

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 10.10.2019

+ **CRL.A. 1067/2016**

PRASHANT GUPTA @ RINKU
versus

..... Appellant

STATE (NCT OF DELHI)

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr Dhan Mohan, Ms Tanu B. Mishra and
: Mr Ravi Mishra, Advocates.
For the Respondent : Ms Meenakshi Chauhan, APP for State.
: SI Ajit Krishna, PS Mandawali.

WITH

+ **CRL.A. 1068/2016**

SADAB

versus

..... Appellant

STATE (NCT OF DELHI)

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr Dhan Mohan, Ms Tanu B. Mishra and
: Mr Ravi Mishra, Advocates.
For the Respondent : Ms Meenakshi Chauhan, APP for State.
: SI Ajit Krishna, PS Mandawali.

AND

+ **CRL.A. 1069/2016**

MOHD SHAFI

..... Appellant

versus

STATE (NCT OF DELHI)

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr Dhan Mohan, Ms Tanu B. Mishra and
: Mr Ravi Mishra, Advocates.
For the Respondent : Ms Meenakshi Chauhan, APP for State.
: SI Ajit Krishna, PS Mandawali.

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HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The appellants have filed the present appeal impugning a judgment dated 30.09.2016, whereby they have been convicted of the offence under Section 392 of the Indian Penal Code, 1860 (IPC) for robbing the complainant (PW-1) of a sum of ₹ 20 lakhs and for snatching a motor cycle from a passerby (PW-2). The appellants have also been convicted of the offence under Section 120B of the IPC.

2. The appellants have also impugned separate orders dated 18.10.2016, respectively sentencing them to serve Rigorous Imprisonment of seven years and a fine of ₹10,000/- each for the offences under Sections 392/120B of the IPC for robbing the complainant (PW 1). The appellants were also sentenced to Rigorous Imprisonment for three years and to pay a fine of ₹5000/- each for the offences under Sections 392/120B of the IPC on account of snatching

a motorcycle from PW 2. The appellants have also been separately sentenced to serve one year of rigorous imprisonment for an offence under Section 120B of the IPC and to pay a fine of ₹1,000 each. It was further directed that the appellants would undergo a further period of simple imprisonment for a period of six months on failure to pay the fine of ₹ 10,000/-, for a period of three months on failure to pay the fine of ₹5,000/-, and for a period of one month on failure to pay the fine of ₹1,000/- as imposed for offences under Sections 392/120B, 392/120-B and Section 120B of the IPC respectively.

3. The impugned judgment was rendered in connection with a case arising from FIR No. 378/2009, registered with P.S. Mandawali. The said FIR was lodged at the instance of one Mohammad Arif (who deposed as PW 1). He had reported that he had arrived at Vijaya Bank, Patparganj for withdrawing ₹ 20 lakhs from the account of his brother (Mohammad Riyasuddin) for making certain payments. He had stated that he was working with his brother in the meat business and the said amount was required to make payments to the market. He stated that he arrived at the Vijaya Bank on 17.08.2009 at about 11:30-11:45 a.m. in a Santro car, which was being driven by his driver named Akram. On reaching the bank, he presented the cheque for encashing and was informed that the same would take time and was requested to wait in the bank. It is reported that since the withdrawal of the amount was taking time, he had proceeded to a nearby mosque to offer prayers (*Namaz*). He returned back to the bank at about 2.25 p.m. and at about 2.30 p.m., he collected the amount of ₹20 lakhs from the bank

officials. He had stated that on coming out of bank, he found that there was a Scorpio car parked on the road. He reported that three boys had come from behind the said vehicle and one of them caught his collar and had held a *katta* (country made pistol) to his temple, another boy pointed a *katta* at his chest and the third boy had demanded that he be handed over the bag containing currency and had threatened to shoot him if he refused. He had reported that the boys had snatched the bag and walked away while pointing the weapons (*katta*) to him. He had returned back to the bank and informed the public about the incident. He had stated that one boy (Nadim), who was also an accused, was known to him had called the police from the mobile phone.

4. One Mr Kuldeep (PW 2), son of Sh Prakash Singh, had also reported that on the said date at about 2.30 p.m., he was riding his motorcycle on the way to report for duty at Hasanpur Depot when he saw three boys running from the front. He stated that two of them were armed with *kattas* and one of them had a red color bag on his shoulder. He stated that they had forced him to leave the motorcycle and one of them had placed a *katta* to his temple another boy had placed a *katta* on his back and had demanded that he leave his motorcycle. He yielded to their demands and one of the boys who had placed a *katta* on his temple had started the said motorcycle and all the boys had ridden away on his motorcycle. He had called the police and had informed the PCR about the incident.

5. The prosecution had examined eleven witnesses including seven police officials. The Trial Court had evaluated the evidence available

and had found the appellants guilty of the offences for which they were charged. In addition to the appellants, there were two other accused including one Nadeem who was present in the Bank and was known to the complainant (PW 1). Nadeem was acquitted of the offences as there was no evidence of his involvement in the crime. The other accused was not apprehended.

6. The appellants have challenged the impugned judgment on the ground that there are alleged inconsistencies in the evidence of the police witnesses and the evidence available on the cases did not establish that they had committed any offence, beyond reasonable doubt. It is also contended on behalf of the appellants that testimony of PW 4 (SI Lokender) was not reliable and thus, the alleged recoveries made were planted by the police officials. It is contended that PW 4 was not involved in the investigation of the said case and yet had proceeded to make alleged recoveries without informing the Investigating Officer (IO).

7. The learned Additional Public Prosecutor appearing for the State has countered the aforesaid submission and submitted that there was no material inconsistency in the testimony of witnesses and the evidence led clearly established that the appellants were guilty of the offences for which they have been convicted. It is also submitted that it was not necessary to join public witnesses as there was sufficient credible evidence pointing to the guilt of the appellants in this case.

Evidence

8. Before proceeding further, it is relevant to briefly examine the evidence led by various witnesses.

9. The complainant, Mohammad Arif – examined as PW 1 – deposed that on 17.08.2009, he had taken a cheque of an amount of ₹20 lakhs in the name of his brother, Mohd. Riyasuddin, for encashment to Vijaya Bank, Patparganj. PW1 had come to bank in a Santro car which was driven by his driver, Akram. At about 11.30 am-11.45 a.m., PW1 reached the bank and went inside the bank with a red coloured bag. He was informed that the cheque encashment would take time and he went to offer *namaz* at 2.00 p.m. and came back to the bank by 2:25 pm. After ten minutes, he received the payment of ₹20 lakhs and kept the cash in the said bag. When he came out of the bank, he found a Scorpio car parked on the road and from behind it three boys came running. One of the three boys caught his collar and was dark complexioned. He placed a *katta* on his temple and another boy pointed the *katta* at his chest. The third boy demanded him to handover the bag and threatened to shoot him, should he refuse. The three boys snatched his bag and ran away while brandishing the *katta*. PW1 knew one of the accused (Nadim), who called the police from PW1's mobile phone.

10. In his examination in chief, PW1 stated that on 26.08.2009, a Test Identification Parade (TIP) was held where PW1 identified the accused Shadab (Ex. PW1/B). PW1 also identified the accused Prashant in the TIP proceedings (Ex. PW1/C). Accused Shafi had refused to participate in the TIP proceedings. However, on 24.09.2010,

PW1 identified all three accused persons, Shadab, Shafi and Prashant Gupta, who were present in Court, as persons who had committed the alleged crime.

11. Kuldeep, the person whose motorcycle was snatched, was examined as PW2. He deposed that he was a driver for the Delhi Transport Corporation and on 17.08.2009, at about 2 p.m., he had started from his house on his motorcycle (DL 4S BL 2098) and at about 2.50 pm, he reached Panchsheel Apartment. On turning left towards Hasanpur Depot, he saw three boys coming from the front. Two of them were armed with a *katta* and one had a red coloured bag on his shoulder. They forced him to stop the motorcycle and one of them placed a *katta* on his temple and the other one placed a *katta* on his back. They threatened him to leave the motorcycle or they would kill him. Thereafter, he informed the police of the incident. He stated that the boy who had placed the *katta* on his temple was of a strong built and had wheatish complexion and was wearing a white t-shirt. On 07.03.2011, in his examination in chief, he identified Mohd. Shafi in Court. He stated that he could not identify the other two boys as they were by his side. PW2 was not cross examined by the defence counsel on being provided the opportunity to do so.

12. Pawan Kumar, the taxi driver who had dropped the accused persons to Dasna and had been threatened by the accused persons, was examined as PW3. He deposed that he was driving an Indica car and on 17.08.2009, at about 03:15 pm, he was standing with his taxi at Mayur Vihar, Ph III, Taxi Stand, when one boy (pointed at Mohd.

Shafi), along with another boy, who was thin and tall, came to him. The had come in a rickshaw and one of the accused had a red bag in his hand. They had booked a taxi for Dasna. The tall thin boy sat beside him while going to Dasna and Mohd. Shafi sat on the rear seat. The tall boy had 3-4 bullets. Mohd. Shafi threatened him from behind at gunpoint to drive fast. On reaching Dasna, he was paid ₹550 as fare and ₹100 as other expenses. PW3 said that he could identify the other boy who was sitting beside him and was having bullets in his hand. On 07.03.2011, accused Shadab was absent and had been granted exemption from personal appearance on the ground that his identity was not disputed. PW3 was not cross examined by the defence counsel on being provided the opportunity to do so.

13. SI Lokender was the Investigating Officer (IO) in FIR No. 317/2009, under Section 25 of the Arms Act, 1959, registered at P.S. Seelampur. SI Lokender was examined as PW4 and he deposed that on 23.08.2009, on receiving information, he arrested Mohd. Shafi. and Mohd. Shadab was also present and was driving the motorcycle and Shadab was riding pillion. PW4 recovered one country made pistol and six live cartridges from the possession of the accused Mohd. Shafi and one country made pistol and two live cartridges were recovered from Mohd. Shadab (vide seizure memos - Ex. PW4/C). A separate case was registered against Shadab under Sections 25 of the Arms Act, 1959 vide FIR No. 318/2009 at P.S. Seelampur.

14. After his arrest, Mohd Shafi disclosed his involvement with reference to the incident alleged in FIR No. 378/2009. The disclosure

statements of accused Shafi (Ex. PW4/A) was recorded. Accused Shafi disclosed that two accused persons, namely Nadim and Prashant Gupta would be arriving at the metro station at about midnight. A trap was laid and the other two accused were also apprehended. Thereafter, PW 4 along with other police officers went to the house of the accused, Mohd Shafi, where ₹4,72,000/- was recovered from under the chulha by digging the mud which was in the lawn (angan). Thereafter, accused Shadab took them to his house and ₹5,50,000/- was recovered from under the bed lying in the first floor. Thereafter, from the house of Prashant Gupta, ₹1,30,000/- was recovered from the bed lying at the ground floor.

15. HC Virender Singh was one the police officers who were present during the arrest of Mohd. Shafi and Mohd. Shadab. He was examined as PW5 and he deposed that on 23.08.2009, Mohd Shafi and Mohd. Shadab were arrested and SI Lokendar Kumar was present at time of the arrest and that live cartridges and loaded *kattas* were recovered from the possession of the two accused persons (Mohd. Shafi and Mohd. Shadab).

16. Suresh Chandra Naik, Assistant Manager, Vijaya Bank was examined as PW6 and he verified that as per the bank records, on 17.08.2009, one Mohd. Arif had withdrawn cash amounting to ₹20 lakhs from the account of his brother, Mohd. Riyasuddin. HC Ram Pal Singh, examined as PW7, proved that on 17.08.2009, on the receipt of *rukka* from CT Naushad, sent by Inspector Anand Kumar, he recorded FIR No. 378/2009.

17. CT Naushad was examined as PW8, who deposed that on 17.08.2009, on receipt of DD No. 29A and 30A, he along with other police officers reached the spot i.e. Oriental Enclave, IP Extension, DDA Market, where the complainant Mohd. Arif met them and his statement was recorded. Thereafter, he took the *rukka* to the police station and got the FIR registered and returned to the spot with the original *rukka* and a copy of the FIR.

18. HC Shiv Om, BDS Crime Branch, Delhi was examined as PW9, who deposed that on 19.08.2009, on receiving a DD no.17A, he recovered a motorcycle (DL- 4 SBZ 2098) (same motor cycle as snatched from PW2) from a spot near 67B, Pocket C-1, Mayur Vihar, Phase III.

19. Inspector, Anand Kumar - FRRO, Indira Gandhi International Airport, was the Investigating Officer in the present case, FIR No. 378/2009. He was examined as PW11 and he deposed that on 17.08.2009, on receipt of DD No. 29A and 30A, he reached the spot i.e. Oriental Enclave, IP Estate, near Vijaya Bank. PW11, along with Inspector Keshav Kumar, SI Pawan Kumar, ASI Khan and Ct Naushad met him at the spot. They recorded the statement of PW1 (Ex. PW1/A) and the same was handed over to Ct Naushad for the registration of the FIR. He also recorded the statement of the witness, Kuldeep. A site plan was prepared at the instance of the complainant (PW1) and Kuldeep. On 24.08.2009, PW11 received information from PS Saleempur that accused persons were arrested in FIR No. 317/2009 and FIR No. 318/2009 under Sections 25/54/59 of the Arms Act, 1959.

Thereafter, he arrested the accused persons and on 26.08.2009, he conducted TIP proceedings of accused persons Prashant and Mohd. Shadab. Accused Mohd. Shafi refused to participate in the proceedings.

20. On 27.08.2009, PW11 obtained police custody of the four accused persons for three days. He deposed that the accused persons separately led him to Plaza Market and pointed out the place where the complainant (PW1) was robbed, led him to Mayur Vihar, Phase III at Janta, where they left the said motorcycle and the taxi stand at Mayur Vihar-III from where they took the taxi to Dasna.

Reasons and Conclusion

21. The prosecution had not examined any public witnesses although most of the said incident had occurred in broad day light and where several public witnesses were present. However, this Court is unable to accept that failure to examine any public witnesses adversely affects the case set up by the prosecution. This is so, because there is overwhelming evidence available on record which clearly establishes that the appellants are guilty of the offence for which they were charged. PW 1 (Mohammad Arif), who was also the victim, had identified accused Prashant Gupta @ Rinku and Mohd. Sadab (appellants in Criminal Appeal No. 1067/2016 & Criminal Appeal No. 1068/2016 respectively) in a Test Identification Parade conducted in Tihar Jail. Accused Mohd. Shafi (appellant in Criminal Appeal No. 1069/2016) had refused to participate in the TIP, however, he was

identified by PW 2 (Kuldeep) in the Trial Court. The evidence led by PW 1 and PW 2 clearly establish that the appellants had held up PW 1 at gunpoint and had snatched the bag containing cash. They had, thereafter, proceeded to hold up PW 2 while he was on his way and had dispossessed him of his motorcycle at a gunpoint. The three appellants had got away on the motorcycle belonging to PW 2. Mohammad Shafi, along with the accused persons, had thereafter taken a rickshaw to a taxi stand located in Mayur Vihar Taxi Stand and booked a taxi for Dasna. PW 3 Pawan Kumar who was the driver of the taxi hired by Mohammad Shafi had identified Mohammad Shafi in Court. He had also described Shadab, however, could not identify him as he was not present in Court on the date when PW 3 was examined. It is noteworthy that Shadab was granted exemption from personal appearance on account of that his identity is not in dispute. As noticed above, PW 3 had also deposed that Mohammad Shafi had threatened him with a pistol and had called upon him to drive fast. He had also stated that the thin and tall boy (Shadab), who was sitting beside Mohammad Shafi, had three or four bullets in his hand. The testimony of PW 3 remained uncontroverted as despite opportunity, he was not cross-examined. It is noteworthy that he had also deposed that the boys (Mohammad Shafi and Shadab) had a red coloured bag in their hand. The testimony of PW1, PW 2 and PW 3 establishes that the appellants had snatched the bag containing cash from PW 1. They had then got away on PW 2's motorcycle. Two of them had, thereafter, taken a rickshaw to Mayur Vihar, Taxi Stand and had hired a taxi to go to

Dasna. Their testimony leaves little room for doubt that the appellants were guilty of the offence for which they are charged.

22. The appellants Mohammad Shafi and Shadab were apprehended for an offence relating to another case. PW4- SI Lokender had deposed that he had recovered a country made pistol and six live cartridges from the possession of Mohammad Shafi, one country made pistol and two live cartridges from Shadab. This recovery was effected on 23.08.2009. Mohamad Shafi's disclosure statement was recorded (Ex. PW 4/A), which indicates his involvement in the FIR in question (FIR No. 378/2009). Subsequently, a sum of ₹4,72,000/- was recovered from the house of Mohd. Shafi and ₹5,50,000/- was recovered from the house of Shadab and ₹ 1,30,000/- was recovered from the house of Prashant Gupta.

23. Given the evidence obtaining in the present case, this Court is unable to fault the Trial Court for convicting the appellants. This Court finds no infirmity in the impugned decision convicting the appellants for the offences under Sections 392/120-B IPC. No interference with the impugned judgment is warranted. The appeals are, accordingly, dismissed.

VIBHU BAKHRU, J

OCTOBER 10, 2019

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