile phone of make Nokia 1100, silvery black colour without a SIM card was recovered from the right pocket of pant of Vijay and on interrogation, he could not explain the possession of mobile phone. Naresh stated that he had taken the TSR on hire. On further interrogation, Vijay revealed that the Nokia mobile and ₹250/- were looted by them at night from a passenger of TSR by showing the dagger near Balaji Chowk and the passenger was dropped off there only. Thereafter the SIM card of the aforesaid mobile was recovered from near a pillar close to his house. HC Rakesh Chand asked 3-4 public persons to join investigation but when none agreed, he prepared the sketch of the dagger and sealed it.

6. Thereafter, HC Rakesh Chand, PW-9 recovered the SIM card at the instance of Vijay. He inserted it in the aforesaid mobile and gave a missed call from that mobile to his mobile phone to know the number. The number was 9911249965. Thereafter, he dialed the last called number 9312853935 which was received by PW-4 Inderjeet Singh who informed that the owner of the said mobile was PW-1 Rakesh, who was his son-in-law. Statement of Rakesh, PW-1 was recorded under Section 161 Cr. P. C. on the basis of which the FIR was registered. Naresh, Vijay and Rajender Singh were arrested and identified by Rakesh, PW-1.

7. PW-1, Rakesh, the complainant in the present case stated that on March 28, 2007 between 11:00-12:00 P.M., he hired a TSR from Uttam Nagar in which two persons were already sitting besides the driver. When they reached near Aggarwal Sweet shop, Balaji Chowk, the TSR was stopped at the instance of one of the two boys who gave him beatings. Thereafter, Vijay and Rajender Singh forcibly snatched the Nokia mobile

phone and ₹250/- by pointing out knife. He went home and did not lodge the complaint because he had sustained injury and it was odd hour in the night. However, he narrated the entire incident to his wife Prabha Devi, PW-2. He stated that he was called to the police station on the next day of the incident where the police showed him his mobile phone.

8. PW-2 Prabha Devi deposed in sync with the testimony of PW-1. She stated that Rakesh PW-1 reached home around 12:00 night on the day of the incident.

9. PW-3, Puneet Arora who runs a shop under the name of style of Arora Telecoms brought the original receipt book which showed that one mobile phone of make Nokia 1100 (black) bearing IEMI No. 357593005127660 was sold to Rakesh Singh.

10. PW-4 Inderjeet Singh, father-in-law of Rakesh stated that on March 29, 2007 around 8:00 P.M., he received a telephonic call from the police station asking about the person to whom phone number 9911249965 belongs. He replied that the phone number belonged to Rakesh, his son-in-law. He stated that he informed Rakesh about it and sent him to the police station.

11. As noted above, the complainant Rakesh did not lodge the FIR on 28th March, 2007 as the incident took place in the mid night at around 11.00-12.00 PM and whereafter the police arrested the appellants. The above noted verification was done from the mobile phone and the recovered mobile phone was found to be that of Rakesh. Merely because Rakesh did not promptly lodge the FIR, it cannot be held that there is unexplained delay in lodging the FIR, thus entitling the appellants to be acquitted. Further while verifying from the complainant, he identified the appellants and Naresh who

had been arrested by that time hence a test identification thereafter was meaningless. Test identification parade is an aid in investigation and is required to be conducted if the facts and circumstances so demand. In a case where the accused persons are apprehended at the instance of the complainant or complainant immediately on their apprehension identifies them, a test identification parade conducted is an idle formality and not the requirement of investigation.

12. The contention of learned counsel for the appellants that no person can be searched unless arrested reserved to be rejected. Section 102 Cr.P.C. provides that if there is a reasonable suspicion to the police officer that the person is in possession of stolen property or is involved in commission of a cognizable offence, he can immediately carry out a search without effecting a formal arrest and seize the suspected property.

13. The alternative plea of the appellant claiming parity with Naresh who has been acquitted or to be released on the period already undergone deserves to be rejected. As noted above, Naresh was the driver of the TSR and this Court in CrI.A.867/2012 acquitted him because no specific role of either threatening or committing robbery was attributed to him. He was plying the appellants in his auto rickshaw and only stopped at their instance. Thus he was entitled to be acquitted. Appellant Rajender has been convicted for offence punishable under Section 397 IPC for which the minimum sentence prescribed is imprisonment for a period of seven years. Hence the sentence of Rajender cannot be reduced below seven years imprisonment awarded to him. As regards Vijay, he has already been awarded sentence of imprisonment for a period of five years, in view of the fact that he was not convicted under Section 397 IPC. This Court finds no ground to reduce the

same to the period already undergone.

14. On the basis of the evidence on record, I find no infirmity in the conviction of Rajender Singh for offences punishable under Sections 392/397/34 IPC and Vijay for the offences punishable under Section 392/34 IPC and the order on sentence. Appeals are accordingly dismissed.

15. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record.

16. TCR be returned.

(MUKTA GUPTA)
JUDGE

JANUARY 11, 2017
‘v mittal’

