

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 05.01.2021

+ **CRL. A. 790/2016**

VINAY

.....Appellant

Versus

THE STATE

..... Respondent

Advocates who appeared in this case:

For the Appellant : Mr Vijay Kinger, Advocate.

For the Respondent : Mr Ravi Nayak, APP for State.

AND

+ **CRL. A. 791/2016 and CRL.M. (BAIL) 1353/2019**

RAJ TILAK

.....Appellant

Versus

THE STATE

..... Respondent

Advocates who appeared in this case:

For the Appellant : Mr Zeeshan Hashmi, Advocate.

For the Respondent : Mr Ravi Nayak, APP for State.

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HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The appellants have impugned a judgment dated 21.07.2016, whereby the appellants were convicted of offences punishable under section 323, 354, 354A, 356, 394, 450, 452, 506 (Part II) read with

Section 34 of the Indian Penal Code, 1860 (IPC). In addition, the appellant Vinay was also convicted of an offence punishable under Section 411 of the IPC. The appellants also impugn an order on sentence dated 25.07.2016, whereby the appellants were sentenced in respect of the offences committed by them.

2. A tabular statement indicating the sentences awarded to the appellants in respect of the offences for which they were convicted is set out below: -

S. No.	Offence	Sentence
1.	S. 323 IPC	Rigorous Imprisonment for 1 year with fine of ₹ 1,000/- and in the event of default in payment of fine, Simple Imprisonment for 30 days.
2.	S. 354 IPC	Rigorous Imprisonment for 3 years with fine of ₹ 1,000/- and in the event of default in payment of fine, Simple Imprisonment for 30 days.
3.	S. 354-A IPC	Rigorous Imprisonment for 1 year with fine of ₹ 1,000/- and in the event of default in payment of fine, Simple Imprisonment for 30 days.
4.	S. 356 IPC	Rigorous Imprisonment for 2 years with fine of ₹ 1,000/- and in the event of default in payment of fine, Simple Imprisonment for 30 days.

5.	S. 394 IPC	Rigorous Imprisonment for 7 years with fine of ₹ 5,000/- and in the event of default in payment of fine, Simple Imprisonment for 6 months.
6.	S. 450 IPC	Rigorous Imprisonment for 5 years with fine of ₹ 5,000/- and in the event of default in payment of fine, Simple Imprisonment for 6 months.
7.	S. 452 IPC	Rigorous Imprisonment for 3 years with fine of ₹ 5,000/- and in the event of default in payment of fine, Simple Imprisonment for 6 months.
8.	S. 506 Part II IPC	Rigorous Imprisonment for 3 years with fine of ₹ 5,000/- and in the event of default in payment of fine, Simple Imprisonment for 6 months.

3. In addition to the above, the appellant Vinay was also sentenced to rigorous imprisonment for a period of one year with a fine of ₹1,000/- and in the event of default in payment of fine to undergo simple imprisonment for a further period of 30 days for committing an offence punishable under Section 411 of the IPC. All the sentences awarded to appellants were directed to run concurrently.

Factual context

4. Briefly stated, the facts of the case are that on the basis of a complaint made by Dolly Mondal, an FIR (FIR bearing no. 677/14

under Sections 323/354/354A/394/397/452/411/506/34 of the IPC registered at PS Khajuri Khas) was registered against the appellants. The complainant alleged that on 07.07.2014 at 11.30 a.m. at H. No. B-65, Gali No. 2, Dayal Pur, New Delhi, the accused Vinay and Raj Tilak entered the complainant's house on the pretext of shifting the electricity meter. They robbed her of her jewellery and mobile phone thereby, causing hurt and outraging her modesty. It was also alleged that the accused used a knife - a deadly weapon, at the time of committing the said robbery. Upon hearing the alarm, the public near her house caught the accused Vinay. The accused Raj Tilak managed to escape and was apprehended from his house at around 8 pm later that day. Pursuant to aforesaid FIR, the accused were charged with the commission of the offences punishable under Sections 323/354/354A/394/397/452/411/506/34 of the IPC. They pleaded not guilty and the matter was set down for trial.

Evidence

5. During the course of the trial, the prosecution examined eleven witnesses.

6. Dolly Mondal, the complainant, was examined as PW-1. She stated that on 07.07.2014 at 11.30 a.m., the accused Vinay and Raj Tilak entered the complainant's house on the pretext of shifting the electricity meter. PW-1 called her husband (PW-2) from her mobile phone to confirm the same. She also asked the accused Vinay to talk to her husband on phone. She stated that her husband had asked them to

come the next day before 10 am when he would be home. The accused Vinay and Raj Tilak asked her to show them the air-conditioner. She stated that she asked them why they wanted to see it and asked them to leave so that she could shut the door. The accused Raj Tilak became aggressive and asked her what she had said (*kya bola, kya bola*) and inserted his fingers into her mouth and brought her down on the floor. PW-1 stated that the accused Raj Tilak bit her on her left cheek. He pinned her down and the accused Vinay bolted the door from inside. She testified that the accused took her forcibly inside the room and pinned her down. The accused Vinay dragged her by her hair; he bit her on her forearm, upper arm of her left hand; and gave fist blows on her back and other parts of the body. She alleged that he bit her on her back and other parts of her body. She alleged that the accused robbed her of her gold chain, two gold rings and four ear-rings (two small and two large) which PW-1 was wearing at the time of the incident, and a Samsung mobile phone. She stated that she kept screaming and heard the accused telling each other to kill her. She stated that Vinay was holding her legs and tried to stab her with a knife but she caught it in her hand. Consequently, she suffered a cut injury on her left palm.

7. She stated that hearing her screams, local persons in the neighbourhood gathered outside the door that opened on the side street and started knocking on the door. They asked her to open the door while enquiring as to what had happened (*“Didi, kholo kholo andar kya hua hai”*). She stated that the accused left the house from the main door. She followed them raising an alarm and the accused Vinay was

apprehended by the public present outside the house. The accused Raj Tilak managed to escape. Someone took her phone from the accused Vinay and handed it over to her. Someone called the PCR, which arrived about 10-20 minutes later and took her to the Hospital. Thereafter, at around 3 pm, she was medically examined at GTB Hospital and her statement under Section 161 Cr.PC was recorded by SI Shalinder Singh (Ex. PW1/B). She stated that she returned to her house and the IO also came there. She testified that she handed over the recovered Samsung phone to the IO at her house (Ex. PW1/C). She further stated that at around 8 pm, the accused Raj Tilak was also arrested by the IO and she identified him at Village Sherpur (Ex. PW1/E).

8. In her cross-examination, PW-1 was confronted by her statement under Section 161 of the Cr.PC and some of the facts as testified by her were not a part of her statement. PW-1 affirmed that the police officials did not enquire about the mobile phone numbers of PW-1 and her husband. She affirmed that the place where the initial conversation with the accused persons had taken place was not visible from the houses situated opposite to her house. She affirmed that around fifty persons from the locality were present when the accused Vinay was apprehended by the public. She stated that she does not know the person who recovered mobile phone from the accused Vinay and handed it over. She denied having a nephew by the name of Pradeep or that the accused Vinay had provided a loan to Pradeep or on his surety. She denied knowing the accused Raj Tilak and also

denied owing him any money. She denied that all the documents were prepared at the police station by the IO or that she had signed the same without verifying the contents.

9. Robin Mondal, the husband of the complainant, deposed as PW-2. He stated that on 07.07.2014 at around 11:30 am, he received a telephonic call from PW-1, wherein PW-1 informed him that the accused persons had come to their house. PW-2 stated that he spoke to one of the accused over the telephone, asked him to come the next day and disconnected the call. He stated that his subsequent calls to PW-1 were not received by her. She returned his call after 25-30 minutes informing him about the alleged incident. Thereafter, he reached GTB Hospital and he and the complainant went home after her treatment.

10. On cross examination, PW-2 affirmed that the police did not make any enquiries or recorded his statement regarding the alleged incident. He affirmed that he had prepared the gold ornaments that were robbed by the accused, from the gold received by him as labour charges. He affirmed that he did not maintain a record of the customers who gave gold to him as labour charges. He affirmed that he did not give the receipt of the ornaments to the IO.

11. Dr. Ashutosh deposed as PW-4. He stated that on 07.07.2014, he examined PW-1 at GTB Hospital and affirmed having signed the MLC No. 2625/14. He also identified the photographs showing the injuries suffered by the complainant. In his cross examination, PW-4 affirmed that there was no cut on the left palm of PW-1. He further

affirmed that PW-1 had informed him that she had sustained the injuries on account of her being bit by someone.

12. Ct. Subodh Kumar deposed as PW-6. In his cross examination, he affirmed that he reached the spot of the alleged incident at around 12:30 pm and there were fifty to sixty public persons present there. He affirmed that the accused Vinay had sustained injuries. He affirmed that the accused Raj Tilak was found outside his house with two or three persons. He affirmed that the accused did not run away and stood silently when he was apprehended from Village Sherpur.

13. Ct. Sanjeev Singh deposed as PW-8. He affirmed that on 07.07.2014 he reached the spot of the alleged incident at around 12-12:15 pm and there were fifteen to twenty persons present at the spot. He further affirmed that the accused Vinay did not sustain any injuries.

14. SI Shailender Singh, the Investigating Officer, deposed as PW-11. He stated that on 07.07.2014, after being informed of DD No. 23A at 12:08 pm, Ct. Subodh (PW-6) and him reached the complainant's house. He stated that the accused Vinay had sustained injuries, as the public had beaten him. After being rescued, the accused Vinay was sent to the police station. Thereafter, he and Ct. Subodh (PW-6) reached GTB Hospital to record the statement and obtain the MLC of PW-1. He affirmed that he seized a Samsung mobile phone, which was recovered by PW-1. He prepared a *rukka* (Ex PW11/A) for registration of the FIR. Thereafter, on the basis the information given by the

accused Vinay, he along with PW-6 arrested the accused Raj Tilak at around 8 pm from Village Sherpur.

15. On cross examination, PW-11 affirmed that the accused Vinay was medically examined at JPC Hospital (Ex. PW11/D-1). He affirmed that he asked persons from the public to join the investigation, however, none agreed. He denied that he went to the house of the accused Raj Tilak and apprehended him from there while he was sleeping. He affirmed that the accused Raj Tilak tried to run away before being apprehended and no person from the public were present at that time. He denied making any enquires from the neighbours of the accused Raj Tilak.

16. The statements of the accused were recorded under Section 313 of the Cr.PC. They stated that they had been falsely implicated in the present case. The accused Vinay stated that he had gone to the complainant's house alone to demand money from her nephew. He stated that he did not enter the complainant's house. He further stated that he had sustained injuries because of the police officials and not the public. He stated that he was made to sign blank papers at the police station. The accused Raj Tilak stated that he was apprehended by the police from his house while he was sleeping.

Reasons and conclusion

17. The prosecution's case rests almost entirely on the testimony of the complainant (PW1) and the MLC. The complainant's MLC (PW1/A) clearly indicates that she had suffered a wound on her left

cheek measuring approximately 3 x 1.5 cm. She had swelling on her lower lips and there were bruises present on the left cheek and the left forearm. In addition, there were bite marks on the left cheek and the left forearm. The photographs (PW1/G colly) establish that the complainant had suffered an ugly injury on her left cheek. One of the photographs clearly indicates the bite marks of her cheek as well as an open wound. Although the investigation in this case has been shoddy and wanting, however, it cannot be disputed that the prosecution has clearly established that the complainant had suffered the injury. This lends much credence to her testimony.

18. The jewellery stated to have been robbed by the appellants has not been recovered. Although, no bills have been produced for purchase of such jewellery; the complainant's husband had explained that the jewellery was made by the gold received by him as labour charges for making jewellery. There is no reason to doubt that explanation and, therefore, the same must be accepted.

19. The mobile phone stated to have been stolen by the appellant Vinay was not recovered from him by the police officials or by the complainant. According to the testimony of the complainant, someone from the crowd had recovered the same and had handed it over to her. As to who had recovered the said mobile has not been brought on record. None of the persons who had apprehended the appellant Vinay, have been examined.

20. According to the testimony of the complainant, a large number of persons had collected on the side lane of her house and had heard her scream. They had knocked on the door and had enquired as to what was happening inside. However, none of the said neighbours were examined.

21. In view of the above, one may have doubted the prosecution's case against the appellants. But the appellant, Vinay had clearly admitted that he had gone to the house of the complainant. In this view, there can be no doubt that the appellant Vinay was present at the spot. There is also no doubt that he had been apprehended by the public. The appellant Raj Tilak was not apprehended at the spot but he has also been identified by the complainant. The appellant Vinay, has not led any evidence to establish as to why they had gone to the complainant's house. Although, in his statement, the appellant Vinay, had stated that he had gone there because the complainant's nephew (one Pradeep) had borrowed money from him. However, there is no evidence to establish the same. Suggestions to the aforesaid effect were put to PW1 (the complainant) in her cross-examination. However, she denied that she had any nephew by the name of Pradeep. Thus, there is no substance in the defence sought to be built up by the appellants. The complainant had suffered injuries and there is no reason whatsoever for her to falsely implicate the appellants. Thus, this court finds no reason to doubt her testimony that the appellants had entered her premises and had robbed her of her valuables.

22. The complainant had identified the appellants and her testimony remained unshaken.

23. This Court has evaluated the evidence obtaining in this case and concurs with the decision of the trial court in convicting the appellants for the offences for which they have been convicted.

24. However, this Court finds that the sentence awarded to the appellants for committing the offence punishable under section 394 IPC is harsh and does not factor in the mitigating circumstances. The appellant Vinay was aged about 21 years at the material time and had no criminal antecedents. The appellant Raj Tilak was also aged about 24 years. His antecedents are clean as well. He has a minor daughter, which was about four months old on the date of the impugned judgment. The court had also disbelieved the case set up by the prosecution that either of the appellants were armed. The appellants have already served their sentences for all the offences except the offence punishable under section 394 of the IPC. They have also served more than six years for the said offence. In the given circumstances, the sentences awarded to the appellants are reduced to the period already served. The appellants are directed to be released forthwith.

25. The appeals are disposed of in the aforesaid terms. The pending application is also disposed of.

VIBHU BAKHRU, J

JANUARY 05, 2021/RK