

THE BRIEF REASONS FOR THE JUDGMENT:

- 1) The case of prosecution against the accused is that on 05.09.2018 at about 11:20 PM near Talwar Jewellers, Multani Dhanda within the jurisdiction of PS Nabi Karim he along with his associates(since not arrested) in furtherance of their common intention committed theft of 2 mobile phones make Samsung GTS and Samsung J9 from the possession of the complainant Safiquddin.
- 2) After completion of investigation, charge sheet was filed against the accused. In compliance of Sec. 207 Cr.PC, documents supplied to the accused. Arguments on point of charge were heard. Vide order dated 11.03.2019, a charge u/s. 379/34 IPC was framed upon the accused, to which he pleaded not guilty and claimed trial.
- 3) In support of its case, prosecution has examined five witnesses. After conclusion of prosecution evidence statement of accused was recorded U/s 313 Cr.PC(as per section 281(1) Cr.PC) in which accused denied all the allegations and opted to lead DE. In the defence evidence accused examined one Saleem as defence witness. Thereafter the defence evidence was closed.
- 4) I have heard the arguments of Ld. APP for State and Ld Counsel for accused. I have also perused the record carefully.
- 5) It is the cardinal principle of criminal justice delivery system that the prosecution has to prove the guilt of the accused beyond reasonable doubts. No matter how weak the defence of accused is but the golden rule of the criminal jurisprudence is that the case of prosecution has to stand on its own legs.
- 6) The prime witness of the present case is the complainant Safiquddin who was examined as PW1 by the prosecution. Along with the complainant



there was one another eye witness namely Sh Titu Ahmed examined as PW2 by the prosecution. PW2 is the brother of PW1 and was present at the spot at the time of the alleged incident. The testimony of PW1 and PW2 is required to be examined carefully to appreciate as to whether the case of the prosecution stands proved beyond reasonable doubts or not.

7) Since PW1 and PW2 were present at the spot and at the same time, they deposed on the same lines. It is necessary to appreciate the testimony of PW1 and PW2 together to have a clear picture of the entire sequence of events. PW1 and PW2 deposed on the day of incident they were purchasing T-shirts from a hawker at Arakasha Road and there accused arrived along with two other boys. They deposed that accused was pushed by those two boys and thereafter accused pushed the complainant/PW1. Someone from public informed the complainant that something has been removed from his pocket. Public persons asked the complainant to apprehend the accused. PW1 and PW2 deposed two mobiles phones were found missing. Thereafter the accused was apprehended but boys who were accompanying the accused fled away from the spot. Police was called at the spot and one stolen mobile phone was recovered from the possession of the accused. The mobile phone was Samsung GTS belonging to the complainant.

8) Police recorded the statement of the complainant which is Ex.PW1/A and seized the stolen mobile phone which was recovered from the possession of the accused vide seizure memo Ex.PW1/B. During the testimony of PW1 and PW2 the photographs of the stolen mobile phone were shown to them and they correctly identified the mobile phones. The photographs were proved as Ex.P1 to ExP4.

9) Perusal of testimony of complainant/PW1 and PW2 reveals that they

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supported the case of the prosecution in entirety. Both these witnesses were cross-examined by Ld Defence Counsel but nothing came in the cross-examination helpful for the case of the accused. Both these witnesses correctly identified the accused in the court. I found no reason to disbelieve the testimony of PW1 and PW2 on the aspect of identification of the accused being offender. There was no previous enmity between the complainant and the accused. The complainant and his brother are the residents of Assam and they came to Delhi three days back from the day of incident. It is not believable that complainant and his brother will come from Assam to Delhi just to falsely implicate the accused. The presence of accused at the spot at the time of the incident was specifically mentioned in the rukka also and so deposed specifically by PW1 and PW2.

10) The presence of accused at the spot and his apprehension at the spot got corroborated by the testimony of PW3 ASI Jagdhari also who reached at the spot after receiving PCR call. He deposed that he met complainant and his brother and the accused was also present at the spot. He also deposed that the stolen mobile phone was recovered from the possession of the accused in the presence of IO. He also identified the stolen mobile phone recovered from the possession of accused by virtue of photographs already Ex.P1 to ExP4.

11) The recovery of stolen mobile phone from the possession of the accused also proved by virtue of testimony of PW4 Ct Mahender and PW5/ IO SI Ram Avtar. Both these witnesses deposed as to the apprehension of the accused at the spot and the recovery of stolen mobile phone (Ex.P1 to Ex.P4) from the possession of the accused. Both these witness were also cross-examined by Ld Defence Counsel but again there was no material contradiction as to the crucial facts of the present case including the



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apprehension of the accused at the spot and recovery of stolen mobile phone from the possession of the accused.

12) Thus by virtue of testimony of complainant, eye witness and the police officials, it stands proved on record that the accused was apprehended at the spot and the stolen mobile phone belonging to the complainant was recovered from the possession of the accused.

13) The defence witness namely Salim examined as DW1 does not instill the faith of this court. By virtue of testimony of DW1 the accused tried to bring on record the defence of mistaken identity. DW1 deposed that the accused has been falsely implicated in the present case and the complainant apprehended the accused instead of those boys who ran away with the mobile phone of the complainant. DW1 was cross-examined by Ld APP for the State wherein he deposed that accused is known to him as he is his childhood friend. He deposed that he had not made any complaint against the false implication of the accused. DW1 is the interested witness being the friend of the accused. If the accused was falsely implicated than why no representation was sent to any authority.

14) Again at the risk of repetition it is to be stated that the complainant and his brother were not the resident of the Delhi and they were strangers to the accused. No motive has been come on record for falsely implicating the accused or false plantation of the case property upon the accused. The testimony of PW1 and PW2 had inherent flow which is possible from a natural witness only. The documents proved on record including previous statement of the complainant Ex.PW1/A and seizure memo Ex.PW1/B are proved to be trustworthy documents.

15) Thus it is proved on record beyond reasonable doubt that the accused was apprehended at the spot only along with the stolen mobile phone of the



complainant. This impliedly creates a presumption of theft by virtue of Section 114 of Indian Evidence Act that it was the accused who committed theft. Since the accused was facilitated by his associate in the offence of theft it could be safely stated that accused and his associates were sharing a common intention at the time of committing theft.

16) Accordingly, in view of the above-discussion the offence u/s 379/34 IPC is proved on record against the accused Rahul and he is hereby convicted accordingly. Copy of the judgment be supplied to the convict free of cost. Be heard on point of sentence.

**Announced in open court
on 11.06.2020**

**(Kapil Kumar)
MM-5/Central District
Tis Hazari Courts/Delhi,**



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CNR No. DL CT-02-02-039623-2018
CIS No. 17330/18
State Vs. Rahul
FIR No. 310/18
PS. Nabi Karim
U/s. 379/34 IPC

11.06.2020

File has been pre-poned in view of circular of the Ld District & Sessions Judge (HQ), reference no. 8188-8348/DJ/Covid 19, Lockdown pronouncements/2020, dated 03.05.2020.

Present: Ld Sub. APP for the State.
Accused is present with counsel.
Final arguments heard.

Vide separate judgment of even date, accused Rahul is convicted for the offences under section 379/34 IPC. Copy of the judgment supplied to the convict free of cost.

Ld Counsel presses for advancing arguments on point of sentence today only. Request considered. Ld APP for the State has no objection to the same.

Arguments on the point of sentence heard. Ld. APP for the state submits that a substantive punishment be awarded to convict so that a deterrent message be sent to the society.

Ld Counsel for convict prays for a lenient view by submitting that the convict is too poor. It is submitted that convict is sole bread earner of his family.

Records perused.

The penology is largely based on two cardinal principle i.e.




awarded such a sentence, which discourages the other like minded people of the society from entering the world of crime. However, a balance is required to be maintained between the theories, while sentencing the convict. No single theory whether deterrent, preventive, retributive or re-formative can help in eliminating crimes and criminals from society. It is only through an effective combination of two or more of these theories that an ideal penal programme can be drawn to combat crimes. It is also essential to understand crime as a social and individual phenomenon and the need to prevent its commission or repetition by adapting an attitude conducive to the re-socialization and reformation of the criminal. The criminal reformation serves a great social purpose and society itself becomes the greatest beneficiaries of this reformation by being freed from his depredations. If the society cannot reform an offenders, it is punishment for the society. Convict remained in JC for around 11 days.

Convict is poor person and sole bread earner of his family.
Convict is sentenced to imprisonment already undergone

Section 437A Cr.PC complied with.

File be consigned to Record Room after due compliance.


(KAPIL KUMAR)
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Delhi/11.06.2020

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