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Mohit Rajora @ Gotu vs.state

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Court : Delhi

Decided On : May-31-2019

Appellant : Mohit Rajora @ Gotu

Respondent : State

Judgement :

* % + STATE + IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on:

14. h May, 2019 Decided on:

31. t May, 2019 CRL.A. 74/2017 MOHIT RAJORA @ GOTU ..... Appellants Represented by: Mr. M.C. Sharma, Advocate versus .....

... RESPONDENTS
Represented by: Mr. Ashok Kumar Garg, APP for the State with SI Saurabh, P.S. Govind Puri CRL.A. 362/2017 VINEET GUPTA ..... Appellant Represented by: Mr. Mayank Mukherjee, DHCLSC Mikhail Advocate STATE versus Represented by: Mr. Ashok Kumar Garg, APP for the State with SI Saurabh, P.S. Govind Puri ..... Respondent CORAM: HON'BLE MS. JUSTICE MUKTA GUPTA1 By these appeals, appellants Mohit Rajora @ Gotu and Vineet Gupta challenge the impugned judgment dated 8th December 2016 wherein they were convicted for offences punishable under Section 3
IPC in FIR No.252/2014 registered at PS Govind Puri and the order on sentence dated 16th December 2016 whereby the appellants were directed to undergo

CRL.A. 74/2017 & 362/2017 Page 1 of 8 rigorous imprisonment for a period of five years each and to pay a fine of 2500/- each, in default whereof to undergo simple imprisonment for a period of three months each.

2. Assailing the conviction, Learned Counsel for Mohit submits that the complainant Rajesh Rana in his testimony deposed that none of the accused present in court that is, Mohit Rajora and Vineet Gupta, put the knife on him. He further stated that the offence was committed by the rear seat passengers hence no role has been attributed to the appellant. Furthermore, the appellant was shown to the complainant in the police station before the TIP was conducted. He further points out to the inconsistencies in the testimony of the police witnesses. Ct. Pradeep Kumar in his testimony stated that he could not identify Vineet Gupta due to the lapse of time but when Vineet Gupta was present in court he identified him and stated that the photocopy of the ID Card was recovered from near the Honda Showroom, lying on the ground. Ct. T.C. Babu in his testimony stated that the voter ID Card was recovered from the possession of the appellant. SI Gurjeet Singh, investigating officer in his testimony has stated that the search of Mohit was not conducted at the spot.

3. Learned Counsel for Vineet Gupta submits that the fact that the appellants were actually the victims has been accepted by the complainant in his testimony. Furthermore, the copy of the PAN Card was not found from him rather it was recovered on his pointing out. Mere pointing out does not amount to admission of guilt, pointing out can also be done as a witness. The appellants were also co-passengers who were threatened with dire consequences at the time of the incident.

4. Per contra, Learned APP for the State submits that the sharp injury CRL.A. 74/2017 & 362/2017 Page 2 of 8 sustained by the complainants has been caused by the appellants. The recovery of the ID card has duly been made from the appellants. They have been identified by the complainant in the TIP proceedings.

5. Brief facts of the case are that on 7th March 2014, at about 9:00 P.M., information was received regarding a knife injury at Okhla round about. Aforesaid information was recorded vide DD No.74B (Ex.PW-17/D) and was assigned to SI

Gurjeet Singh. He along with Ct. Sewa Singh reached the spot where he found out that the injured had been removed to Trauma Centre AIIMS. On reaching there they met the injured/complainant and collected his MLC. He recorded the statement of the complainant wherein he stated that he was working as Operation Executive at Dart Mail Courier Company whose office is situated at F-66, Okhla Industrial Area, 2nd Floor, Okhla Industrial Area - I. On 7th March 2014, at around 8:00-8:15 P.M. he was waiting for an auto to go home at Maa Anand Mai Marg opposite Courtsy Honda when one TSR came from M.B. Road side. There were four other persons apart from the auto driver in the TSR. Two of these persons were sitting in front with the auto driver while the other two were sitting on the rear seat. He also sat in between the other two persons on the rear seat to go to Govindpuri Metro Station. After covering some distance when they reached the Red Light at Indira Kalyan Vihar the two persons sitting on his side took out a knife. While holding the knife to his neck they asked him to take out whatever valuables he had. He panicked and took out his mobile phone, wallet and office carry bad and handed it over to them. His wallet contained Rs.100/-, ATM Card, Aadhar Card and a photocopy of his Voter ID Card. His office carry bag contained Rs.4000 and his wifes Voter ID Card and other documents. The person sitting on his left side stabbed him on CRL.A. 74/2017 & 362/2017 Page 3 of 8 his thigh with a knife. After that the boys sitting there told the auto driver to take the auto on the left side of Crowne Plaza Hotel towards Tughlakabad and they threw him out on the side of the road over there. The PCR Van came at the spot and took him to Trauma Centre AIIMS Hospital. The persons who snatched his belongings and showed him a knife were 20-25 years of age. Aforesaid statement was recorded vide Ex.PW-2/A. On the basis of the aforesaid statement, FIR No.252/2014 (Ex.PW-7/A) was lodged at PS Govind Puri for the offences punishable under Sections 394/3
IPC.

6. Clothes of the complainant were seized vide seizure memo Ex.PW- 4/A. On 9th March 2014 the site plan was prepared at the instant of the complainant vide Ex.PW-17/B. On 11th March 2014, SI Gurjeet Singh received information from Special Staff, South District about the arrest of Vineet Gupta who had disclosed about his involvement in the crime and disclosed that his associates who were

both juveniles may be available near Batra Hospital. Aforesaid information was recorded vide DD No.72B (Ex.PW-17/E). Vineet Gupta was arrested vide arrest memo Ex.PW-13/C and his personal search was conducted vide personal search memo Ex.13/D by the Special Staff, South District. SI Gurjeet Singh alongwith SI Rambir and Ct. Ravinder reached near Batra Hospital and the police officials of the Special Staff, South District also reached there alongwith Vineet Gupta. On reaching there Vineet Gupta pointed out to two persons being his associates. They were apprehended and one Nokia mobile phone was recovered from one of them which was seized vide Ex.PW-10/A. The next day Vineet Gupta was arrested in this case vide arrest memo Ex.PW-11/A.

7. On 14th March 2014, on the basis of a secret information, Mohit CRL.A. 74/2017 & 362/2017 Page 4 of 8 Rajora was apprehended from near Peepal Chowk, Madangir. He was brought to the Police Station and arrested vide arrest memo Ex.PW-12/A. His personal search was done vide personal search memo Ex.PW-12/B and his disclosure statement was recorded vide Ex.PW-12/C. A copy of the voter ID card of the complainant was recovered at his instance which was seized vide seizure memo Ex.PW-12/D. Pointing out memo was also prepared at his instance vide Ex.PW-12/E. SI Gurjeet Singh moved an application for TIP of Mohit Rajora but he refused to participate in the same.

8. On 15th March 2014, TIP of Vineet Gupta was held in Tihar Jail where he participated in the TIP proceedings. The complainant duly identified Vineet Gupta in the TIP proceedings.

9. On 21st March 2014, SI Gurjeet Singh along with Vineet Gupta went to the place of incident where pointing out memo was prepared vide Ex.PW- 15/A. Vineet Gupta led him to an old building on Maa Anandmai Marg from where he got recovered a copy of the PAN Card of the complainant which was seized vide seizure memo Ex.PW-15/B.

10. The TSR involved in the robbery was seized by Special Staff which was transferred from PS Saket to PS Govind Puri.

11. On completion of investigation, charge sheet was filed. Charge was framed against Vineet Gupta and Mohit Rajora for the offences punishable under Sections 3
IPC vide order dated 11th August 2014.

12. Rajesh Rana (PW-2), complainant deposed in sync with his statement made before the police. He further added that his mouth was gagged and the person sitting on his left side tried to stab him but he caught hold of that knife. During the snatching he suffered an injury on his left thigh and blood started oozing out. When he raised hue and cry after being thrown out of the CRL.A. 74/2017 & 362/2017 Page 5 of 8 TSR, three ladies came there, out of which one of them called the police on 100 number. In his cross-examination conducted by the counsel for Mohit Rajora he stated that since it was dark at the spot, he could not see the front seat passengers properly. The passengers sitting on the front seat neither gave him beatings nor did they loot him. He further stated that he was called to the police station 3-4 days after the incident where four persons were present along with the Investigating Officer. He identified the accused persons present in court as two out of the four persons present in the police station that day. He further added that the rear seat passengers threatened to kill the other passengers and the driver of the vehicle if the vehicle was not taken according to their instructions.

13. Dinesh (PW-1), stated that he was the owner of the TSR No.DL-1- RP-2232. On 7th March 2014 he gave TSR to Vineet Gupta on rent. After 2- 3 days the police came to him and seized the TSR informing that the TSR had been involved in some crime. The vehicle was released on superdari by the court in his favour vide Ex.PW-1/A. He submitted the copy of the insurance policy vide Ex.PW-1/C and identified the photographs of the TSR vide Ex.PW-1/D and Ex.PW-1/E. In his cross-examination he stated that he had checked the TSR on the day of the incident and he did not find any blood on it.

14. T.U. Siddiqui (PW-3), Mechanical Inspector, stated that on 31st March 2014 he inspected one vehicle TSR (Bajaj) bearing number DL-1-RP-2232. He gave his inspection report vide Ex.PW-3/A wherein he noted as follows: Fresh Damages - i.

Nil ii. Brakes OK CRL.A. 74/2017 & 362/2017 Page 6 of 8 iii. Vehicle on Road 15. SI Sanjay (PW-5), Mobile Crime Team stated that on 26th May 2014 one TSR bearing No.DL-1-RP-2232 was inspected by him at the premises of PS Govindpuri. He gave his inspection report vide Ex.PW-5/A wherein he noted that the on inspection no blood stains were found on the vehicle.

16. Pawan Kumar (PW-9), Ld. MM stated that he conducted the TIP of accused Vineet Gupta vide Ex.PW-9/A on 15th March 2014 wherein the complainant correctly identified Vineet Gupta.

17. Dr. Satya Prakash (PW-6), Senior Resident, Department of Surgery, AIIMS identified the signatures of Dr. Fahad Ansari on the MLC (Ex.PW- 6/A). As per the MLC the following injury was found on the injured - i. Incised wound 3cms X2ms muscle deep incised wound on the lateral aspect of left thigh. The injuries were opined to be simple in nature.

18. Mohit Rajora in his statement recorded under Section 313 Cr.P.C. stated that he was present in the TSR at the time of the incident and Vineet Gupta was driving the TSR. He was sitting on the left side of the TSR driver. He did not snatch anything from Rajesh Rana. Two persons sitting on the back seat had put knife on his neck and asked him to hand over all his valuables. They had also threatened the driver of the TSR to drive the same without stopping otherwise he would face dire consequences. The police lifted him from his house. He refused to participate in the TIP proceedings as his photos were already clicked by the police.

19. Vineet Gupta in his statement recorded under Section 313 Cr.P.C. stated that four persons namely Yash Bhalla, Rahul, Mohit and Sushil were sitting in the TSR driven by him as passengers and he did not know them. CRL.A. 74/2017 & 362/2017 Page 7 of 8 He had voluntarily surrendered before the police and got himself arrested in the case. He got the TSR recovered from the house of the owner where it was parked.

20. As noted above, from the evidence of the prosecution itself, it is evident that Vineet Gupta was the driver of the TSR and Mohit Rajora was sitting on the left side of Vineet Gupta. The allegations of the complainant were against the two

accused persons, who were sitting on his left and right side on the back seat and not against Vineet Gupta who was driving the TSR or the two persons sitting by his side. Merely because the two appellants did not save the complainant when two other accused put the knife on him and snatched money, ATM, Adhar Card etc. and in the absence of any meaningful recovery and any overt act by Vineet Gupta and Mohit Rajora, it cannot be said that they share the common intention to commit robbery with the two other accused who inflicted injury on the complainant and robbed the articles as noted above.

21. In view of the discussion aforesaid, the impugned judgment of conviction and order of sentence are set aside.

22. Appeals are disposed of.

23. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record and intimation to appellants. Appellants are directed to be released forthwith if not required in any other case.

24. TCR be returned. MAY31 2019 vj (MUKTA GUPTA) JUDGE CRL.A. 74/2017 & 362/2017 Page 8 of 8

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