

\$~43

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

+ **CRL.L.P. 629/2017 and CRL.M.A. 17894/2017**

STATE

..... Petitioner

Through: Mr Amit Gupta, APP for State.
SI Rahul, PS Bhajanpura.

versus

SHER ALI @ SHERU & ANR.

..... Respondents

Through: Mr A.K. Pandey, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

%

12.12.2019

VIBHU BAKHRU, J

1. This is a petition filed by the State seeking leave to appeal against the judgment dated 22.05.2017 passed by the Special Judge (NDPS)/ASJ/ NE/KKD Courts, Delhi in the case arising out of FIR No. 225/2016 under Sections 392/397/411/34 of the Indian Penal Code, 1860 (IPC) registered with PS Bhajanpura. By the impugned judgment, the respondents were acquitted of the offences for which they were charged. Respondent no.1 was charged with the commission of an offence under Sections 392/397 of the IPC and respondent no.2 (Shahid @ Mulli) was charged with commission of offence under Section 392 of the IPC.

2. The said FIR was registered at the instance of one Mandeep Kumar (the Complainant). He stated that on 02.03.2016, he was robbed by three persons at a place near Shaheed Bhagat Singh Park, C-9 Block, Yamuna Vihar, Delhi. He alleged that he was accosted by three boys. One of them had stated that the Complainant had beaten one person. Thereafter, the three boys took the complainant to a *gali*. He alleged that one of the boys – later identified as Sher Ali (respondent no.1) – had put a knife on the complainant's neck and the second boy (later identified as Shahid) had caught hold of him. The third boy had taken out two mobile phones from the complainant's pocket. The said mobile phones were identified as 'Micromax Model A-110' and 'Nokia Model C-1'. The Micromax phone had two sim cards corresponding to mobile nos. 8130376112 and 8285783848. The other mobile phone, of the brand Nokia, had a sim card corresponding to mobile number 7065551247.

3. He alleged that one of the mobile phones was handed over to Sher Ali (the boy who had placed a knife on his neck). The Complainant stated that the boy who had caught hold of him, took out his purse, which contained ₹200/-, from his trouser pocket. It is alleged that the said three boys had fled thereafter. He testified that he had chased Sher Ali and caught him with the assistance of one official of the PWD. The complainant, thereafter, made a call to 100 number and Sher Ali was handed over to the said police.

4. It is the prosecution's case that apart from the mobile phone (Micromax A-110), the knife allegedly used in the commission of the

alleged offence was also recovered from the trousers of Sher Ali. The disclosure statement of respondent no.1 was recorded and he had disclosed the names of his associates as Rehman and Shahid. Rehman could not be apprehended. However, Shahid (respondent no.2) was arrested.

5. The prosecution had examined thirteen witnesses for establishing its case.

6. The testimony of the Complainant, who deposed as PW4, is material. He testified that Shahid had removed his purse from the rear pocket of his trouser. He has stated that his purse contained a sum of ₹200/-, one sim card of BSNL and two photographs. He stated that he raised an alarm by shouting '*chor chor*' and thereafter, pursued Sher Ali for a considerable distance. He testified that Sher Ali was apprehended near the PWD office with the assistance of an employee of PWD. He further testified that from Sher Ali's pocket, the robbed mobile phone (Micromax A-110) and a knife were recovered. He testified that he made a call from the said mobile phone after inserting a sim card therein and a PCR van came there.

7. He further testified that one police official, namely, Yasin Khan had come there and had, simultaneously, recorded his statement. He testified that Yasin Khan had kept the recovered mobile phone in a white piece of cloth and converted the same into a parcel. He testified that the accused (Sher Ali) had thrown the knife on the road, which was picked up by Yasin Khan. Yasin Khan prepared a sketch thereof and

kept the knife in a white piece of cloth and sealed the same. According to PW4, after five-ten minutes, ASI Harkesh came there and he prepared a site plan and arrested the accused Sher Ali. A personal search was carried out and one mobile phone was recovered from Sher Ali.

8. The aforesaid testimony clearly indicates that, according to PW4, Sher Ali was searched on two occasions. First, by him. This, according to PW4, resulted in recovery of a Micromax A-110 phone and a knife. And second, by ASI Harkesh. According to ASI Harkesh, this search resulted in recovery of a mobile phone which belonged to the accused Sher Ali. This clearly raises doubts as to the case of the prosecution that Yasin Khan had recovered the knife.

9. ASI Yasin Khan was examined as PW9. He testified that the complainant had produced the accused Sher Ali as well as a mobile phone of the make 'Micromax' before him. He further testified that he had searched Sher Ali and during his search, a knife used for cutting vegetables was recovered. This is wholly inconsistent with the testimony of PW4. PW4 had testified that he had recovered the mobile phone and the knife. He had contradicted himself and had also stated that the accused had thrown the knife on the ground and the same was picked up by Yasin Khan. Apart from the testimony of PW4 being intrinsically inconsistent, it is also inconsistent with the testimony of ASI Yasin Khan.

10. In addition to the above, the Trial Court had also noticed that PW4 had testified that he had called 100 number from the Micromax

phone after inserting a sim card therein. It was found that the call had been made by a mobile number that corresponded to one of the mobile numbers of the Micromax mobile phone. There is no material to indicate that Sher Ali had removed the sim from the mobile after robbing the Complainant. This raises a doubt as to whether any other sim had been put in the said mobile phone. In addition to these questions, there is also the aspect that the mobile phone numbers were not in the name of the Complainant.

11. PW4 had also testified that his purse contained one sim. The said purse was not recovered from Sher Ali and therefore, this raises the question as to how another sim card came in to the possession of the complainant (which he states that he put in the Micromax phone to call 100 number).

12. One of the key witnesses – the PWD official who had assisted in apprehension of respondent no.1, was not examined.

13. Apart from the above, the Trial Court had noticed other inconsistencies in the testimonies of witnesses as well. And, in view of the above, it concluded that the prosecution had failed to establish, beyond reasonable doubt, that the accused had committed the offence for which they were charged.

14. The view expressed by the Trial Court is a plausible view and this Court finds no compelling reason to interfere with the impugned judgment.

15. Accordingly, the present petition seeking leave to appeal against the impugned judgment is dismissed. The pending application is also disposed of.

VIBHU BAKHRU, J

DECEMBER 12, 2019
RK

HIGH COURT OF DELHI



नित्यमेव जयते