

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

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Reserved on: 3rd October, 2018

Decided on: 31st May, 2019

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CRL.A. 127/2018

MOHD. SHAHRUKH

..... Appellant

Represented by: Mr. Kushal Raj Gupta,
Advocate

versus

THE STATE GOVT OF NCT OF DELHI

..... Respondent

Represented by: Ms. Meenakshi Chauhan,
APP for the State with SI
Naveen, PS Seelampur

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By the present appeal, Mohd. Shahrukh challenges the impugned judgment dated 24th October, 2017 convicting him for the offence punishable under Section 392 IPC in FIR No. 589/2016 registered at PS Seelampur and the order on sentence dated 3rd November 2017 directing him to undergo rigorous imprisonment for a period of three and a half years and to pay a fine of ₹ 500/- and in default whereof to undergo simple imprisonment for a period of six months.

2. Learned counsel for the appellant contends that the complainant Sonu Kumar who was examined as PW-4, deposed contrary to his statement before the police and does not support the case of the prosecution. He further prays for reduction of sentence on the same ground.

3. Per contra, Learned APP for the State submits that the appellant was apprehended at the spot and was causing injury to the complainant with a

shaving blade.

4. Process of law was set into motion on 26th December 2016 at about 12:30 P.M. when W/SI Rajesh received a phone call from HC Vikram informing about one boy who had robbed a mobile phone from another man who was overpowered at the spot. Aforesaid information was recorded vide DD No.12A (Ex.PW-3/A) and assigned to SI Manoj. He along with SI Rahul and Ct. Devender reached the place of occurrence near Bihari Mandir, GT Road Shastri Park. On reaching the spot he met the complainant Sonu Kumar and recorded his statement vide Ex.PW-4/A wherein he stated that he worked as a housekeeper at Jubli and Company, Pari Chowk. On 26th December 2016, he left home to buy his Asthma Medicines from the hospital near the University. He was travelling to Delhi via train and got down at Yamuna Iron Bridge. When he was going to board the metro from there at around 11:30 A.M., he took out his phone to call his cousin brother, one boy whose name he later found out as Mohd. Shahrukh snatched his mobile phone make MI2 Redmi Prime. He ran after him and caught hold of him. When he started shouting '*Chor-Chor*' loudly, Mohd. Shahrukh slapped him 3-4 times and took out a shaving blade from his pocket and started scaring him. When he was scaring him, some people who were passing by saw and came to his rescue. During this fight, HC Vikram came there and he caught hold of Mohd. Shahrukh. On the basis of the aforesaid statement, FIR No. 589/2016 (Ex.PW-3/C) was lodged at PS Seelampur for the offence punishable under Section 394/411 IPC.

5. Thereafter, Mohd. Shahrukh was arrested vide arrest memo Ex.PW-4/E5 and his personal search was conducted vide Ex.PW-4/E5 wherein a MI2 Redmi Prime Mobile Phone and one half blade was recovered at his

instance. The phone was identified by Sonu Kumar as his phone. His disclosure statement was recorded vide Ex.PW-4/E7. SI Manoj prepared the site plan vide Ex.PW-4/E4. The mobile phone and one half blade was seized vide seizure memos Ex.PW-4/E2 and Ex.PW-4/E3. Photographs of the mobile phone were taken vide Ex.PW-8/C. He collected a copy of the mobile phone bill (Ex.PW-1/A) which revealed that the mobile phone was in the name of one Abhishek who was the cousin brother of Sonu Kumar.

6. On completion of investigation, charge sheet was filed. Charge was framed for offences punishable under Sections 394/397/411/ 34 IPC vide order dated 1st May 2017.

7. Sonu Kumar (PW-4), complainant deposed that on 26th December 2016, he was travelling in train and was coming to Delhi to buy medicines for his mother. When the train reached near *lohe ka pul* someone came to him, snatched his mobile phone from his hand, jumped from the running train and ran away. He also got down from the train as the train was going very slow at that time. He could not apprehend the person. When he reached the main road he noticed one police picket where he met a police official to whom he narrated the entire incident. The police official directed him to go to PS Seelampur. Thereafter, he went to PS Seelampur and got his statement recorded. He stated that he was not in a position to identify the robber as he had not seen him at that time. He further stated that no one was arrested by the police in his presence neither was any weapon/blade used at the time of the robbery.

8. Abhishek Kumar (PW-1), cousin brother of complainant stated that on 4th May 2015, he had purchased one mobile phone make Redmi2 in Black & White color. The receipt of the same is Ex.PW-1/A. After 5-6 months, he

sold the phone to Sonu. He identified the photographs depicting the mobile phone in court.

9. As noted above, appellant was not apprehended from the spot but later on. The complainant could not identify the person who had robbed him as he has not seen him at that time. He also denied that the appellant was arrested in his presence or that any recovery was made from him. The recovery of the mobile phone at the instance of the appellant is also not connected with that of the complainant for the reason the mobile phone was identified by the photographs and not by the actual instrument which identification would not be proper as every mobile phone of series would be similar in nature except that from the recordings therein or from the mobile number or the SIM number or IMEI number, identification can be done. From the evidence of the prosecution as noted above, it cannot be held that the prosecution has proved that the appellant is guilty of offences punishable under Sections 392 IPC beyond reasonable doubt. Hence the appellant is entitled to the benefit of doubt. Impugned judgment of conviction and order on sentence are set aside.

10. Appeal is disposed of.

11. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record. The appellant be released forthwith if not required in any other case.

12. TCR be returned.

(MUKTA GUPTA)
JUDGE

MAY 31, 2018

vj