

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

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Reserved on: 1st March, 2018

Decided on: 6th September, 2018

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CRL.A. 902/2017

TINKU @ RINKU @ VIJAY @ VICKY

..... Appellant

Represented by: Mr. Anwesh Madhukar
(DHCLSC) and Mr. Pranjal
Shekhar, Advocates.

versus

STATE

..... Respondent

Represented by: Ms. Meenakshi Chauhan, APP
for the State with ASI Shiv
Murti, PS Kalyanpuri

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By the present appeal, Tinku @ Rinku @ Vijay @ Vicky challenges the impugned judgment dated 4th August, 2017 convicting him for the offence punishable under Sections 392/397 IPC in FIR No. 186/2015 registered at PS Kalyanpuri and the order on sentence of the even date 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 one year.

2. Learned counsel for the appellant contends that the mobile phone recovered has not been proved to be that of the complainant Deepak Gupta as the photocopy of the receipt/bill is in the name of Manisha Gupta. The person from Flipkart from where the mobile phone had been purchased has not been examined as a witness. The appellant has been falsely implicated in the present case as there was an argument between the appellant and Deepak Gupta when the appellant objected to his driver urinating in the public place.

There are glaring contradictions with regard to the arrest of the appellant. No public witness has been examined though people were around. Learned Trial Court has convicted the appellant under Section 392/397 IPC even though it disbelieved the recovery and arrest. There is contradiction in the testimony of PW-1 and PW-2 with respect to the fact who made the call on 100 number.

3. Learned APP for the State on the other hand contends that the conviction of the appellant is rightly based on the testimony of PW-1 and PW-2 which are consistent. Furthermore, both these witnesses have identified the appellant in the TIP proceedings as well as in Court. Recovery has been effected on the basis of disclosure statement of the appellant.

4. Process of law was set into motion on 28th February, 2015 at about 10:40 A.M. when HC Vinod Kumar received a phone call from control room informing about the robbery of a mobile phone. Aforesaid information was recorded vide DD No. 14A and was assigned to HC Rajesh. He went near Bal Vikas Vidhayala, Trilokpuri and met the complainant Deepak Gupta. He recorded the statement of Deepak Gupta wherein he stated that he resided at C-23A, Gali No. 1, Mandawali, Unche Pur, Delhi along with his parents and worked at Saint Infotech Pvt. Ltd in Gurgaon. On the day of the incident, he was going home in the office cab with the driver after dropping other colleagues at Noida Sector-15, Metro Station and New Ashok Nagar. At around 9:45 A.M., when he reached near ganda nala road, Gazipur, the driver parked the car near 8 Block, Trilokpuri in front of Bal Vikas Vidhyalaya to urinate. One boy aged 22-23 years came to him and told him that the driver is urinating in front of the school and told him to advise the driver not to do so in front of the school. In the meantime, the driver came

and as soon as he started the car, the boy snatched the mobile phone from his hand. When he resisted, the boy took out a knife from his back side under his shirt and placed it on his neck. Out of fear, he moved backwards and asked the driver to drive the cab. After about 10 metres, he asked the driver to stop the cab and called on 100 number. He also stated that he can identify his mobile phone Moto G black colour I generation, IMEI No. 355004054357366 with Airtel SIM bearing number 8010626659. Aforesaid statement was recorded vide Ex. PW-1/A. On the basis of the aforesaid statement, FIR No. 186/2015 (Ex.PW-5/A) was lodged at PS Kalyanpuri for the offence punishable under Section 392/397 IPC.

5. After the registration of FIR, Ct. Idrish along with ASI Om Prakash went to the spot. Site plan (Ex. PW-8/A) was prepared on the pointing out of the complainant. Search for the appellant was made, however, he could not be traced. On 2nd March, 2015, bill of the mobile phone was seized vide memo Ex. PW-1/B.

6. On 7th March, 2015, HC Rajesh Kumar received information that one Tinku @ Rinku, who commits robbery at the point of knife, is present in 8 Block Jhuggi. HC Rajesh Kumar along with the secret informer went to jhuggi and apprehended the said person. On enquiry, he revealed his name as Rinku @ Tinku. During his search, one mobile phone of make Moto G black colour was recovered from him. IMEI of the phone matched with the IMEI number of the mobile phone mentioned in the present FIR. Appellant was arrested vide arrest memo Ex.PW-3/A, his personal search was conducted vide memo Ex.PW-3/B and his disclosure statement was recorded vide Ex.PW-4/B. Mobile phone was seized vide memo Ex. PW-4/A. On the basis of the disclosure statement, appellant got recovered the knife from the

jhuggi behind DDA park, 7-8 Block, Trilokpuri, which was seized vide memo Ex.PW-3/D. Three stolen motorcycles were also seized vide memo Ex.PW-4/C. Site plan of the place of recovery of knife and motorcycles was prepared vide Ex.PW-8/B. On completion of investigation, charge sheet was filed. Charge was framed for offence punishable under Sections 392/397/411 IPC vide order dated 14th July, 2015.

7. Deepak Gupta (PW-1) deposed in Court in sync with his statement made before the police. During his cross examination, he stated that he does not remember the IMEI number of his mobile phone.

8. Lal Singh (PW-2) stated that he was a taxi driver and had engaged his taxi at Saint Infotech Pvt. Ltd. in Gurgaon to pick up and drop the employees of the company. He corroborated the version of Deepak Gupta.

9. Himanshu Raman Singh, Civil Judge -I (Central), Tis Hazari Court stated the he had conducted the TIP of the appellant. He proved the TIP proceedings as Ex.PW-1/C. As per the proceedings, the witness had correctly identified the appellant.

10. Contention of learned counsel for the appellant that he has been falsely implicated due to the enmity deserves to be rejected for the reason the genesis of the occurrence that the appellant objected to the driver of the complainant's vehicle urinating in the public place has been stated by the complainant in FIR in question however, the further case of the complainant is that in order to distract through this complaint the appellant snatched the mobile phone from the hand of the complainant and when he resisted, the appellant took out a knife from the backside under his shirt and placed it on his neck. Description of the mobile phone, its number and IMEI number has been given by the complainant in the FIR itself and thus non-examination of

the person from Flipkart, from whom the mobile was purchased is immaterial. The mobile phone recovered from the appellant pursuant to his arrest was of the same number, SIM and IMEI number as of the complainant. The complainant has identified the appellant in the Test Identification Parade proceedings soon after the incident conducted on 25th March, 2015. The contention that no public witness was joined at the time of arrest has been answered by HC Rajesh that no public person agreed to join the proceedings at the time of arrest and recording of the disclosure statement of the accused. Though learned Trial Court disbelieved the recovery of knife however, the said knife was not connected with the offence alleged as it was not shown to PW-1 and PW-2 who could identify the same, hence the recovery of knife was meaningless.

11. Considering the cogent and convincing testimony of the complainant duly corroborated by Lal Singh, the taxi driver, this Court finds that the prosecution has proved its case beyond reasonable doubt.

12. Consequently, the impugned judgment of conviction and order on sentence are upheld.

13. Appeal is dismissed.

14. Copy of this order be sent to Superintendent, Rohini Jail for updation of the Jail record and intimation to the appellant.

15. TCR be returned.

(MUKTA GUPTA)
JUDGE

SEPTEMBER 06, 2018
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