



2024:DHC:9963



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

% Reserved on : 03.12.2024
Pronounced on : 23.12.2024

+ **CRL.A 717/2024**

VICKY @ DEEPAK

.....Appellant

Through: Mr. Gautam Khajanchi and Ms. Aditi
Kukreja, Advocates.

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Shoaib Haider, APP for State
with SI Mayank PS Kalyanpuri, Delhi.

+ **CRL.A. 952/2024 & CRL. M(BAIL) 1701/2024**

JAMES

.....Appellant

Through: Mr. Ajay Verma and Mr. Vaishnav
Kirti Singh, Advocates.

versus

THE STATE GOVERNMENT OF NCT OF DELHI.....Respondent

Through: Mr. Shoaib Haider, APP for State
with SI Mayank PS Kalyanpuri,
Delhi.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present appeal has been instituted against the judgement of conviction dated 23.04.2024 and order on sentence dated 10.07.2024 passed by Principal District & Sessions Judge, East District, Karkardooma Courts



in the case arising out of FIR No. 532/2021 registered under Sections 392/397/34 IPC and 25/27 Arms Act at P.S. Kalyan Puri, Delhi.

Vide the impugned judgement, the appellants were convicted for the offence under Section 392/34 IPC and sentenced to undergo rigorous imprisonment for a period of 4 years, with fine of Rs.15,000/-, in default whereof, they were directed to undergo simple imprisonment for a period of 2 months.

Additionally, the appellant/*Vicky @ deepak* was also convicted for offences under Section 397 IPC and 25/27 Arms Act and directed to undergo rigorous imprisonment for a period of 7 years and 4 years respectively, with fine of Rs. 5,000/- in the latter conviction, in default whereof, he was directed to undergo simple imprisonment for a period of 1 month. The benefit of Section 428 Cr.P.C. was also given to both the appellants.

2. The facts, in a nutshell, are that the complainant, one *Daya Ram*, a taxi driver had on 27.09.2021 around 4.15 pm stopped his vehicle by the side of the road to relieve himself when he was attacked by the appellants. While the appellant/*James* allegedly grabbed hold of his neck, the appellant/*Vicky* pointed a knife to his stomach and robbed him of his Samsung A6 mobile phone and Rs.1200 in Cash. This incident was witnessed by one *Safi Alam Khan*, a Civil Defence personnel, who intervened and upon seeing him, the appellants ran away from the place of the incident. *Safi* called the PCR. On the next day, on basis of information given by secret informer, police went to Jhuggis of 19-20 Block, Kalyanpuri where the appellant/*Vicky* was apprehended. The robbed mobile phone was recovered from him and the knife used in the commission of offence was



also recovered at his instance from his home. The eyewitness *Safi*, was also present with the police and identified the appellant/*Vicky*. In his disclosure statement, *Vicky* stated that the appellant/*James* was the other person involved in the commission of offence. Later, when the appellant/*James* was arrested in relation to another case being FIR No. 534/2021, during investigation, his involvement in the present case was detected. He was identified in judicial TIP by the complainant on 14.01.2022. Charges were framed under Sections 392/34 IPC against the appellant/*James* and under Section 392/397 IPC and 25/27 Arms Act against the appellant/*Vicky*.

3. In trial, a total of 8 witnesses were cited by the prosecution to prove its case. The complainant namely *Daya Ram* was examined as PW5. *Safi Alam Khan*, the eyewitness was examined as PW2. The other witnesses were formal in nature, who deposed relating to various aspects of investigation. On the other hand, the accused persons, in their statement recorded under Section 313 Cr.P.C. claimed innocence and false implication.

4. Learned counsel for appellant/*Vicky* submits that the appellant is innocent and has been falsely implicated in the present case. He submits that the said appellant was never subjected to a TIP and was identified only in the police station by the complainant and hence his identification for the first time in Court cannot be said to be free from doubt. In support of this contention, reliance is placed on the decision of Supreme Court in Jafar v. State of Kerala, reported as **2024 SCC OnLine SC 310**.

He further submits that the testimonies of the witnesses are riddled with various inconsistencies and contradictions. It is submitted that there is no mention of any secret informer in the testimony of PW2, but PW3 and PW8 on the other hand categorically state that the appellant/*Vicky* was



pointed out by the secret informer. It is next contended that while the complainant PW5 in his testimony states that he along with PW2 went to the police station on the date of the incident, PW2 on the other hand says that he went to the police station on the next day. He submits that these contradictions raise serious doubts on the credibility of the eyewitness.

5. Learned counsel for the appellant/*James* submits that the said appellant is innocent and has been arrested solely on the basis of the disclosure statement of the co-accused. He further submits that there is no description of the appellant in the complaint and he has been arrested on 24.12.2021 in relation to some other case and has been falsely roped in the present case. It is submitted that no recovery has been effected from him and there are no independent witnesses to the said offence, and PW2, the eyewitness is a stock witness whose testimony cannot be relied upon.

6. The appeals have been vehemently opposed by Learned APP for the State who submits that the appellants have been rightly convicted by the Trial Court. He further submits that the eyewitness PW2 has fully supported the prosecution case. The alleged contradictions are minor and in no way shake the testimony of the eyewitness. It is further stated that the robbed mobile and knife used in the commission of offence have been recovered at the behest of appellant/*Vicky*. It is further stated that the complainant has correctly identified appellant/*James* in the Judicial TIP as the accused who held him by the throat. It is stated that both the appellants are serial offenders, and while referring to the Status Report, states that while appellant/*Vicky* has 14 prior involvements, the appellant/*James* has 6 prior involvements.



7. I have heard the counsels for the parties and have perused the documents which have been placed on record.

8. It has been noted by the Trial Court that PW5/complainant in his testimony has clearly stated that two persons robbed him of his Samsung A6 phone, and Rs 1200 in cash. In Court, he has identified appellant/Vicky as the one who put a knife to his stomach and appellant/James who caught hold of his neck. He also spoke as to the presence of one eyewitness, PW2 at the spot who intervened to help him. He also identified the mobile phone which was seized from the pants of appellant/Vicky as the one which was robbed from him.

9. PW2, who was also present on the spot has corroborated the version of PW5 regarding the incident on all material aspects. He has also testified to accompanying the police when the appellant/Vicky was apprehended and witnessing the recovery of the robbed mobile and Knife from Vicky. He also confirmed the seized articles to be the same which were recovered in front of him. He also positively identified the appellant/James in Court as the second person involved in the crime.

10. Doubt has been raised on the credibility of PW2 by pointing out a few inconsistencies in the statements of PW2 and PW5. However, the same are minor and do not go to the root of the matter. The inconsistency highlighted by the Learned counsel for the appellant does not affect the core of the prosecution case. A gainful reference in this regard may be made to Narayan Chetanram Chaudhary v. State of Maharashtra, reported as (2000)

8 SCC 457 wherein it was held that:-

“42. Only such omissions which amount to contradiction in material particulars can be used to discredit the testimony of the witness. The omission in the police statement by itself would not necessarily render the



testimony of witness unreliable. When the version given by the witness in the court is different in material particulars from that disclosed in his earlier statements, the case of the prosecution becomes doubtful and not otherwise. Minor contradictions are bound to appear in the statements of truthful witnesses as memory sometimes plays false and the sense of observation differ from person to person. The omissions in the earlier statement if found to be of trivial details, as in the present case, the same would not cause any dent in the testimony of PW 2. Even if there is contradiction of statement of a witness on any material point, that is no ground to reject the whole of the testimony of such witness. In this regard this Court in State of H.P. v. Lekh Raj [(2000) 1 SCC 247 : 2000 SCC (Cri) 147 : (1999) 9 ST 155] (in which one of us was a party), dealing with discrepancies, contradictions and omissions held: (SCC pp. 258-59, paras 7-8)

“Discrepancy has to be distinguished from contradiction. Whereas contradiction in the statement of the witness is fatal for the case, minor discrepancy or variance in evidence will not make the prosecution's case doubtful. The normal course of the human conduct would be that while narrating a particular incident there may occur minor discrepancies, such discrepancies in law may render credential to the depositions. Parrot-like statements are disfavoured by the courts. In order to ascertain as to whether the discrepancy pointed out was minor or not or the same amounted to contradiction, regard is required to be had to the circumstances of the case by keeping in view the social status of the witnesses and environment in which such witness was making the statement. This Court in Ousu Varghese v. State of Kerala [(1974) 3 SCC 767 : 1974 SCC (Cri) 243] held that minor variations in the accounts of the witnesses are often the hallmark of the truth of their testimony. In Jagdish v. State of M.P. [1981 Supp SCC 40 : 1981 SCC (Cri) 676] this Court held that when the discrepancies were comparatively of a minor character and did not go to the root of the prosecution story, they need not be given undue importance. Mere congruity or consistency is not the sole test of truth in the depositions. This Court again in State of Rajasthan v. Kalki [(1981) 2 SCC 752 : 1981 SCC (Cri) 593] held that in the depositions of witnesses there are always normal discrepancies, however, honest and truthful they may be. Such discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence, and the like. Material discrepancies are those which are not normal, and not expected of a normal person.

Referring to and relying upon the earlier judgments of this Court in State of U.P. v. M.K. Anthony [(1985) 1 SCC 505 : 1985 SCC (Cri) 105 : AIR 1985 SC 48] , Tahsildar Singh v. State of



U.P. [AIR 1959 SC 1012 : 1959 Cri LJ 1231] , Appabhai v. State of Gujarat [1988 Supp SCC 241 : 1988 SCC (Cri) 559 : JT (1988) 1 SC 249] and Rammi v. State of M.P. [(1999) 8 SCC 649 : JT (1999) 7 SC 247] this court in a recent case Leela Ram v. State of Haryana [(1999) 9 SCC 525 : JT (1999) 8 SC 274] held:

‘There are bound to be some discrepancies between the narrations of different witnesses when they speak on details, and unless the contradictions are of a material dimension, the same should not be used to jettison the evidence in its entirety. Incidentally, corroboration of evidence with mathematical niceties cannot be expected in criminal cases. Minor embellishment, there may be, but variations by reason therefor should not render the evidence of eyewitnesses unbelievable. Trivial discrepancies ought not to obliterate an otherwise acceptable evidence....

The court shall have to bear in mind that different witnesses react differently under different situations: whereas some become speechless, some start wailing while some others run away from the scene and yet there are some who may come forward with courage, conviction and belief that the wrong should be remedied. As a matter of fact it depends upon individuals and individuals. There cannot be any set pattern or uniform rule of human reaction and to discard a piece of evidence on the ground of his reaction not falling within a set pattern is unproductive and a pedantic exercise.’”

11 Reliance was placed by learned counsel for the appellant/Vicky on the decision of Supreme Court in Jafar (Supra) that in absence of TIP, the identification of the appellant at the Police Station by the complainant becomes doubtful. In the said case, it was observed that:-

“7. With the assistance of the learned counsel for the parties, we have scrutinized the evidence. The conviction of the appellant herein is basically based on the deposition of Babu Puttan (PW-1), who was working as a security guard and was sitting in a chair in front of the said room. No doubt that he narrates the version, as per the prosecution case. He has also identified accused No. 2-Jafar, appellant herein and accused no. 3-Saneesh in the Court. However, he has clearly admitted that police had shown him these two people and as such, he has identified them.



8. Anil Kumar (PW-8), who is the Investigating Officer (IO), has also admitted that PW-1 identified the accused persons by seeing them at the police station. He has further admitted that no identification parade was conducted. As such, it can be seen that the identification of the appellant herein by PW-1 is quite doubtful as no identification parade has been conducted. PW-1 clearly states that he has identified the accused persons since the police had shown him those two people.

9. In the absence of proper identification parade being conducted, the identification for the first time in the Court cannot be said to be free from doubt. We find that the other circumstance that the Courts relied for resting the order of conviction is with regard to the recovery of an iron rod. An iron rod is an article which could be found anywhere. It is not the case of the prosecution that any stolen article was recovered from the appellant herein.”

However, the said case is distinguishable on facts as no recovery was made at the instance of the accused therein however, in the present case, the mobile phone of the complainant and the Knife stated to be the weapon of offence has been recovered at the instance of the appellant/Vicky. Moreover, in the present case, not only the complainant but also the eyewitness PW2 has positively identified the said appellant at the time of his arrest and there is no reason to disbelieve his testimony.

12. Many questions have been raised regarding the credibility of the eyewitness PW2, however, other than some minor discrepancies in statement, nothing has been brought on record to show that the said eyewitness had some ill-will, vested interest or is a stock witness for the police. Moreover, no defence evidence was led before the Trial Court by the appellants and in absence of same, Trial Court has correctly come to the conclusion that the testimony of PW5 and PW2 coupled with the recovery of knife and mobile from appellant/Vicky are sufficient to prove beyond reasonable doubt the charges levelled against the appellants.



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13. Considering the aforesaid and after going through the evidence on record as well as the impugned judgment, this Court is of the considered view that there is no infirmity in the judgment of the learned Trial Court. Hence, I find no grounds to interfere with the same.

14. Accordingly, the appeals are disposed of in the above terms alongwith the pending application.

MANOJ KUMAR OHRI
(JUDGE)

DECEMBER 23, 2024/ry-js