

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

% Reserved on: 12th July, 2018
Decided on: 19th July, 2018

+ **CRL.A. 1158/2017**

SHEHZAD

..... Appellant
Represented by: Mr. Nilanjan Bose, Advocate
(DHCLSC).

versus

STATE

..... Respondent
Represented by: Mr. Ashok Kr. Garg, APP for
the State with SI Naveen
Kumar, PS Seelampur.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. Based on the testimony of Mohd. Salman Malik (PW-1) and Rehan (PW-2), identification of the appellant by these witnesses and the recovery of the robbed articles i.e. Samsung mobile phones (Ex.P1 and Ex.P3) and a ₹100 Note (Ex. P2), Shehzad was convicted for the offence punishable under Section 392 IPC vide impugned judgment dated 6th October, 2017 and sentenced vide order dated 9th October, 2017 directing him to undergo rigorous imprisonment for a period of three years and to pay a fine of ₹5,000/- and in default whereof to undergo simple imprisonment for a period of six months for the offence punishable under Section 392 IPC.

2. Learned counsel for the appellant challenging the conviction contends that the appellant was wrongly accused of armed robbery. Appellant did not use the knife. The defence of the appellant was that there was a scuffle and the same plea has been taken by him in his statement recorded under Section 313 Cr.P.C. Appellant has been falsely implicated by Salman (PW-1) and Rehan (PW-2). It is the case of the prosecution that there was a recovery of

₹100/-, however, the robbed amount was ₹840/- and since the appellant was arrested on spot, prosecution story is highly improbable. Thus the appellant be acquitted. In the alternative it is urged that the appellant be released on the period already undergone.

3. Learned APP for the State on the other hand contends that the appellant robbed Salman (PW-1) and was arrested on the spot. Thus, the appellant has been rightly convicted by the learned Trial Court.

4. Sequence of events leading to the prosecution case are that on 10th August, 2013 when Ct. Dhanesh (PW-4) was on patrolling duty with Ct. Ram Rattan (PW-6) on GT Road, opposite the double storey, Machli Park, Welcome, Delhi at about 11:20 P.M., they saw that two persons were running and two persons were chasing them saying “*chor chor*”. On hearing this, Ct. Dhanesh and Ct. Rattan also ran behind those persons. Out of them, one person was apprehended near Welcome Red Light. His name was revealed as Shehzad. Other person succeeded in running away. The names of the persons making noises were revealed as Salman and Rehan (PW-2). Salman stated that Shehzad robbed ₹100/- and his mobile phone on the pointing of knife. On interrogation, Salman disclosed the name of his accomplice as Amil. On search of Shehzad, one currency note in the denomination of ₹100/- was recovered from the right front pocket of his pant. Thereafter, they were taken to the Police Station. Statement of Salman was recorded on the basis of which FIR No. 341/2013 (Ex.PW-3/A) was registered at PS Seelampur for the offences punishable under Sections 392/411/34 IPC.

5. Thereafter, Ct. Dhanesh along with SI Arvind (PW-7), Salman, Rehan and Shehzad went to the spot where SI Arvind Kumar prepared the site plan

vide Ex.PW-7/B. Shehzad was arrested vide arrest memo Ex.PW-1/C and his personal search was conducted vide memo Ex.PW-1/D. A pointing out memo was prepared vide Ex. PW-7/C at the pointing out of Shehzad. Disclosure statement of Shehzad was recorded vide Ex.PW-6/A. Thereafter, SI Arvind Kumar along with Shehzad, Ct. Rattan, Ct. Dhanesh, Salman and Rehan went to House No. Z1/117 Lakdi Market, Welcome which was the house of Amir @ Amil in his search but he was not present.

6. On 14th August, 2013, SI Arvind Kumar, on the basis of secret information that Amir was present at home, went to his house along with Ct. Ram Rattan. Amir was found present in his house. On search, two mobiles, belonging to Salman and Rehan, were found which were seized vide memo Ex.PW-6/B. Amir was arrested vide arrest memo Ex.PW-6/E and his personal search was conducted vide memo Ex.PW-6/F. His disclosure statement was recorded vide Ex.PW-6/C. The place of incident as pointed out by Amir was recorded vide memo Ex.PW-6/D.

7. On 17th September, 2013, further investigation was assigned to SI Rizwan (PW-8). After completion of investigation, charge sheet was filed under Sections 392/397/411/34 IPC. Charge was framed.

8. Mohd. Salman Malik was examined as PW-1. He deposed that on the day of "Meethi Id" he and his friend Rehan were returning from a movie to Vijay Park. At around 11:00 P.M., while walking when they reached the red light point near Seelampur, he felt a boy came from his backside who had put his hand on his shoulder and placed a knife on his right side belly. Another boy who was an associate of that assailant was on the footpath nearby. The boy asked him to take out whatever valuable he had with him. When he tried to refuse and resist, the boy pressed the knife on his belly and

fearing a serious injury, he took out his Samsung mobile phone and ₹100/- and gave them to the assailant boy. The other boy who was on the footpath asked his friend Rehan to hand over whatever he was carrying. Rehan initially resisted but he asked him to give up. Rehan handed over his Samsung mobile phone and ₹700-800/- to the other boy who was shorter in height. Both the accused ran towards Welcome after crossing the road. When hue and cry was raised, two police officials nearby also ran, chased and apprehended them. The assailant who was shorter in height was apprehended at the spot and his name was revealed as Shehzad. He correctly identified Shehzad in Court.

9. Rehan was examined as PW-2. He corroborated the version of Mohd. Salman Malik. He also correctly identified Shehzad in Court.

10. Shehzad in his statement recorded under Section 313 Cr.P.C. stated that on the date of incident, a quarrel took place at Eid mela near Seelampur metro station, Delhi between Salman, Rehan and him. Amil intervened and tried to settle the matter. Thereafter, all of them went away on their different routes. Police falsely implicated him in the present case in collusion with Salman and Rehan.

11. Prosecution from the evidence of Salman and Rehan further corroborated by the evidence of Ct.Dhanesh and Ct. Ram Rattan claims to have proved beyond reasonable doubt the offence committed by the appellant, whereas the plea of the appellant is of false implication. The plea of the appellant is not unfounded. It is the case of Salman that Shehzad took out ₹100/- and mobile phone from him whereas Amir @Amil robbed Rehan of money and mobile phone. It is also the case of the prosecution that immediately thereafter the two ran and Shehzad was apprehended from near

the spot. However, despite immediate apprehension no mobile phone was recovered from Shehzad. Thus there is merit in the plea of Shehzad that only a scuffle took place.

12. In view of the discussion aforesaid Shehzad is entitled to the benefit of doubt. Consequently, the impugned judgment of conviction and order on sentence are set aside.

13. Appeal is disposed of. Copy of the judgment be sent to the Superintendent, Tihar Jail, who is directed to release the appellant forthwith, if not required in any other case.

14. Trial Court record be sent back.

(MUKTA GUPTA)
JUDGE

JULY 19, 2018
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