

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

Judgment reserved on: July 01, 2010  
Judgment delivered on: August 10, 2010

+ **CRIMINAL APPEAL NO.287/2006**

**SANJU**

**....APPELLANT**

Through: Mr. Jitender Kumar, Advocate

Versus

**STATE (N.C.T. OF DELHI)**

**.....RESPONDENT**

Through: Mr. Pawan K. Bahl, APP

**WITH**

**CRIMINAL APPEAL NO.576/2006**

**ANIL KUMAR**

**....APPELLANT**

Through: Mr. Bhupesh Narula, Advocate

Versus

**STATE (N.C.T. OF DELHI)**

**.....RESPONDENT**

Through: Mr. Pawan K. Bahl, APP

**CORAM:**

**HON'BLE MR. JUSTICE AJIT BHARIHOKE**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in Digest ?

**AJIT BHARIHOKE, J.**

1. Above two appeals have been preferred by Sanju and Anil Kumar against the impugned judgment of conviction dated 10.04.2006 and

the order on sentence dated 15.04.2006 whereby the learned Additional Sessions Judge convicted the appellants for the offences punishable under Section 394/34 IPC read with Section 397 IPC and sentenced both of them under Section 394/34 IPC read with Section 397 IPC to undergo RI for the period of seven years and to pay a fine of Rs.3000/-, in default to undergo RI for the period of six months. The learned Additional Sessions Judge also convicted the appellant Anil Kumar for the offence under Section 27 Arms Act and sentenced him to undergo RI for the period of period of seven years and to pay a fine of Rs.2000/- and in default to undergo RI for the period of two months. The learned trial Judge further directed that both the sentences shall run concurrently with benefit of Section 428 Cr.P.C.

2. Briefly stated, case of the prosecution is that the complainant Jitender Kumar (PW1) was employed with M/s. GFC Finance Ltd., 13/34, W.E.A. Karol Bagh, New Delhi. On 28.09.2004, Shri Tarun Goel (PW2), Director of the aforesaid company gave Rs.6 lakhs in cash to PW1 for depositing the same in Kotak Mahendra Bank, Greater Kailash, Part-II, New Delhi. PW1 Jitender Kumar left the company with cash of Rs.6 lakhs kept in a black leather bag. He boarded a bus from Karol Bagh to Greater Kailash, Part-II. At about 9:30 or 9.45 am, PW1 Jitender Kumar got down from the bus near Savitri Cinema. When he was proceeding towards Kotak Mahendra Bank, two boys came from behind, one of them gave a knife blow on his right cheek as well as left hand and both of them snatched the bag from him and ran away. PW1

Jitender Kumar raised an alarm "*Pakro Pakro*", on this some public persons chased said two boys. SI Jagdish Chand (PW5) and Constable Jitender Kumar (PW8) happened to be present near the place of occurrence on patrol duty. On seeing the said two boys being chased by public, they apprehended said two boys near House No.E-159, Greater Kailash, Part-II. On inquiry, they disclosed their names as Anil Kumar and Sanju. Appellant Anil Kumar was having a knife in his hand and appellant Sanju was having a black leather bag.

3. In the meanwhile, someone informed PCR that a boy has been stabbed near E-159, Greater Kailash, Part-II, which information was conveyed by the PCR to Police Station Chitranjan Park and was reduced into writing as DD No.5A dated 28.09.2004 P.S. Chitranjan Park at 11:05 am. Copy of the DD report (Ex.PW7/A) was entrusted to SI Ram Yash Pandey (PW7) who along with Constable Anil Kumar (PW6) also reached at the spot. He recorded the statement of injured complainant Jitender Kumar Ex.PW1/A. Both the appellants and recovered black bag containing Rs.6 lakhs in the form of currency notes of Rs.500/- denomination each and spring actuated knife were produced before the Investigating Officer. He counted the money which comprised of 12 packets of Rs.500/- denomination each. The Investigating Officer also prepared the sketch of the knife Ex.PW5/A. On measurement, the blade of the knife was found to be 13 cm long and its handle was 10 cm long. Recovered money as well as the knife were converted into separate packets and sealed with the seal of "CB". The seal after use

was handed over to SI Jagdish Chand. SI Ram Yash Pandey appended his endorsement Ex.PW7/B, detailing the proceedings conducted by him, on the statement of the complainant and sent it to the Police Station for the registration of the case. On the basis of said rukka, formal FIR Ex.PW7/A was recorded at the Police Station at 1:35 pm. Both the appellants were arrested. A packet of chilli powder was recovered from the personal search of appellant Sanju. The complainant was taken to nearby Talwar Nursing Home where his MLC was prepared and he was treated by Dr. Kapil Dev(PW3). Blood-stained *baniyan* and shirt of the complainant were also seized on being handed over by the Doctor after converting into a sealed packet. On interrogation, the appellants disclosed the involvement of one Manoj and one Sunil in the offence. Accused Sunil could not be arrested. Accused Manoj was arrested; however, he was not identified by the complainant, so he was discharged.

4. During trial, the appellants were charged for the offence punishable under Section 394/34 IPC read with Section 397 IPC. Appellant Anil Kumar was also charged for the offence punishable under Section 27 of the Arms Act. Both the appellants pleaded not guilty to the charges framed against them and claimed to be tried.

5. In order to bring home the guilt of the appellants, prosecution examined eight witnesses in all. Before advertng to submissions made

on behalf of the appellants, it would be useful to have a look upon the testimony of some of the material witnesses.

6. PW1 Jitender Kumar is the complainant. He has reiterated his version given in the complaint Ex.PW1/A by testifying that on 28.09.2004, he proceeded from GFC Finance company, Karol Bagh at about 9:00 am with Rs.6 lakhs kept in a black bag for depositing the same in Kotak Mahendra Bank, Greater Kailash, Part-II. He travelled by bus route No.490 from Karol Bagh to Greater Kailash, Part-II. He got down from the bus near Savitri Cinema, Greater Kailash around 9:30 or 9:45 am and proceeded towards the Bank on foot. At about 10:30/10:45 am when he was at some distance from the Bank, two boys came from behind. One of them inflicted knife injuries on his right cheek and left hand and thereafter those boys snatched the bag containing currency notes and started running. He chased them and raised an alarm "*Pakro Pakro*". Some public persons who were sitting nearby apprehended those boys and the bag containing money was recovered from them. He identified the appellant Anil as the person who gave him knife blows and appellant Sanju as the person who snatched the bag from him. He stated that the bag containing money was recovered from the possession of appellant Sanju and the knife was recovered from the appellant Anil Kumar. He also claimed that thereafter, he was taken to a nearby hospital by public persons. Police arrived in the hospital and recorded his statement Ex.PW1/A. Police also seized the bag containing money which he had carried with him to

the hospital after the recovery. According to him, his blood-stained *baniyan* and shirt were also seized by the police vide memo Ex.PW1/B. The bag and currency notes were seized vide memo Ex.PW1/C and knife was seized vide memo Ex.PW1/D. He identified the black bag as Ex.P1, knife as Ex.P2 and his blood-stained *baniyan* and shirt as Exhibits P3 and P4. He denied the suggestion of APP that the bag containing the currency notes and the knife was recovered from the possession of accused persons at the spot.

7. PW3 Dr. Kapil Dev of Talwar Medical Centre has stated that on 28.09.2004 at about 11:10 am, one Jitender was brought to Talwar Medical Centre with a history of stab injury and on examination, he found following injuries on his person:

- “1. 4 cms. wound on right side of cheek, deep till inside, profusely bleeding.
2. 4 cms. Wound on left forearm dorsum deep till deep muscles, bleeding profusely”.

8. PW3 Dr. Kapil Dev stated that the patient was immediately shifted to Operation Theatre. Injuries were grievous and dangerous in nature. He has proved copy of the MLC prepared by him as Ex.PW3/A.

9. PW5 SI Jagdish Pandey is another important witness. He has stated that on 28.09.2004, he was on duty of bank checking and area patrol on a motorcycle along with Constable Jitender Kumar. At about 10:40 or 10:45 am when they were at E-Block, Greater Kailash, Part-II,

he noticed two boys being chased by injured complainant and some public persons. One of them was having a knife in his hand and other was having a bag. He apprehended the boy carrying knife, whereas Constable Jitender apprehended the boy carrying bag with the help of public persons. On inquiry, the names of said two boys were disclosed as Anil Kumar and Sanju and the name of the injured was disclosed as Jitender. He stated that in the meantime, SI Pandey along with Anil Kumar also reached at the spot. On checking, the bag was found to contain 12 packets of currency notes of Rs.500/- denomination each. He claimed that the said bag along with the currency notes and the knife was handed over to the Investigating Officer SI Pandey. PW8 Constable Jintender Kumar has deposed to almost similar effect. According to him, Anil Kumar, when apprehended, was having open knife in his hand, whereas appellant Sanju was carrying a leather bag containing money. PW7 SI Ram Yash Pandey is the Investigating Officer who reached at the spot immediately after the appellants were apprehended along with the knife and the bag containing currency notes. He has deposed about the details of investigation conducted by him.

10. Both the appellants when examined under Section 313 Cr.P.C. denied the prosecution case and claimed that they have been falsely implicated. Appellant Anil claimed that he was lifted from his house and implicated in this case falsely. Appellant Sanju also claimed that he was lifted from his house and was implicated in this case. According

to the explanation given by appellant Sanju, the actual assailants managed to escape from the spot and the Police have falsely implicated him. No witness in defence has been examined by either of the appellants.

11. The learned trial Judge on consideration of the evidence produced by the prosecution and the submissions made on behalf of the respective parties found the appellants guilty and convicted and sentenced both the appellants for the offences punishable under Section 394/34 IPC read with Section 397 IPC. The learned trial Judge also found the appellant Anil Kumar guilty of offence under Section 27 of the Arms Act and convicted and sentenced him accordingly.

12. Learned Shri Jitender Kumar, advocate appearing for the appellant Sanju and learned Shri Bhupesh Narula, advocate for the appellant Anil Kumar have argued almost on similar lines. They submitted that it is a false case and the appellants have been falsely implicated after being picked up from their respective houses. Dilating on the argument, it was submitted that as per the case of the prosecution, the appellants were apprehended red-handed on the spot along with the bag containing Rs.6 lakhs which fact stands belied by DD No.5A dated 28.09.2004 recorded at Police Station Chitranjan Park at 11:05 am regarding the incident. Learned counsels pointed out that as per the said DD report Ex.PW7/A, the information conveyed by the PCR to the Police Station was only in respect of one person having

been stabbed near E-159, Greater Kailash, Part-II, New Delhi and there is no mention of the robbery of Rs.6 lakhs in the DD report. From this, learned counsels have urged this Court to infer that no robbery actually took place and the appellants have been falsely implicated.

13. The submission made on behalf of the appellants is devoid of merit. As per the testimony of the complainant (PW1) Jitender Kumar as well as SI Jagdish Chand (PW5) and PW8 Constable Jitender, some public persons were also chasing the appellants at the relevant time. From this it is apparent that the incident was seen by some public persons also. The identity of the informer who conveyed the information to the PCR is not revealed in the DD report and it is possible that some public person, after seeing the stabbing incident, might have informed the police control room that a boy has been stabbed. Therefore, much importance cannot be attached to there being no reference to the robbery of the bag containing Rs.6 lakhs in the DD report Ex.PW7/A. Further, if the appellants were not caught red-handed with the robbed money at the spot, it is highly improbable that the complainant would have provided Rs.6 lakhs to the police to be shown as the case property just for the sake of false implication of the appellants at the instance of the police. There is nothing on the record to indicate any enmity or motive on the part of PW1 Jitender Kumar (complainant) which could have prompted him to take such a drastic step. Thus, I find no merit in the above contention.

14. It is submitted on behalf of the appellants that the recovery of the bag containing Rs.6 lakhs from the possession of the appellant Sanju is highly doubtful. Dilating on the argument, learned counsels submitted that as per the testimony of PW5 SI Jagdish Chand while he was on patrol duty at E-Block, Greater Kailash, Part-II, he saw the appellant being chased by public. On this, he apprehended the appellants Anil Kumar who was carrying a knife in his hand and Constable Jitender(PW8) apprehended the appellant Sanju who was carrying the robbed bag containing Rs.6 lakhs. Learned counsels argued that if this version was true, then seizure memo ought to have reflected these facts, whereas as per the seizure memo Ex.PW1/C the bag containing Rs.6 lakhs was produced before the Investigating Officer SI R.Y. Pandey by the complainant Jitender Kumar. It is submitted that this contradiction casts a strong suspicion against the correctness of the prosecution version and the said suspicion is further compounded by the fact that there is no independent witness either cited or examined by the prosecution to corroborate the aforesaid story. Thus, it is argued that the appellants are entitled to at least the benefit of doubt.

15. I am not convinced with the above argument. Non-joining of public witnesses to the recovery, by itself, cannot be taken as a circumstance to discard the testimony of the complainant who sustained knife injuries in the incident which have been described as dangerous by PW3 Dr. Kapil Dev who prepared his MLC Ex.PW3/A and

who treated him on the date of incident at Talwar Medical Centre. However, this circumstance requires the Court to be on its guard while examining the evidence of the complainant and police witnesses.

16. As regards the infirmity pointed out by the learned counsels for the appellants regarding the recovery and seizure of the bag containing money from appellant Sanju, it would be seen from the testimony of PW1 Jitender Kumar that he has testified that after being stabbed and looted, he ran after the appellants and raised an alarm "*Pakro Pakro*". On this, some public persons who were sitting nearby chased the appellants and apprehended them. He also claimed that his bag containing Rs.6 lakhs was recovered from the possession of the appellant Sanju, whereas the knife was recovered from the appellant Anil Kumar. In his further statement, he deposed that from the spot he was taken to the Hospital where his statement was recorded and at the Hospital, police seized the said bag containing currency notes of Rs.6 lakhs which was carried by him to the Hospital after recovery. From this statement of the complainant Jitender Kumar, it is clear that after the recovery of looted bag from the appellant Sanju, it was handed over to the complainant who carried it with him to Talwar Medical Centre where he handed over the same to the Investigating Officer. Thus, I find no mismatch in the testimony of the complainant and the facts recorded in the seizure memo Ex.PW1/C. Rather, the facts narrated in the seizure memo Ex.PW1/C tend to corroborate the testimony of the complainant Jitender Kumar.

17. Lastly, it is argued on behalf of the appellants that as per the testimony of PW8 Constable Jitender, he reached back at the Police Station on the date of occurrence at around 8:00 pm and when he reached at the Police Station, he did not see the accused persons there. From this, learned counsels have urged me to infer that till 8:00 pm the appellants were not arrested and if the prosecution story was true, then Constable Jitender should have seen the appellants in the lockup of the Police Station on his arrival at the Police Station on 28.09.2004 at 8:00 pm. I find no merit in this contention. Reaching at the Police Station does not mean that Constable Jitender had visited the lockup of the Police Station to find out who was detained at the Police Station at the relevant time. Thus, much significance cannot be attached to the above referred version of PW8 Constable Jintender.

18. Appellants in their respective statements under Section 313 Cr.P.C. have claimed that they were picked up by the Police from their respective houses and falsely implicated in this case. The defence taken by the appellants is not plausible because had this been true, the appellants would definitely have examined someone from their family or their neighbourhood to substantiate the aforesaid defence that they were picked up by the Police from their respective houses. Since no evidence has been adduced by the appellants in this case, I am not inclined to accept the defence put forth by them.

19. PW1 Jitender Kumar (complainant) has fully supported the case of the prosecution. His version is natural and consistent with the first information report recorded at the Police Station within three hours of the incident. Not only this, Jitender Kumar had sustained serious knife injuries on his person. Therefore, his presence at the spot cannot be doubted. Otherwise also, there is nothing on the record to suggest that he had any enmity or motive to falsely implicate the appellants. Thus, there is no reason as to why the complainant would depose falsely to implicate the appellants and also provide Rs.6 lakhs, which is a huge amount, to the Police to ensure false implication of the appellants. Thus, in my view, the learned trial Judge has rightly relied upon his testimony, which finds corroboration from the testimony of PW5 SI Jagdish Chand and PW8 Constable Jitender as well as the medical evidence provided by PW3 Dr. Kapil Dev, to find the appellants guilty of the charges.

20. In view of the above, I find no reason to interfere with the impugned judgment of conviction and consequent order on sentence. Appeals are devoid of merit, which are accordingly dismissed.

21. Appellant Anil Kumar is stated to be on bail. SHO, P.S. Chitranjan Park is directed to take him in custody and send him to the Jail for undergoing the remaining sentence.

**(AJIT BHARIHOKE)**  
**JUDGE**

**AUGUST 10, 2010/pst**