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

Date of Decision: 12.03.2014

+ CRL. A.1273/2010

MOHAMMED EHSAN Appellant

Through: Mr. K. Singhal, Mr. Jitender Sethi &
Mr. H. Jailiya, Advs.

versus

STATE OF DELHI Respondent

Through: Mr. Feroz Khan Ghazi, APP with
S.I. Sunil Kumar, P.S. Tilak Marg.

CORAM:

HON'BLE MR. JUSTICE V.K. JAIN

JUDGEMENT

V.K. JAIN, J. (ORAL)

On 8.10.2008, at about 10:40 p.m, Police Control Room was informed through mobile No.9211389388 that 5-6 boys had robbed the informant of his mobile phone and Rs.1,000/- in cash near India Gate Park, after putting a knife on his neck. The information, when conveyed to Police Station Tilak Marg, was recorded vide DD No.31A, a copy of which was given to S.I. Mukhtar Singh for investigation. The Investigation Officer, reached the spot where the complainant Rakesh Kumar was present. He alleged that on that day at about 10:30 p.m., when he was returning home after taking a walk at

India Gate, four (4) young boys all of a sudden came in front of him in the Inner Circle, opposite K.G. Marg and obstructed his way. One of them caught hold of him from behind, whereas the other took out a knife and put it on his neck, simultaneously asking him to take out whatever he had and threatening to kill him in case he did not comply. The remaining two (2) boys caught both his hands and one of them took out one (1) mobile phone and Rs.1,000/- in cash from his pocket besides one challan slip issued by MCD. The boys then fled from the spot after threatening to kill the complainant in case he raised alarm. However, one of the boys who had fled towards Shahjahan Road was caught by the Beat Constable when alarm was raised by the complainant. On search of the aforesaid boy one knife was recovered from his pocket. The name of the boys, who was caught on the spot was later found to be Mohd. Ehsan son of Mohd. Yusuf.

2. This also the case of the prosecution that on being pointed out by Mohd. Ehsan, his three (3) associates, namely, Mohd. Anwar, Mohd. Jabir and Shahnawaz, were arrested and Rs.1,000/- in cash besides black purse of the complainant were recovered from Shahnawaz.

3. Charge under Section 392 of IPC read with Section 34 thereof was framed against all the four (4) accused, namely Mohd. Ehsan, Mohd. Anwar,

Mohd. Jabir and Shahnawaz, to which they pleaded not guilty and claimed trial. The appellant Mohd. Ehsan was separately charged under Section 392 of the Indian Penal Code read with Section 397 thereof for using a knife during the commission of the robbery. He was also charged under Section 25 of the Arms Act. The appellant as well as his co-accused having pleaded not guilty, as many as twelve (12) witnesses were examined by the prosecution. Four (4) witnesses were examined in defence.

4. Vide impugned judgement dated 24.4.2010, all the accused were convicted under Section 392/34 of IPC whereas the appellant Mohd. Ehsan was also convicted under Section 392 read with Section 397 of the Penal Code. Vide impugned Order on Sentence dated 14.7.2010, three (3) convicts namely Mohd. Anwar, Mohd. Jabir and Shahnawaz were given the benefit of probation whereas the appellant Mohd. Ehsan was sentenced to undergo RI for seven (7) years and pay fine of Rs.1,000/- or to undergo SI for one (1) month in default under Section 392 of IPC read with Section 397 thereof. However, he was not convicted under Section 25 of the Arms Act.

5. The complainant came in the witness box as PW-8 and *inter alia* stated that on the date of this incident, he had gone to India Gate at about 5-6 PM. When he was returning from there at about 10.00-10.30 PM and

reached Shahjahan Road, four young boys came from the opposite direction and stopped him. One of them caught hold of his collar from the back side, whereas two of them caught hold of his one hand each. The fourth boy put a knife on his neck and they asked him to take out whatever he had. He was robbed of his purse containing a sum of Rs. 1,000/- and a slip of MCD challan. He was also robbed of his mobile phone. The complainant identified all the accused persons and further stated that he made telephone call to the Police Control Room from the mobile phone of an ice cream seller. According to him, when the accused persons tried to run away, he raised alarm and chased them. One of them was apprehended with the help of a Beat Constable and a *buttondar* knife was recovered from him. He identified the appellant Mohd. Ehsan as the person who was apprehended with the help of the Beat Constable and from whom the knife was recovered. He also stated that when interrogated, Mohd. Ehsan led the police to iron bridge near Darya Ganj from where he got arrested the accused Mohd. Anwar, Mohd. Jabir and Shahnawaz. He identified Mohd. Anwar as the person who had robbed him of his mobile and Shahnawaz as the person who had taken out his purse. According to him, the purse was recovered from Shahnawaz and was seized vide memo Ex. PW-2/N. He also identified Ex.

P/1 as the purse which was recovered in his presence from the appellant Mohd. Ehsan.

6. PW-7 Pradhuman Singh, *inter alia*, stated that on 06.10.2008 when he was present at his ice-cream cart at Shahjahan Road at about 10.00-10.30 PM, the complainant Rakesh Kumar came there and requested him to make a call to Police Control Room from his mobile, claiming that he had been looted by 5-6 persons who had taken away his belongings on the point of knife. He further stated that the complainant made a call to PCR from his telephone. During cross-examination, he stated that on the next day, the complainant had come to him and told him that there were four and not 5-6 person who had robbed him of his belongings.

7. PW-10 Constable Ashok stated that on 06.10.2008, he was present in the parking of Shahjahan Road at about 10.00 PM, when he had heard noise of “chor chor”. He saw one boy coming towards the side of Shahjahan Road and some members of the public chasing him. The boy was apprehended. After some time the complainant also reached there and claimed that the person whom he had apprehended had put knife on his neck along with three associates and had robbed him of his mobile phone and purse containing cash. He identified the appellant Mohd. Ehsan as the person who was

apprehended by him and claimed that on his search, a *buttondar* knife was recovered from the pocket of his pant. This witness also deposed regarding arrest of the other accused persons on being pointed out by the appellant and being identified by the complainant.

8. PW-2 Constable Joginder Singh *inter alia* stated that on 06.10.2008, he also had reached the spot while on patrolling and on searching of the accused Mohd. Ehsan by SI Mukhtiar Singh, one *buttondar* knife was recovered from the right pocket of his pant. This witness also deposed with respect to the arrest of the other accused persons on being pointed out by the appellant and being identified by the complainant Rakesh.

9. PW-4 SI Mukhtiar Singh *inter alia* stated that on 06.10.2008 on receipt of DD No. 31A, he along with Constable Wazir Singh reached the spot, where Constable Ashok produced the appellant Mohd. Ehsan. The complainant Rakesh Kumar was also present there. He recorded the statement of Rakesh Kumar Ex. PW-1/A and seized the knife which had been recovered from Mohd. Ehsan.

PW-6 Constable Wazir Singh *inter alia* stated that he accompanied SI Mukhtiar Singh to the spot in the night of 06.10.2008 and met Constable Ashok who had already apprehended the appellant Mohd. Ehsan. On search

of the accused, a *buttondar* knife was recovered. He also stated that Ashok had produced Mohd. Ehsan along with the *buttondar* knife.

PW-11 SI Shiv Karana deposed with respect to arrest of the accused Mohd. Anwar, Mohd. Jabir and Shahnawaz at the instance of the appellant Mohd. Ehsan from the pavement near iron bridge Darya Ganj.

PW-12 SI Rajinder Singh *inter alia* stated that on 06.12.2008, he had recorded the statement of PW-7 Pradhuman Singh. During cross-examination, he admitted that the name of Pradhuman Singh had been added later by hand in the list of witnesses.

10. In his statement under Section 313 of Cr.P.C., the appellant denied the allegations against him and claimed that the complainant Rakesh Kumar was previously known to him since he had advanced a loan of Rs 4000/- to the complainant. He further stated that on the day of this incident, the complainant had called him at Patiala House to pay back his dues, but since he did not pay his dues, a fight took place between them as a result of which he as implicated in this case.

11. DW-2 Vakila Khatoon is the mother of the appellant. She *inter alia* stated that Rakesh, being a friend of Ehsan, used to come to her and had demanded Rs. 4,000/- from her son. She further stated that on the

complainant insisting time and again, she gave a loan of Rs 4,000/- to him. According to her, one day the complainant called her son to Patiala House Court on the pretext of giving back the money and on the next day, she came to know that the complainant had falsely implicated her son in this case.

12. I see no reason to disbelieve the complainant as regards the incident of robbery which took place with him on 06.10.2008. Though the appellant claims to have advanced a loan of Rs. 4000/- to the complainant, there is no documentary evidence of such loan having been given to the complainant either by him or by his mother. No complaint was made either by the appellant or by his mother to any superior police officer alleging that the appellant had been falsely implicated in this case on account of the financial transaction which he had with the complainant. Therefore, the plea taken by him appears to be only an afterthought.

13. The complainant had nothing to gain by concocting a false story of robbery with him. Moreover, his deposition finds ample corroboration from the deposition of Constable Ashok Kumar who apprehended the appellant when he was being chased by the complainant and some other members of the public in the night of 06.10.2008. The appellant does not allege any enmity or ill-will between him and Constable Ashok Kumar. Therefore,

there could have been no reason for Constable Ashok Kumar to falsely claim that he had apprehended the appellant while being chased by the complainant and some other members of the public. The report made to the police station immediately after the incident of robbery is also corroborative of the deposition of the complainant in this regard.

14. PW-7 Pradhuman Singh was examined by the Investigating Officer on 06.12.2008, i.e., about two months after the incident and there is no explanation for the delay in recording his statement. It is also true that the Investigating Officer has no difficulty in locating the aforesaid witness since his mobile number was already available in the DD entry lodged in the police station in the night of 06.10.2008. A perusal of the charge-sheet, including list of witnesses, which forms part of the charge-sheet, would show that the names of all the witnesses, except Pradhuman Singh were typed, whereas the name of Pradhuman Singh was added later by hand. A perusal of DD No. 31A, except PW-4/E would show that the call was made from mobile No. 9211389388. However, no evidence has been collected by the Investigating Officer to prove that the aforesaid mobile connection was in the name of PW-7 Pradhuman Singh or was otherwise being used by him. In fact, when Pradhuman Singh came in the witness-box, he did not even

claim that the number of his mobile connection was 9211389388. In these circumstances, the possibility of Pradhuman Singh not being the person whose mobile phone was used by the complainant for giving information to the Police Station cannot be altogether ruled out. Consequently, the deposition of PW-7 Pradhuman Singh needs to be excluded from consideration while evaluating the evidence of the prosecution.

15. According to PW10 Constable Ashok Kumar and PW4 S.I. Mukhtiar Singh, the knife was recovered by Constable Ashok Kumar from the pocket of the appellant when he was apprehended by him on Shah Jahan Road. On the other hand, according to PW2 Constable Joginder Singh, it was on search of Mohd. Ehsan by S.I. Mukhtiar Singh that the knife was recovered from the right pocket of the pant he was wearing. Thus, there is a material contradiction as to whether the knife was seized by Constable Ashok Kumar at the time the appellant was apprehended or by S.I. Mukhtiar Singh after his reaching the spot.

16. According to the complainant Rakesh Kumar, the knife from the appellant Mohd. Ehsan was recovered by Constable Ashok Kumar in his presence. He also claimed that throughout he remained with the police officers and it was in his presence that the appellant was interrogated and he

later led the police team to Iron Bridge near Darya Ganj from where the other accused persons were arrested. However, signatures of the complainant do not appear either on the seizure memo of the knife Ex.PW4/C or on its sketch Ex.PW4/D. There is no explanation from the prosecution as to why the signatures of the complainant were not obtained on the aforesaid documents despite the knife having been seized and sketch having been prepared in his presence. The aforesaid discrepancy, in my view, creates serious doubts with respect to the authenticity of the case of the prosecution in this regard and, in fact, creates substantial doubt with respect to the alleged recovery of the knife from the appellant. This is more so when I find that the seizure memo of the purse and cash as well as the arrest memos of the accused persons do bear the signatures of the complainant.

17. I have carefully perused the seizure memo of the knife Ex.PW4/C. A reading of the said seizure memo gives an impression as if one parcel containing knife sealed with the seal of 'MSY' was produced before the Investigating Officer who then prepared a parcel and sealed the said parcel with the same seal of 'MSY'. I fail to appreciate how a parcel which had already been sealed with the seal of 'MSY' would again have been

converted into another parcel and sealed with the same seal of 'MSY'. This is yet another circumstance which creates doubt with respect to the case of the prosecution as regards the seizure of the knife.

18. Since the recovery of knife from the appellant has become seriously doubtful, it would not be safe to rely upon the deposition of the complainant as regards the person who used the knife during the commission of robbery. This is not the case of the prosecution that the appellant had thrown away the knife while running away from the place of robbery. The complainant, who was chasing the appellant also does not say so either in the FIR or in his deposition in the court. Therefore, had the appellant used the knife during the commission of robbery, that knife would have been found with him at the time he was apprehended by Constable Ashok Kumar. Since the alleged recovery of knife by Constable Ashok Kumar has been found to be doubtful, it would only be appropriate that benefit of doubt is given to the appellant as far as the allegation of use of knife by him during the commission of robbery is concerned. Consequently his conviction needs to be maintained only under Section 392 of IPC read with Section 34 thereof.

19. For the reasons stated hereinabove, the appellant is convicted under Section 392 of IPC read with Section 34 thereof and is sentenced to undergo

RI for three (3) years. He shall also be entitled to benefit of Section 428 of the Code of Criminal Procedure, 1908.

One copy of this order be sent to the concerned Jail Superintendent for information & necessary action.

LCR be sent back along with a copy of this order.

MARCH 12, 2014
b'nesh/bg

V.K. JAIN, J.