

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

% *Reserved on: 10th January, 2019*
Decided on: 1st July, 2019

+ **CRL.A. 647/2016**

NISHANT Appellant
Represented by: Mr. Rajiv Bajaj, Advocate

versus

STATE Respondent
Represented by: Ms. Rajni Gupta, APP for
the State

+ **CRL.A. 924/2016**

ROHIT Appellant
Represented by: Mr. Dhan Mohan, Mr. Tanu B.
Mishra, Mr. Ravi Mishra, Ms.
Harkamal Jeet Kaur, Ms.
Roshni Rani and Mr. Gaura
Bindal, Advocates

versus

STATE (GNCT OF DELHI) Respondent
Represented by: Ms. Rajni Gupta, APP for
the State

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

1. Nishant and Rohit challenge the impugned judgment dated 26th May, 2016 convicting them for offence punishable under Section 392/34 IPC and the order on sentence dated 30th May, 2016 directing them to undergo rigorous imprisonment for a period of four years and six months each and to pay a fine of ₹10,000/- each, in default whereof to undergo simple

imprisonment for a period of one month each.

2. Assailing the conviction, Learned Counsel for Rohit contends that the appellant was never identified by the only witness that is the complainant. Moreover, the arrest memo which was made at the park contains the signature of the appellant's mother who was never present at the park. The medical report of the appellant mentions that he suffered injuries because of the public but no public witness has been examined. He further submitted that according to the complaint of Ram Singh, ₹1300/- was snatched from him but a total recovery of ₹700/- only has been made from both the appellants. No TIP was conducted. He also urges that as per the Nominal Roll of the Appellant his conduct is satisfactory in jail and no case is pending against him. Thus, he be acquitted.

3. Learned Counsel for Nishant, in addition to the aforesaid arguments contends that the complainant Ram Singh in his cross-examination has denied all the allegations made in his complaint before the police. He also urges that appellant is a first-time offender and there is no case pending against him. Thus, he be acquitted.

4. Learned APP for the State on the other hand submits that the two robbed mobile phones were recovered at the instance of the appellants. The arrest memo also bears the signatures of the complainant Ram Singh. He further submits that the investigation was carried out in a prompt manner and the same is evident from the testimonies of various police witnesses.

5. Process of law was set into motion on 28th January, 2015 at about 7:10 P.M., on receipt of information regarding snatching of cash and mobile. Aforesaid information was recorded vide DD No. 91B (Ex.PW-2/B) and was entrusted to HC Ramesh. He along with Ct. Kaptan went to Y-Block,

Shani Mandir where they met the complainant Ram Singh who stated that he was going to his house in Krishna Vihar and while he was crossing the District Park Cemetery, two boys came there amongst whom the tall one held his neck from behind and the other one put a knife on his back and said they would kill him if he made any noise. Thereafter, one of the two boys took two Samsung phones from the right pocket of his pants, one was model no. 308 which contained an Airtel Sim No. 9680672323, the other phone contained Reliance Sim No. 8287333263 along with ₹1,300/-. The other boy snatched his Aadhar Card and two photographs from the top pocket of his jacket and again told him that if he made any noise they would kill him. They took away his belongings and ran into the dark. Aforesaid statement was recorded vide Ex.PW-3/A. On the basis of the aforesaid statement, FIR No. 60/2013 (Ex.PW-1/B) was registered at PS Vijay Vihar for the offence punishable under Section 392/397/34 IPC.

6. Further investigation of the case was handed over to SI Mahavir who prepared the site plan at the instance of Ram Singh vide Ex.PW-7/A. Thereafter, they went to District Park Avantika in search of the accused persons. On reaching there, they noticed that two persons were sitting in the District Park near the gym. He apprehended the two persons at the instance of Ram Singh. They disclosed their names as Rohit and Nishant. On search of Rohit, one mobile phone make Samsung, Aadhar Card and two photographs of Ram Singh and cash of ₹200/- was recovered, which was seized vide seizure memo Ex.PW-5/A. On search of Nishant, one mobile phone make Samsung, cash of ₹500/- was recovered and seized vide seizure memo Ex.PW-5/B. One *buttondar* knife was also recovered from Nishant which was seized vide seizure memo Ex.PW-5/C. Rohit and Nishant were

arrested vide arrest memo Ex.PW-5/D and Ex.PW-5/E respectively. Their personal search was conducted vide personal search memos Ex.PW-6/A and Ex.PW-6/B. Their disclosure statements were recorded vide Ex.PW-5/F and Ex.PW-5/G. Pointing out memo was prepared at the instance of Rohit and Nishant vide Ex.PW-7/B. After completion of investigation, charge sheet was filed. Vide order dated 5th June, 2015 charge against Nishant was framed for offences punishable under Sections 392/397/411 IPC and against Rohit under Sections 392/411 IPC. Additionally, vide order dated 8th April, 2016 charge for offence punishable under Section 25 Arms Act was framed against Nishant.

7. The complainant was examined as PW-3 in court wherein he deposed in sync with his statement made before the police. He further stated that he could not see the faces of persons since it was dark and he would not be able to identify them. The day after the incident he was informed that his mobile phones and cash of ₹700/- had been recovered. He was called to Vijay Vihar Police Station where the police took his signatures on blank papers and handed over the recovered articles to him. In his cross-examination he stated that neither had he gone alongwith SI Mahavir in search of the accused persons on the day of the incident nor were Rohit and Nishant apprehended from the spot at his instance.

8. As noted above, the only witness to the incident is Ram Singh, the complainant who in his deposition clearly stated that he could not see the faces of both the persons as it was dark. In the Court, neither in examination-in-chief nor in the cross-examination he identified the two accused.

9. Undoubtedly, if the recovery of the case property is proved from the

accused a presumption that the appellants were the accused who had robbed could be drawn, however the complainant in his deposition does not state that the recovery was made in his presence or that both the accused were arrested in his presence whereafter the recoveries were made. The evidence to prove the recovery of the mobile phone, aadhar card and money at the instance of the appellants has been deposed to by the Investigating Officer SI Mahavir Singh (PW-7), Const. Kaptan Singh (PW-5) and Const. Dharambir (PW-6). As per the deposition of Const. Kaptan Singh, on search of Rohit, one mobile phone make Samsung, cash of ₹200/- and aadhar card of the complainant were recovered and on search of Nishant, one mobile phone make Samsung and ₹500/- besides a *buttondar* knife were recovered which was there in the right pocket of his pant. The same fact has been deposed to by const. Dharambir. However, SI Mahavir Singh stated that from Rohit besides the Samsung mobile phone aadhar card and cash of ₹200/-, two photographs of the complainant were also recovered which fact has not been deposed to by Const. Dharambir and Const. Kaptan Singh. The complainant during the course of examination did not bring the money recovered and thus the articles brought in Court were the two mobile phones, aadhar card and two photographs.

10. It is trite law that the conviction of an accused can also be based on the testimony of the police witnesses who have consistently deposed about the case of the prosecution. The two mobile phones which were given on superdari to the complainant were produced by him in the Court and the description of the phones tallied with the number and description of the phones mentioned in the seizure memo. Further, the photographs of the mobile phones recovered and released on superdari were also taken and

placed on record which tallied with the mobile phones of the complainant. Further the complainant has also deposed about the prosecution case and the recoveries except identifying the two appellants as the accused.

11. Considering the fact that the recoveries pertaining to the complainant were affected from the two appellants which were duly proved by the three witnesses namely SI Mahavir Singh, Const. Kaptan Singh and Const. Dharambir, this Court even in the absence of the complainant's supporting the case of the prosecution only to the extent of identification of accused finds no error in the impugned judgment convicting the appellants for the offence punishable under Sections 392/34 IPC.

12. Appeals are accordingly dismissed.

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

14. TCR be returned.

(MUKTA GUPTA)
JUDGE

JULY 01, 2019
'vj/rk'

न्यायमेव जयते