* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ Crl.A.No.971/2004

% Reserved on: 19th February, 2010
Date of Decision: 24th February, 2010

\# RAJINDER KUMAR ..... Appellant
\! Through: Mr. Rakesh Kumar and
Mr. Naval Kishor, Advs.

versus

$ THE STATE ..... Respondent
^ Through: Mr.Jaideep Malik, APP

Crl.A.No.16/2005

\# NARINDER ..... Appellant
\! Through: Mr. Rakesh Kumar and
Mr. Naval Kishor, Advs.

versus

$ THE STATE ..... Respondent
^ Through: Mr.Jaideep Malik, APP

Crl.A.No.258/2005

\# SIKANDER ..... Appellant
\! Through: Mr. Rakesh Kumar and
Mr. Naval Kishor, Advs.

versus

$ THE STATE ..... Respondent
^ Through: Mr.Jaideep Malik, APP

Crl.A.No.741/2005

\# RAKESH & PAPPU ..... Appellant
\! Through: Mr. Ravindra Narayan

versus

$ THE STATE ..... Respondent
^ Through: Mr.Jaideep Malik, APP

* **CORAM:**
HON'BLE MR. JUSTICE V.K. JAIN

1. Whether the Reporters of local papers may be allowed to see the judgment? YES

2. To be referred to the Reporter or not? YES

3. Whether the judgment should be reported in the Digest? YES

: V.K. JAIN, J.

1. By this common judgment, I shall dispose of all the four appeals referred above which are directed against the Judgment dated 6th November, 2004 and Order on Sentence dated 9th November, 2004, whereby all the appellants were convicted under Section 392/34, 394 and 506 of IPC and the appellant Rakesh was also held guilty under Section 397 of IPC and Section 25 of Arms Act. All the appellants were sentenced to undergo RI for 10 years and to pay fine of Rs.5,000/- or to undergo RI for 6 months each in default under section 392/34 of IPC and were further sentenced to

undergo RI for 5 years each and to pay fine of Rs.2,000/- each or to undergo imprisonment for four months each under Section 394 IPC. They were also sentenced to undergo RI for 3 years and to pay fine of Rs.1,000/- each or to undergo RI for three months in default under Section 506 of IPC. The appellant Rakesh was sentenced to undergo RI for 7 years and to pay fine of Rs.3,000/- or to undergo RI for 4 months in default under Section 397 of IPC and to undergo RI for three years and to pay fine of Rs.1,000/- or to undergo RI for three months in default under Section 25 of Arms Act.

2. On the night intervening 29/30th December, 2003, on receipt of copy of DD No.26-A regarding car No.DL2CA 5531 with four persons in it, having been intercepted near Sultanpuri Crossing, the IO of this case reached the spot, where ASI Jaslin Kongari of Police Control Room produced the appellants before him and informed that they had been caught with stolen goods on the identification of the complainant Sunil and his companion Manoj. The articles produced by ASI Jaslin Kongari and one knife were also seized from him. He also found that Registration No. DL9C 2337 had been etched on the glasses of the car, whereas the

number plate fixed on it bore Registration No. DL2CA 5531.

3. In his complaint to the IO, Sunil Arora stated that on 29th December, 2003, he alongwith his companion Manoj, was standing at Peeragarhi Chowk at about 11.30 pm. One Maruti car No.DL2CA 5531 stopped near them. Two boys, including driver, were sitting in the car and were asking for passengers for Bahadurgarh, Sapla and Rohtak. Since they agreed to drop the complainant and his companion to Bahadurgarh, they occupied the rear seat of the car. Two more boys, who were present on the bus stop, also joined them on the rear seat of the car saying that they had to go to Rohtak. When they reached ahead of Nangloi, the persons sitting on the right side of the car, took out a knife, put it on his neck and asked him to take out whatever he had. When the complainant avoided handing over his belongings to him, that person gave a knife blow to him which the complainant was able to avert. The person, who was sitting on the left side of Manoj, gave a fist blow to him. Having got scared, the complainant handed over his mobile phone, wrist watch and Rs.4700/- in cash, whereas Manoj handed over his gold chain, mobile phone and gold ring, which he was wearing,

and Rs.2500/- in cash to them. The car driver then stopped the vehicle at a deserted road. The complainant and his companion Manoj were brought out of the car and were searched. The robbers then sped away in the car, after threatening to kill the complainant and his companion. When the complainant and his companion were coming out of the road on which they were left, they noticed a PCR van coming on the road. They narrated the incident to the police officials travelling in the PCR van with them. When they reached near Police Station, it came to be known that one car No.DL2CA 5531 had been stopped near Sultan Puri Railway Crossing by another PCR van. When they reached near Sultan Puri railway crossing, they found car No.DL2CA 5531 and four persons whose names came to be known as Narinder, who was driving the car, Rajinder, who was sitting on the front seat with the driver, Rakesh, who was sitting with the complainant and Sikander, who was sitting with Manoj.

4. The complainant Sunil came in the witness box as PW-4 and stated that on 29th December, 2003 when he was standing on the bus stand of Peeragarhi Chowk, at about 11.30 pm, alongwith his friend Manoj, waiting for the bus,

and finding no bus coming, they were intending to take lift in the vehicle. One Maruti car came near them. Two persons, including driver, were sitting in the car. They agreed to leave them at Bahadurgarh. Thereupon, he alongwith his friend Manoj, sat in the car. Two persons, who were standing at the bus stand, also sat with them saying that they wanted to go to Rohtak. When they reached near Nangloi, the person, who was sitting with him, put a knife on his neck and asked him to hand over whatever he had. When he refused, that person tried to give a blow to him with a knife which he was able to avert. The person who was sitting on the side of Manoj, then gave a fist blow on the mouth of Manoj. Being afraid, he handed over his mobile phone, Ex.P-1, cash amounting to Rs.4700/- and wrist watch Ex.P-2 to them, whereas Manoj handed over his gold ring, gold chain, mobile phone and cash amounting to Rs.2500/- to them. The complainant identified all the four appellants and stated that the appellant Narinder was driving the Maruti car, whereas Rajinder was sitting on the front seat. Rakesh, according to him, was the person, who had put knife on his neck, whereas Sikander was the person who was sitting with Manoj and had given fist blow to

him. He further stated that after turning on a Mundka-Finari road, those persons took them out of the car, searched them and left after threatened to kill them in case they disclosed the incident to anyone. When they were coming at G.T. road, they saw one PCR van coming there and narrated the incident to PCR officials who immediately flashed the message about the incident on the wireless. When they were coming towards Police Station Nangloi in PCR van, the officials received a message that a Maruti car had been stopped near Sultan Puri Railway Crossing by another PCR van. PCR officials took them to that place where all the four accused were found standing with police officials. On their search by police officials, his mobile phone was recovered from the possession of the appellant Narinder, whereas his watch and cash amounting to Rs.4700/- was recovered from the possession of Rakesh. The mobile phone of Manoj was recovered from the appellant Rajinder, whereas his ring, chain and cash amounting to Rs.2500/- from the possession of Sikander. He has further stated that Maruti car was seized by the police vide memo Ex.Pw-4/h which bears his signature at point-A. He further stated that knife Ex.P-4 was also

recovered from the possession of the appellant Rakesh, after other police officials reached the spot.

5. Manoj, companion of the complainant, came in the witness box as PW-5 and corroborated the version given by the complainant. He also stated that he sustained injury on his lower lip when the appellant Sikander gave a fist blow to him. He identified his mobile phone Ex.P-5, gold ring, Ex.P-6 and chain Ex.P-7. He also identified the knife which was recovered from the appellant Rakesh.

6. PW-1 ASI Jaslin Kongari stated that on 29th December, 2003, he was in charge of PCR van P-65 and was on duty from 8.00 pm to 8.00 am. At about 12.45 pm, he received a message on wireless about robbery by four boys travelling in Maruti car No.DL2CA 5531. At that time, his van was parked at Nangloi Chowk. He saw one Maruti car of white colour coming from Haryana side towards Delhi and directed his driver to chase that car. He also noticed that the number of the car tallied with the number given in the wireless message. He got the car stopped and informed the control room. Another PCR van reached there, with two boys who had been robbed by these four boys of Maruti car. On his direction,

Constable Samarveer Singh conducted their personal search to ascertain arm in their possession. In the meantime, senior police officials also reached there and on the directions of SI Dariao Singh, the boys were searched again and one gold chain, one mobile phone were recovered from the possession of Sikander, whereas Rs.3100/- or Rs.2100/- in cash were revered from Rakesh besides one buttondar knife. Cash amounting to Rs.4700/- recovered from the possession of Sikander. Four mobiles were also recovered from the possession of accused persons. Out of them, two belonged to the complainant and his companion. The witness has identified the Nokia phone Ex.P-1, wrist watch, Ex.P-2, knife, Ex.P-4, other mobile phones Ex.P-5, gold chain, Ex.P-6, gold chain, Ex.P-7, besides currency notes.

7. PW-6 Head Constable Suresh Kumar was posted in MHCM, Police Station Nangloi on 30th December, 2003. He stated that on that date, case property, including one Maruti car, was deposited in Malkhana and the relevant copies of the registers are Ex.PW-6-A/B. PW-7 Shakti Singh produced the record relating to PCR vehicle No.69 and 65 and stated that as per record, vehicle No.P-65 was under charge of ASI Jaslin

Kongari, whereas PCR van P-69 was under the charge of Ram Prakash.

8. PW-8 Ashok Kumar was on duty in PCR P-69 in the night intervening 29/30th December, 2003. He stated that about 12.18 am when they reached Mundka-Figni Road, they saw two boys running towards their vehicle. The information given by those boys about robbery with them by four persons was flashed on by them on wireless and they went towards Police Station Nangloi alongwith those boys. In the meantime, they received a wireless message from P-65 regarding one Maruti car with four boys in it having been intercepted. Thereafter, they went to Railway Crossing Sultan Puri where they saw the accused persons in the custody of police officials. PW-9 Head Constable Ram Prakash, who was the in-charge of PCR van P-69 on 29th December, 2003, has corroborated testimony of PW-8. He also identified the knife Ex.P-4 which was seized in his presence and identified all the four accused present in the Court.

9. PW-10 Constable Samarveer Singh was on duty in PCR van P-65 on 29th December, 2003 alongwith PW-1 ASI Jaslin Kongari. He has corroborated the deposition of PW-1 and has

stated that on reaching Rohtak Road, they received wireless message about robbery by four persons in car No.DL2CA 5531 and when they were going to their base point, they noticed one Maruti car turning towards Punjabi Basti Sultan Puri. When they got the car stopped, it was found to be the same car and all the four accused persons in the Court were sitting in that car. He further stated that on search of the appellant Rakesh, who tried to run away from the spot, one buttondar knife Ex.P-4 was recovered from his possession.

10. PW-11 Head Constable Ajay, who was on duty with SI Madan Lal in Police Station Nangloi on 29th December, 2003 stated that when they reached the spot, one Maruti car bearing No.DL2CA 5531 was found parked there and all the four accused persons were also found there having been apprehended by PCR officials. He further stated that one buttondar knife Ex.P-4 was also revered from the possession of the appellant Rakesh. PW-12 Head Constable Sri Bhagwan is the another police official, who was on duty in PCR van P-65 in the night intervening 29/30th December, 2003. He also has corroborated the testimony of ASI Jaslin Kongari and PW-10 Constable Sumervir Singh. He has also identified the

knife Ex-P-4 recovered from the possession of the appellant Rakesh besides mobile phone Ex.P-1 and P-5 and watch Ex.P-2.

11. PW-13 ASI Anant Saroop was the driver of PCR van P-69 in the night intervening 29/30th December, 2003. He corroborated the testimony of PW-8 Ashok Kumar and PW-9 Head Constable Ram Prakash.

12. PW-14 Constable Mundey Gyanoba went to the spot alongwith SI Vipin Kumar in the night intervening 29/30th December, 2003. According to him, when they reached the spot, one Maruti car No.DL2CA 5531 was found stationed there alongwith six persons from the public and PCR officials.

13. PW-15 ASI Madan Lal went to the spot in the night intervening 29/30th December, 2003 alongwith Constable Ajay. According to him, when they reached the spot, all the four accused were present there. Two boys had also reached there in another PCR vehicle. ASI Jaslin Kongari produced one knife which had been recovered from the appellant Rakesh. According to him, SI Vipin Kumar also reached the spot. He has identified buttondar knife Ex.P-4, stated to have been recovered from the possession of the appellant Rakesh.

14. SI Vipin Kumar is the IO of this case. He stated that on 30th December, 2003, he, on receipt of copy of DD No.26-A, Ex.P-2/A, reached the spot alongwith Constable Mundey Gyanoba, where PCR officials were found. Complainant Sunil and his companion Manoj as well as all the four accused were present there. The recovered articles were handed over to him. He has identified the mobile phones Ex.P-1 and Ex.P-5 and wrist watch Ex.P-4.

15. In their statement under Section 313 Cr.P.C., all the appellants denied the allegations against them and claimed to be innocent. The appellant Sikander stated that he was lifted from his house. Similar claim was made by the appellant Rajinder, Narinder and Rakesh.

16. DW-1 Rajni is the sister of the appellant Rajinder. She has stated that on 30th December, 2003 at about 7.30 am, two police officials came to their house and took Rajinder alongwith them on the pretext that he was to be interrogated. DW-2 Sube Dar is the father of the appellant Rakesh. He stated that on 30th December, 2003, at about 2.30 am, two police officials came to their house and took his son Rakesh with them on the pretext that they wanted to interrogate him.

17. It was first contended by the learned counsel for the appellant Rakesh that since the appellants were not previously known to PW-4 and PW-5 and were not arrested in their presence, they having been arrested by PCR officials before PW-4 and PW-5 reached the place where they were apprehended, it was obligatory for the prosecution to subject them to Test Identification Parade and in the absence of any such effort on the part of the Investigating Officer, identification of the appellants by PW-4 and PW-5 in the Court is not sufficient to establish their identity and cannot form the basis of their conviction.

18. It is settled proposition of law that when the accused is not previously known to the witness, and is not apprehended on the spot, there is no evidence to corroborate identification during trial, and there are no special features in the testimony of a witness, which persuade the Court to accept identification in the Court, even without any corroborative evidence, it is obligatory for the prosecution to get his identity verified in a Test Identification Parade. However, in the present case, there is ample corroborative evidence on record to show that the appellants alone are the persons who had

robbed PW-4 and PW-5, of their belongings.

19. The robbery took place in a Maruti car bearing registration No.DL2CA 5531. The robbery took place past midnight in the night intervening 29/30th December, 2003. The persons involved in robbery were found in number. The appellants (4 in numbers) were found travelling in a Maruti car, which bore Registration No.DL2CA 5531, soon after the commission of robbery. The appellants being found travelling in a Maruti car bearing same Registration Number which PW-4 and PW-5 had found on the Maruti car in which they were robbed and that too soon after the robbery had taken place, is a strong corroborative evidence against the appellants, particularly when they have not offered any explanation for their travelling in a Maruti car bearing Registration No.DL2CA 5531, soon after the commission of robbery. It has also come in the testimony of a number of witnesses, including PW-4 and PW-5, that the articles stolen from the possession of PW-4 and PW-5 were recovered from the possession of the appellants when they were searched in the presence of PW-4 and PW-5, after they had been apprehended while travelling in Maruti car No.DL2CA 5531. Since there is

no explanation from the appellants for their being found in possession of the stolen articles almost immediately after the robbery had taken place, recovery of stolen articles from them is yet another corroborative evidence which leaves no reasonable doubt that they were the persons who had robbed PW-4 and PW-5 of their belongings in the night intervening 29/30th December, 2003.

20. Identification of the appellants by PW-4 and PW-5, coupled with their having been apprehended in the car bearing Registration No.DL2CA 5531 and their being found in possession of the stolen articles is sufficient to establish their identity and it was not obligatory for the Investigating Officer to get them identified in a judicial which is Test Identification Parade.

21. In fact, even if identification of the appellants by PW-4 and PW-5 is altogether excluded from consideration, other evidence available on record by itself is sufficient to establish the guilt attributed to them. The testimony of PW-4 and PW-5 shows that the persons who robbed them of cash, mobile phone, watch, chain and ring, were travelling in a Maruti car which had a number plate bearing Registration No.DL2CA

5531 on it. The testimony of PW-9 Head Constable Ram Prakash who was on duty in PCR vehicle P-69 during that night shows that when PW-4 and PW-5 met them in the night intervening 29/30th December, 2003, they informed them that they had been robbed in Maruti car No.DL2CA 5531 and he flashed a wireless message accordingly to Police Control Room. The testimony of PW-7 Shakti Singh shows that this witness was in charge of PCR van P-69 in the night intervening 29/30th December, 2003. Hence, there is absolutely no reason to disbelieve his testimony. Ex.P-2/A is copy of DD No.2-A recorded at Police Station Nangloi at about 1.12 am on 30th December, 2003. It shows that the information given to the Police Control Room by police officials travelling in PCR van P-69 regarding robbery in Maruti car No.DL2CA 5531. This was the same car, in which PW-8 and PW-9 were on duty in the night intervening 29/30th December, 2003. Therefore, there can be no reasonable possibility of car Registration No.DL2CA 5531 having been introduced at a later stage. This number had been flashed to Police Control Room even before the appellants were apprehended by the PCR officials on duty in PCR Vehicle No.

P-65, at Railway Crossing Sultan Puri. I, therefore, have no hesitation in accepting that the person, who robbed PW-4 and PW-5 of their mobile phones, watch, jewellery and cash, were travelling in a Maruti car which, at that time, was having Registration No.DL2CA 5531. The testimony of PCR officials, who were travelling in PCR P-65 in the night intervening 29/30th December, 2003, namely, PW-10 Constable Sumervir Singh and PW-1 ASI Jaslin Kongari shows that it was Maruti car being Registration No.DL2CA 5531 which they had chased and in which the appellants were found travelling. PW-10 Constable Sumervir Singh has specifically stated that after receipt of message, information about crime committed in Maruti car No.DL2CA 5531, they found a car turning towards Basti Sultan Puri and when they got it stopped, they found it was the same car. PW-1 Jaslin Kongari has specifically stated that they received a message on wireless about robbery by four persons travelling in Maruti car No.DL2CA 5531 and before Railway Crossing of Sultan Puri, he noticed that a Maruti car coming from Haryana side was having the same number which wireless message flashed and it was that car which they had got stopped and in which

the appellants were found travelling. Thus, the testimony of PW-1 and PW-9 shows that the appellants were traveling in the intervening night of 29/30th December, 2003, in a car bearing same registration number which had been displayed on the car in which PW-4 and PW-5 were robbed of their belongings. The testimony of PW-7 also shows that PW-1 ASI Jaslin Kongari was the in-charge of PCR van P-65 in the night intervening 29/30th December, 2003 and, therefore, his presence in PCR van during that night cannot be disputed. Even otherwise, there is no reason to disbelieve the testimony of police officials travelling in PCR vans P-65 and P-69, since none of them belonged to the local Police Station and none of them had any reason to make a false deposition against the appellants. Though the case of the prosecution is that the number plate fixed on the car was a fake one and true registration number of car used in the crime was DL9C 2337, that, to my mind, is of no consequence since registration number on the car, in which robbery was committed, was the same which was found on the car in which the appellants were found travelling soon after the robbery had taken place. The testimony of PW-6 Head Constable Suresh Kumar,

MHC(M) of Police Station Nangloi, coupled with the copies of relevant registers of Police Station Ex.PW-6/A & B shows that it was Maruti car No.DL2CA 5531 which was deposited in Malkhana on that day. The seizure memo of the car Ex.PW-4/M also shows that it was car having number plate bearing Registration No.DL2CA 5531 which was seized by the police. Therefore, there can be no dispute as regards the registration number on the car in which the appellants were found travelling during that night. The appellants have not offered any explanation for their being found travelling in Maruti car bearing Registration No.DL2CA 5531 in the night intervening 29/30th December, 2003. This is not their case that the car, in which they were travelling, was different from the car in which the robbery was committed though both the cars had number plates bearing same registration number. According to PW-16 SI Vipin Kumar, who seized the vehicle from the spot, though the car seized by him had number plates bearing Registration No.DL2CA 5531, the actual registration of the car was 2337. There is no explanation from the appellants as to why the car in which they were travelling had a fake registration plate. Travelling in a car having fake

registration plate is also an incriminating circumstance against the appellants and indicates that they were the persons involved in committing robbery and that is why they were using plate bearing fake registration number on the car in which they were travelling. The case of the appellants is that they were not at all travelling in any car when they were apprehended and that they were, in fact, called from their residence and implicated in this case.

22. The testimony of PW-4 Sunil Arora and PW-5 Manoj shows that the stolen articles were recovered when the appellants were searched in their presence in the night intervening 29/30th December, 2003. The mobile phone Ex.P-1 of PW-4 Sunil Arora was recovered from the possession of the appellant Narinder, whereas mobile phone of his companion PW-5 Manoj was recovered from the possession of the appellant Rajinder. The watch of the complainant Sunil Arora was recovered from the possession of the appellant Rakesh, whereas chain and gold ring stolen from the possession of PW-5 Manoj were recovered from the possession of the appellant Sikander.

23. It was contended by the learned counsel for the

appellants that no Test Identification Parade of the stolen property having been got conducted, the identity of these articles does not stand established. I find that complainant Sunil Arora has specifically stated that the mobile phone was purchased by him from M/s Sai Enterprises Ex.PW-16/DXC vide purchased memo No.465. Copy of invoice, whereby mobile, belonging to PW-5 Manoj was purchased, is also available on record. Ex.PW-4/DX2 and DX3 are the copies of invoices of purchase of chain and ring stolen from the possession of PW-5 Manoj, whereas Ex.DX4 is the copy of the invoice, whereby watch was purchased by PW-4 Sunil. Therefore, ownership of the articles stolen from PW-4 and PW-5 has been duly proved by the prosecution. The appellants, on the other hand, have not claimed any of the articles alleged to have been recovered from their possession.

24. It was held by the Hon'ble Supreme Court in **Erabhadrappa alias Krishnappa vs. State of Karnataka**, AIR 1983 SC 446, that where a lady witness identifies the stolen articles such as ornaments and sarees at the trial without prior Test Identification Parade, the testimony of such a witness was not inadmissible in evidence for want of

prior Test Identification Parade, as ladies have uncanny sense of identifying their own belongings, particularly the articles of personal use. This, to my mind, would equally apply to articles of daily use by a male. A particular article may be identified by any particular mark on it or by its frequent use or observation which causes a permanent impression on the mind of identifier, that leads to recognition of the article. Since PW-4 and PW-5 had been using the mobile phones, which were stolen from their possession, they were in a position to identify them. Similarly, the watch, which PW-4 Sunil Arora used to wear and the ring and chain, which PW-5 Manoj used to wear, were such articles which these persons were in a position to easily identify. More importantly, not only these stolen articles have been identified by the complainant, who have also produced proof of their purchase, they were seized from the appellants on the spot, in their presence. In the absence of any of the appellants claiming these articles, there is no reason to disbelieve the testimony of appellants as regards ownership and identification of the stolen articles.

25. The appellants were found in possession of the stolen

articles soon after their theft. In view of the provisions contained in Section 114(a) of Evidence Act, it may be presumed that they had either stolen these articles or they had received the same knowing or having reason to believe the same to be stolen property. Since the appellants have not offered any explanation for their being found in possession of the stolen articles and considering the fact that they were found in possession almost immediately after theft of these articles, the presumption necessarily has to be that the appellants had committed theft of these articles. The appellants have not even attempted to rebut the statutory presumption available against them under Section 114(a) Evidence Act. Therefore, recovery of stolen articles from their possession almost immediately after commission of robbery, by itself is sufficient to prove that they were the persons who robbed PW-4 and PW-5 of their belongings in the night intervening 29/30th December, 2003.

26. It was pointed out by the learned counsel for the appellant Rakesh that FIR number finds mention of documents such as seizure memo of car and stolen articles Ex.PW-4/D, Ex.PW-4/E, Ex.PW-4/F, Ex.PW-4/G and Ex.PW

4/M though the case of the prosecution is that these documents were prepared on the spot and the rukka, bearing endorsement of the IO on the statement of Sunil Arora, was sent to the Police Station only after these documents had been prepared. There is no cross-examination of the Investigating Officer on this aspect. He was not asked as to how FIR number came to be given on these documents when, according to him, the documents had been prepared before registration of FIR. In the absence of any cross-examination of the Investigating Officer, no advantage can be derived by the appellants from this aspect of the case. It would be noteworthy here that according to learned APP, as per practice FIR number on such documents is written only after FIR has been registered and a copy of the FIR is brought on the spot by the police official who takes rukka to the Police Station for registration of the FIR.

27. It was next pointed out by the learned counsel for Rakesh that when PW-5 was examined in hospital by PW-3 Dr. Rajesh Chauhan, he did not tell him that as to how he has sustained injuries on his person. This, to my mind, is of no significance. PW-3 does not claim that he had asked PW-5

Manoj as to how the injury was sustained by him. Since the person who caused injury to PW-5 had already been arrested before he was taken to the hospital for his medical examination, there was no occasion for him to tell the doctor as to how he had sustained the injury on his person.

28. It was also pointed out by the learned counsel that neither key nor the number plate fixed on the car was seized by the police. In my view, nothing turns on the failure of the Investigating Officer to seize the key of the vehicle. It was not necessary for the Investigating Officer to remove the fake number plate fixed on the car and seize since he was not investigating theft of the car in which robbery was committed. Therefore, no adverse inference can be drawn against prosecution on account of the key or fake number plate fixed on the car having not been seized.

29. It was also pointed out by the learned counsel for the appellant that Sub-Inspector Dariao Singh has not been examined though he was the superior officer of PW-1 and it was at his instance that the appellants were searched again after he had arrived at the spot. It was not obligatory for the prosecution to examine Dariao Singh when a number of

witnesses, including public witnesses, who were victims of the crime and a number of police officials, including those who were on duty in PCR vehicles and who had apprehended the appellants have been examined. What the Court is required to see as to whether the prosecution has been able to prove its case from the testimony of the witnesses who have not been examined by it. No useful purpose is served from multiplying the evidence by examining multiple witnesses to prove the same fact.

30. It was submitted by the learned counsel for the appellant Rakesh that according to PW-5, he had brought Rs.2500/- from his house and had purchased some clothes from the shop of his friend and at the same time, he claims to have Rs.2500/-. The contention is that PW-5 must have spent some money in purchase of clothes and, therefore, he could not have Rs.2500/- in possession, when the robbery took place. I find that PW-5 was not asked as to how he was having Rs.2500/- with him at the time of commission of robbery when he had taken that very amount with him while leaving the house and he had also purchased some clothes for which he must have incurred some expenditure. More

importantly, I find that according to PW-5, he had purchased the clothes from the shop of his friend Sunil. It is quite possible that Sunil being his friend PW-5 at that time did not make any payment to him for the clothes purchased from his shop.

31. It was also submitted by the learned counsel for the appellant that according to PW-4 and PW-5 though they were four persons who sat on the rear seat of Maruti car, PW-5 was also able to avert the knife blow given to him by the appellant Sikander in the car. The contention is that if four persons are sitting in a small car like Maruti-800, it is not possible for a person to avert the knife blow given to him. I find no merit in this contention. If a person notices the blow aimed at him, it is quite possible for him to avert it by ducking himself. It was also contended by the learned counsel for the appellant Rakesh that two FIRs were registered by PW-2 within a span of 15 months though there is no occasion to register two separate FIRs. I find no merit in the contention. One FIR was registered at the instance of ASI Ajay Kumar under Arms Act on account of recovery of a knife from his possession whereas, the other FIR at the instance of

SI Vipin Kumar for the robbery committed by the appellants.

32. The learned counsel for the appellant Rakesh has also pointed out a few contradictions. He has pointed out that according to PW-1 ASI Jaslin Kongari, they had remained on the spot for 10-15 minutes where the incident was took place and the recovery memos were signed in the Police Station, whereas according to other witnesses, the proceedings were conducted at the place where the appellants were apprehended. I find that even PW-1 has stated at one place of his cross-examination that all the proceedings were conducted on the spot, at about 15-20 metres away from the Railway Crossing. It, therefore, appears that on account of passage of time, he was not sure as regards the place, where the proceedings took place.

33. The appropriate method to test the credibility of a witness whose testimony suffers from some discrepancies or contradictions is to consider his evidence, *dehors* such discrepancies and contradictions, in order to find out whether he appears to be a truthful witness or not. If the Court comes to the conclusion that a he appears to be a truthful and reliable witness, his deposition in the Court needs to be

evaluated in the light of the discrepancies and contradictions pointed out in his testimony and then decide whether the credibility of the witness stands impeached on account of the contradictions or discrepancies on the basis of which his testimony has been assailed. It would not be appropriate for the Court to reject the testimony of a witness at the very threshold, merely on account of some contradictions or discrepancies, found, here and there, in his testimony. The Court needs to focus on the core part of the testimony of the witness to evaluate his credibility and contradictions or discrepancies on peripheral matters which have no material bearing on the core part of his testimony should not lead to the whole testimony being rejected on account of such minor contradictions or discrepancies. The Courts need to appreciate that when a witness is examined in the Court on such peripheral or incidental matters, his answers to the questions put to him are bound to be based upon whatever he has been able to retain his memory or whatever he is able to recollect at that time. The Courts also need to recognize and appreciate that not everyone has the same capacity of retention, recollection and reproduction, which is bound to

vary from individual to individual. Therefore, it is quite natural even for a honest and truthful witnesses to differ on same peripheral details unrelated the main incident, witnessed by them. Also, when the Trial Court which had the opportunity to observe demeanour of the witness, has believed him, the Appellate Court should ordinarily not to take a contrary view on the reliability of such a witness, unless there are strong and compelling reasons warranting taking a contrary view. The discrepancies and contradictions, in order to materially impeach the credibility of a witness, necessarily need to be vital in nature and on the core part of his testimony. The contradiction pointed out in the testimony of PW-1 ASI Jaslin Kongari vis-à-vis the testimony of other witnesses not being on the core part of his testimony, i.e. chasing of car bearing Registration No. DL2CA 5531 by him in PCR van, apprehension of the appellants while travelling in that car and recovery of buttondar knife from the possession of the appellant Rakesh and stolen articles from all the appellants, the contradictions pointed out by the learned counsel do no impeach his credibility as a reliable and truthful witness and therefore cannot form the

basis of outright rejection of his testimony.

34. For the reasons given in the preceding paragraphs, I have no hesitation in holding that all the four appellants are guilty of committing robbery of mobile phones, cash, jewellery, chain and watch from the possession of PW-4 Sunil Arora and PW-5 Manoj in the night intervening 29/30th December, 2003 when they were travelling in a Maruti car having number plate bearing Registration No. DL2CA 5531. The very fact that two of the appellants were already sitting in the car whereas the remaining two boarded it after PW-4 and PW-5 had occupied its rear seat leaves no reasonable doubt that all the appellants shared a common intention to commit robbery of articles belonging to PW-4 and PW-5. The recovery of stolen articles from the possession of the appellants is yet another proof of their having acted in furtherance of a common intention to commit robbery. Since injury was caused to PW-5 Manoj in committing robbery, all the appellants are guilty of offence punishable under Section 394 IPC read with Section 34 IPC.

35. The appellant Rakesh used a buttondar knife, which is a deadly weapon at the time of committing crime. The

expression 'deadly weapon', used in Section 397 of IPC has not been defined in the Act. In common parlance, it would mean an instrument, which, if used as a weapon, can cause death of a person. The knife recovered from the possession of the appellant Rakesh was a buttondar knife. Such knifes are not meant for domestic use and if used as a weapon of offence, they can result in the death of a person to whom blow from such a knife is given. Therefore, a buttondar knife is definitely a deadly weapon within the meaning of Section 397 of IPC. In **Phool Kumar Vs. Delhi Admn**. AIR 1975 SC 905 the accused was carrying a knife in his hand at the time the robbery was committed. It was found from the deposition of PW-16 that the appellant/accused Phool Kumar had a knife in his hand. The Hon'ble Supreme Court held that he was therefore carrying a deadly weapon. In **Salim Vs. State** 1987 (3) Crimes 794 the Hon'ble High Court of Delhi held that to categorize knife or to fix its size for it to be a deadly weapon may not be appropriate. It was held that to say that a knife to be a deadly weapon should be of a particular size would not be a correct statement. In **State of Maharasthra Vs. Vinayak** 1997 Cr.L.J. 3988 Bombay High Court held that

knife is a deadly weapon within the ambit of expression 'deadly weapon' used in section 397 of IPC.

36. Since PW-4 and PW-5 were criminally intimidated when they were travelling in Maruti car No. DL2CA 5531 and the facts and circumstances of the case show that the threat to them was given in furtherance of the common intention, which the appellant shared with each other, all of them are also guilty of offence punishable under Section 506 Part II of IPC and their conviction under Section 506 of IPC is accordingly maintained.

37. For the reasons given in the preceding paragraphs, the appellant Rakesh is convicted under Section 392/394/34 of IPC read with Section 397 thereof. The appellant Rakesh is sentenced to undergo RI for seven years under Section 392/394/34 of IPC read with Section 397 thereof and is further directed to pay fine of Rs.5,000/- or to undergo SI for three months in default. He is also sentenced to undergo RI for one year and to pay fine of Rs.1,000/- or to undergo SI for 15 days in default under Section 506 Part-II of IPC. He is also sentenced to undergo RI for one year and to pay fine of Rs.1000/- or to undergo SI for 15 days in default under

Section 25 of Arms Act. The appellants Sikander, Narinder and Rajinder are sentenced to undergo RI for three years each and to pay fine of Rs.3,000/- or to undergo SI for one month each in default under Section 392/394 of IPC read with Section 34 thereof and are further sentenced to undergo RI for one year each and to pay fine of Rs.1,000/- each and to undergo SI for 15 days each in default under Section 506 Part-II of IPC. The sentences shall run concurrently. The appellants are granted two weeks' time to pay the fine. Those of the appellants, who have not already served the substantive sentence imposed upon them, will surrender forthwith before the Trial Court to undergo the remaining portion of the sentence awarded to them. Those of the appellants, who fail to pay the fine imposed upon them within two weeks from today, will also surrender before the Trial Court to undergo the sentence imposed upon them in default of payment of fine.

One copy of this order be sent to the Trial Court within three days for information and compliance.

(V.K.JAIN)
JUDGE

FEBRFUARY 24, 2010/BG