

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

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Reserved on: January 10, 2018

Decided on: 6th September, 2018

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CRL.A. 69/2016

DEEPAK

..... Appellant

Represented by: Mr. H.S. Arora, Advocate

versus

STATE

..... Respondent

Represented by: Mr. Hirein Sharma, APP for
the State with ASI Badluram,
PS Janakpuri.

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CRL.A. 510/2016

KARAN

..... Appellant

Represented by: Ms. Rakhi Dubey, Advocate

versus

STATE

..... Respondent

Represented by: Mr. Hirein Sharma, APP for
the State with ASI Badluram,
PS Janakpuri

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. Vide impugned judgment dated 1st December, 2015, the appellants Deepak and Karan were convicted for the offences punishable under Sections 392/411/34 IPC and Karan was also convicted for the offence punishable under Section 397 IPC. Vide order on sentence dated 5th December, 2015 Deepak and Karan were directed to undergo rigorous imprisonment for a period of seven years each and to pay a fine of ₹3,000/-

each for the offence punishable under Section 392/34 IPC and in default of payment of fine, to undergo further simple imprisonment for a period of one month each; rigorous imprisonment for a period of two years each and to pay a fine of ₹1,000/- each for the offence punishable under Section 411 IPC and in default of payment of fine, to undergo further simple imprisonment for a period of one month each. Karan was also sentenced to undergo rigorous imprisonment for a period of seven years and to pay a fine of ₹3,000/- for the offence punishable under Section 397 IPC and in default of payment of fine, to undergo further simple imprisonment for a period of one month.

2. Learned counsel for the Deepak submits that as per Rakesh Singh (PW-1) the mobile phone and cash of ₹900/- were recovered from the possession of the appellants at the police station. However, as per the testimony of Ct Rajbir (PW-4) the search of the appellants was done by the complainant on the asking of SI Ajit Singh and the complainant handed over the recovered items to SI Ajit Singh. Furthermore, there is discrepancy in the testimony of Rakesh Singh with respect to the fact whether the PCR van came first on the spot or police officials came on the motorcycle. During the examination-in-chief of Rakesh Singh, he stated that he had noticed one PCR Van and one police bike coming. However, during his cross-examination, he stated that when he raised noise, two patrolling officials came on motorcycle and PCR van came at spot after five minutes. No independent witness has been examined even though they were available and the same is reflected from the testimony of Rakesh Singh who stated in his cross-examination that two labourers who were sleeping in a nearby tea kiosk woke up and came there. There is discrepancy in the place of personal

search of the appellants. Rakesh Singh in his statement did not state that the personal search of the accused was conducted in his presence. No bill or receipt of the mobile phone of make Nokia was produced by Rakesh Singh. Mukesh, from whom Rakesh Singh had purchased the mobile phone, was also not examined as a witness. It is further urged that recoveries were planted on the appellants because of animosity with beat police. No log book either of the police gypsy or the police bike has been produced or proved on record.

3. Learned counsel for Karan, in addition to the aforementioned arguments, states that as per the case of prosecution ustara was recovered from the personal search of Karan, however, recovery memo does not mention about it. Furthermore, the Court had observed that the ustara was sealed with the seal of 'VS' whereas SI Ajit (PW-7) stated that it was sealed with the seal of 'AS'. Even the seizure memo notes that ustara was sealed with the seal of 'AS'.

4. Per contra, learned APP for the State submits that the appellants were correctly identified by Rakesh Singh in Court. The appellants were apprehended from the spot and the recoveries were made from them. There are no contradictions which go to the root of the matter. Thus, the impugned judgment suffers from no illegality.

5. Briefly stated, the prosecution case is that on 7th April, 2014 Ct. Rajbir (PW-4) was on patrolling duty with HC Mast Ram (PW-5), when they reached C-4E, near Janakpuri, Bus stand, they met SI Ajit Singh (PW-7), ASI Ramesh Kumar (PW-3) and one person Rakesh Singh (complainant herein). Rakesh told them that three boys had robbed his mobile phone and ₹900/- and fled towards C-5, Vidya Marg, Jail Road, Janakpuri side.

Thereafter, the police officials along with the complainant went towards Janakpuri side where the complainant pointed out towards three boys who were near the garbage box on road which goes from Vidya Marg to Sagarpur. Three boys were apprehended and on enquiry, the names of those boys were revealed as Karan, Deepak and 'A' (JCL). On personal search of Karan, one mobile phone of make Nokia, blue and black in colour, belonging to Rakesh and one ustra (barber's knife) were recovered from his right side pocket of pant. ₹500/- were recovered from the right side pocket of pant of 'A'. and ₹400/- in the denomination of ₹100 X 2, ₹10 x 10 and ₹50 X 2 were recovered from right pocket of Deepak. SI Ajit (PW-7) prepared the sketch of the ustra [Ex. PW-1/A] and it was sealed with seal of 'AS' and was seized vide seizure memo Ex. PW-1/B. The mobile phone [Ex.P2] was seized vide seizure memo Ex. PW-1/C. Currency note of ₹500/- [Ex.P4] recovered from JCL 'A' was taken into possession vide seizure memo Ex. PW-1/F. Currency notes of ₹400/- [Ex. P3] in various denominations recovered from Deepak were taken into possession vide seizure memo Ex. PW-1/D. Statement [Ex. PW-1/E] of Rakesh Singh was recorded on the basis of which FIR No. 389/2014 [Ex. PW-2/A] was lodged for the offences punishable under Sections 392/397/411/34 IPC at PS Janakpuri.

6. Karan and Deepak were arrested vide arrest memos Ex. PW-1/G and Ex. PW-1/H respectively. Personal search of Karan and Deepak was conducted vide memos Ex. PW-1/J and Ex. PW-1/K respectively. Disclosure statements of Karan and Deepak were recorded vide Ex. PW-7/D and Ex. PW-7/E respectively. 'A' was arrested vide arrest memo Ex. PW-4/A and his personal search was conducted vide memo Ex. PW-4/B. SI Ajit

prepared the site plan of place of recovery [Ex. PW-7/B] and site plan of place of occurrence [Ex. PW-7/C].

7. On completion of investigation, charge sheet was filed against Karan and Deepak in the Court and against JCL 'A' before the Juvenile Justice Board. Charge was framed against Karan and Deepak.

8. Rakesh Singh was examined as PW-1 in Court. He deposed on 6th April, 2014 when he was coming back from Shahpura, Rajathan, he got down from the bus at Dhaula Kuan and boarded a TSR for going towards his house. He got off from the TSR at Dabri Mode around 1:10 A.M. and started walking towards his house. When he reached the bus stand at C-4E, Janakpuri, Delhi, he saw three boys were standing there. One of them approached them and asked him about the availability of the bus at that odd hour to which he replied that there is no schedule for the bus and he continued walking towards his house. All of a sudden, those three boys came on to him, one of them placed ustara on his neck and threatened to cut his neck and kill him if he raised any alarm. Remaining two boys started snatching cash from his pockets while grappling him. They checked his bag, all the pockets and took away his mobile phone and cash of ₹900/-. The boys ran away towards C-4E market. Thereafter, he raised alarm and noticed one PCR van and one police bike coming in that area, to whom he narrated the incident.

9. DW-1, Smt. Kalawaati Devi mother of Deepak stated that on 7th April, 2014 around 5:00 A.M., Deepak had gone for a morning walk but he did not return at 6:30 A.M., his usual time. When he did not reach home till 8:00A.M., they started searching for him. Around 1:00 P.M., she received a phone call from a lawyer informing that Deepak is in police custody. During

her cross-examination, she stated that Deepak reached home at 7:00 P.M. on 7th April, 2014 and remained at home during the intervening night of 6th and 7th April, 2014. She denied the suggestion that Deepak was missing from home during the intervening night of 6th and 7th April, 2014.

10. Contention of learned counsel for the appellants that recovery was planted upon them and even as per the case of Rakesh Singh the same was made at the Police Station though the police officials stated that the recovery of the ustara, mobile phone and money was made at the spot deserves to be rejected for the reason Rakesh Singh in his examination-in-chief stated that after the incident took place he raised the alarm and noticed one PCR van and a police bike coming in the area and he approached them; when the police officials made him sit in the PCR Gypsy. They went in search of the accused. When they reached near Mandir at Vidya Marg, Rakesh Singh noticed the three boys and pointed towards them. They were overpowered by the police. From the possession of Karan Singh, one mobile phone and one ustara was recovered, cash of ₹400/- with two currency notes of ₹100/- and two currency notes of ₹50/- and 10 currency notes of ₹10/- were recovered from Deepak and further cash of ₹500/- was recovered from the third boy 'A'.

11. No doubt in his examination-in-chief he further stated that the accused were taken to the police station, he also accompanied them to police station and the aforesaid items were recovered from the possession of the accused persons at the Police Station however, from the sequence of events narrated in the examination-in-chief it is evident that the recoveries had been made at the spot which fact has been clarified by Rakesh Singh in his cross-examination where he stated that after three boys were identified and

apprehended, they remained at the place of incident for 15-20 minutes when police officials made inquiries from the boys and their search was taken in his presence and articles were recovered from them. Thereafter, he along with the accused persons and police officials went to the Police Station at around 2.00 AM/2.30 AM. He also stated that two/four papers were prepared at the spot which he signed. He remained at the police station for about half an hour and left the same at around 3.00 AM/3.30 AM during which time signatures on the documents were obtained from him. Police officials also stated that recoveries were made at the spot. Thus there is no contradiction between the testimony of Rakesh Singh and police officials as to whether the recovery was made at the spot or in the police station.

12. Specific case of the appellants is that due to animosity with the beat police officers they have been implicated in this case. Constable Rajbir and Head Constable Mast Ram, who were on the night patrolling duty being the beat officers, have not been suggested of any animosity in their cross-examination except that a suggestion has been given that they have deposed falsely. Smt. Kalawati Devi, mother of Deepak (DW-1) who appeared in the witness box stated that her son was at home on the intervening night of 6th/7th April, 2014, however, this fact was not stated by Deepak in his statement under Section 313 Cr.P.C.

13. From the evidence of the prosecution and the discussion aforesaid this Court finds no error in the impugned judgment convicting the appellants for offence punishable under Section 392/34 IPC and Section 411 IPC however, with respect to conviction of appellant Karan for the offence punishable under Section 397 IPC, the link evidence qua ustara is doubtful as SI Ajit stated that he had sealed the ustara with the seal of 'AS' however, learned

Additional Sessions Judge has observed that the pullanda containing the ustara was sealed with the seal 'VS'. Thus on this count Karan is entitled to the benefit of doubt and conviction of Karan for offence punishable under Section 397 IPC is set aside.

14. Considering the fact that as regards the link evidence qua ustara benefit of doubt has been extended and the appellants' conviction for offence punishable under Sections 392/34 IPC and Section 411 IPC has only been upheld, the sentence of the appellants is modified to the period already undergone which is more than 4½ years including remissions.

15. Appeals are accordingly disposed of. Appellants who are in custody be released forthwith, if not required in any other case.

16. Copies of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record and intimation to the appellants.

17. Trial Court Record be returned.

(MUKTA GUPTA)
JUDGE

SEPTEMBER 06, 2018
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