

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

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Reserved on: 25th April, 2018
Decided on: 20th August, 2018

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CRL.A. 808/2017

DARSHAN MUKHIYA

..... Appellant

Represented by: Mr. Dinesh Malik and
Mr. Akash Saini, Advocates

versus

STATE

..... Respondent

Represented by: Mr. Ashok Kr. Garg, APP for
the State with SI Om Pal Singh,
PS Model Town.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By the present appeal, Darshan Mukhiya challenges the impugned judgment dated 28th February, 2017 convicting him for the offences punishable under Sections 392/397/120B IPC in FIR No. 99/2011 registered at PS Model Town and the order on sentence dated 15th March, 2017 directing him to undergo rigorous imprisonment for a period of seven years and to pay a fine of ₹10,000/- and in default whereof to undergo simple imprisonment for a period of 3 months for the offence punishable under Section 397 IPC and rigorous imprisonment for a period of six years and to pay a fine of ₹1,000/- and in default whereof to undergo simple imprisonment for a period of 10 days for the offences punishable under Section 392/120B IPC. Co-accused Ram Briksh Mukhiya, Vishnu Mukhiya and Garbu Mukhiya were also convicted in the present case, however, since no appeal has been preferred by the co-accused persons, this Court is only concerned with the appeal of Darshan Mukhiya.

2. Learned counsel for the appellant contends that SI Rakesh Rana (PW-

10), Investigating Officer in the present case, has explicitly admitted in his testimony that the appellant was shown to the complainant Rekha Makkar (PW-1) prior to the test identification proceedings (TIP). No katta was recovered from the appellant. Furthermore, no robbed article nor any incriminating article was recovered from the appellant. The person who came from the chemist shop to deliver the medicines to Rekha Makkar has not been examined. There being no incriminating evidence against the appellant, he is required to be acquitted.

3. Learned APP for the State on the other hand contends that the conviction of the appellant is rightly based on the testimony of Rekha Makkar (PW-2) who correctly identified him in Court.

4. Process of law was set into motion on 2nd March, 2011 at about 5:47 P.M. when a call was received regarding dacoity committed at House No. A-1/47, Third Floor, Part I, Gujrawala Town. Aforesaid information was recorded vide DD No. 33A (Ex.PW-10/A) and assigned to SI Rakesh Rana. He along with Ct. Virender reached the spot being House No. A-141, Third Floor, Gujrawala Town, where he met Rekha Makkar (complainant herein). He inspected the entire third floor. The household articles of the room were scattered all over the room, cupboards and drawers were found open. He recorded the statement of Rekha Makkar wherein she stated that at about 4:40 PM, when she was sitting in her bedroom and watching TV, two boys aged about 28-30 years, having dark/wheatish complexion and talking in Bihari language, entered the room. Out of the two boys, one boy was holding a rusty katta and the other boy asked her to hand over the keys of cupboard, which she refused. In the meantime, one more accomplice of the boys entered the room. First two boys broke open the drawer of the

cupboard by constantly pulling it and took out around ₹3.5-4 lakhs lying in the drawer and started putting in their pockets. They also took out jewellery and put it inside a pink coloured bag on which R.N Jewellers was printed. She stated that she would give details of jewellery later. Thereafter, the three boys threatened her and snatched her Nokia phone having number 9999916783 greyish black coloured mobile and then tied her on the toilet seat with the shawl and ties. She further stated that the boys had also got rope with them, with which they tied her legs. Thereafter, all three men ran away from house with cash, jewellery and her mobile phone. She stated that since then, her servant Saroj Ba aged about 30-35 years was also missing. Around 10 days earlier, a boy named Nageshwar after introducing Saroj Ba as his acquaintance, had made her employ him as a servant. She stated that Saroj handed over a bottle of water to her and left the house, before the boys arrived, on the pretext that he was coming back in two minutes. Saroj took the Nokia mobile, Phone No. 9899322727, which was provided by her, along with him.

5. Aforesaid statement was recorded vide Ex. PW-2/A on which FIR No. 99/2011 was registered for the offence punishable under Section 392/34 IPC at PS Model Town.

6. In the meantime, officers of the Crime Team also reached the spot and prepared the inspection report which was proved vide Ex. PW-10/C. SI Rakesh Rana prepared the rough site plan (Ex. PW-10/D). One black and white muffler, one blue shawl with brown border, one black check tie, one piece of bandage and one pair of black color slippers were found at the spot and were seized vide seizure memo (Ex. PW-3/A). Rekha Makkar provided the phone number of Nageshwar, who was running a placement agency,

through whom Saroj, whose real name was later on revealed as Vishnu Mukhiya, was employed as a servant. On inquiry from Nageshwar, it was found that co-villager of accused Vishnu Mukhiya was working as servant in Roop Nagar.

7. On 3rd March, 2011, SI Rakesh Rana along with ASI Joginder, ASI Bhagat Singh, Ct. Tushar departed for Madhubani, Bihar in search of accused Vishnu Mukhiya. Local police was contacted and raid was conducted at the house of accused Vishnu Mukhiya, but the family members told that he had not reached there from Delhi yet. SI Rakesh Rana and the team came back to Delhi on 6th March, 2011. In the meanwhile, another team, consisting of ASI Pramod, HC Naresh, Ct. Kuldeep and Ct. Jai Prakash left for Madhubani, Bihar in search of accused Vishnu Mukhiya. On 9th March, 2011, SI Rakesh Rana, Insp. Vinod and Ct. Mukesh Mishra joined the above mentioned another team in Bihar.

8. On 14th March, 2011, at about 1:00 P.M.–2:00 P.M., secret information was received that accused Vishnu Mukhiya would be going to his brother in law's house at Village Lalmaniya. Accused Vishnu Mukhiya was apprehended on the pointing out of the secret informer and SI Rakesh Rana did his cursory search and from his pant, a jewellery bag and ten currency notes of ₹1,000/- denomination were recovered. Aforesaid articles were seized vide seizure memo Ex.PW-4/A.

9. On 17th March, 2011, co-accused Garbu Mukhiya was apprehended, who disclosed that he had already sold some of the robbed articles.

10. Accused Vishnu Mukhiya led police team to park A-block, Gujrawala Town, Part-I, where he and his associates had planned the dacoity. He disclosed that on 2nd March, 2011, he was working as domestic help at

House No. A-141, Third Floor, Gujrawala Town, Part-I and his accomplice Joginder Mukhiya was standing on road in front of the said premises. Thereafter, accused Vishnu Mukhiya disclosed that at the time of the commission of offence, he was standing outside the main door and his accomplices committed dacoity, after which they took an auto from the front of the house.

11. On 1st July, 2011, the absconding five accused persons including the appellant, were declared Proclaimed Offenders by the concerned Court.

12. On 30th September, 2011, ASI Parmod received a secret information that Darshan Mukhiya (appellant herein) had gone to Ambala. HC Naresh Kumar (PW-4) along with ASI Parmod, HC Sudhir and Insp. Vinod went to Ambala. On inquiry, it was found that Darshan Mukhiya was residing in the area of PS Pehwa. When Darshan Mukhiya proceeded towards the fields, at the instance of secret informer, he was arrested and his personal search was carried out.

13. On 1st October, 2011, ASI Joginder Singh (PW-11) received information that Darshan Mukhiya, who had been arrested by ASI Parmod Kumar of PS Adarsh Nagar, will be produced in Rohini Court. With the permission of the Court, Darshan Mukhiya was formally arrested vide arrest memo Ex.PW-11/A, his personal search was conducted vide memo Ex.PW-11/B and his disclosure statement was recorded vide Ex.PW-11/C whereafter he was remanded to judicial custody. Darshan Mukhiya refused to participate in TIP on 7th October, 2011.

14. Rekha Makkar was examined as PW-2 in Court. She deposed in conformity with her statement recorded before the police. She also stated that one person pointed gun at her and told her that '*main tere ko lootne aya*

hoon'. The boy with the gun opened one small purse lying by her side to search for keys. In the meantime, it appeared that the doorbell rang and the three boys quickly dragged the chair inside the bathroom. She stated that one boy, who was with the boy carrying katta, kept asking him, '*chala bomb' chala bomb'*', but the boy with katta said '*jab sab de diya, toh kya zaroorat hai'*'. She stated that he did not hurt her in any manner. She stated that her right hand was loosely tied with a tie and she was able to free it. Thereafter one by one, she untied the other knots and freed herself. She made a call to her husband and also went upstairs to check for Saroj, who had a room on the roof. She did not find Saroj there, but the articles in his room were also scattered. In the meantime, doorbell rang again and a person from the chemist shop had come with the medicines that she had ordered. Rekha asked him, if he had seen anyone going down the stairs to which, he replied that he saw two boys. She told the person from chemist shop that she didn't have money and if he wanted to leave the medicines, he could do so or otherwise, take them back. The person from chemist shop took back the medicines. After that her neighbor from ground floor, her daughter, her husband and thereafter police came. She stated that the men who came to loot her left a pair of old slippers and took her husband's slippers from her bedroom. The boy who was carrying katta, had worn gloves after taking them out from his pocket, before he broke open the cupboards to prevent his finger prints from being imprinted.

15. Rekha Makkar when asked to identify the assailants in the Court, pointed out towards the appellant who was then wearing yellow and gray striped shirt stating that he was the one who was having the katta in his hand and had broken the almirah. She identified her servant who was named as

Saroj, whose name was later on revealed as Vishnu as also present in Court. Rekha Makkar also identified Ram Briksh Mukhiya as an accused who was accompanying Darshan Mukhiya, the accused with katta. Rekha Makkar was not able to identify the third accused present at the time incident for the reason the said person had a cloth tied on his mouth.

16. Contention of learned counsel for the appellant that the Investigating Officer admitted that the appellant was shown to Rekha Makkar and thus TIP proceedings were vitiated deserves to be rejected for the reason SI Rakesh Rana in his examination-in-chief stated that on 13th October, 2011 the appellant was produced before the Court pursuant to the production warrants issued by the Court on his request and he obtained one day police custody remand. During his police custody on 14th October, 2011 the appellant led him to the spot, that is, the house of Rekha Makkar where witness Rekha Makkar met them and identified Darshan Mukhiya. ASI Joginder Singh stated that Darshan Mukhiya had already been declared a proclaimed offender who was arrested by ASI Pramod Kumar of PS Adarsh Nagar on 1st November, 2011 and produced in the concerned Court of PS Model Town. SI Rakesh Rana, the Investigating Officer of the above noted FIR was out of Delhi in connection with some other case. Thus ASI Joginder Singh took Darshan Mukhiya to Rohini Court, moved an application for interrogation and formal arrest of the accused which was granted and he recorded the disclosure statement of the accused Darshan Mukhiya vide Ex.PW-11/C whereafter he was remanded to judicial custody. On 3rd October, 2011 an application for judicial TIP of Darshan Mukhiya was filed and the TIP was fixed for 7th October, 2011 when Darshan Mukhiya refused to participate in the judicial TIP. From the evidence of SI

Rakesh Rana and ASI Joginder Singh it is evident that Darshan Mukhiya was shown to the witness Rekha Makkar only on 13th October, 2011 after he was produced in Court and had refused the judicial TIP on 7th October, 2011 and his police custody remand was granted.

17. Thus evidence of Rekha Makkar is categorical and she is the victim who cannot be said to have had just a fleeting glimpse of the accused who entered her house, robbed the jewellery, cash and mobile phone and also tied her to the toilet seat with the shawl and ties. Thus she had sufficient time to identify the accused

18. Considering the fact that the evidence of the complainant is impeccable and the witness had faced the entire incident, observed the appellant and the co-accused committing the offences, this Court finds no ground to acquit the appellant.

19. Consequently, the judgment of conviction and order on sentence are upheld. Appeal is dismissed.

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

21. TCR be returned.

(MUKTA GUPTA)
JUDGE

AUGUST 20, 2018
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