

Delhi District Court

3.Title State vs . Mohd. Daud on 21 January, 2015

Author: Ms. Neha Paliwal

THE COURT OF MS NEHA PALIWAL :
METROPOLITAN MAGISTRATE-03, EAST
KARKARDOOMA COURTS : DELHI

1.

FIR No.	993/2014	
2.Unique Case ID No.	02401R0403822014	
3.Title	State Vs. Mohd. Daud	
3(A).Name of complainant	Abhishek Rai, S/o Sh. Sunder Lal Rai, R/o B-4, IIIrd Floor, Pandav Nagar, Delhi. Permanent R/o 1419, Chander Vihar Colony, Jhansi, (UP).	
3(B).Name of accused	(1) Mohd. Daud, S/o Sh. Abdul Gaffar, R/o H.No. B-315, Gali No.5, Mandawali, Delhi - 110092. (2) Asraf, S/o Sh. Ikhlaq Khan, R/o A-389, Saraswati Gali, Mandawali, Delhi.	
4.Date of institution of challan	12/12/14	
5.Date of Reserving judgment	Not reserved, pronounced on the same date.	
6.Date of pronouncement	21.1.2015	
7.Date of commission of offence	22.10.2014	
8.Offence complained of	Under Section 454/380/411/34 IPC	
9.Offence charged with	Under Section 451/34 IPC and Section 380/34 IPC.	
10.Plea of the accused persons	Pleaded not guilty	
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11.Final order	Both accused persons are convicted for the offence U/s 380/34 and Section 451/34 IPC.	

BRIEF REASONS FOR THE DECISION OF THE CASE:□

1. The present charge sheet was filed before this Court by the officials of PS Mandawali against both the accused persons for the offences U/s 454, 380, 411 all read with Section 34 IPC.

2. Briefly the case of the prosecution is that on 22.10.2014 at about 7.00pm at B□ Third Floor, Pandav Nagar, Delhi, accused Ashraf and Mohd. Daud in furtherance of their common intention to commit theft, committed house trespass in the house of the complainant namely Sh. Abhishek Rai. After committing the house trespass they both committed theft of gas cylinder of HP Company and Laptop Compaq Model 783TU belonging to the complainant. They both were caught with the case

property by the complainant near his house with the help of public. Thus, it is the case of the prosecution that the accused persons have committed the offences punishable U/s 454, 380, 411 all read with Section 34 IPC.

3. In the present matter charge sheet was filed by the IO before the Court on 12.12.2014. Cognizance of the offence was taken against the accused persons on 16.12.2014 and on the very same FIR No. 993/2014 State Vs Mohd. Daud & Others 2 of 17 date the copy of the documents were supplied to the accused persons and after compliance of the provisions of Section 207 Cr.P.C. and after hearing both the parties, charge for the offence punishable U/ss 451 read with Section 34 and 380 read with Section 34 IPC was framed against the accused persons on the same date, to which they both pleaded not guilty and claimed trial.

4. Admission and denial of documents was also conducted on the same date U/s 294 Cr.P.C., vide which accused persons admitted the factum of registration of FIR and lodging of DD No. 47 B dated 22.10.2014, however denying the contents of the said documents. In view of the admission of the accused persons the FIR and DD No. 47 B were exhibited as Ex. P□ and Ex.P□2 respectively.

5. Thereafter, matter was fixed for prosecution evidence.

Prosecution in order to prove its case against the accused in total has examined as many as four witnesses namely PW□ Sh. Abhishek Rai: who is the complainant in the present case, PW□2 HC Sher Singh: who is the IO of the present case, PW□3 Sashank Jain: who is the owner of the laptop, PW□4 Ct. Chhotey Lal: who is the witness of investigation.

6. Prosecution evidence was closed in the present matter vide FIR No. 993/2014 State Vs Mohd. Daud & Others 3 of 17 order of the Court dated 7.1.2015, as it was submitted by Ld. APP for State that all the prosecution witnesses have been examined.

7. Statement of accused persons U/s 313 Cr.P.C. read with Section 281 Cr.P.C. was recorded before the Court on 9.1.2015, wherein all the incriminating materials on record were put to the accused persons. It was submitted by the accused persons that they are innocent and have been falsely implicated in the present matter by the complainant in connivance with the police officials of PS Mandawali. As it was submitted by the accused persons that they do not wish to lead any evidence in their defence, the matter was fixed for final arguments.

8. PW□ Abhishek Rai is the complainant in the present matter. He has deposed that on 22.10.2014 at around 7.00□7.15pm, when he was passing through the stairs and going towards his house he saw that two boys were coming down from the stairs. One of them was having cylinder in his hand and the other one was having a red colour polythene bag in his hand. When he reached his room, he found that the doors of his room were open and on further checking he found that his laptop make Compaq and gas cylinder make HP were missing.

9. It is further deposed by the witness that he immediately FIR No. 993/2014 State Vs Mohd. Daud & Others 4 of 17 rushed towards the street and raised alarm. The said two boys were apprehended by

him in the street with the help of public persons. He found that the said boys were having his stolen laptop and gas cylinder. The witness correctly identified the two accused persons before the Court at the time of his deposition as the persons who were apprehended with his stolen property by him.

10. It was further deposed by the witness that he handed over the accused persons alongwith laptop and cylinder to the police who seized the laptop and gas cylinder vide separate seizure memos Ex. PW□/A and Ex. PW□/B. His statement Ex. PW□/C was also recorded by the police. Police arrested the accused persons vide memos Ex. PW□/D and Ex. PW□/E respectively.

11. It was further deposed by the witness that the stolen laptop belonged to his friend Shashank Jain and he had given the photocopy of the bill of the laptop Mark A to the police. Witness correctly identified the case property i.e. laptop and gas cylinder before the Court as Ex. P□ and Ex. P□ respectively.

12. In his cross examination it was deposed by the witness that when he reached at his room, he found that his room was ransacked and when he checked the place where he used to keep his laptop, he found that his laptop was missing and then he immediately ran FIR No. 993/2014 State Vs Mohd. Daud & Others 5 of 17 towards the kitchen and found that his gas cylinder was also missing. It was further deposed by the witness that Shashank Jain was his room mate and that is why his laptop was kept in his room. It was further deposed by him that though the gas cylinder was possessed by him, however its ownership was not with him. It was further deposed by the witness that his statement was recorded by the PCR Officials and he does not remember as to on how many documents he had signed and the police had recorded the statement of Shashank Jain in his presence.

13. PW□ Sh. Shashank Jain has deposed before the Court that on 22.10.2014 at about 7.30pm, he was called by his friend Abhishek Rai, who informed him that a theft has been committed at his residence. Thereafter, when he reached at the residence, the investigation was going on and he told the police that the laptop which was in possession of the police belongs to him. The witness identified his laptop Ex. P□ before the Court.

14. In his cross examination it was deposed by the witness that his statement was not recorded by the police and he had not put any signatures on any of the documents. It was further deposed that when he reached the spot accused persons were already apprehended.

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15. PW□ HC Sher Singh, is IO of the present case. It is deposed by him that on 22.10.2014, on receipt of DD No. 47 B regarding apprehension of thieves he alongwith Ct. Chhotey Lal went to the spot i.e. at the street outside B□, Pandav Nagar, Delhi where they met with the complainant Abhishek Rai. The complainant handed over two boys who revealed their names as Mohd. Daud and Ashraf and also produced the stolen/recovered gas cylinder and laptop kept in a red polythene to him. It was further deposed by the witness that thereafter he recorded the statement of the complainant Ex. PW□/C, made endorsement on rukka Ex. PW□/A which bears his signatures at

point A and handed over the same to Ct. Chhotey Lal for registration of FIR. Thereafter he prepared site plan Ex. PW□2/B at the instance of complainant and interrogated the accused persons.

16. It is further deposed by the witness that thereafter Ct. Chhotey Lal came back at the spot with copy of FIR and original rukka and handed over the same to him. Thereafter, he seized the laptop and the gas cylinder vide memos Ex. PW□1/A and Ex. PW□1/B and arrested both accused persons vide memos Ex. PW□1/D and Ex. PW□1/E. Thereafter, he conducted the personal search of accused persons vide memos Ex. PW□1/E and Ex. FIR No. 993/2014 State Vs Mohd. Daud & Others 7 of 17 PW□1/F and recorded the supplementary statement of the complainant. Thereafter, he deposited the case property in the malkhana and after completion of investigation filed the charge sheet before the Court. The witness correctly identified the accused persons and the case property Ex. P1 and Ex. P2 as well as photographs of gas cylinder and laptop Ex. PW□1/G (Colly.) before the Court at the time of his deposition.

17. In his cross examination it was deposed by the witness that he had reached at the spot at around 8.00pm after receiving DD No. 47B at around 7.30pm. It is admitted by the witness that in DD No. 47 B, Ex. P□2 it is recorded that one thief has been apprehended. It was further deposed by the witness that only complainant was present at the spot and he has not recorded the statement of any other public person. Though he had asked the public persons to join the investigation but none of them agreed and he did not serve the notice to any public person.

18. PW□4 Ct. Chhotey Lal is witness of investigation. He has deposed before the Court that on 22.10.2014, he alongwith HC Sher Singh went to the spot i.e. D□4, Third Floor, Pandav Nagar, near Hanuman Mandir where one person was apprehended by the public and complainant Abhishek was also present. The name of the FIR No. 993/2014 State Vs Mohd. Daud & Others 8 of 17 person who was apprehended was revealed as Daud. The other person who escaped from the spot was apprehended by HC Kuldeep. Witness correctly identified both accused persons before the court.

19. It was further deposed by the witness that the IO prepared rukka and sent the same through him for registration of FIR and he went to the PS and gave the same to DO for registration of FIR, thereafter he brought the FIR from the PS and gave the same to IO.

20. The witness was cross examined by Ld. APP for State with the permission of the Court on the point of preparation of documents and the witness admitted the fact that the seizure memo of the case properties, the arrest memo of accused persons and their personal search memos were prepared in his presence. The witness also admitted that the IO has prepared the site plan at the instance of the complainant.

21. In his cross examination by the Ld. Counsel for the accused persons it was admitted by the witness that his statement was recorded at PS and he had signed all the documents at PS. It was further deposed by the witness that many public persons were present at the spot, however, the IO had not requested any public person to join the investigation and had not asked any public person FIR No. 993/2014 State Vs Mohd. Daud & Others 9 of 17 whether they had seen the accused persons while entering into the house of the complainant. It was further stated that statement of PW□3 was

recorded in PS.

22. I have heard the final arguments as advanced by the Ld. APP for State and Ld. Counsel for the accused persons.

23. It is a settled legal principle that the prosecution has to prove its case against the accused persons beyond the shadow of all reasonable doubts and has to stand upon its own legs. The prosecution cannot draw any strength from the weakness of the case of the accused. It is also a settled proposition in the criminal law that the accused had a pious right of not to be convicted for an offence which is not established beyond reasonable doubts by the prosecution. The burden of proof in a criminal trial always rests upon the prosecution and the same never shifts on accused.

22. The accused persons in the present case have been charged for the offence punishable U/s 380/34 IPC and Section 451/34 IPC.

Section 380 IPC reads as under: □ Theft in dwelling house, etc. □ Whoever, commits theft in any building, tent or vessel, which building, tent or vessel is used as a human dwelling, or used for the custody of property, FIR No. 993/2014 State Vs Mohd. Daud & Others 10 of 17 shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Section 451 reads as under: □ House □ trespass in order to commit offence punishable with imprisonment - Whoever commits house □ trespass in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to seven years.

Section 34 IPC reads as under:

Acts done by several persons in furtherance of common intention: □ When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

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23. For the purpose of proving of the offence U/s 380 IPC it has to be proved before the Court that a theft was committed by the accused in a building which is used as human dwelling.

24. Section 378 IPC defines the offence of theft and states that if a person intended to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking he is said to commit theft.

25. For the purpose of proving the offence U/s 451 IPC it has to be established before the Court that the accused has committed house trespass in order to commit the offence of theft.

26. In the present case in hand, the complainant had categorically deposed before the Court that he had seen both the accused persons coming down from the stairs with the cylinder and the red colour polythene and when after discovery of the factum of theft in his house he went down stairs and apprehended the accused persons with the aid of public persons, the gas cylinder and the laptop which belonged to the complainant were found in the possession of the accused persons.

27. PW□ has correctly identified both the accused persons as well as the case property i.e. Laptop and gas cylinder before the Court. PW□ has deposed before the Court that the laptop belongs FIR No. 993/2014 State Vs Mohd. Daud & Others 12 of 17 to him. He also identified the case property before the Court as Ex. P□.

28. In the present matter it is argued by Ld. Counsels for the accused persons that in DD No. 47 B:dated 22.10.2014 Ex. P□, it is written that only one thief was apprehended and therefore there is discrepancy in the version of the prosecution witnesses.

29. Perusal of Ex. P□ DD No. 47 B dated 22.10.2014, shows that it is written that theft has been committed in dwelling house after breaking open the locks and one thief has been apprehended. PW□ has deposed before the Court that one thief was apprehended by the complainant and the another who escaped from the spot was apprehended by IO/HC Kuldeep. However, in contrast to these two, it is deposed by PW□ that both accused persons were apprehended by him with the aid of public persons and PW□ i.e. the IO has also deposed that the complainant handed over to him both the accused persons alongwith the case property.

30. Thus, this discrepancy is coming in the version of the prosecution witnesses as well the documents, however, it does not tantamount to be fatal to the case of the prosecution for the reasons that PW□ was even cross examined by Ld. APP for State on the aspect of preparation of documents even after he was given FIR No. 993/2014 State Vs Mohd. Daud & Others 13 of 17 permission to refresh his memory by the Court. In the DD entry it is written that the locks of house were also broken, however, nothing has come in the deposition of witnesses with respect to breaking of the locks.

31. Variations and discrepancies are bound to occur in the testimony of the witnesses when they depose before the Court after a considerable lapse of time. Hardly, one comes across a witness whose evidence does not contain a grain of untruth or an exaggeration, embroideries or embellishments. Merely because in one respect it is unsafe to rely on the testimony of a witness it does not necessarily follow as a matter of law that it must be discarded in all other respects also.

32. Reliance is placed upon Sukhdev Yadav & Others Vs. State of Bihar (2001) 8SCC 86 wherein it has been held 'Once the trustworthiness of evidence stated in a case stands satisfied, the court should not hesitate in accepting the same. If the evidence in its entirety appears to be trustworthy, it cannot be discarded merely on the ground of presence of minor variations in evidence. When the witnesses are examined after a long gap minor contradictions omissions and discrepancies are bound to occur in the testimony of witnesses'. Relying upon an earlier decision in Leela Ram Vs. FIR No. 993/2014 State Vs Mohd. Daud & Others 14 of 17 State of Haryana (1999) 9 SCC 525 it was

observed that there are bound to be some discrepancies between the narrations of different witnesses when they speak on details, and unless the contradictions are of a material dimension, the same should not be used to jettison the evidence in its entirety. Incidentally, corroboration of evidence with mathematical niceties cannot be expected in criminal cases. Minor embellishments, there may be, but variations by reason therefore should not render the evidence of eyewitnesses unbelievable. Trivial discrepancies ought not to obliterate an otherwise acceptable evidence.

33. In the present matter nothing has come on record in order to show that there was any previous enmity between the complainant and the accused persons. There is no reason for any person to implicate a person in a false case unless he has ulterior motive to trap the accused for ulterior gain.

34. Nothing has come in the cross examination of the complainant which can assail his credibility before the Court and his testimony has remained unrebutted and unshackled before the Court. Further the discrepancies regarding the manner of apprehension of accused persons and the places where the documents were prepared are the discrepancies are post the FIR No. 993/2014 State Vs Mohd. Daud & Others 15 of 17 commission of offence and are with respect to the procedure followed in investigation and not with respect to the actual commission of the offence and therefore, does not strike at the root of the matter.

35. Thus, by virtue of testimony of PW□ and PW□ the prosecution has been able to establish that the accused persons have moved the property in possession of the complainant, without the consent of the complainant with the intention to cause wrongful loss to the complainant and wrongful gain to themselves. The place where the theft was committed was the house of the complainant and his friend PW□ and thus was a dwelling house. The accused persons were apprehended on the spot by PW□ alongwith the case property.

36. Nothing has come before the Court which can assail the trustworthiness or credibility of prosecution witnesses with respect to the factum of theft.

37. Thus, it is established before the Court that the accused persons have committed theft in dwelling house of the complainant and for the said purpose have entered the house of the complainant without his consent and therefore, had committed the offence of criminal trespass in order to commit offence of theft. FIR No. 993/2014 State Vs Mohd. Daud & Others 16 of 17

38. The cogent , coherent and consistent testimonies of the witnesses are sufficient to nail the accused persons for the offence of committing house trespass in order to commit the offence of theft and for the offence of committing theft in dwelling house.

39. In view of the above said discussions and findings, the accused persons are convicted for the offence U/s 380/34 IPC and Section 451/34 IPC.

40. Let the Convicts be heard separately on the quantum of sentence.

41. Copy of judgment be supplied to the convict free of cost.

Announced in the
Open Court on 21.1.2015

(Neha Paliwal)
Metropolitan Magistrate,
KKD/Delhi

It is certified that this judgment contains 17 pages and each page bears my signatures.

(Neha Paliwal) Metropolitan Magistrate, KKD /Delhi 21.1.2015 FIR No. 993/2014 State Vs Mohd. Daud & Others 17 of 17 FIR No. 679/2014 PS Mandawali U/s 380/451 IPC State Vs Daud 16.10.2014 Order on sentence.

Present: Ld. Substitute APP for State.

Convict Daud present with LAC Sh. Sanjeev Kumar. Arguments were heard on the last date of hearing. It was argued by the Ld. Counsel for the convict that the convict is aged about 22 years and has an old aged mother to support. It is further submitted that accused has been in custody in the present matter from 18.7.2014 till 20.8.2014. It is further submitted that an opportunity be given to him to reform himself.

Per contra it is submitted by Ld. APP for State that maximum punishment be given to the convict as prescribed under law.

Submissions heard. Record perused.

In the present matter convict has remained in custody from 18.07.2014 till 20.08.2014 and has remained in custody for a period of approximately 1 month and 3 days.

The convict has been convicted for committing theft of purse FIR No. 993/2014 State Vs Mohd. Daud & Others 18 of 17 containing Rs.500/□ and identity cards from a dwelling house after committing criminal trespass with the intention to commit theft.

Sentencing is a delicate act in which the court is required to take the over all view of the facts and circumstances of the case and the court cannot be oblivious of the fact that the sentence should serve the purpose of serving society at large. The Court is required to maintain fine balance amongst the preventive, deterrent and reformatory approach.

In view of the same, keeping in view the amount of the property for which the convict has been convicted and the age of convict and the fact that he has already undergone a period of 1 month and 3 days in custody he is sentenced to the period already undergone and is further sentenced to pay a fine of Rs. 2000/□

Fine paid. Receipt be given.

File be consigned to record room.

(Neha Paliwal) MM 3 (E)/KKD: Delhi/16.10.2014 FIR No. 993/2014 State Vs Mohd. Daud & Others 19 of 17