

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

% *Reserved on: 29th April, 2019*
Decided on: 1st July, 2019

+ **CRL.A. 1064/2017**

ANAND Appellant
Represented by: Ms. Sunita Arora, Advocate

versus

STATE Respondent
Represented by: Ms. Meenakshi Chauhan, APP
for the State with SI Prempal
Singh, PS Seelampur

+ **CRL.A. 389/2018**

RAHUL Appellant
Represented by: Mr. Kartickay Mathur and Mr.
Sanket Gupta, Advocates

versus

STATE Respondent
Represented by: Ms. Meenakshi Chauhan, APP
for the State with SI Prempal
Singh, PS Seelampur

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

1. Anand and Rahul challenge the impugned judgment dated 10th October 2017 convicting them for offences punishable under Section 392/34 IPC and the order on sentence dated 12th October 2017 directing them to undergo rigorous imprisonment for a period of three years each and to pay a fine of Rs.5,000/- each, in default whereof to undergo simple imprisonment for a period of six months each.

2. Assailing the sentence, Learned Counsel for Anand prays that Anand be released on the period already undergone.
3. Learned Counsel for Rahul contends that Ct. Hemraj (PW-2) in his cross-examination stated that they reached the spot at 5:30 P.M. whereas the complainant in his testimony stated that Rahul was arrested at 5:30 P.M. Ct.Hemraj also deposed that Rahul was arrested from a nearby metro station however the case of the prosecution is that it was a railway track. The Investigating Officer has also not recorded the statements of any eye-witnesses. He further submits that the recovered mobile phone was identified by the complainant but no bill has been produced that shows that it belonged to the complainant. He further prays that Rahul be released on the period already undergone.
4. Learned APP for the State on the other hand submits that Rahul was apprehended on the same day at the instance of the complainant. The mobile phone was also recovered from the appellant. The complainant also produced the original bill in court and provided its photocopy to the police. Furthermore, the appellants were correctly identified in court by the complainant.
5. Process of law was set into motion on 12th June 2013 at about 5:00 P.M., on receipt of information regarding robbery of the caller's mobile phone and some money at Railway Line, Old Seelampur, Delhi. Aforesaid information was recorded vide DD No.24A (Ex.PW-7/A) and entrusted to ASI Beg Raj Singh. He alongwith Ct. Hemraj reached the spot where they met the complainant Pradeep Saxena who stated that on 12th June 2013 he was coming from Moradabad to Delhi by train. He was supposed to get off at Shahdara Station but the train did not stop there. When the train was

moving slowly at train signal in front of Seelampur Metro Station, he got down and started walking on railway tracks towards Shahdara. At around 4:45 P.M., when he was between railway and metro station, Seelampur he suddenly came saw two persons aged about 21-22 years coming towards him. One of them pushed him and the other one caught hold of his neck and put a knife on his neck. The other person who had pushed him took out his mobile make Nokia X2, black colour with SIM No.8010441349 from his right side pocket and snatched away Rs.200/- kept in his back pocket. Thereafter, both of them ran away from the spot. Aforesaid statement was recorded vide Ex.PW-1/A. On the basis of the aforesaid statement, FIR No. 260/2013 (Ex.PW-5/A) was registered at PS Seelampur for the offence punishable under Section 392/34 IPC.

6. The site plan was prepared at the instance of the complainant Pradeep Saxena vide Ex.PW-7/C. Thereafter, ASI Beg Raj Singh alongwith the complainant went in search of the accused persons at the Seelampur jhuggi. Rahul (Appellant herein) was spotted by the complainant near Jhuggi No.104, Gali No.1, Seelampur. He was arrested vide arrest memo Ex.PW-1/B and his personal search was conducted vide personal search memo Ex.PW-1/C. One mobile phone make Nokia X2, black colour with a blue colour cover and Rs.200/- cash was recovered from him. The complainant identified the recovered mobile phone as his own. The recovered articles were seized vide seizure memo Ex.PW-1/D. His disclosure statement was recorded vide Ex.PW-2/A wherein he disclosed the name of his associate as Anand.

7. On 9th July 2013, an information was received vide Ex.PW-7/D regarding the arrest of the co-accused Anand in FIR No.268/2013 registered

at PS Gandhi Nagar. Anand was formally arrested in this case on 12th March 2013 vide arrest memo Ex.PW-6/A. His personal search was conducted vide personal search memo Ex.PW-6/B and his disclosure statement was recorded vide Ex.PW-6/C.

8. On completion of investigation, charge sheet was filed. Charge was framed against the appellants for the offence punishable under Sections 392/34 IPC and additionally against Anand for the offence punishable under Section 397 IPC vide order dated 19th August 2013.

9. The complainant was examined as PW-1 in court wherein he deposed in sync with his statement made before the police. He further stated that after the incident of the robbery he proceeded toward Shahdara where he met two persons to whom he narrated the incident and called the police on 100 number from one of their mobile phones. He identified his mobile phone as Ex.P1 and the currency notes as Ex.P2 in court. In his cross-examination he stated that Rahul had been apprehended from the gali after which he was taken to the Police Station where his personal search was conducted and articles of robbery were recovered from him.

10. Anand in his statement recorded under Section 313 Cr.P.C. stated that he was lifted from his house by police officials of PS Gandhi Nagar who falsely arrested him in FIR No.268/2013. The police had obtained his signatures on blank paper.

11. Rahul in his statement recorded under Section 313 Cr.P.C. stated that nothing was recovered from his possession and the police officials had planted the recovery on him subsequently.

12. As noted above, appellant Rahul was apprehended soon after the incident by the police from Seelampur jhuggis on the identification of the

complainant. From him, the mobile phone make Nokia X2 of black colour with blue cover and Rs.200/- cash was recovered. The complainant also admitted having signed the personal search memo, seizure memo and the arrest memo of Rahul. The incident took place at about 5.00 P.M. whereas Rahul was apprehended, searched and formally arrested at 9.25 P.M. on 12th June, 2013 immediately after the incident. There are no material contradictions in the testimonies of the witnesses qua his arrest or the recovery. Hence, this court finds no error in the impugned judgment convicting Rahul for the offences punishable under Section 392/34 IPC or the order on sentence.

13. Appellant Anand was arrested subsequently after he was arrested in another case, when he made the disclosure statement in respect to the present case. Appellant Anand has been identified by the complainant in the Court and he cannot take advantage of the fact that he successfully ran from the spot and could be apprehended later on. Further, the application for Test Identification Parade of Anand was filed and on 12th July, 2013 when he was produced in Court, he refused to participate therein. Before filing of the application, Anand was never in the custody of the local police so as to be able to get identified by the complainant.

14. Considering the evidence of the prosecution witnesses this Court finds no error in the judgment of conviction or the order on sentence except the fact that the learned Trial Court believed the prosecution case but did not convict Anand for offence punishable under Section 397 IPC though charged. However, in the absence of a leave to appeal by the State challenging the acquittal of Anand for offence punishable under Section 397 IPC he cannot be convicted for the said offence. Hence, his conviction and

order on sentence for offence punishable under Section 392/34 IPC is upheld.

15. Appeals are dismissed.

16. Since the sentence of the appellant Anand was suspended pending hearing of the appeal, the appellant would surrender to custody to undergo the remaining sentence. His bail bond and surety bond are cancelled.

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

18. TCR be returned.

CRL M.B. 546/2018 in CRL.A. 389/2018

Dismissed as infructuous

**(MUKTA GUPTA)
JUDGE**

**JULY 01, 2019
'vj/rk'**

न्यायमेव जयते