

**THE COURT OF SH. KAPIL KUMAR
METROPOLITAN MAGISTRATE-05, CENTRAL,
TIS HAZARI COURTS, DELHI**

CNR No. DL CT-02-003760-2014

CIS No. 295510/16

State Vs. Dharmender @ Ishan

FIR No. 133/12

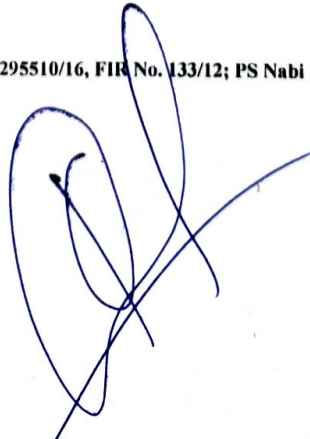
PS. Nabi Karim

U/s. 380/34 IPC

**JUDGMENT
(Through VC)**

- 1) The date of commission of offence : 09/10.06.2012
- 2) The name of the complainant : Ramesh Malhotra
- 3) The name & parentage of accused : Dharmender @ Ishaan
S/o Chander Bhan.
- 4) Offence complained of : 380/34 IPC
- 5) The plea of accused : Pleaded not guilty
- 6) Final order : Convicted
- 7) The date of such order : 09.07.2020

Judgment announced on : 09.07.2020



THE BRIEF REASONS FOR THE JUDGMENT:

- 1) The case of prosecution against the accused is that in the intervening night of 09/10.06.2012 between 10:30 PM to 5:30 AM at first floor of H. no. L 146, Laxman Puri, Nabi Karim, Delhi, he along with his associate Sehjad (since absconding) within the jurisdiction of PS Nabi Karim in furtherance of their common intention committed theft of cash and jewellery (as mentioned in the complaint) from the house of the complainant Ramesh Malhotra.
- 2) After completion of investigation, charge sheet was filed against the accused. In compliance of Sec. 207 Cr.PC, documents supplied to the accused persons. Arguments on point of charge were heard. Vide order dated 21.04.2015, a charge u/s. 380/34 IPC was framed upon the accused, to which he pleaded not guilty and claimed trial.
- 3) In support of its case, prosecution has examined nine witnesses. The accused has not disputed the fact that initially a untrace report was filed in the present case and he was arrested in FIR no. 74/14 PS Nabi Karim. The accused not disputed the report filed by fingerprints expert in which he opined that the fingerprints which were lifted from the house of the complainant matched with that of fingerprints of the accused.
- 4) 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 not to lead DE.
- 5) I have heard the arguments of Ld. APP for State and Ld Counsel for accused persons. I have also perused the record carefully.
- 6) 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.

7) The present case was registered on the complaint Ex.PW1/A given by the complainant Ramesh Malhotra who was examined as PW1 by the prosecution. PW1 deposed that he is a trader of ladies suits and operates his business from the ground floor of the property no. L146, Lakshmanpuri Nabi Karim, Delhi. He deposed that on the day of incident i.e 09.06.2012 he was sleeping on the roof of his house and when he got wake up at around 5:30 AM he saw the articles lying in his room were scattered and his cash amounting to Rs 2.5 Lacs, gold earrings, silver bowls etc were missing. He deposed that he made a call at 100 number (DD no.11A; Ex.PW2/A) and police came at the spot. He deposed that he had given a complaint and crime team came at the spot. He deposed that the crime team lifted various fingerprints from the spot. Complainant deposed that till the fingerprints were lifted he and his family members did not touch anything.

8) Perusal of the complaint and the testimony of the complainant reveals that the complaint was against a unknown person. The complainant or any other person was not able to see the thief. There was no CCTV Footage. However the fact as to the theft in the house of the complainant proved on record by virtue of testimony of PW1.

9) PW3 ASI Pawan Kumar the official from Mobile Crime Team deposed that on the request of HC Phool Charan he developed chance fingerprints from the spot which are Q1 to Q6 and prepared a report regarding the same is Ex.PW3/A. PW4 HC Nafish and PW9 ASI Phool Karan reached at the spot and conducted the investigation. The FIR



Ex.PW5/B was registered vide endorsement on rukka vide DD no. 15 A Ex.PW5/A by the Duty Officer ASI Amir Singh on the basis of rukka sent by HC Phoolkaran through Ct Nafish. PW6 HC Dinesh, clicked the photographs of the spot which are Ex.P1. Efforts were made to trace the accused but of no avail for which the untrace report was filed in the court and the same was accepted by the court on 01.12.2012.

10) After the acceptance of untrace report the investigation of the present case was closed but there occurred a turn of events. The accused Dharmender @ Ishan was arrested by SI Giriraj in FIR no. 74/14 PS Nabi Karim. This fact has not been disputed by the accused. The accused made a disclosure statement in that case FIR qua the present case and on that disclosure statement the further investigation of the present case started by ASI Suresh/PW8 on the instructions of SHO PS Nabi Karim. In FIR no. 74/14 PS Nabi Karim the fingerprints of the accused were taken and the fingerprint report from CRO Ex.PW8/A was prepared. ~~When~~ The fingerprints of the accused which were taken in FIR no. 74/14 PS Nabi Karim were got matched to the fingerprints which were lifted in the present case. The accused was arrested in the present case. Two days police custody remand was taken for apprehending the co-accused and to trace the case property but of no avail.

11) Thus the only incriminating evidence in the present case against the accused is report of fingerprint expert. The fingerprint report Ex.PW8/A is clear that the left middle and right finger impressions of accused Dharmender were found identical with the chance fingerprints Q2 and Q3 which were picked in the present case. This report is dated 20.01.2014 and this document is not in dispute. These fingerprints were taken from the

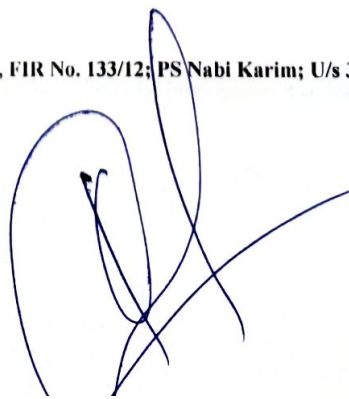


house of the complainant in the year 2012 which got matched in the year 2014. This is very crucial piece of evidence and in the considered opinion of this court is sufficient for the conviction of the accused.

12) The submissions of Ld Defence Counsel that the report of fingerprints expert is planted in the present case has no relevancy. The fingerprints were picked in the year 2012. The crime report along with the fingerprints expert report to the effect that the fingerprints of the suspects not matched were filed in the year 2012 only with the untrace report. The accused was arrested in the year 2014. It is not possible that the police officials knew in the year 2012 only that the accused will be arrested in the year 2014 in some other case and they will file the report in the present case. Any such assumption is completely absurd.

13) The facts proved on record are that in the year 2012 there was a theft in the house of the complainant for which the present case was registered. During the investigation of the present case fingerprints were developed from the house of the complainant and those fingerprints got matched with that of accused when the accused arrested in the year 2014 in some other case of PS Nabi Karim.

14) The accused could not give any explanation as to how his fingerprints came in the house of the complainant on the day of theft. The complainant and the accused were strangers. The fact that the fingerprints of the accused were found in the house of the complainant is in itself a complete circumstantial evidence to conclude that it is the accused only who committed theft in the house of the complainant in the intervening night of 9/10.06.2012.



15) The complainant deposed that his cash and jewellery were stolen from his house. There is no cross-examination of complainant on this aspect. This fact is impliedly admitted by the accused that there was cash and jewellery in the house of the complainant as deposed by him and those articles were stolen.

16) Accordingly, it stands proved that accused committed theft in the house of the complainant in the intervening night of 9/10.06.2012 and removed articles as mentioned by the complainant in his complaint. Accordingly accused is convicted for the offence U/s 380 IPC. Copy of judgment be supplied to the convict free of cost. Be heard on point of sentence.

**Announced through VC
on 09.07.2020**


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