

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 13.05.2020

+ **CRL.A. 1018/2016**

PANKAJ

..... Appellant

versus

STATE

..... Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Kanhaiya Singhal, Advocate.

For the Respondent: Mr. Amit Gupta, APP.

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HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The appellant has filed the present appeal impugning a judgment dated 26.07.2016, whereby the appellant was convicted of the offences punishable under Sections 392 and 397 read with Section 34 of the Indian Penal Code, 1860 (IPC). The appellant also impugns an order dated 28.07.2016, whereby he was sentenced to undergo rigorous imprisonment for a period of five years with a fine of ₹10,000/- for the offence committed under Sections 392/34 of the IPC and in default of payment of fine, to serve simple imprisonment for a further period of six months. The Trial Court also directed that sum of ₹7,000/- would

be paid as a compensation to the complainant out of the aforesaid fine of ₹10,000/-. In addition, the appellant was sentenced to undergo rigorous imprisonment for a period of seven years for the offence punishable under Section 397/34 of the IPC. The sentences were directed to run concurrently.

2. The appellant was prosecuted pursuant to FIR No.263/2014 under Sections 392/397/34 of the IPC, registered with PS Mianwali Nagar.

3. The said FIR was registered at the instance of the complainant (Ankur Pathak), who deposed as PW-3. The complainant had stated that he was working with a company named Accenture located in Sector 62, Noida. He stated that on 10.04.2014, he had gone to Peeragarhi Metro Station on his way to Noida. He stated that when he reached the said Metro station and was going up via an escalator, one boy aged about 15-16 years approached him and told him that a person standing downstairs was calling him. The complainant looked downwards but could not see the said person. The boy then asked the complainant to go downstairs. The complainant did so and he was approached by one person aged about 27-28 years (identified as the appellant). He accosted the complainant and alleged that he (the complainant) had raped his sister. He told the complainant that she had received injuries and the complainant's face resembled with that of the person who had raped his sister. He called upon the complainant to accompany him so that his sister could identify him. He also told him that if he was not the same person, he would be free to go. The complainant tried to convince him

that he had not raped any person. The appellant also spoke to the father of the complainant on his phone (the phone of the complainant). The complainant stated that he accompanied that person to clear the misunderstanding. Both the boys (the appellant and the boy who had approached the complainant) took the complainant to Surajmal Stadium Metro Station on a motorcycle, that was described as a red and black colored Bajaj Discover model. The complainant alleged that they stopped the motorcycle at a secluded place and took him to the jungle behind the said Metro Station. The rider then give a blow to the complainant due to which the complainant collapsed on the ground (sat down on the ground). The appellant, thereafter, asked the other boy to hand him a knife. The complainant stated that he feared for his life and asked them to take whatever they wanted but not kill him. He alleged that the accused placed a knife on his waist and asked him to handover whatever he had. The complainant stated that he had ₹1250/- which he handed over to the accused. Further, the accused also took away two gold rings that the complainant was wearing. The other boy returned ₹250 and asked the complainant to flee to his house. The complaint then fled from the spot and reached Nangloi Bus Depot, where he informed the police.

4. Pursuant to the said FIR, the matter was investigated. According to the prosecution, the site plan was prepared at the instance of the complainant. On 25.05.2014, the appellant was arrested, albeit, in another FIR (FIR No. 842/2014 registered with PS Shakarpur). According to the prosecution, the appellant made a disclosure in that

case relating to his involvement in the present FIR (FIR No.263/2014 registered with PS Mianwali Nagar). Thereafter, the appellant was arrested in this case as well.

5. The appellant was charged with committing the offence punishable under Sections 392/397/34 of the IPC. He pleaded not guilty and therefore, the matter was set down for trial.

6. The prosecution examined eight witnesses to establish the case. The complainant deposed as PW-3. The appellant's conviction rests principally on the testimony of PW-3.

7. PW-3 testified that he was employed with Accenture, Noida Sector-62 and on 10.04.2014 (which was a day of election in Delhi), he was going to Noida by metro. He had to board the metro from Peeragarhi Metro Station and when he was going to the said station and was on the escalator, one boy aged about 15-16 years approached him and told him that a person standing downstairs was calling him ("*neechey khade huye bhaiya aapko bula rahe hai.*") He stated that he looked down from the escalator but could not see anybody. At that stage, the boy told him that he should go down stairs and he would then become aware of everything. He stated that, thereafter, he went down and saw one person standing near the metro station (identified as the accused/appellant). He was aged about twenty-seven years. He accosted PW-3 and alleged that PW-3 had raped his sister and she had suffered injuries. He stated that since PW-3's face resembled with the boy who had committed the crime, he was required to accompany them

for the purpose of identification. He also assured PW-3 (the complainant) that if he was not found to be the offender he could leave. PW-3 tried to convince the appellant that he had not raped any person. PW-3 testified that thereafter, he called his father and informed him about the incident. Thereafter, to remove any doubt he agreed to accompany the two boys. He deposed that they made him sit on a red and black coloured Bajaj Discover motorcycle. The appellant was riding the motorcycle; the complainant sat in the middle and the other boy aged 15-16 years sat behind him. He testified that they took him behind Surajmal Metro Station to a jungle. They stopped the motorcycle on the road and told him that since the road is closed ahead, they have to walk. He stated that when they reached near a drain in the jungle, one of them kicked him on his back as a result he collapsed on the ground (sat on the ground). He stated that he could identify the person who was riding the motorcycle and he identified the appellant, who was present in court, to be that person. He also stated that he could identify the other boy (who was aged 15-16 years) but he was not present in court.

8. PW-3 further deposed that the appellant had asked his companion to give him a knife. He stated that he was frightened and told them not to kill him and they could take whatever they wanted. He alleged that the accused placed a knife upon him and the two boys took ₹1250/- in cash and two gold rings. He stated that the accomplice of the appellant gave him ₹250/- out of the robbed amount and told him not to tell anything to anybody and run away quietly. PW-3 testified that he ran

away from the spot. He came out of the jungle and made a call to his father. His father asked him to call the police. He saw one traffic police official on the road and he went near him and made a call to the police. He stated that, thereafter, the police made inquiries from him and recorded his statement. He further stated that he had accompanied the police to the place of the incident and pointed out the same to them. The IO had prepared a site plan, which bore his signature, and the same was exhibited as Ex.PW-3/B

9. PW-3 further testified that on 23.06.2014, he was called to Tihar Jail to join the TIP where he identified the appellant as the person who had robbed him. The TIP proceedings were exhibited as PW-3/C and PW-3 identified his signatures on the said proceedings.

10. PW-3 was cross-examined and a perusal of the same indicates that his testimony remained un-shaken. In his cross-examination, he reiterated that he had identified the appellant in TIP proceedings held in Tihar Jail before the Magistrate. However, he also admitted that the police had shown the accused to him in the police station before the TIP proceedings. He stated that he was told by the IO to identify the person who had committed the crime, amongst the other persons participating in the TIP proceedings before the Magistrate. However, he denied the suggestion that he had identified the appellant at the instance of the IO.

11. Mr Singhal, learned counsel appearing for the appellant has challenged the appellant's conviction on the sole ground that his identification was not reliable. He submitted that the complainant (PW-

3) had admitted that the appellant was shown to him by the police at the police station prior to the TIP proceedings. He submitted that in the circumstances, the TIP proceedings could not be relied upon. He contended that even though PW-3 had identified the appellant in the dock, however, such evidence is not reliable. He submitted that dock identification is weak evidence and the appellant could not be convicted on the basis of such evidence. He relied upon the decision of the Coordinate Bench of this Court in ***Nazim Khan @ Guddu v. State: CRL.A. 532/2012 decided on 08.05.2014*** in support of his contention. He also referred to the decisions of the Supreme Court in ***Ramesh v. State of Karnataka: (2009) 15 SCC 35; Iqbal and Anr. v. State of UP: (2015) 6 SCC 623; State of Maharashtra v. Syed Omar Ayed Abar and Anr.: (2016) 4 SCC 735; Thulia Kali v. State of Tamil Nadu: (1972) 3 SCC 393; and Tomaso Bruno & Anr. v. State of UP: (2015) 7 SCC 178.***

12. This Court does not find any merit in the appellant's contention that his identification as the person who had committed the offence is not reliable. Admittedly, the appellant had participated in the TIP proceedings and was identified by the complainant. The complainant had also identified the appellant in court. He had also denied the suggestion that the appellant was identified at the instance of the police. Although he admitted that he had seen the appellant at the police station, there is no reason to doubt his identification of the appellant. He had testified that police had asked him to identify the person who had committed the crime. And, he had done so. This Court finds no reason

to doubt his testimony.

13. In *Nazim Khan* (*supra*), this Court acquitted the appellant who had been convicted on being identified by the complainant. The complainant in that case had alleged that she was robbed by 7-8 persons. She stated that at the time of the incident, she was present in the house and was cleaning the water filter in the kitchen, which was located on the first floor. She was running a clinic on the ground floor of her house and the doors of her house were opened. She stated that initially, five boys came upstairs and demanded that she hand over all jewellery that she was wearing. She had removed the gold earrings, gold chain with the pendant, gold rings and a pair of earrings, which were taken by the said accused. The articles recovered from the accused were identified by the complainant (who deposed as PW-3). An application was also moved for the Test Identification Parade of the appellant therein. However he refused to participate in the said proceedings. The complainant (PW-3) identified the appellant therein during her testimony before the Court. However, the Court did not find the said testimony reliable. This Court had observed that dock identification was a very weak evidence and, as a rule of prudence, the accused could not be convicted based on dock identification without corroboration. In that case the Court concluded that the appellant's refusal to participate in the TIP proceedings was justified since his photographs had been shown to the complainant and the police had also shown him to the complainant prior to the said proceedings. In the circumstances, the court held that refusal of the appellant to participate in the TIP proceedings did not

justify drawing an adverse inference against him. The Court proceeded to note that the complainant had referred the robbers as boys. However, the appellant therein, was aged about forty-nine years and therefore, could not be described as a boy. Thus, the Court found that in the given facts it raised doubts as to the identification of the appellant therein.

14. The aforesaid decision is of little assistance to the appellant in this case. First of all, the appellant did participate in the TIP proceedings and PW-3 (the complainant) had identified the appellant as the accused who had robbed him on the point of a knife. PW-3 had, thereafter, also identified the appellant during his testimony. Secondly, PW-3 had testified that the IO had asked him to identify the person who had committed the crime from amongst the persons in the TIP proceedings. He denied the suggestion that he had identified the appellant at the instance of the IO. Thus, even though the appellant may have been shown to the complainant by the police, there is no material to doubt PW-3's testimony that he was merely asked to identify the person who had committed the crime. Thus, in the given facts of this case, this Court finds no reason to doubt PW-3's testimony that it is the appellant who had robbed him on the date of the incident. Thirdly, and more importantly, there is no material which raises any doubt as to the appellant's identification. In this case, the complainant (PW-3) had described the person who had robbed him as aged 27-28 years. His description also matches with the age profile of the appellant.

15. Given the evidence in this case, the other decisions referred to by the appellant are also of no assistance to the appellant.

16. This Court finds no infirmity with the impugned judgment. The appeal is, accordingly, dismissed.

VIBHU BAKHRU, J

MAY 13, 2020
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