

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

Judgment delivered on: March 22, 2011

+ **CRIMINAL APPEAL NO.762/2003**

SHYAMBEER @ SOMVIR **....APPELLANT**

Through: Mr. Rajesh Mahajan, Amicus Curiae

Versus

THE STATE(GOVT. OF NCT OF DELHI) RESPONDENT

Through: Mr. Sunil Sharma, 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.(ORAL)

1. This appeal is directed against the impugned judgment dated 04.09.2003 passed by the learned Additional Sessions Judge in Sessions Case No.83/02 FIR No.210/02 under Section 392/397 IPC and Section 25 of the Arms Act P.S. Hari Nagar and the consequent order on sentence dated 06.09.2003 whereby the appellant has been held and convicted for the offences punishable under Section 392 and 397 IPC as also Section 25 of the Arms Act and sentenced accordingly.

2. Briefly stated, facts relevant for the disposal of this case are that on 03.05.2002 complainant Kamlesh Chand Meena (PW1) was

travelling in bus route No.740 bound for Mandi House. When the bus reached near Sagarpur bus stand, the appellant, who was carrying a knife in his hand, removed Rs.4,500/- from his pocket. When he raised an alarm, the appellant pointed the knife towards him, but he somehow managed to catch hold of the appellant along with knife. The appellant was thereafter searched, but the money could not be recovered. Thereafter, he was brought down from the bus and the complainant conveyed the information about the incident to the police station on telephone. On the basis of said information DD No.5A (Ex.PW3/A) was recorded at Police Station Hari Nagar at 8:10 am and copy thereof was entrusted to SI Manmat Kumar(PW3), who immediately left for the spot along with Constable Ravinder Singh. At the place of occurrence, complainant Kamlesh Chand Meena produced the appellant as well as the knife before the Investigating Officer. Investigating Officer recorded his statement Ex.PW1/A. He also measured the knife and prepared the sketch of the knife and, thereafter the knife was converted into a sealed cover with the seal of MK and took into possession vide seizure memo Ex.PW1/C. Rukka was sent to the Police Station on the basis of which, formal FIR Ex.PW3/B was registered. On completion of investigation, appellant was challaned and sent for trial.

3. Learned Additional Sessions Judge framed charges under Sections 392 and 397 IPC as also under Section 25 of the Arms Act against the appellant, to which he pleaded not guilty and claimed trial.

4. In order to bring home the guilt of the appellant, prosecution examined four witnesses, namely, PW1 Kamlesh Chand Meena (complainant), PW2 Constable Ravinder Singh, PW3 SI Manmat Kumar and PW4 SI Renu Sharma, who recorded the FIR on the basis of rukka Ex.PW2/A.

5. The case of the prosecution rests solely on the testimony of the complainant Kamlesh Chand Meena, who testified that on 03.05.2002, he boarded bus route No.740 from the red-light near Sagarpur bus stand. He was to go to Mandi House. When the bus stopped at Sagarpur bus stand, the appellant, who was having a knife in his hand, removed Rs.4,500/- from the pocket of his pant on the point of knife. He, however, over-powered the appellant along with the knife. But the appellant managed to hand over the stolen money to one of his companions, who were 4-5 in number. The companions of the appellant fled away along with the money. He brought the appellant down from the bus and informed the Police Station Hari Nagar on telephone. Police reached at the spot of occurrence and recorded his statement Ex.PW1/A. He further stated that the Investigating Officer measured the recovered knife and prepared its sketch Ex.PW1/B. Thereafter, said knife was converted into a sealed packet and taken into possession vide memo Ex.PW1/C. The appellant was arrested at the spot vide arrest memo Ex.PW1/D and his personal search was conducted vide memo Ex.PW1/E. The witness identified the knife recovered from the possession of the appellant as Ex.P-1.

6. The appellant was examined under Section 313 Cr.P.C. to afford him an opportunity to explain the incriminating evidence against him. In the said statement, he denied the prosecution evidence in its entirety and claimed that he was lifted from in front of his brother's house at Delhi Cantt, Sadar and taken to Police Station Hari Nagar where he was falsely implicated in this case after planting the knife upon him. Though the appellant stated that he would like to lead evidence in defence, but he failed to adduce any evidence in defence.

7. Learned Shri Rajesh Mahajan, Amicus Curiae appearing for the appellant submits that the appellant has been falsely implicated by the local police with the help of complainant Kamlesh Chand Meena, who himself is a police Constable. Learned amicus argued that case of the prosecution is based on sole testimony of Kamlesh Chand Meena which does not inspire confidence. Learned Trial Court has failed to appreciate that neither there is recovery of the stolen property nor there is any independent witness to support the version of the complainant, despite the fact that the incident allegedly took place in a crowded bus. It is further contended that otherwise also, the story of the prosecution is highly improbable. Dilating on the argument, learned amicus for the appellant submitted that according to the complainant, the money was removed on the point of knife from the right inside front pocket of his pant and the appellant managed to pass on the stolen money to his associates. This version, according to learned amicus, is highly improbable that the appellant would have

managed to remove the money from inside front pocket of the pant of the complainant and pass on the same to his associates despite of resistance of the complainant who allegedly apprehended him with knife. In view of the above, learned amicus urged that version of prosecution is highly doubtful as such the appellant is entitled to benefit of doubt.

8. Learned APP, on the other hand, submitted that merely because the complainant was a police Constable, he cannot be disbelieved. He contended that it is the quality of evidence which should weigh on the mind of the Court and not the quantity. If the passengers of the bus or its driver and conductor have not come forward to corroborate the version of the complainant, his testimony cannot be thrown away particularly when he had no motive to falsely implicate the appellant. Learned APP submitted that as per the version of the complainant Kamlesh Chand Meena, he was posted at the residence of Additional DCP at Mandi House and he had nothing to do with local Police Station Hari Nagar, as such the possibility of his trying to help the local police station to falsely implicate the appellant is too remote. Thus, learned APP has pressed for dismissal of the appeal.

9. I have considered the rival contentions and perused the material on record. Admittedly, the complainant Kamlesh Chand Meena is a police Constable. It is also admitted case of the prosecution that the alleged occurrence took place in a crowded bus. According to the

prosecution story, the appellant was present in the crowded bus with an open knife in his hand when he removed Rs.4,500/- from the inside front pocket of the complainant on the point of a knife. This version appears to be highly unnatural to be believed. If the appellant was actually carrying an open knife in his hand, there ought to have been commotion in the bus and the complainant would have been on his guard to prevent the appellant from removing money from the pocket. It is also highly improbable that in an occurrence in which the appellant was immediately apprehended by the complainant, he could have managed to pass the stolen money to his associates. Therefore, in absence of recovery of stolen property from the possession of the appellant and also any independent corroboration from either the passengers or bus conductor or driver of the bus, I do not consider it safe to rely upon the version of the complainant Kamlesh Chand Meena.

10. Complainant Kamlesh Chand Meena in his cross-examination has stated that from the spot of occurrence, he took the appellant to the police station to produce him before the police. This version is contradictory to the case set up by the prosecution in the rukka Ex.PW2/A, wherein it is stated that on the receipt of DD No.5A(Ex.PW3/A) Investigating Officer visited the spot of occurrence when the appellant was produced before him by the complainant and that he recorded statement of the complainant at the spot. Complainant has also stated that he did not ask any passenger of the

bus to accompany him to police station, which means that he despite of being police Constable did not make any effort to take eye witness to the police for corroboration of his story. This raises a strong doubt against the reliability of the version of the complainant. Interestingly, though the bus route number is given in the complaint, yet the Investigating Officer has not cared to locate the bus and try to examine the conductor and driver of the bus to verify the correctness of the version of the complainant. In view of the above, I do not find it safe to rely on such uncorroborated testimony of the complainant who is a police Constable.

11. In view of the discussion above, I find the prosecution case highly doubtful to be believed. Therefore, I am unable to sustain the conviction of the appellant. Appeal is accordingly allowed and the impugned judgment of conviction and the consequent order on sentence are set aside.

12. Appellant is acquitted giving him benefit of doubt.

13. Appeal is disposed of accordingly.

(AJIT BHARIHOKE)
JUDGE

MARCH 22, 2011

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