

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

Judgment reserved on: July 27, 2011
Judgment delivered on: October 13, 2011

+ **CRL.A. 796/2008**

VEERPAL @ VEERU **....APPELLANT**
Through: Mr. Tarun Kumar, Advocate.

Versus

THE STATE (NCT OF DELHI) **....RESPONDENT**
Through: Ms. Fizani Husain, APP.

WITH

CRL.A. 178/2008

AVDHESH **....APPELLANT**
Through: Mr. Kunal Malhotra, Advocate.

Versus

STATE (THROUGH NCT OF DELHI) **....RESPONDENT**
Through: Ms. Fizani Husain, 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 noted appeals are directed against the impugned judgment of conviction dated 30th January, 2008 in Sessions Case

No.84/2004 FIR No.352/2000 P.S. Srinivas Puri and consequent order on sentence dated 7th February, 2008 whereby the appellants Veerpal and Avdresh have been convicted and sentenced under Section 392/397/34 IPC.

2. Briefly stated, case of the prosecution is that on 24th August, 2000 complainant Madhav Krishan (PW-4) was dropped by his friend Shahid Khan at bus stop Srinivas Puri. The complainant was waiting for the bus for Rohini. While he was waiting for the bus, the appellants Veerpal and Avdresh came at bus stop Srinivas Puri and robbed the complainant of his purse containing ₹221/-, besides some visiting cards and other documents, on the point of knife. The knife was shown to the complainant by the appellant Veerpal. After handing over his purse to the appellant Avdresh, complainant Madhav Krishan mustered courage and caught hold of the appellant Veerpal and raised alarm. On hearing the alarm, PW6 Sukhjeet Singh came to the spot from the nearby taxi stand and he apprehended the appellant Avdresh. Thereafter, complainant and PW Sukhjeet Singh took both the appellants to the police station and they handed over the knife as well as robbed purse containing money to the police. Statement of the complainant was recorded by the police, on the basis of which formal FIR was registered. After the necessary formalities of investigation, the appellants were challaned and sent for trial. Learned Additional Sessions Judge charged the appellants for the offences punishable under Section 392 read with

Section 34 IPC as well as Section 397 IPC. Both the appellants pleaded innocence and claimed to be tried.

3. In order to bring home the guilt of the appellants, prosecution has examined 7 witnesses. Material witnesses, however, are PW-4 Madhav Krishan (complainant) and PW-6 Sukhjeet Singh.

4. PW-4 Madhav Krishan complainant has testified that on the night of 24th August, 2000, he had a dinner at the house of his friend Shahid Khan at Nizamuddin. After the dinner, Shahid Khan dropped him at bus stop Srinivas Puri at around 10.30 p.m. While he was waiting for the bus, the appellants came at the bus stop and initiated conversation with him. The appellant Avdhesh suddenly caught hold of him and the appellant Veerpal took out a knife and asked him to hand over his belongings. On this, he handed over his purse containing ₹221/-, 8 visiting cards and some other documents to the appellant Avdhesh. After handing over the purse, he mustered courage and caught hold of the hand of the appellant Veerpal in which the appellant Veerpal was holding the knife and raised alarm. On hearing his alarm, one sardarji with a stick in his hand came at the spot and with his help, the appellants were overpowered. In the process, the knife fell down from the hand of the appellant Veerpal which was picked up by the complainant. Complainant further stated that thereafter he along with said Sardarji took the appellant to the police station where his complaint statement Ex.PW-4/A was recorded. He has further stated

that he handed over the knife to the police. Police prepared the sketch of knife Ex.PW-4/B, converted it into a sealed pack and seized it vide memo Ex.PW-4/C. The stolen purse was also seized by the police Ex.PW-4/D. Both the appellants were arrested vide arrest memos Exhibits PW-4/E and PW-4/G. The complainant identified the knife used by the appellant Veerpal as Ex.P1. He also identified his purse containing ₹221/-, 8 visiting cards, one calendar and two small piece of papers collectively exhibited as Ex.P-2.

5. PW-6 Sukhjeet Singh has supported the version of the complainant. He testified that on 24th August, 2000, he was present at Amritsar Taxi Stand at around 10.30 p.m. when he heard the noise of '*bachao bachao*' coming from the side of bus stop Srinivas Puri. He saw that a young person had caught hold of another person who was having a knife. On this, he picked a stick from the taxi stand and rushed to the bus stop. The person who was holding the appellant Veerpal told him that his purse was with the other appellant, thus, he over powered the other person. Thereafter, both of them were taken to the police station. Witness has identified the appellant Avdhesh as the person who was caught by him.

6. PW-2 Shahid Khan is the friend of the complainant who has corroborated the version of the complainant that complainant had taken dinner with him on 24th August, 2000 and thereafter, he dropped the complainant Madhav Krishan at bus stop ring road Srinivas Puri.

7. The appellants, when examined under Section 313 Cr.P.C. denied the prosecution story and claimed innocence. Appellant Veerpal Singh took a vague defence that he has been falsely implicated in this case.

On the other hand, appellant Avdhesh took the following defence:-

“On that day there was Sai Sandhya in Bhajan Pura, my father is Pandit. I had gone there along with my father. After the Poojan was over at about 8.30 p.m., Sai Sandhya started and I left for my house. The person in whose house the Sai Sandhya was organized came to the bus stop with me. I boarded the bus and thereafter he left. At about 10.15 or 10.30 pm I reached S.N.Puri bus stand. When I alighted from the bus I noticed that 2-3 persons standing there and talking with each other. Veerpal was also there. I inquired from them as to what happened. On this complainant asked me to leave the spot. Thereafter I went home. I informed the maternal grand mother of Veerpal and informed that Veerpal was talking with some person at S.N. Puri bus stop. Thereafter I went home and slept. About one or one and a half hour maternal grand mother of Veerpal came to my house and asked me to accompany her. I accompanied her to the police station where I was falsely implicated in this case.”

8. The appellant Avdhesh has examined one Pashupati Nath Jha as DW-1 who stated that on 24th August, 2000, he had organized ‘*Maha MritunjayJaap*’ at his residence from 10.00 a.m. to 5.00 p.m. Thereafter, *Havan* was performed which was over at around 8.15 p.m. The appellant attended said function and after taking dinner, he along with 4-5 other friends boarded a bus from Bhajan Pura for ISBT, Kashmere Gate. He also stated that from Bhajan Pura, appellant Avdhesh had to change a bus from ISBT to reach Lajpat Nagar.

9. Learned Additional Sessions Judge, relying upon the testimony of the complainant and PW-6 Sukhjeet Singh, found the appellants guilty

and he convicted the appellant Veerpal for the offence under Section 392/397/34 IPC and also convicted the appellant Avdhesh for the offence under Section 392/34 IPC. Both the appellants were thereafter sentenced vide impugned order on sentence dated 7th February, 2008.

10. Learned Sh. Kunal Malhotra, Advocate appearing for the appellant Avdhesh and learned Sh. Tarun Kumar, Advocate appearing for the appellant Veerpal have argued on similar lines. They have assailed the impugned judgment of conviction on the ground that it is based upon incorrect appreciation of facts. It is submitted that the learned Additional Sessions Judge has failed to appreciate that the prosecution story is too unnatural to be believed. It is contended that this is a case of improper investigation. Though, as per the version of PW6 Sukhjeet Singh, 2/3 persons including Rakesh Kumar, Bakshish Singh and one helper boy also arrived at the spot of occurrence, yet the prosecution has neither cited nor examined those witnesses. Learned counsels argued that Sukhjeet Singh is a stock witness of the police, as such, no reliance can be placed upon his testimony. It is further argued that if the prosecution story is to be believed, appellant Avdhesh did not try to get the appellant Veerpal released from the complainant nor did he try to escape, which conduct is highly unnatural to be believed. Learned counsels for the appellants have therefore contended that it is not safe to rely upon the testimony of the complainant and Sukhjeet Singh to hold the appellants guilty. Thus, it is urged that the appeals be accepted.

11. I do not find any merit in the submissions made on behalf of the appellants. PW4 Madhav Krishan, as per his testimony, is an engineer. There is nothing on the record to show any connection between him and the police officials posted at P.S. Srinivas Puri at the relevant time. There is nothing on record to suggest that he had any motive or grudge against either of the appellants, which could have motivated him to falsely implicate them. PW4 Madhav Krishan has fully supported the case of the prosecution and his version stands corroborated by PW6 Sukhjeet Singh, who was present at a nearby Taxi Stand and who helped the complainant to catch hold of the appellants. He has also withstood the test of cross examination. Thus, I find no reason to suspect the veracity of the testimony of the above witnesses. As regards the failure of the prosecution to cite or examine the independent eye witnesses Rakesh Kumar and Bakshish Singh, PW6 Sukhjeet Singh has stated in his cross-examination that he did not tell the police about the arrival of these persons at the spot of occurrence. When the Investigating Officer was not told about their presence at the spot immediately after the occurrence, he was not expected to name them as witnesses in the charge sheet. Thus, under the circumstances, absence of any other independent witness except Sukhjeet Singh is by no means fatal to the case of the prosecution.

12. Coming to the defence taken by the appellants. Appellant Avdhes has taken a defence that on the fateful night, he was returning home after attending a '*Bhajan Sandhya*'. He alighted at the

bus stop, Sriniwas Puri at about 10.15--10.30 p.m. There, he noticed 2/3 persons talking to Veerpal. He enquired from them as to what had happened and on this, complainant asked him to leave the spot. Thereafter, he went home. Appellant Avdhesh further claimed that he informed grand-mother of Veerpal that he saw Veerpal talking with some persons at Sriniwas Puri bus stop. One and a half hours later, on the request of grand-mother of Veerpal, he accompanied her to the police station where he was falsely implicated.

13. Aforesaid defence of the appellant Avdhesh does not inspire confidence for the reason that had it been true, Veerpal, in his statement under Section 313 CrPC, would have taken a similar defence. Appellant Veerpal however has only stated that he has been falsely implicated in this case. Further, had the defence of Avdhesh been true, he would have examined grand-mother of Veerpal to substantiate his claim. Since he has failed to do so, I find no merit in the defence.

14. Next submission on behalf of the appellants is that the story of the prosecution put forth by the complainant Madhav Krishan and PW6 Sukhjeet Singh is not reliable for the reason that version of these witnesses suffers from various contradictions. Learned counsels have pointed out that according to PW4 Madhav Krishan, the taxi stand was at a distance of 10 to 15 steps from the bus stop where the occurrence took place whereas PW6 Sukhjeet Singh has stated that the taxi stand

was at a distance of 5 to 6 steps from the bus stop. Learned counsels for the appellants further pointed out that as per PW4 (Complainant), the distance of police station from the spot of occurrence was about 300-400 meters whereas according to PW6, the distance was about 250-350 meters. In my considered view, the aforesaid contradictions pointed out by learned counsels for the appellants are too minor to suspect the credibility of the witnesses. Otherwise also, the distance has been given by the witnesses as per their own assessment on approximate basis. Therefore, minor variation is bound to occur. Learned counsels have further submitted that PW4, in his testimony, stated that he and Sukhjeet Singh took the appellants to the police station in a TSR whereas, according to PW6 Sukhjeet Singh, the appellants were taken to the police station on foot and in view of this contradiction, learned counsels have urged that the testimony of the prosecution witnesses be rejected as unreliable. Even the above contradiction is not so material so as to effect the credibility of the complainant and PW6 Sukhjeet Singh, who are independent public persons having no grudge against or reason to falsely implicate either of the appellants. The testimony of the witnesses is consistent on all material aspects of the case. Therefore, I am of the view that learned Trial Judge has rightly relied upon the testimony of the complainant and PW6 Sukhjeet Singh to return the finding of conviction.

15. Another submission made on behalf of the appellants is that the conduct attributed to the appellant Avdresh is highly unnatural to be

believed. Expanding on the argument, learned counsel for the appellant Avdhesh submitted that if the prosecution story is to be believed, appellant Avdhesh neither tried to get his co-accused Veerpal released from the grip of the complainant nor he tried to run away on seeing Sukhjeet Singh coming towards the spot of occurrence. It is argued that aforesaid conduct is highly unnatural to be believed. Therefore, it is not safe to believe the prosecution story put forth by the complainant Madhav Krishan and PW6 Sukhjeet Singh.

16. I do not find any merit in this contention. It is well known that different people react differently to similar situation. From the sequence of events narrated by PW4 Madhav Krishan, it is apparent that entire occurrence took place within a few minutes. If the appellant Avdhesh did not react to the complainant apprehending Veerpal and raising the alarm '*bachao bachao*', this by itself cannot be taken as a reason to suspect the credibility of the complainant and PW6 Sukhjeet Singh, particularly when they have withstood the test of cross-examination and they have no axe to grind with either of the appellants.

17. Learned counsel for the appellant Veerpal has submitted that sentence of 07 years RI for offence under Section 397 IPC awarded to the appellant Veerpal is too harsh. He has urged for a lenient view on the ground that the appellant is having an aged mother and two minor children to cater to. He is not a previous convict and he deserves at

least one chance to mend his ways and become a useful member of the society.

18. On behalf of the appellant Avdhesh, it is contended that he was a young man of 19 years at the time of commission of offence. He is not a previous convict and during the pendency of this case, he has completed his Graduation. It is contended that he deserves at least one chance for rehabilitation. Thus, learned counsel for the appellant Avdhesh has pressed for his release.

19. I have considered the submissions made on behalf of the appellants. Taking into account the fact that the appellants have committed a grave offence of robbing a person on the point of knife, I do not find any reason to interfere with the sentence awarded by the learned Additional Sessions Judge.

20. In view of the discussions above, I do not find any merit in the appeals. Appeals are accordingly dismissed.

(AJIT BHARIHOKE)
JUDGE

OCTOBER 13, 2011

Ks/akb