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HIGH COURT OF DELHI : NEW DELHI

Judgment reserved on : January 22, 2009

Judgment delivered on : January 30, 2009

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(1) Crl. A. No. 182/2006

% Naresh Mukhia ... Appellant
Through: Mr. Abinash K. Mishra, Advocate

versus

The State (NCT of Delhi) ... Respondent
Through: Mr. Amit Sharma, Additional Public
Prosecutor for State.

(2) Crl. A. No. 907/2006

Mohd. Farid ... Appellant
Through: Mr. R.N. Jha, Advocate

versus

The State (NCT of Delhi) ... Respondent
Through: Mr. Amit Sharma, Additional Public
Prosecutor for State.

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

SUNIL GAUR, J.

1. The above captioned two appeals arise out of the impugned judgment of 9th December, 2005 vide which the two appellants herein i.e. Mohd. Farid and Naresh Mukhia stands convicted for the offence under Section 392/34 of the IPC and appellant Mohd. Farid also stands convicted for the offence under Section 397 of the IPC

and for the offence under Section 25 of Arms Act. Order of 13th December, 2005 of the trial court sentencing these two appellants to RI for five years each and to a fine of Rupees One thousand each for the offence under Section 392/34 of the IPC and RI for seven years and to a fine of Rupees Two thousand for the offence under Section 397 of the IPC imposed upon appellant Mohd. Farid and RI for one year and a fine of Rupees Five hundred imposed upon appellant Mohd. Farid for the offence under Section 25 of the Arms Act, is also impugned in this appeal.

2. Both these appeals pertain to one incident and arise out of common impugned judgment, therefore, they were heard together and are being decided together by this common judgment.

3. The background relevant facts are as follows:-

On 26th November, 2004 at about 6:30 p.m. Mahesh (PW-5) was sitting with his father in his house and the door bell rang and when the door was opened, three boys having pistol and a knife entered the house and had threatened Mahesh (PW-5) to handover the valuables, including money and ornaments and one of the culprit took the wrist watch and a gold ring which Mahesh (PW-5) was wearing and another culprit took the keys of the almirah from the father of PW-5 and tried to open the inner safe of the said almirah but he could not open it and in the meanwhile, Neelima (PW-3), a maid of the house, came there from upstairs and on seeing the culprits, she raised alarm and the culprits tried to flee away and they were chased and in the lane(gali), two of the culprits i.e.

appellant/ accused Mohd. Farid and his co-accused Lalit were apprehended with the help of neighbour etc. and one country made pistol and the robbed mobile phone, was recovered from accused Mohd. Farid and on the written complaint of Mahesh (PW-5), FIR of this case was registered. Appellant/ accused Naresh had managed to flee away. Investigation had commenced and during the course of the investigation, appellant/ accused Naresh was arrested but he had refused to participate in the Test Identification Parade. It stood revealed in the statement of Smt. Raj (PW-6), mother of the complainant that the appellant/accused Naresh had snatched her gold ring having pearl and he had managed to escape after alarm was raised. The robbed ring of Smt. Raj (PW-6) was got recovered by appellant/ accused Naresh. After completion of the investigation, charge sheet was filed against these two appellants/ accused and their co-accused for the offences under Section 392/34, 397/34 of the IPC and under Section 27 of the Arms Act.

4. At trial, appellant/accused did not plead guilty to the aforesaid charges framed against them and the evidence of fifteen witnesses was recorded by the trial court, which comprises of the deposition of the first informant Mahesh (PW-5), of his mother Smt. Raj (PW-6), and of their maid Neelima (PW-3). There is also evidence of an eye witness Kulbhushan (PW-2) and of a neighbour Harender Pal Singh (PW-12). Head Constable Jagdish Raj (PW-7) has deposed regarding the apprehension of appellant/ accused Mohd. Farid near the spot.

Assistant Sub Inspector Sarabjeet Singh (PW-14) is the Investigating Officer of this Case.

5. Appellant/accused Mohd. Farid before the trial court in his statement under Section 313 of Cr.P.C. admitted his presence at the spot by taking the plea that he had gone to house of complainant (PW-5), with co-accused Naresh and Lalit Mukhia to take money of Ramu Mukhia from his employer/ first-informant. He alleges false implication in this case but gives no reason for being falsely implicated in this case. Appellant / accused Naresh Mukhia had also taken the similar plea of going to the house of the employer/ first informant (PW-5) along with co-accused Lalit Mukhia, to collect the salary of co-accused Ramu Mukhia. However, no evidence was led by these two appellants/ accused in their defence before the trial court.

6. After the trial, these two appellants/ accused stand convicted and sentenced as already noted above.

7. On behalf of the appellants, it has been pointed out that there is some discrepancy in the evidence of the witnesses *interse* regarding the timing of this incident and the variation pointed out is of just fifteen minutes or so, which to my mind, is not at all a material discrepancy. During the course of the arguments, as well as in the written submissions, it has been stressed that the furnishing of the written typed complaint by PW-5 within a short period of just half an hour of the occurrence is just not possible and of alleged seizure of the country made pistol and of arrest of appellant/ accused Mohd. Farid and his two co-accused near the spot, is not at all possible and the FIR of this case has been ante-timed and the

alleged writing work was done later on in the police station. It is a matter of record that the *Rukka* for registration of the FIR was sent at about 9:00 p.m. and the FIR in this case was registered on the same day promptly at 9:30 p.m. which clearly rules out the plea of the appellants of investigation of this case being tainted. A bare perusal of the testimony of the Investigating Officers (PW-14 & PW-15) reveals that they have not been cross-examined on the aspect of investigation of this case being tainted or on the aspect of the recovery of the robbed gold ring and therefore, no benefit accrues to the appellants on this account.

8. It is true that Smt. Raj (PW-6) in her evidence has stated that the recovered ring Ex.P-2, weighed three grams, and first informant (PW-5) has stated in his evidence that the gold ring which was robbed from him, weighed ten grams, but it will not make any difference for the reason that there is no pointed cross-examination of the first informant (PW-5) regarding non recovery of the gold ring from the appellant/ accused Mohd. Farid upon his apprehension near the spot. It is a matter of record that the gold ring Ex.P-2 got recovered by appellant/ accused Naresh belonged to Smt. Raj (PW-6) and she has duly identified it in her evidence. Even if Mahesh (PW-5) has identified the recovered Ex. P-2 in his evidence, it would make no difference because he has clearly stated in his evidence that the ring Ex. P-2 got recovered by appellant /accused Naresh belonged to his mother. Thus, it is abundantly clear that there is no worthwhile controversy regarding the recovered ring Ex. P-2.

9. The so-called discrepancies pointed out by the appellants/ accused in the prosecution case as highlighted in the written

submissions, become inconsequential in view of the fact that appellant/ accused Mohd. Farid was apprehended at the spot and the weapon of offence used by him in the commission of this crime, i.e. the country made pistol as well as robbed wrist watch of PW-5 was recovered from him after his apprehension near the spot by the neighbours/ public persons.

10. The testimony of complainant/ first-informant (PW-5) and of his mother (PW-6) is found by me to be consistent and reliable and has been rightly accepted by the trial court. Although neighbour (PW-12) was declared hostile by the prosecution, but he has stated that wrist watch and the country made pistol was recovered from appellant/ accused Mohd. Farid at the spot and he has stated that due to lapse of time, he could not recollect about it. There is also evidence of Kulbhushan (PW-2) who had witnessed this incident and has deposed about the apprehension of appellant Mohd. Farid and his co-accused Ramu and of recovery of county made pistol from one of them. I find that the evidence of these two witnesses does provide ample corroboration to the prosecution case. Infact, worthwhile corroboration to the core of the prosecution case is provided by the maid Neelima (PW-3) whose testimony remains intact despite limited cross-examination by the State. Otherwise also, the evidence of the first informant (PW-5) and of his mother (PW-6) is sufficient to sustain the conviction of these two appellants/ accused and the plea taken by these two appellants/ accused of being present at the spot also reinforces the prosecution case.

11. Now, what remains to be seen is as to the version of these two appellants/ accused given by them in their statements under Section

313 of the Cr.P.C. is plausible one and if it is sufficient to dislodge the prosecution version. Appellants/ accused wants this court to believe that they had accompanied their co-accused Ramu (since convicted) who was previously servant in the family of the first informant (PW-5), to realise the salary due towards him. It is not disclosed as to what were the arrears of the salary and it is not even stated that the employer/ first informant (PW-5) or his family had refused to pay the alleged salary dues. Above all, it is not disclosed by the appellants/ accused as to why the complainant / first informant (PW-5) and his mother (PW-6) and their maid (PW-3) and their neighbour (PW-2 & PW-12) would falsely implicate them in this case.

12. To say the least, the aforesaid plea taken by the appellants/ accused is quite vague one and is hardly plausible and is not at all sufficient to discard the prosecution case, which has been found to be completely worthy of reliance.

13. In view of the foregoing narration, it is held that the conviction of these two appellants/ accused by the trial court is well justified and is based upon the evidence on record and does not suffer from any illegality or infirmity. Thus, the conviction of these two appellants/ accused is hereby upheld.

14. On the quantum of sentence also, there is no scope for any interference, so far as the sentence imposed upon appellant/ accused Mohd. Farid is concerned, as it is found that the sentence awarded to him for the offence under Section 397 of the IPC is the minimum sentence. However, the sentence of RI for five years awarded to appellant/accused Naresh Mukhia for the offence under

Section 392/34 of the IPC, leaves some scope for reduction of the sentence, as no minimum sentence is provided for the aforesaid offence.

15. The reason put forth for taking a lenient view on the point of sentence qua appellant/accused Naresh Mukhia is that he was aged about twenty two years at the time of this incident and he did not have any criminal record and at the time of the hearing on the point of sentence, it was found that he was married by then and was having a wife and a child to support. This stands noted in the impugned order on sentence. It has been pointed out that as per the '*nominal roll*' of appellant/accused Naresh Mukhia, he has already undergone substantive sentence of two years and two months, out of the sentence of five years awarded to him and his conduct in jail has been found to be satisfactory. By virtue of order of 20th March, 2007 of this court, the sentence imposed upon the appellant stood suspended and as of today, appellant/ accused Naresh is on bail. He has faced the agony of trial and appeal proceedings since November, 2004 in this case. He was not arrested at the spot. While taking into consideration the facts and circumstances of this case, I find it to be a fit case for reduction of the substantive sentence imposed upon appellant/accused Naresh to the period already undergone by him, subject to the enhancement of fine from Rupees One thousand to Rupees Ten thousand only. It is ordered accordingly. In case, the fine which is now enhanced to Rupees Ten thousand only, is not deposited by the appellant/accused Naresh within three weeks from today, he shall have to undergo simple imprisonment for a period of ten months only.

16. The appeal of appellant Naresh Mukhia stands partly allowed to the extent indicated above, whereas appeal of appellant Mohd. Farid stands dismissed.

SUNIL GAUR, J.

January 30, 2009

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