

CA No. 396/18
Imran Vs. State

04.08.2020

Matter taken up through Video Conferencing (Cisco Webex).


Present: Appellant produced from JC through V/C (in some other case).
Sh. U. K. Giri, Ld. Counsel for appellant.
Sh. Virender Singh, Ld. Addl. PP for State/respondent.

Vide separate judgment of even date, the appellant deserves benefit of doubt and accordingly acquitted for the offence u/s 356/379/34 IPC. The impugned judgment dated 22.09.2018 and order on sentence dated 01.10.2019, are hereby set aside. Bail bond and surety bond furnished by appellant stands cancelled. Surety is discharged. Endorsement, if any, on any document stands cancelled. Original, if any, be returned to the rightful claimant.

Appellant is directed to furnish bail bond u/s 437 (A) Cr.PC to the tune of Rs. 20,000/- and surety bond of like amount at earliest.

Trial Court Record be sent back to the concerned court alongwith copy of this judgment. This judgment be immediately uploaded on the official website of the District Court and copy be also sent to the prosecution branch.

The appeal file be consigned to record room.


(Charu Aggarwal)
ASJ-02/Central/THC/Delhi
04.08.2020

IN THE COURT OF MS. CHARU AGGARWAL
ADDITIONAL SESSION JUDGE-02: CENTRAL DISTRICT
TIS HAZARI COURT: DELHI.

CA No. 396/18

Imran
S/o Sh. Surab Khan
R/o H. No. A-90, DDA Flats,
Shastri Park, New Delhi.

.....Appellant

Vs.

State

..... Respondent

Date of institution :
Date of decision :

22.10.2018
04.08.2020

JUDGEMENT

1. The present appeal u/s 374 Cr.PC has been preferred by an appellant Imran (accused before Ld. Trial Court) challenging the judgment of conviction dated 22.09.2018, whereby he was convicted for committing offence u/s 356/379 IPC and order on sentence dated 01.10.2018, whereby he was sentenced to undergo Rigorous Imprisonment (RI) for one year & to pay fine of Rs. 10,000/- failing which Simple Imprisonment (SI) for three months for the offence u/s 379 IPC and RI for six months & fine of Rs.5000/- failing which SI for three months for the offence u/s 356 IPC, passed by Ld. MM-8, Central District, Tis Hazari Court Delhi.

2. The facts emerging from the trial court record are that on receipt of DD No. 34 PP Red Fort (PS Kotwali), dated 26.04.2015, regarding mobile snatching at Lower Subhash Margh near Khaskat,



Delhi, HC Sant Ram alongwith Ct. Suresh reached at the spot, where they met complainant and one rickshaw puller Anwar. IO/HC Sant Ram recorded the statement of the complainant Vinod in which he stated that he is resident of Kotwali, Darya Ganj, Delhi. On 25.04.2015, at about 11:45 PM, he was going from Police Station (PS) Kotwali, Chandni Chowk to Kotwali Building Darya Ganj, on a rickshaw. At that time, he was talking on his mobile and suddenly two unknown boys came on a motorcycle from his back side and the pillion rider of the bike snatched his mobile phone bearing no. 9999968092 and immediately ran away from the spot on motorcycle towards Jama Masjid. The complainant could not note down the registration number of the bike, however, said that he can identify the pillion rider of the bike who snatched his mobile phone, if brought before him. The rickshaw puller Anwar made a call at 100 number from his mobile. Police reached at the spot. On the basis of aforesaid statement of the complainant the FIR u/s 356/379/34 IPC was registered. Investigation was carried by HC Sant Ram. On 13.06.2015, on receipt of secret information, the appellant/accused Imran and JCL "R" were arrested. Nothing was recovered from their possession pertaining to this case. On 18.06.2015, the appellant/accused and JCL "R" were produced before Ld. MM for TIP, however, they refused to participate in the same on the ground that their photographs were taken in the police station (PS) by the IO and shown to the complainant before the proposed TIP. Upon verification of age of JCL "R", he was found to be juvenile, therefore, he was produced before the concerned Juvenile Justice Board (JJB) by the IO. Formalities of arrest of accused was completed by the IO.

3. After completion of investigation, chargesheet was filed



by the IO before the concerned Ld. MM. Accused was summoned. Vide order dated 25.09.2017, Ld. MM framed the charge u/s 379/356/34 IPC against the accused to which he pleaded not guilty and claimed trial. In order to prove its case, the prosecution has examined total 5 witnesses before the Ld. Trial Court. The appellant also examined one witness DW-1 Sonia in his evidence. In the statement recorded u/s 313 Cr.PC, he pleaded his innocence that he was falsely implicated in the present case. He reiterated his stand that IO clicked his photographs in the Police Station after his arrest and shown to the complainant because of which he had refused to participate in TIP proceedings.

4. Out of the total 5 witnesses examined by the prosecution, **PW-1** is complainant, who has reiterated the incident occurred with him in his deposition. He correctly identified the appellant in the court.

5. **PW-2** to **PW-5** are police personnel, who were part of the investigation. **PW-3** Suresh Meena and **PW-4** ASI Sant Ram, on receipt of DD N. 34 PP, reached at the spot. **PW-4** being IO of the case recorded the statement Ex. PW-1/A of the complainant. PW-2 HC Satinder and PW-5 SI Kishan Pal (second IO) are the witnesses of the arrest of the appellant. PW-5 completed the investigation and filed the chargesheet in the court of Ld. MM. All the PWs were cross examined by Ld. Defence Counsel before the Ld. Trial Court.

6. It would be relevant to mention that during trial of the case, the appellant admitted certificate u/s 65-B of Evidence Act regarding registration of FIR and TIP proceedings.

7. After hearing Ld. APP & Ld. Counsel for appellant and considering the material on record, the Ld. Trial Court has convicted



the appellant/accused for the offence u/s 356/379 IPC for which charge was framed against him and also passed the order on sentence as mentioned above.

8. I have heard Ld. APP and Ld. Counsel for appellant/accused.

9. The appellant has challenged the impugned judgment on the ground that Ld. Trial Court has not properly appreciated the evidence. Nothing was recovered from the possession of the appellant. It is also argued that the appellant refused to participate in TIP proceedings since his photographs were clicked by the IO in the police station and shown to the complainant before the proposed TIP. It is also pointed out by counsel for appellant that despite admitted presence of rickshaw puller Anwar at the spot, the IO has not recorded his statement, itself create a doubt on the case of the prosecution. Ld. Counsel has further argued that no adverse inference can be drawn against the appellant merely for refusal to participate in the TIP and according to Ld. Counsel identification of appellant by the complainant for the first time before the court after about 2 ½ years of alleged occurrence is of no legal consequence and cannot form the basis of his conviction. He also submitted that PW-1 during cross examination, admitted that he is also a rickshaw puller, therefore, a person of low acumen and cannot be expected to remember the face of an unknown person after more than 2 years.

10. Ld. APP has submitted that Ld. Trial Court has rightly convicted the appellant since PW-1, the star witness of the prosecution, has supported the case on all material aspects on occurrence of incident and on identification of appellant. He has argued that PW-1 withstood the test of cross examination conducted



by Ld. Defence counsel and could not shake his testimony either on the incident or identification of appellant. He submitted that testimony of PW-1 cannot be brushed aside by the court only since he is a rickshaw puller.

11. I have considered the arguments advanced by Ld. APP & Ld. Counsel for appellant and perused the record.

12. The most material witness of the prosecution is PW1 complainant who has categorically deposed in his chief examination that on 25.04.2015 at 11.45 p.m., he was going on a rickshaw towards Kotwali building, Delhi and was carrying his mobile phone with him. At that time, 2 boys suddenly came on a motorcycle from his back side and pillion rider of the bike snatched his mobile phone from his hand and immediately went off on the motorcycle. PW1 was cross-examined by the counsel for the appellant but he could not elicit anything creating dent on his deposition. The Court finds nothing in the testimony of PW1 creating doubt on his deposition on the occurrence of incident with him. The arguments of Ld. Counsel for appellant that the case of the prosecution is doubtful since despite admitted presence of rickshaw puller Anwar at the spot, the prosecution has not examined him, has no force since the quality of evidence is relevant to reach on the final conclusion of the case but not the plurality of the witnesses. If the testimony of the sole witness that too of victim of the crime is found cogent, consistent and reliable then Court has no reason to discard such testimony only on the ground that other witnesses present at the spot are not examined by the prosecution. In this case, so far as occurrence of incident is concerned, on that the Court is satisfied with the unshaken testimony of PW1 that on the date and time of the incident his mobile was



snatched by the assailants of the Crime.

13. As regards the identity of the appellant being assailant of the Crime is concerned, after his arrest on 13.06.2015, the IO of the case on 18.06.2015 moved an application before Ld. MM for conducting TIP of the appellant, but, appellant refused to participate in the TIP proceedings on the ground that his photographs were clicked by the police in the police station. The same stand was taken by the appellant in his statement recorded u/s 313 CrPC. After the arrest of the appellant, nothing was recovered from him relating to this case. However, he was correctly identified by the complainant (PW1) during his evidence. Thus, the only material against the appellant is his refusal to participate in the TIP and his identification in the Court by the complainant during his chief examination.

14. Before proceeding further, I would like to discuss the law on the point of identification of the accused first time during trial before the court. It is settled law that the identification of the accused by the eye witnesses/victims of the crime in their evidence is substantive piece of evidence but the TIP is his only corroborative piece of evidence in order to assure the investigating agency that investigation is going on in the right direction. It is also trite law that identification of the accused first time in the Court is weak piece of evidence and Court should be cautious to rely on such identification and preferably it should not made sole basis of conviction of the accused unless some corroborative evidence has also come on record, however, this principle is subject to exception. Reliance in this regard is placed on the following judgments:-



The legal position with respect to identification of an accused was summarized by Hon'ble Supreme Court in "**Dana Yadav @ Dahu & Ors. Vs. State of Bihar**", (2002) 7 SCC 295 inter-alia as under:-

"37... (c) Evidence of identification of an accused in Court by a witness is substantive evidence whereas that of identification in test identification parade is, though a primary evidence but not substantive one, and the same can be used only to corroborate identification of accused by a witness in Court.

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(e) Failure to hold test identification parade does not make the evidence of identification in Court inadmissible rather than the same is very admissible in law, but ordinarily identification of an accused by a witness for the first time in Court should not form basis of conviction, the same being from its very nature inherently of a weak character unless it is corroborated by his previous identification in the test identification parade is a check value to the evidence of identification in Court of an accused by a witness and the same is a rule of prudence and not law.



(f). *In exceptional circumstances only as discussed above, evidence of identification for the first time in Court, without the same being corroborated by previous identification in the test identification parade or any other evidence, can form the basis of conviction.*

(g) *Ordinarily, if an accused is not named in the first information report, his identification by witnesses in Court, should not be relied upon, especially when they did not disclose name of the accused before the police, but to this general rule there may be exceptions as enumerated above."*

15. The judgment was followed by Hon'ble Delhi High in "**Rijaul Khan Vs. State**", **2014(1) JCC 670** and it was observed as under:-

"As a legal principle, the substantive evidence of a witness is a statement made by him in the Court. The identification for the first time in the Court, by its very nature, is of a weak character and, therefore, the Court normally looks for corroboration of such evidence by way of some other evidence which may, *inter-alia*, include identification in a test Identification Proceedings.



Identification in a test identification parade is not a substantive piece of evidence, though it can be used as a piece of corroborative evidence if the witness identifies the accused while deposing in the Court."

16. In "**Budhsen & Anr. Vs. State of U.P.**", 1970, Crl. L.J. 1149, the Apex Court, *inter-alia*, observed that though as a general rule, identification of the accused for the first time in the Court without there being any corroboration whatsoever cannot form the sole basis for conviction, there may be exceptions to the said general rule when for example the Court is impressed by a particular witness, on whose testimony it can safely rely, without corroboration.

17. Now, let us examine the facts of the present case in the light of aforementioned settled proposition of law. Admittedly, the appellant was not known to the complainant (PW1) prior to the incident. In the statement Ex. PW1/A, on the basis of which FIR was registered, the complainant did not give either any identification mark or attribute of the assailant of the crime but he simplicitor said that he can identify the accused, if brought before him. No evidence has come on record that there was sufficient light at the spot. As per the prosecution story, on 25.06.2015 the complainant was going on a rickshaw in late night at 11.45 p.m. and suddenly two boys came on a motorcycle from the **back side of the complainant**, snatched his mobile phone and immediately went off on motorcycle. The evidence of the complainant (PW1) was recorded in the Court in November, 2017, after the gap of almost two and a half years from the date of



incident and he correctly identified the accused in his evidence. The appellant was not known to the complainant (PW1) prior to the incident, the incident has occurred in the late dark night, no evidence has come on record that there was sufficient light at the spot and particularly the manner in which the incident has happened that the snatchers suddenly came from the back side of the complainant, snatched his mobile and ran away, clearly show that the complainant only had glimpse of the snatchers as he did not have sufficient opportunity and time with him to absorb the faces of wrong doers, therefore, the identification of the appellant by the complainant in the Court after the gap of two and a half years has raised doubt in the mind of the Court. In this situation, the power of observation, memory and capacity to recapitulate of the complainant (PW1) assumes its importance. After the perusal of testimony of PW1, this Court has no doubt in its mind that PW-1 is not a person of long memory. In the statement Ex. PW1/A, on the basis of which FIR was registered, complainant said that after the incident rickshaw puller Anwar made a call from his mobile but when PW1 entered in the box to depose, he said that a 100 number call was made by him (PW1) from the mobile of rickshaw puller Anwar. Though, this contradiction is not of much relevance to prove the incident but it has become relevant to evaluate the memory and power of recapitulation of complainant. The complainant, who can identify an unknown person after the gap of two and a half years of whom he only had glimpse that too in the late dark night, cannot be presumed to have forgotten who made the call at 100 number and called the police after the incident. The State has vehemently argued that the appellant refused to participate in TIP is strong evidence against the appellant. It was submitted that



had the appellant participated in TIP he would have been correctly identified by PW-1 after the incident might be the apprehension in the mind of appellant. This argument of Ld. APP does not convince the Court since the appellant was arrested almost after two months of the incident and this Court again for the same reason that an unknown person seen in the late dark night only for minimal seconds cannot be identified even after two months of the incident. Moreover, the appellant since beginning when he was first produced before Ld. MM for TIP and till the time his statement u/s 313 CrPC was recorded took the consistent stand that his photographs were clicked in the police station and shown to the complainant before the proposed TIP. Thus, the TIP proceedings in this case are nothing but farce and provide a justification to appellant to refuse to participate in the TIP. It is also argued on behalf of the prosecution that complainant and appellant were not known to each other and had no previous animosity, therefore, the complainant had no reason to falsely implicate him. The Court finds no force even in this argument of the State since having no reason with the victim party to implicate the accused cannot become sole basis of conviction of the accused but it can only be additional ground of conviction, if the prosecution succeeds in proving its case otherwise on material aspects beyond reasonable doubt. Moreover, this Court has no hesitation in observing that complainant might not have any reason to falsely implicate the appellant but the police/IO/SHO may have the reason to falsely implicate a BC of the area, as the appellant is, in order to solve their blind/unsolved cases. The observation of the Court, in the present case, is on the basis of deposition of second IO (PW-5 SI Kishan), who arrested the appellant. Role of the second IO in the investigation was



that he on receipt of the secret information, arrested the appellant and JCL 'R', conducted their personal search, recorded their disclosure statements, formally arrested them and made efforts to recover the case property i.e. mobile phone of the complainant and for this purpose he took four days police remand of appellant. As per chargesheet, the mobile phone of complainant (PW1) was not recovered, but, second IO(PW1) in his deposition stated that phone was recovered from JCL 'R' and was deposited in Mal Khana of the PS. No such phone or any other documents from Mal Khana is brought on record, may be for the obvious reason that it was never even recovered. Not only this, the second IO (PW5) also said in his testimony that a purse and Rs.3,000/- were recovered from the appellant. Surprisingly, it is not a case of snatching of a purse but a case of mobile snatching. PW5, second IO of the case, who arrested the appellant on receipt of alleged secret information is not at all a truthful witness (police official). In view of doubt created on the veracity of this witness, the possibility of false implication of appellant by second IO cannot be ruled out.

18. In view of aforesaid discussion, the appellant deserves benefit of doubt and accordingly acquitted for the offence u/s 356/379/34 IPC. The impugned judgment dated 22.09.2018 and order on sentence dated 01.10.2019, are hereby set aside. Bail bond and surety bond furnished by the appellant stands cancelled. Surety is discharged. Endorsement, if any, on any document stands cancelled. Original, if any, be returned to the rightful claimant.



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