

(2014) 07 DEL CK 0079

In the Delhi High Court

Case No : Criminal Appeal No. 1462 of 2011

Adil

APPELLANT

Vs

State Govt. of NCT of Delhi

RESPONDENT

Date of Decision : 25-07-2014

Acts Referred:

Arms Act, 1959 — Section 25
Penal Code, 1860 (IPC) — Section 392, 397

Citation : (2014) 4 Crimes 40 : (2014) 4 Crimes 320 : (2014) 3 JCC 1857

Hon'ble Judges : S.P. Garg, J

Bench : Single Bench

Advocate : Rakhi Dubey, Advocate for the Appellant; M.N. Dudeja, APR,
Advocate for the Respondent

Judgement

S.P. Garg, J.—The appellant-Mohd. Adil assails a judgment dated 19.08.2011 of learned Additional sessions Judge in Sessions Case No. 19/11 arising out of FIR No. 262/2007 registered at Police Station Welcome by which he was convicted under Sections 392/ 397 IPC and 25 Arms Act. Allegations against the appellant were that he and his associate Gulfan @ Gukran (since acquitted) robbed complainant-Anand @ Sonu on 16.04.2007 at about 07.00 p.m. near metro station wall, Welcome of his mobile phone Tata indicom at knife point. It appears that after investigation, a charge-sheet was submitted against. Mohd. Adil and Gulfan @ Gukran. During the pendency of the trial Adil absconded and was declared Proclaimed offender. The trial against Gulfan @ Gukran resulted in his acquittal. It is relevant to note that the State did not challenge Gulfan's acquittal. After Adil's arrest, a supplementary charge-sheet was filed against him. The prosecution examined seven witnesses to establish his complicity in the crime. In 313 statement, the appellant denied his involvement in the crime and pleaded false implication. He examined DW-1 (Zameel Ahmed) and DW-2 (Wasim) in defence. At the outset, it may be mentioned that the trial court record does not contain the original memos/documents/exhibits. In the absence of original record, the court is not in apposition to appreciate the statements of

witnesses recorded during trial effectively.

2. Admittedly, despite Adil's apprehension at the spot soon after the incident, the robbed article i.e. mobile was not recovered from his possession. PW-1 Anand @ Sonu-complainant disclosed that Adil had robbed his mobile phone at knife point. The other assailant wearing helmet continued to sit on a motorcycle. When he raised alarm after the incident of robbery, the assailant sitting on the motorcycle fled the spot and Adil was apprehended by the police official who happened to arrive there on motorcycle. No number of the motorcycle was revealed by the complainant. Even after apprehension of Gulfan @ Gukran, no motorcycle was recovered in his possession. Even robbed article i.e. mobile was not found in his possession. Gulfan @ Gukran was acquitted as the complainant was unable to identify him. Conflicting version has been given by the prosecution witnesses regarding the circumstances in which the appellant was arrested. PW-3 (Rajeev Vashishth) claimed himself to be on duty at Keshav Chowk Red Light, GT Road when about 07.00 p.m. the complainant, met him and told him about the robbery incident. PW-1 (Anand @ Sonu) did not claim if he had gone to PW-3 (Rajeev Vashishth) to complain about the incident of robbery. His plea from the inception was that at the place of occurrence, his alarm attracted the attention of a police man who was crossing the road on a motor-cycle, along with the other public person. No such other public person has been examined. The complainant did not state if the present appellant after snatching the mobile phone from him had handed over it to his associate on the motorcycle. It has come on record that the prosecution witnesses have given divergent statements regarding the recovery of knife. It is unbelievable that after alarm being raised, the appellant would not hand over the knife to his associate or he himself would not sit on the motorcycle to escape from the spot. It appears that the prosecution witnesses have not presented true facts. It is unclear if "pujari" of the temple was called at the spot as there is different version narrated by PW-2 (HC Sajender Pal) and PW-3 (Rajeev Vashishth) in this regard. In the light of the above discussion, conviction of the appellant cannot be sustained particularly when the original memos/exhibits are not on record. The appellant deserves benefit of doubt and is acquitted. The appeal is accordingly allowed. The appellant be released forthwith if not required to be detained in any other case. Copy of this order be sent to the concerned Jail Superintendent for information and necessary action. Trial court record be sent back along with a copy of this order.