

**IN THE COURT OF JUDICIAL MAGISTRATE FIRST
CLASS-08 (CENTRAL), TIS HAZARI COURTS : DELHI**

PRESIDING OFFICER: MS. SAYESHA CHADHA, DJS

FIR No. 294/22
PS : Chandni Mahal
U/s 380/454/511 IPC
State vs. Ripan

Date of Institution of case: 03.10.2022

Date when Judgment reserved: 15.07.2024

Date on which Judgment pronounced: 15.07.2024

J U D G M E N T

A. Case No.	: 13500/2022
B. Date of Institution of Case	: 03.10.2022
C. Date of Commission of Offence	: 21.08.2022
D. Name of the complainant	: Sh. Ahsan
E. Name of the Accused	: Ripan s/o Sh. Ishaq
& his parentage and residence	R/o Vagabond, Taimoor Nagar, Delhi.
F. Offences complained of	: U/s 380/454/511 Indian Penal Code
G. Plea of the Accused	: Pleaded not guilty
H. Final order	: Acquittal
I. Date of such order	: 15.07.2024

Brief statement of reasons for decision of the case:

1. The case of prosecution in brief is that on 21.08.2022 after

1.00 pm, at H. No. 2814, First Floor, Shankar Gali, Turkman Gate, Delhi, falling within the jurisdiction of PS Chandni Mahal, accused had attempted to commit house breaking by entering into the house of complainant Mohd. Ahsun and was apprehended at 3.30 pm at the above mentioned place while breaking the lock of main gate with screw driver / pechkas which were recovered from his possession vide seizure Mark X and thereby committed an offence punishable u/s 380/454/511 Indian Penal Code, 1860 (hereinafter called as IPC).

2. Upon conclusion of investigation, a final report was filed before the court on 03.10.2022 against the accused. Cognizance of offence punishable u/s 380/454/511 IPC was taken. Upon summoning, the accused appeared and copies of charge sheet were supplied to the accused in compliance of Section 207 of The Code of Criminal Procedure, 1973 (hereinafter called as Cr.P.C). Thereafter, charge for offence punishable u/s 380/454/511 IPC was framed against the accused to which he pleaded not guilty and opted for trial.

3. Thereafter, the prosecution was given the opportunity to substantiate the allegations against the accused. The prosecution examined 5 (five) witnesses in support of its case:

4. **PW-1 Mohammad Ahsun** has deposed in his examination-in-chief that on 21.08.2022, he was residing at above said address with his family. At that time, he was studying in 12th standard. On that day, at about 1.00 pm, he along with his mother and sister went

to market and came back at around 3.30 pm. When he came back, he saw that one unknown person was trying to break the lock of the main gate of his house with the screw driver to commit theft in his house. Thereafter, they started shouting and apprehended the accused at the spot and brought him down. In the meanwhile, public gathered at the spot and gave beatings to accused. He called at 112 and after some time, police officials came at the spot. On enquiry, the name of accused was revealed as Ripan. He handed over the custody of the accused and the screw driver to the police official. He recorded his statement Ex.PW1/A bearing his signature at point A and got the FIR registered. IO also called the inspection team at the spot who inspected the spot and took photographs of the gate. IO prepared the site plan at his instance Ex.PW1/B bearing his signature at point A. IO seized the screw driver vide seizure memo Ex.PW1/C bearing his signature at point A. IO arrested accused vide arrest memo Ex.PW1/D and carried out personal search of accused vide memo Ex.PW1/E both bearing his signature at point A. IO recorded his supplementary statement u/s 161 CrPC and he was discharged. He has correctly identified accused. Photographs of the main gate which accused was trying to break were shown to the witness and the witness correctly identified the photographs Ex.P-1. MHCM produced the case property in a white transparent polythene bearing the details of the present case which was stapled. The same was opened and found containing one white pullanda bearing the details of the present case duly sealed with the seal of

PK. The seal broken and pullanda was opened with the permission of the court. The witness has correctly identified the screw driver Ex.P2 which was recovered from his possession on the date of incident.

During cross-examination of the witness by Ld. LAC for the accused, PW-1 stated that he signed on some documents at the spot and on some documents at the PS. He cannot say on which document he signed at the spot or PS. No public person was present at the spot at the time when he reached his home where the accused was trying to break the locks. He admitted that the spot was residential area and incident took place at about 3.30 pm. He also admitted that police officials visited again for investigation. He also admitted that police officials had not asked public person neither neighbours to join the investigation in his presence. There was no CCTV camera installed near the spot. He also admitted that nothing was stolen by the accused. Accused was trying to break the locks of main gate of his house when he came back. 2-3 police officials remained at the spot for about 15-20 minutes. He never reached to PS nor he signed any document except the day of incident.

5. **PW-2 SI Naresh** has deposed in his examination-in-chief that on 21.08.2022, he was posted as SI at Mobile Crime Team Paharganj at Central District, Delhi. On that day, after receiving the information from the control room, he alongwith HC Yogesh Kumar (Photographer) went to the spot i.e. H.No.2814, Ist Floor,

Shanker Gali, Turkman Gate, Delhi. They reached at the spot at about 05:55 pm. No chance prints were obtained from the wooden door and Iron door of the main entrance abovesaid house. HC Yogesh Kumar who was photographer had taken the photographs of the above said doors of the above said house in his presence. They remained at the spot till 06:20 pm. He prepared the seen of crime inspection report bearing number 649/2022 Ex.PW-2/A bearing his signature at point A and handed over the same to IO. IO recorded his statement u/s 161 CrPC and he was discharged. At this stage, the photographs of iron and wooden doors shown to the witness and the witness has correctly identified the same Ex.P-1.

During cross-examination of the witness by Ld. LAC for the accused, PW-2 admitted that the incident of attempt to theft was not carried out in his presence. He also admitted that no chance prints were recovered from the spot.

6. **PW-3 HC Rajveer Bugalia** has deposed in his examination-in-chief that on 21.08.2010, he was posted as HC at PP Turkman Gate, PS Chandni Mahal. On that day, he was on emergency duty from 8.00 am to 8.00 pm. On that day, after receiving DD No.47A Ex.A4 at about 4.16 pm, he along with IO / ASI Parmod Kumar went to the spot ie., H. NO.2814, First Floor, Shankar Gali, Turkman Gate, Delhi. On reaching the spot, they met the complainant Mohd. Ahsun and he handed over the custody of the accused and his name on enquiry was revealed as Ripan and one

screw driver (pechkas) colour green and made of steel to the IO. IO kept the screw driver in a white cloth and prepared pullanda and sealed with the seal of PK. IO seized the case property vide seizure memo Ex.PW1/C bearing his signature at point B. IO called the crime team at the spot and recorded the statement of complainant Ex.PW1/A and prepared the tehrir / rukka and handed over the same to him at about 8.30 pm. Accordingly, he went to the PS Chandni Mahal and got the FIR registered and came back at the spot at about 10.40 pm and handed over the copy of FIR and original rukka to the IO. IO arrested accused vide memo Ex.PW1/D and carried out personal search of the accused vide memo Ex.PW1/E both bearing his signatures at point B. IO recorded disclosure statement of the accused vide memo Ex.PW3/A bearing his signature at point A. IO recorded the supplementary statement of complainant. Accused was taken to the LNJP hospital for medical examination and was later on put behind the bars in the lock up in the PS Chandni Mahal. IO deposited the case property in malkhana. He along with IO came back to PP Turkman Gate and he recorded his statement u/s 161 CrPC. He has correctly identified accused. Photograph of main gate which accused was trying to break shown to the witness and the witness has correctly identified the photographs Ex.P1. He can identify the case property i.e., screw driver if shown to him. The case property exhibited as Ex.P2.

During cross-examination of the witness by Ld. LAC for the accused, PW-3 admitted that incident did not take place in his

presence and he was not the eye witness of the incident. He arrived at the spot at about 4.20 pm. He left with rukka for registration of FIR at about 8.30 pm. He came back at the spot at about 10.40 pm. He finally left the spot at about 11.00 pm. He admitted that there were residential houses adjacent to the house of complainant. He also admitted that few public persons were present at the spot but he does not know whether they were resident of society or not. Complainant has not mentioned the time of incident to him. The same was narrated by the complainant to the IO. He also admitted no public person was joined the investigation by the IO and no notice served upon them in his presence. All the relevant documents regarding the investigation were prepared at the spot. No CCTV camera installed at the spot. IO had not taken any photograph of the accused along with the case property i.e., screw driver. The screw driver was recovered from the accused. He also admitted that no stolen property was recovered from the accused. He had not made any arrival and his departure entry going to the PS along with rukka and of coming back after registration of FIR at the spot.

7. **PW-4 ASI Pramod Kumar** has deposed in his examination-in-chief that on 21.08.2010, he was posted as ASI at PP Turkman Gate, PS Chandni Mahal. On that day, he was on emergency duty from 8.00 am to 8.00 pm. On that day, after receiving DD No.47A Ex.A4 at about 4.16 pm, he along with HC Rajveer went to the spot ie., H. NO.2814, First Floor, Shankar Gali, Turkman Gate, Delhi.

On reaching the spot, they met the complainant Mohd. Ahsun and he handed over the custody of the accused and name of accused on enquiry was revealed as Ripan and one screw driver (pechkas, handle colour green made of plastic and rod made of steel) to him. He kept the screw driver in a white cloth and prepared pullanda and sealed with the seal of PK. He seized the case property vide seizure memo Ex.PW1/C bearing his signature at point C. He called the crime team at the spot and recorded the statement of complainant Ex.PW1/A bearing his signature at point B and prepared the tehrir / rukka Ex.PW4/A bearing his signature at point A and handed over the same to HC Rajveer at about 8.30 pm. Accordingly, he went to the PS Chandni Mahal and got the FIR registered and came back at the spot at about 10.40 pm and handed over the copy of FIR and original rukka to him. He prepared the site plan at the instance of complainant Ex.PW1/B bearing his signature at point B. He arrested the accused at about 10.45 pm vide memo Ex.PW1/D and carried out personal search of the accused vide memo Ex.PW1/E both bearing his signature at point C. He recorded the disclosure statement of the accused vide memo Ex.PW3/A bearing his signature at point B. He recorded the supplementary statement of complainant and he was discharged. Accused was taken to the LNJP hospital for medical examination of the accused and was later on put behind the bars in the lock up in the PS Chandni Mahal. He deposited the case property in malkhana. He recorded the statement of HC Rajveer and he was discharged. SI Naresh handed over the

scene of crime report along with photograph of the spot taken by HC Yogesh Kumar and the same exhibited as Ex.PW2/A and Ex.P1. He recorded the statement of crime team and they were discharged. On completion of investigation, he filed the charge-sheet before the concerned court. He has correctly identified the accused. Photograph of main gate which accused was trying to break shown to the witness and the witness has correctly identified the photographs Ex.P1. He can identify the case property i.e., screw driver if shown to him. The case property exhibited as Ex.P2.

During cross-examination of the witness by Ld. LAC for the accused, PW-4 stated that he admitted that incident did not take place in his presence and he was not the eye witness of the incident. He along with HC Rajveer arrived at the spot at about 4.25-4.30 pm. He finally left the spot at about 11.00 pm. He also admitted that there were residential houses adjacent to the house of complainant. He asked 4-5 public persons to join the investigation but all of them refused by giving their reasonable excuses without disclosing their names and addresses. Due to paucity of time, no notice could be served upon them. All the relevant documents regarding the investigation were prepared at the spot. No CCTV camera installed at the spot. He had not taken any photograph of the accused along with the case property i.e., screw driver. He had not collected any chance print from the case property, however, the crime team which was called at the spot by him had taken photographs of the spot. He admitted that no stolen property was

recovered from the accused.

8. **PW-5 HC Yogesh** has deposed in his examination-in-chief that on 21.08.2022, he was posted as Head Constable/photographer at Mobile Crime Team, Central District, Pahar Ganj. On that day, after receiving information, he alongwith SI Naresh Kumar, reached at the spot i.e. House No.2814, First Floor, Turkman Gate, Delhi, at about 05:55 PM. On reaching the spot, they came to know that house breaking was attempted at the said house. He took the photographs of the spot from his Govt. camera. He alongwith SI Naresh Kumar stayed at the spot till 06:20 PM and SI Naresh (Finger Print Expert) handed over the scene of crime report (SOC report) to the IO. IO recorded his statement on 30.08.2022 and he was discharged. Photographs of the spot which were handed over to the IO shown to the witness and the witness has correctly identified the same by stating that he clicked the photographs and handed over the same to the IO Ex.P1.

During cross-examination of the witness by Ld. LAC for the accused, PW-5 stated that he admitted that incident did not take place in my presence. He also admitted that the accused was not present at the spot when he reached there. He also admitted that IO did not join any public person in the investigation in his presence. He also admitted that he had no knowledge about the facts of the present case except that the house breaking was attempted at the alleged spot and photographs of the spot were taken by him. He

also admitted that he does not have any knowledge regarding who attempted the alleged house breaking.

9. Vide separate statements of the accused recorded u/s 294 CrPC, the accused admitted the factum of registration of FIR Ex.A-1, certificate u/s 65 B Ex.A-2, endorsement Ex.A-3 and DD No. 47A Ex.A-4 without admitting the contents of the same.

10. The prosecution evidence was closed on 04.01.2024 and the statement of the accused was recorded under Section 313 read with section 281 of CrPC on 14.03.2024, wherein he pleaded his innocence and stated to have been falsely implicated. The accused has not opted to lead defence evidence. Final arguments were heard. I have cogitated over the submissions made by ld. APP for the state and Ld. Counsel for the accused person.

DISCUSSION, DECISION AND REASONS THEREON:

11. I have heard the arguments addressed by the Ld. APP for state and the Ld. LAC for the accused and carefully perused the documents on record.

12. In order to ensure seamless appraisal of evidence, the following point of determination has been framed

1. Whether the accused Ripan on 21.08.2022, at the alleged time and place, attempted to commit house breaking and theft in the dwelling house of the complainant by breaking the lock of his main gate.

13. The onus to prove the same, beyond reasonable doubt, shall be on the prosecution. The sine qua non to prove the charges of 380/454/511 IPC, is to establish the presence of the accused Ripan at the scene of crime on the alleged date and time of incident.

14. PW-1 in his examination-in-chief as well as in his statement (rukka Ex.PW1/A) submitted to the police officer has categorically stated that, on the day of the offence, he had gone to the market along with his mother and sister. When they came back at around 3.30 pm, the complainant saw that an unknown person was trying to break open the lock of his main gate. However, the prosecution has not examined the mother and sister of complainant as witnesses. In fact, the site plan Ex.PW1/B is eloquent of the fact that the scene of crime is a residential area, however, no public witnesses have been made part of the investigation. PW-1, PW-3 and PW-4 in their cross-examination had admitted the presence of public persons at the spot, however, it is a matter of record that neither any notice was served to them nor their names have been recorded. At this juncture, it is important to mention the case **titled as Sonu v. The State (Government of NCT), Delhi High Court [CRL.A. 633/2020] on September 6th, 2021**. The court in its decision held that

“it was imperative for the prosecution to cite independent public witnesses but none was produced. It is also worthwhile to note that evidence in the present case is replete with statements that public persons were present at the time of incident and also at the time of arrest. However, for both occasions, no public witness has been cited. In fact, the first information about the quarrel was given by a third person from mobile number 9213970007, which resulted in recording of DD No. 69B. In the

entire evidence, there is not even a whisper of any efforts having been made to trace the caller.”

Further the court also held that “in the facts of the case, the deposition of such independent witness would have lent a much-needed corroboration to the prosecution case and assured fairness in the conduct of the Investigating Officer. The non-examination of any independent witness has seriously impaired the credibility of the prosecution case.”

15. The presence of the accused at the scene of crime also comes under suspicion since no CDR or CCTV footage has been made part of the charge-sheet. No photographs of accused along with the case property were taken from the alleged scene of crime. It has been categorically admitted by PW-2 that no chance prints were obtained from the door of the house.

16. There is nothing on record to fortify the claims of the prosecution that can establish the presence of the accused at the spot. PW-2, PW-3 and PW-4 have admitted that they are not the eye witnesses to the alleged offence. Merely on the basis of the testimony of the complainant which has not been corroborated by other evidences on record, the prosecution has not been able to prove the presence of accused at the spot.

17. Since, in order to commit to house breaking as well as theft in dwelling house, it is essential for the accused person to be present on the spot, the prosecution has not been able to discharge its onus beyond reasonable doubt. Therefore, the ingredients of offence u/s 380/454/511 IPC against the accused have not been proved.

18. Hence, the accused **Ripan s/o Sh. Ishaq** is entitled to be acquitted of the said charges u/s 380/454/511 IPC.

19. File be consigned to record room after due compliance.

Announced in the open court

today i.e., 15.07.2024.

(SAYESHA CHADHA)
Judicial Magistrate First Class-08
Central District, Tis Hazari
Courts/Delhi

[This judgment contains 14 pages and each page bears the initials of undersigned and the last page bears the complete sign of undersigned.]