

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

State

Vs.

Rakesh @ Guddu etc.

FIR No. 350/2017

SC No. 75/2018

PS : Nabi Karim

U/s: 452/397/392/34 IPC

1. SC No. of the case : 75/2018
2. Date of commission of offence : 13.11.2017
3. Name and address of accused :
 1. Rakesh @ Guddu S/o Hetram
R/o 7400, Katra, Gali Tel Mill, Nabi
Karim, Delhi.
 2. Rohit S/o Chander Pal R/o
H. No. 7412, Gali Tel Mill,
Nabi Karim, Delhi.
 3. Sushil @ Chuha S/o Sh. Ratan Lal
R/o H. No. 253, Pila Katra Gali Tel
Mill, Nabi Karim, Delhi.
4. Offence complained of : u/s **452/397/392/34** IPC
5. Plea of accused : Pleaded not guilty and claimed
trial.
6. Final order : Convicted
7. Date of institution : 02.02.2018
8. Date of such order : 27.08.2020

JUDGMENT

1. Three accused namely Rakesh, Rohit and Sushil have faced trial for the offence u/s 452/392/397/34 of Indian Penal Code (*hereinafter referred as 'IPC'*), on the allegations that they tres

passed into the room of PW2 Mohd. Tayyab & PW3 Raj Kumar and robbed Rs.300/- from them at the point of knife.

2. The case of the prosecution is that on receipt of DD No. 41 A dated 13.11.2017 at PS Nabi Karim, SI Raj Kumar alongwith const. Mahender reached at the spot i.e. House No. AB-216, Gali Tel Mill, Nabi Karim, Delhi where they found PW2 Mohd. Tayyab, PW3 Raj Kumar Sahni and PW4 Brij Kishore, who had apprehended accused Rakesh. IO SI Raj Kumar recorded the statement (Ex. PW2/A) of PW2 Mohd. Tayyab to the effect that he is a TSR(auto) driver and resides as a tenant in a room of building No. AB-216, Gali Tel Mill, Nabi Karim, Delhi. On 13.11.2017 at about 9.20 p.m. he and his co-tenant Raj Kumar Sahni were present in the room when suddenly all three accused persons namely Rakesh, Rohit and Sushil entered in their room and at that time accused Rohit and Sushil were having knives in their hands. Accused persons started threatening him and Raj Kumar Sahni to hand over their purse and mobile otherwise, they (accused persons) would stab them with knife. Mohd. Tayyab got frightened and handed over Rs.300/- which he was having at that time to accused Rohit. Thereafter, accused Rakesh started demanding money from Raj Kumar. Raj Kumar saw their neighbour Brij Kishore outside the room with whose help accused Rakesh was apprehended. In the meantime, accused Rohit and Sushil ran away from the spot. 100 number call was made and police reached at the spot. On the basis of above allegations FIR u/s 452/392/397/34 IPC

was registered against the accused persons. On 14.11.2017 at 12.30 a.m. accused Rohit was apprehended. On 22.02.2018 accused Sushil was apprehended. They all were formally arrested by the IO. Formalities of their arrest were completed. Their disclosure statements were recorded. The weapon of offence i.e. knives were not recovered.

3. After completion of investigation, the IO filed the chargesheet in the Court of concerned MM who took the cognizance and complied the provisions of Section 207 CrPC. Thereafter, the case was committed to Sessions Court and assigned to this Court. The accused Sushil was arrested later on, therefore, supplementary chargesheet was filed for him before the Ld. MM which was also committed to Sessions and assigned to this Court.

Vide order dated 11.04.2018 charge u/s 452/392/34 IPC was framed against all the three accused and charge u/s 397 IPC was framed against accused Rohit and Sushil to which they all pleaded not guilty and claimed trial.

4. In order to prove its case against the accused persons, the prosecution has examined as many as total 7 witnesses.

Public witnesses/eye witnesses

5. The prosecution has examined three public/eye witnesses to the incident. **PW-2** Mohd. Tayyab & **PW-3** Raj Kumar Sahni are victims of the crime and PW4 is Brij Kishore, neighbour of PW2 and PW3, who reached at the spot during the incident. The FIR

was registered on the statement (Ex. PW2/A) of PW2.

6. **PW2 Mohd. Tayyab** has stated that in the year 2017 he alongwith Raj Kumar Sahni and Brij Kishore used to reside as tenant in building House No. AB-216, Gali Tel Mill, Nabi Karim, Delhi. He used to drive TSR at that time. He has further stated that he does not remember the exact date and time but one year back, since the day when his evidence was recorded (his evidence was recorded on 05.12.2018) at about 9 p.m. he alongwith Raj Kumar Sahni and Brij Kishore was present in his room. In the meantime, accused Rohit and Sushil entered in their room having knives with them and asked them to hand over the money and mobile. At that time he(this PW) was carrying Rs.300/- in his pocket, which he handed over to accused Rohit and told him that he does not use mobile. He tried to come out of the room but the accused did not allow him but on the pretext of natural call he came out of the room and raised alarm. Public persons gathered there. Somebody called police. Public person apprehended one person but he does not remember who was he. He further deposed that accused Rohit and Sushil ran away from the spot. Police recorded his statement Ex. PW2/A.

This witness has turned hostile on the role of accused Rakesh. Therefore, he was cross-examined by Ld. APP who put a specific suggestion that accused Rakesh has also entered into the room but the said suggestion was denied by him. He was also put suggestion that accused Rakesh was apprehended at the spot which

is also denied by him, however, he admitted his signatures on the arrest memo of accused Rakesh Ex. PW2/B and his personal search memo Ex. PW2/C.

7. **PW3 is Sh. Raj Kumar Sahni** who has stated that in the year 2017 he alongwith PW2 Mohd. Tayyab used to reside on rent in a room situated on the first floor of building No. AB-216, Gali Tel Mill, Nabi Karim, Delhi and both of them used to drive auto. On 13.11.2017 at about 9.30 p.m. he and Mohd. Tayyab were present in their room and suddenly all three accused persons tress passed into the room. Accused Sushil was having knife with him which he pointed out towards this PW and PW2 and threatened them to hand over the money and mobile to them otherwise, they will stab them with knife. PW2 Mohd. Tayyab, out of fear, handed over Rs.300/- to accused Rohit. In the meantime, co-accused Rakesh also came near to this PW in order to rob him but he (this PW) saw their neighbour Brij Kishore was passing from in front of the room and on seeing him he raised hue and cry. The accused persons tried to run away from the spot, however, with the help of Brij Kishore accused Rakesh was apprehended whereas other two accused succeeded to run away. PW2 made a call at 100 number. Police reached there. Accused Rakesh was formally arrested by the IO.

8. **PW4 is Sh. Brij Kishore** who has stated that in the year 2017 he was residing as a tenant in a room in property No. AB-216, Gali Tel Mill, Nabi Karim, Delhi. He used to drive auto. PW2 and

PW3 also used to drive auto and were residing in the neighbouring room in the aforesaid property. On 13.11.2017 at about 9 to 10 p.m he (this PW) was passing from in front of room of Raj Kumar Sahni where he saw accused persons in their room. Upon seeing this PW, PW3 Raj Kumar Sahni raised hue and cry and tried to apprehend the accused persons but all tried to run away. However, accused Rakesh was apprehended by them and two other accused persons who were having knives with them ran away. Thereafter, PW2 Mohd. Tayyab made a call at 100 number from the mobile phone of Raj Kumar. Police reached at the spot and recorded statement of this witness.

Police witnesses:-

9. **PW1 is ASI Dinesh Chand**, duty officer, who has stated that on 13.11.2017 he received one ruqqa from const. Mahender, on the basis of which he registered the FIR(Ex. PW1/A) of this case. Ruqqa (Ex. PW1/B) was handed over by him to const. Mahender.
10. **PW5 is const. Mahender** who has stated that on 13.11.2017 on receipt of DD No. 41 A he alongwith SI Raj Kumar reached at the spot i.e. House No. AB-216, Gali Tel Mill, Nabi Karim, Delhi, where they met complainant Mohd. Tayyab alongwith two other persons who had apprehended accused Rakesh. IO recorded the statement of complainant and prepared the ruqqa on the basis of which FIR was registered. IO arrested accused Rakesh, recorded his disclosure statement. IO also arrested accused Rohit. He prepared the site plan, personal search memo and completed all the

formalities of arrest of accused persons.

11. **PW6 is const. Mazid Khan** who has stated that on 22.02.2018 he joined the investigation of this case. Accused Sushil was arrested by IO. IO completed formalities of arrest of accused Sushil.

12. **PW7 is IO SI Raj Kumar** who has stated that on 13.11.2017 on receipt of DD No. 41 A(Ex. PW7/A) he alongwith const. Mahender reached at the spot where they found complainant Mohd. Tayyab alongwith two other persons who had apprehended accused Rakesh. IO recorded statement of complainant. On the basis of statement of complainant, ruqqa was prepared by him and handed over to const. Mahender for registration of FIR. On the basis of ruqqa, const. Mahender got registered the FIR. This PW prepared site plan Ex. PW2/D, arrested accused Rakesh and Rohit. He prepared the pointing out memo of the occurrence.

All the prosecution witnesses were cross-examined by defence counsel.

13. After completion of prosecution evidence, statement u/s 313 CrPC of all three accused persons were recorded in which they pleaded their innocence and stated that they were falsely implicated in this case.

Defence evidence

14. Accused Rohit led his evidence by examining his mother Smt. Manju Rani, as DW1.

15. **DW1 Smt. Manju Rani**, mother of accused Rohit, has stated in her evidence that her husband Sh. Chander Pal had purchased House No. 7412, Gali Tel Mill, Nabi Karim, Delhi in the year 1998 for a sum of Rs.2,00,000/-(Rs. Two Lacs). Her husband and accused Rohit are doing business of repairing of TV and other electronic items from one room on the ground floor of the said house. The house was purchased by her husband from one Sh. Mool Chand and Changi Devi. In one of the room of the house one Sh.Mangal was residing who undertook to vacate the house within a month, however, the room was not vacated by Mangal instead of sold the house to one Smt. Rani @ Triza Rani. Sh. Chander Pal, husband of Manju Rani filed a suit for possession of the said house against said Mangal and Smt. Rani @ Triza Rani which was dismissed by Ld. Civil Judge against which appeal is pending. She has further stated that Smt. Triza Rani is a leader of Congress Party and has good contact with local police of Nabi Karim. Smt. Triza Rani has falsely implicated all sons of this DW in criminal case in connivance with local police. She has relied upon one poster showing connection of Smt. Tirza Rani with Congress party(DW1/1). She has also relied upon the ownership documents of the property Ex. DW1/3 and judgement passed by Ld. Civil Judge as Ex. DW1/2.

16. I have heard Ld. Addl. PP and Sh. M.C. Jain, Ld. Counsel for accused Rakesh and Rohit and Amicus Curiae for accused Sushil.

17. Ld. Addl. PP for the State has argued that prosecution

has succeeded in proving its case beyond reasonable doubt against all three accused. He submitted that all three eye witnesses of the prosecution have supported its case to the hilt on all material aspects that accused persons robbed PW2 and PW3 on the point of knife. He also submitted that recovery of weapon of offence is not fatal to the case of prosecution for offence u/s 397 IPC.

18. Sh. M.C. Jain, Ld. Counsel for accused persons has argued that the prosecution has failed to prove its case against all three accused persons since PW2 Mohd. Tayyab, the one of the star witness of the prosecution, has not supported the case on the relevant points required to be proved by the prosecution. He submitted that PW2 is not at all a reliable witness since in his statement Ex.PW2/A he specified the role of accused Rakesh and also said that accused Rakesh was apprehended at the spot but when he appeared in the Court he gave complete escape route to accused Rakesh, even denied his apprehension at the spot, clearly show that he is not a trust worthy witness. He has also argued that even PW3 Raj Kumar Sahni also did not support the prosecution case as he in his deposition has nowhere stated that at the time of alleged incident accused Rohit was carrying a knife. He has pointed out that PW5 is not an eye witness of the prosecution but he reached at the spot after the incident. Ld. Defence counsel further submitted that the weapon of offence i.e. knife has not been recovered, which also creates doubt on the case of the prosecution. Further argument of

Ld. Defence counsel is that in order to support the ocular evidence, no medical evidence is on record to show that either of the eye witnesses of the prosecution sustained any injuries from the knife allegedly carried by accused persons. He also submitted that accused Rohit and Sushil were not apprehended at the spot but they were arrested later on and IO has not got conducted their TIP in order to prove their involvement in the alleged offence. Ld. Counsel has argued that prosecution has failed to prove that out of three accused booked by them for the alleged incident, who was carrying knife with them, therefore, prosecution has miserably failed to prove the ingredient of Section 397 IPC.

19. I have considered the rival contentions raised by Ld. Addl. PP for the State and Ld. Defence counsel and have also gone through the written arguments filed by the defence. The other material on record is also perused and considered.

20. The first and foremost argument of Ld. Defence counsel that the accused Rohit and Sushil were not arrested at the spot but were arrested later on and the IO after their arrest did not get conducted their TIP, goes against the prosecution and also the argument that the identification of both these accused first time during trial by the prosecution witnesses is a weak piece of evidence, has no merit since non-conducting of TIP is not fatal to the case of the prosecution. The purpose of TIP is only to ensure the investigating agency that their investigation is going on in a right

way. The correct identification of the assailant of the crime during trial in the Court is a substantive piece of evidence and the TIP conducted during investigation is only corroborative to the evidence recorded in the Court. Ld. Counsel has rightly submitted that identification of the accused first time during trial is a weak piece of evidence but there is no straight jacket formula or any settled proposition of law that the conviction cannot be based on the identification of accused first time during trial. Every case depends upon its own facts and circumstances. In the present case all three accused were known to the victim party prior to the incident. PW2 during his cross-examination conducted by Ld. APP for the State has specifically stated that accused Rohit and Sushil were known to him prior to the incident being resident of same gali (street). In the statement (Ex. PW2/A) on the basis of which FIR was registered the name, parentage and addresses of accused persons were given by PW2 also corroborate the version of PW2 that accused persons were known to him prior to the incident. Otherwise also, there is no cross-examination of PW2 that accused persons were not known to the victim party prior to the incident. Thus, the TIP even if would have been conducted during investigation the same would have merely the formality on the part of the IO.

21. The entire case of the prosecution rest upon the testimony of PW2, PW3 and PW4. PW2 and PW3 are victims of the crime and PW4 reached at the spot during the incident. Ld. Defence

counsel has argued that PW2 to PW4 are not trust worthy witnesses as PW2 was declared hostile by the prosecution and PW3 also has not supported the prosecution case for the offence u/s 397 IPC *qua* accused Rohit. *Truly*, PW2 was declared hostile by the prosecution during his deposition in the Court on the role of accused Rakesh and PW3, the other victim of the crime also did not support the case for the offence u/s 397 IPC *qua* accused Rohit. But, it is settled law that the testimony of the hostile witness cannot be completely brushed aside by the Court but can be accepted to the extent it supports the prosecution case. For this reliance is placed on the judgement of Hon'ble Surpeme Court in "**Khujji @ Surendra Tewari Vs. State of MP AIR 1991 SC 1853**". Relevant portion of the judgement is reproduced as under:-

"the evidence of a witness declared hostile, is not wholly effaced from the record and that part of evidence which is otherwise acceptable can be acted upon. It seems to be well settled by the decisions of this Court **Bhagwan Singh Vs. State of Haryana, [1976] 2 SCR 921 ; Rabinder Kumar Dey Vs. State of Orissa, [1976] 4 SCC 233** and **Syed Iqbal Vs. State of Karnataka, [1980] 1 SCR 95** that the evidence of a prosecution witness cannot be rejected in *toto* merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof."

22. In the present case, PW2 and PW3, both victims of the

crime, during deposition in the Court consistently stated that in the year 2017 they were co-tenants in a room of property bearing No. AB-216, Nabi Karim, Delhi, while they were present in the room, assailants of the crime tress passed into the said room and robbed PW2 and while they were in the process of robbing PW3, PW4 Brij Kishore reached at the spot. PW2 during his testimony specifically named accused Rohit and Sushil being assailants of the crime but he tried to give complete escape route to accused Rakesh as he(PW2) did not whisper even a single word against him despite being cross-examined by Ld. APP for the State specifically on the role of accused Rakesh. However, PW3, other victim of the crime specifically deposed in the Court that all three accused Rakesh, Sushil and Rohit tresspassed into their tenanted room and robbed Rs.300/- of PW2 and while they were in the process of robbing him (PW3), PW4 reached at the spot with whose help accused Rakesh was apprehended at the spot. Even, PW2 during his chief examination admitted that one person was apprehended at the spot and accused Rohit and Sushil ran away from there. PW2 also admitted that the arrest memo and personal search memo of accused Rakesh bears his signatures. The silence of PW2 on the role of accused Rakesh becomes inconsequential in view of the deposition of PW3 that accused Rakesh was also one of the assailant of the crime and also in view of the own admission of PW2 that one of the assailant of the crime was arrested at the spot and arrest and personal search memo

of accused Rakesh bears his signatures at point A. The testimony of PW3 regarding the apprehension of accused Rakesh finds corroboration from the deposition of PW4, PW5 and PW7. PW4 has testified during his evidence that while assailants of the crime were trying to rob PW2 he reached at the spot and with the help of PW3 apprehended accused Rakesh. The deposition of PW5 and PW7, both police officials who reached at the spot on receipt of DD Entry, have also stated that when they reached at the spot accused Rakesh was being apprehended by PW2 to PW4. The testimony of PW2 to PW4 is consistent and cogent to be relied upon by the Court that accused persons, facing trial, in November, 2017 trespassed into the tenanted room of PW2 and PW3 and robbed them. Nothing has come in their cross-examination to doubt on their testimony. The defence has not brought anything on record that there was any previous enmity between accused and victim party that they would have been falsely implicated in the present case. Though, accused Rohit led his evidence by examining his mother as DW1 in order to prove that there was some property dispute between family of accused Rohit and one lady Triza Rani who has strong connections with police, therefore, in order to settle the said property dispute the said Triza Rani in connivance with local police of PS Nabi Karim has implicated accused Rohit in this case. The defence led by the accused Rohit is not of any help to him since he did not give even a single suggestion to either of the prosecution witnesses in consonance with the

evidence led by him. Accused Rohit even did not take the stand of his false implication on the ground first time raised by him in his evidence.

23. Accused Rohit and Sushil are also booked for the offence u/s 397 IPC on the allegations that they both were armed with the knives when they trespassed into the room of PW2 and PW3 and robbed them on the point of knife. The knives were not recovered during investigation. The argument of Ld. Defence Counsel that non-recovery of knife is a dent on the case of prosecution has no merit since in "**Ashfaq Vs. State, (2004) 3 SCC 116: 2004 AIR (SC) 1253**" **Hon'ble Apex Court** has held that non-recovery of weapon of offence is not fatal to the case of the prosecution for the offence u/s 397 IPC. Similarly, the arguments of Ld. Defence counsel that as per own case of the prosecution, none has sustained any injury during the incident, clearly show that the knife was not used by either of the accused, therefore, only no MLC of either of the eye witnesses is on record and the same fails the case of the prosecution, also has no legs to stand since in "**Phool Kumar Vs. Delhi Administration., 1975 Cri. LJ 778,**" the Hon'ble Apex Court has held that the "*use*" of deadly weapon mentioned in Section 397 IPC also attracts in a situation if the victim is put into terror to hand over his belongings to the assailant of the crime. In this case PW2 and PW3 have specifically stated that accused persons were armed with the knives which they showed to PW2 and out of fear he (PW2)

handed over Rs.300/- which he was carrying at that time to accused Rohit. In view of the consistent testimony of PW2 and PW3 that accused persons showed the knife to PW2 and out of fear he handed over the money he was carrying at that time to accused Rohit is sufficient to hold that knife was used by the accused persons while robbing PW2. At this juncture, it would be significant to mention that law is not *res-integra* that the knife irrespective of its make whether a kitchen knife or butcher knife, is the deadly weapon for the purpose of Section 397 IPC. Reliance is placed again on "**Phool Kumar**"(supra) and "**Ashfaq Vs. State**"(supra) and also on "**Salim Vs. State (Delhi Administration)**" : (1988) 14 DRJ 85 and "**Ikram Ansari Vs. State (NCT of Delhi) and other connected matters**" : (2014) 8 High Court cases Del 277.

Now, the only question remains for consideration is whether all the accused persons were armed with the knife or only few of them were so armed. As per the chargesheet, accused Rohit and Sushil were carrying knife with them when they entered into the room of PW2 and PW3. PW2 during his deposition in the Court has remained consistent that accused Rohit and Sushil were carrying knife with them when they entered into the room and robbed him at the point of knife. However, PW3, the other victim of the crime, has stated that only accused Sushil was carrying the knife but not accused Rohit. The silence of PW3 *qua* accused Rohit about carrying of knife by him loses his relevance in view of precise deposition of



PW2 and PW4 that accused Rohit was also carrying a knife and used it against PW2. PW2 specifically deposed in his testimony that accused Rohit was carrying knife when he entered into the room and both accused Rohit and Sushil showed their respective knife to him(PW2) and at the point of knife they robbed Rs.300/- from him. Even PW4 Brij Kishore who reached at the spot during the incident also specifically said in his evidence that accused Rakesh was apprehended at the spot and other two accused who were carrying knife ran away from there. The prosecution from the deposition of PW2 and PW4 has succeeded in proving that at the time of incident accused Rohit was carrying the knife and the deposition of PW2 to PW4 is consistent and cogent that accused Sushil was also carrying and they both used the knife at the time of incident on the point of which they both robbed PW2. All the ingredients of Section 397 IPC are proved by prosecution against accused Rohit and Sushil.

24. In view of aforesaid discussion, all three accused are convicted for the offence u/s 452 & 392 IPC and accused Rohit & Sushil are also convicted for the offence u/s 392 r/w section 397 IPC.

Copy of the judgment be sent to concerned Jail Superintendent through e-mail for information and compliance.

Let the matter be heard on the point of sentence on

31.08.2020.

**Announced through VC(Cisco-webex)
on 27.08.2020**


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