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

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Date of Decision: 14.05.2015

% **CRL.A. 322/2015**

PRAVEEN

..... Appellant

Through: Mr. Dinesh Malik & Mr. Gurpreet
Singh, Advocates.

versus

STATE

..... Respondent

Through: Mr. Lovkesh Sawhney, APP along
with SI Roshan Lal, PS–Nangloi, for
the State.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

1. The present appeal is directed against the judgment dated 20.09.2014 passed by Sh. Naresh Kumar Malhotra, Additional Sessions Judge-05, West, Tis Hazari Courts, Delhi in Sessions Case No. 49/14 (Old No.37/13) arising out of First Information Report (FIR) No.50/2011 registered at Police Station – Nangloi under Sections 392/34 I.P.C. and Sections 25/54/59 of the Arms Act.

2. I may notice that the charge framed against the appellant under Sections 392/34 IPC and Section 397 IPC, to which the appellant and the co-accused pleaded 'not-guilty'.

3. The case of the prosecution, taken note in the impugned judgment, is that on receipt of DD no. 39A, PW-8 ASI Shiv Narain went to the spot, where the complainant/PW-1 met him. The complainant produced one knife and handed over the accused Praveen to him. The complainant also gave his statement to ASI Shiv Narain, wherein he has stated that he is running a Chemist shop. On 28.02.2011, at about 6.10 PM, he was sitting at his shop. Three boys came on a black colour Pulsar motorcycle. Two boys came into the shop and one boy remained seated on the motorcycle. Those two boys demanded money from the complainant. On the complainant questioning them “Kis Cheez Ke Paise” one boy stated that “I am the 'DAADA' of this area and my name is Kale”, and he put a knife on the left side of the stomach of the complainant and other boy took Rs.12,000/- from the pocket of the complainant. Both those boys left the shop, while abusing the complainant. When the complainant raised an alarm, his neighbour Dharampal S/o late Diwan Chand/PW-4 came there and some passersby also collected there. All the three boys tried to flee from the spot. Two boys succeeded in fleeing from the spot on the motorcycle, while the third boy was apprehended by the complainant with the aid of the public persons and he disclosed his name as Praveen @ Kale. The complainant also stated that out of the two boys who had fled away from the spot, one of them was the brother of accused Praveen Kumar, and he can identify him.

4. On the search of accused Praveen, a button actuated knife was recovered from the right side pocket of his pant. Thereafter, investigation was carried out. Knife was taken into possession vide seizure memo Ex.PW-1/C. Sketch of the knife was prepared vide Ex. PW1/B. The accused Praveen

was got medically examined at Sanjay Gandhi Memorial Hospital, Mangolpuri vide MLC Ex. PW8/A-1. Motorcycle bearing no. DL4SBK-1076 was recovered at the instance of accused Praveen Kumar. Accused Manoj Kumar was also arrested during the investigation.

5. The prosecution examined eight witnesses, the material witnesses being Sh. Ramesh Kumar, the complainant/ victim as PW-1; Sh. Dinesh Kumar, the eye-witness as PW-5, and; ASI Shiv Narain, the Investigating Officer (IO) as PW-8. Ashok Kumar (PW-2) is the Beat Constable, who had taken the appellant/ accused to the hospital for his medical examination. The statement of the accused Praveen was recorded under Section 313 Cr.P.C. in which the incriminating evidence was put to him. The accused stated that he had received injuries due to beatings by the complainant Ramesh Kumar/PW-1 along with his known persons, on account of his quarrel with the complainant over some issue. He claimed that the complainant, to save himself from the criminal liability, had falsely implicated the accused in the present case.

6. The accused also led evidence of two witnesses – Sh. Dalbir Singh as DW-1 and Sh. Kuldeep Singh as DW-2.

7. Ramesh Kumar (PW-1) deposed that on 28.02.2011 at about 06:10 p.m. he was sitting in his Chemist shop at D-39, 40 Foota Road, Rajdhani Park, Nangloi, New Delhi. At that time, one black motor cycle Pulsar came. Two out of the three riders got down from the motor cycle and came to his shop and they asked him to give money. He refused to give the money and asked “*kis cheez ke paise*”, on which, one of them said to PW-1 that, did he

not know that he was a *dada* of the area, and he disclosed his name as Kale. He further stated that the boy who called himself as Kale, put a knife on the left side of the stomach of PW-1, and the second boy took out Rs.12,000/- from his pocket. Both of them abused him filthily and left the shop. He further stated that he raised an alarm. Upon this, his neighbor Sh. Dharam Pal (PW-4) and some public persons came there. They apprehended the accused Kale and also gave beatings to him. The accused gave his name and address. On his search, one knife was recovered from the right side of his pant. The second boy, who snatched money from the complainant, ran away on the motor cycle on which a third boy was waiting. They ran away upon hearing Kale (accused) shout “*bhaag bhai bhaag*”. The complainant then informed the police on the number ‘100’. The Police Control Room (PCR) Van and the local police arrived at the spot and the statement of PW-1 was recorded, which is Ex.PW-1/A. The accused Praveen was handed over to the police with the knife. PW-1 proved the sketch of the knife as Ex.PW-1/B. He also proved the seizure memo as Ex.PW-1/C. The accused was arrested vide arrest memo, which is Ex.PW-1/D and the personal search memo of the accused was exhibited as Ex.PW-1/E. PW-1 also identified the knife as Ex.P-1.

8. Constable Ashok Kumar (PW-2) deposed that on 28.02.2011 at about 06:30 P.M. on receipt of D.D. No.39/A by ASI Shiv Narain, he along with ASI Shiv Narain went to H. No.D-39, 40 Foota Road, Rajdhani Park, Nangloi, New Delhi. Public persons had gathered there. The complainant met him and handed over Praveen @ Kale along with a *buttondaar* knife. ASI Shiv Narain recorded the statement of the complainant – PW1, and ASI

Shiv Narain was handed over the custody of the accused Praveen. In the meantime, Constable Ramesh also arrived at the spot. PW-2 also proved the sketch of the knife, which was Ex.PW-1/B and the seizure memo (Ex. PW-1/C). He stated that he had prepared the Rukka and handed over the same to Constable Ramesh Kumar for getting the FIR registered. He also got the accused Praveen medically examined. He proved the arrest memo as Ex.PW-1/D, his personal search memo as Ex.PW-1/E and his disclosure statement as Ex.PW-2/A. He too identified the knife as Ex.P-1.

9. Sh. Dharam Pal (PW-4) deposed that he ran a shop of readymade garments on the ground floor. He was present at the first floor in his house to take dinner, and on hearing noise of quarrel he came down. He further stated that he was a crowd of public persons and that he did not see anything else.

10. I may observe that PW-4 turned hostile and was, accordingly, cross-examined by the learned APP for the State. He resiled from his previous statement and he denied all the suggestions put to him in his cross-examination by the learned APP. However, he admitted that Ex.PW-1/C (Seizure Memo), Ex.PW-1/D (Arrest Memo), Ex.PW-1/E (Personal search memo of Parveen @ Kale) and Ex.PW-1/F (Personal search memo of Manoj Kumar) bear his signature. He denied that he had been won over by the accused persons and was deliberately suppressing the truth in order to save the accused persons.

11. Constable Ramesh Chand (PW-7), *inter alia*, deposed that the accused Parveen during his PC remand got recovered one motor cycle DL4SBK-

1076 from his house. He proved the seizure memo-cum-pointing out memo of the motor cycle as Ex.PW-1/A.

12. ASI Shiv Narain (PW-8) deposed that on 28.02.2011, he was on emergency duty from 08:00 a.m. to 08:00 p.m. and while on duty at 06:30 p.m., he received D.D. No.39/A (Ex.PW-8/A) regarding quarrel at D-39, 40 Foota Road, Rajdhani Park, Nangloi, New Delhi. He states that he along with Constable Ashok Kumar reached the place of incident where the crowd had gathered near D-39, 40 Foota Road, Rajdhani Park, Nangloi, New Delhi in which the Chemist shop was being run. Amongst the crowd one person namely Ramesh Kumar came forward and he produced one boy whose name was revealed as Praveen @ Kale along with a *gararidaar* knife which could be operated with button. He deposed that the complainant Ramesh Kumar gave statement regarding robbery of Rs.12,000/- from him by three persons, including the accused, who came to his chemist shop on a black colour Pulsar motor cycle. He deposed that he recorded the statement of Ramesh Kumar as Ex.PW-1/A and prepared the sketch plan of the knife as Ex.PW-1/B. He proved seizure memo of the knife as Ex.PW-1/C and the Rukka as Ex.PW-8/A. He states that the same was given to Constable Ramesh Chand for getting the FIR registered at P.S. Nangloi. He further deposed that the accused Parveen @ Kale was beaten by the public persons and, therefore, he sent him to Sanjay Gandhi Memorial Hospital through Constable Ashok Kumar. He also proved the site plan as Ex.PW-8/B. He stated that he arrested the accused vide the arrest memo Ex.PW-1/D and his personal search memo was proved as Ex.PW-1/E. The disclosure statement of the accused Parveen @ Kale was exhibited as Ex.PW-2/A.

13. At this stage, I may take note of the following extract in the impugned judgment in relation to the deposition of PW-8:

“... .. He has further stated that during disclosure statement, the accused Praveen had disclosed that he had parked the motorcycle which was used by them during incident at his house.”

14. In his testimony of PW-8, the following is, *inter alia*, recorded:

“... .. During disclosure statement, the accused had disclosed that he had parked the motorcycle which was used by them during incident at his house”

15. However, the disclosure statement (Ex. PW-2/A) recorded by PW-8 does not make any such disclosure with regard to the Pulsar motor cycle having been parked by the accused at his house. A perusal of the disclosure statement (Ex. PW-2/A) shows that the accused only stated that he could get the said motor cycle recovered. PW-8 further stated that on the next day, i.e. on 01.03.2011, two days police remand was obtained from the learned MM. During the PC remand the accused Praveen @ Kale led them to a house from where he got recovered the black colour Pulsar motor cycle DL4SBK-1076. The seizure memo of the motor cycle was proved by PW-8 as Ex.PW-7/A. PW-8 also exhibited the MLC of the accused Praveen @ Kale done on 28.02.2011 as Ex.PW-8/A1. Thus, it is evident that the testimony of PW-8 was apparently not consistent with the disclosure statement (Ex.PW2/A), and appears to be an obvious error in the recording of the statement of PW-8 which has crept into the impugned judgment as well.

16. On the basis of the evidence led before the Trial Court, the appellant was convicted, as aforesaid, and sentenced vide order on sentence dated

24.09.2014 with seven years Rigorous Imprisonment (RI) with fine of Rs.1,000/- for the offence punishable under Sections 392/ 34 I.P.C. and on failure of payment of fine, to undergo RI for a further period of two months. He was also sentenced to undergo RI for seven years with fine of Rs.1,000/- for the offence punishable under Section 397 I.P.C. and in default of payment of fine, to further undergo RI for two months. He was also sentenced to undergo RI for one year for the offence punishable under Sections 25/ 54/ 59 of the Arms Act. The sentences were directed to run concurrently. Benefit of Section 428 Cr.P.C. was given to the convict/ appellant.

17. The submission of learned counsel for the petitioner, firstly, is that the complainant (PW-1) has not narrated that after he had been robbed by showing the knife, the appellant had closed the knife while leaving the shop. He submits that if the appellant was running after committing the robbery, his knife would have been in his hand in an open condition, which he would have used to ward off the crowd, which had gathered on an alarm being raised by the complainant (PW-1).

18. Learned counsel further submits that there is a material contradiction on the aspect of the identity of the person who recovered the knife from the accused. PW-1 deposed in his cross-examination that the knife was recovered from the possession of the accused by the persons who had collected at the spot and had taken the search of the accused. He stated that the police had not recorded who had taken the search of the accused Praveen and recovered the knife. He did not know the name of the person who had taken search of the accused. However, PW-8 had deposed that the

complainant Ramesh Kumar had produced the knife before him at the spot and he had told PW-8 that he himself had snatched the knife from the accused Praveen.

19. Learned counsel submits that it is highly unlikely that in a chemist shop only the owner would be present. He further submits that PW-1 had stated that he had an employee working with him, but he was on leave on the date of the incident. He submits that it was unusual that there was no customer, or person present in the shop. He further submits that it was also unusual that on an alarm being raised only Sh.Dharam Pal (PW-4) had apprehended the accused. Even Sh. Dharam Pal (PW-4) had turned hostile and did not support the case of the prosecution.

20. Learned counsel submits that the complainant himself made the call to the police on number '100' and D.D. No.39A (Ex. PW-8/A) was recorded at 06:30 p.m. This D.D. entry was in relation to a quarrel (*jhagdaa*) and not in relation to a robbery (*lootpaat*). He submits that had the robbery been committed, the D.D. entry would have recorded the position accordingly. He, therefore, submits that this throws a doubt on the case of the prosecution.

21. Learned counsel has also referred to the testimony of Sh. Dharam Pal (PW-4), who responded to the alarm raised by the complainant. He stated that on 28.02.2011, he saw present on the first floor of his house and was about to take his dinner when, at about 06:30 p.m., he heard noise of quarrel and came down. He saw a crowd of public persons and he did not see anything else. He stated that the police did not record his statement.

Learned counsel submits that PW-4, upon his cross-examination by the learned APP, further stated that he was asked to sign already prepared documents after about 10 to 15 minutes of the incident. He denied the suggestion that he had signed the documents Ex.PW-1/B, Ex.PW-1/C, Ex.PW-1/D, Ex.PW-1/E and Ex.PW-1/F of his own. He also denied that he had been won over by the accused and that he was deliberately suppressing the truth. He deposed that he had signed the aforesaid documents without going through the contents and under the pressure of the Investigating Officer (IO).

22. Learned counsel submits that even though the appellant allegedly made a disclosure statement that he could get the motor cycle recovered, and his disclosure statement was recorded on 28.02.2011 itself, the police did not proceed to recover the motor cycle at the earliest and the recovery was effected on the following day. He submits that the delay in this action by the police also throws doubt on the genuineness of the recovery. He submits that it is highly unlikely that the accomplice of the appellant would park the motor cycle at the residence of the appellant, when the appellant had already been apprehended and taken into custody.

23. On the other hand, Mr. Sawhney, the learned APP has completely supported the impugned judgment. Mr. Sawhney submits that conviction can be based on the testimony of even a sole victim, if it is reliable. He submits that the testimony of PW-1 is unshaken. He submits that there was hardly any scope of any manipulation in the present case, since everything happened in very quick succession. The complainant (PW-1) made the D.D. entry (Ex. PW-8/A) at 06:30 p.m. and by 06:45 p.m. the IO (PW-8) had

already reached the spot. The accused had been apprehended by PW-4 and the public persons, and they had also given beating to him. The statement of the complainant (Ex.PW-1/A) was also recorded there and then. He submits that though the accused had stated in his statement under Section 313 Cr.P.C. that he had been beaten up by the complainant on account of some dispute, the appellant failed to disclose as to what was the nature of his dispute with the complainant. He submits that the complainant had deposed that he did not know the accused.

24. Mr. Sawhney submits that in his MLC (Ex. PW-8/A1), the accused had disclosed/ got recorded “*alleged H/o physical assault beaten by public/ mob as told by himself and B/B*”. Mr. Sawhney submits that the accused did not name the complainant as the person who had assaulted him. Thus, his version that he had been assaulted by the complainant on account of some alleged dispute, was an afterthought and not believable.

25. Mr. Sawhney submits that the accused had produced two witnesses. DW-1 is Dalbir Singh, who stated that on 28.02.2011 at about 7-8 p.m. he was coming from his shop. Accused Praveen and Ramesh Kumar were having some altercation. Thereafter Ramesh called 3-4 persons from the locality and they have beaten the accused Praveen. Mr. Sawhney submits that the incident had occurred at about 06:10 p.m. and by 06:45 p.m. the police had already reached the spot. Therefore, the testimony of DW-1 that he was coming from his shop at 7-8 p.m. when he saw the alleged incident of altercation between the complainant and the accused, is not believable.

26. Mr. Sawhney submits that a perusal of the testimony of Kuldeep

Singh (DW-2) shows that the same is hearsay, since he states that at 08:30 p.m. *"I came to know that accused Praveen had some altercation with one chemist at 40 foota road"* He was not the eye-witness to the incident and his testimony was not believable.

27. On the aspect of recovery of the knife, Mr. Sawhney submits that from the evidence brought on record, it is clear that the personal search of the accused was taken by one of the persons in the crowd, and the knife was found in the right side pocket of the appellant's pant in the presence of the complainant. The knife was handed over to PW-8 by the complainant, as disclosed by PW-8 and corroborated by seizure memo (Ex.PW-1/C). There is no material contradiction going to the core of the prosecution's case.

28. Mr. Sawhney further submits that for completion of offence under Section 397 I.P.C., it is the use of the weapon and not its subsequent recovery, which is relevant. In this case, the complainant (PW-1) has deposed that the accused had used the knife to threaten the complainant by placing the same on the left side of his stomach and he had also identified the knife in Court when produced.

29. The testimony of PW-1, the complainant is completely unshaken. Pertinently, the complainant categorically stated that one black motor cycle Pulsar came in front of his shop. Two riders got down from the motor cycle and came at his shop and they asked him to give the money. Pertinently, the said black coloured motor cycle was recovered from the house of the accused. The complainant did not know the accused from before, and had no reason to implicate the accused falsely at the cost of letting off the real

culprit. The accused was caught red handed while running after committing the robbery; the buttondar knife was recovered from him, and; was even given beating by the crowd which had gathered in the market place. Pertinently, the accused, when taken for his medical examination and treatment gave the alleged history of physical assault beating by public/mob. It was for the accused to explain the circumstances in which the public/mob had caught hold of him and beaten him up, and also to explain as to why he made the said disclosure in his MLC (Ex. PW-8/A1), if according to him the complainant had given him beating on account of a dispute with him. It was for the accused to disclose the nature of his alleged dispute with the complainant which allegedly led to the complainant giving him beating and making an allegedly false complaint. However, the appellant failed to make any disclosure in this regard, much less raise any probable defence in this respect.

30. I find absolutely no merit in the appellant's submission that PW-1 had not narrated that after he had been robbed by showing a knife, whether, or not, the knife was closed. Whether or not the same was closed within the sight of the complainant PW-1, is not relevant or material. The fact of the matter is that the complainant disclosed in his earliest statement that he had been robbed at knife point shown by the appellant/accused and the buttondaar knife had also been recovered from the appellant, which had been identified by the complainant.

31. The appellant has sought to raise doubts on the basis of the so-called contradiction in the identity of the person who recovered the knife from the accused. Once again, I find no material contradiction in the testimonies of

the prosecution witnesses, which go to the core of the matter. PW-1 had clearly stated that the knife had been recovered by one of the person in the crowd who had collected at the spot. In a crowd, when there may be several persons surrounding the accused, and several hands reaching out to either beat him up, or to check his pockets, it is very unlikely that the victim would in that commotion, pay attention to observe as to who has got the knife recovered from the pocket of the accused, particularly when the crowd consists of strangers as well. Pertinently, the accused did not take the defence even during the cross examination of the prosecution witnesses that the knife did not belong to him, or that the same had been planted upon him. In fact, the recovery of the knife from the accused was not challenged.

32. I also find no merit in the submission of the appellant that it was highly unlikely that in a chemist shop only an owner would be present. In any shop, during the course of the day, there could be episodes when there is no customer present. There is nothing unusual about it. It could well be that the appellant and his accomplice chose to rob the complainant precisely for the reason that he appeared to be all alone in his shop. The appellant and his accomplices picked the complainant for that reason, so as to minimize the risk of resistance or confrontation.

33. PW-4 was the first person to hear the alarm raised by the complainant PW-1 and responded. However, the fact that a crowd/mob gathered; apprehended and beat the appellant/accused and recovered the knife from him, shows that eventually the alarm raised by the complainant PW-1 did have the desired result. Pertinently, the complainant made a call to the police on no.100 and DD No.39A was recorded at 6:30 p.m. Within fifteen

minutes, i.e. by 6:45 p.m., the IO had reached the spot. Thus, there was no scope for any manipulation during this period. The accused had been apprehended by PW-4 and the public also gave him beating. Soon thereafter, the statement of complainant PW-1/A was also recorded at the spot. The appellant was taken to the hospital for his medical examination.

34. No doubt, the DD entry recorded the incident of quarrel and not robbery. However, that by itself would not throw any doubt on the case of the prosecution. The call made by the complainant on no.100 was with a sense of urgency. What he may have uttered, and what eventually came to be recorded would not result in changing the nature of the incident and offence which occurred at the site.

35. PW-4, no doubt, turned hostile. However, he admitted his signatures on Ex.1/B, C, D E & F. He also admitted that he heard a quarrel and came down and saw a crowd. This corroborates the testimony of the other prosecution witnesses, including PW-1. Though, PW-4 states that he signed pre prepared documents without reading them, viz. Ex.PW-1/C (Seizure Memo), Ex.PW-1/D (Arrest Memo), Ex.PW-1/E (Personal search memo of Parveen @ Kale) and Ex.PW-1/F (Personal search memo of Manoj Kumar), he does not disclose why he acted in this unusual and irresponsible manner. He did not claim the exercise of threat, coercion or inducement either by the complainant or the police. Thus, PW-4 stands discredited since his testimony before the Court is not in accord with the corroborative evidence. As to why he turned hostile, is anybody's guess.

36. The disclosure statement of the appellant was recorded on 28.02.2011

itself. The timing of the incident was around 6:10 p.m.; the DD entry was made recorded at 6:30 p.m.; the IO PW-8 had reached the spot by 6:45 p.m. Thereafter, the appellant was taken for his medical treatment to the hospital. The MLC records the date and time of arrival as 28-02-2011 at 9.30 am. It is only thereafter that later in the evening/night, the disclosure statement of the appellant was recorded. The black coloured motor cycle Pulsar was recovered on the following day. Thus, it cannot be said that there was any undue delay in the recovery of the motor cycle.

37. I also find merit in the submission of learned APP that the two defence witnesses produced by the appellant/accused were not trustworthy. DW-1 stated that about 7-8 p.m. while coming from a shop, he noticed the complainant and the appellant/accused having an altercation. This is completely belied by the fact that the incident occurred at about 6:10 p.m.; the complainant reported the incident to the police on no.100 at about 6:30 p.m., and; the IO had even arrived at the spot by 6:45 p.m. There was no question of the appellant/accused having an altercation with the complainant between 7-8 p.m. The evidence of DW-2 is merely hearsay evidence, and is of no avail.

38. In the light of the aforesaid discussion, I am of the view that the appellant has failed to demonstrate that the impugned judgment suffers from perversity, or lack of appreciation, or mis-appreciation of evidence. The evidence brought on record is sufficient to establish beyond any reasonable doubt the commission of offence by the appellant, of which the appellant has been found guilty. The guilt of the appellant stands proved beyond all reasonable doubts.

39. For all the aforesaid reasons, I do not find any merit in this appeal and dismiss the same.

VIPIN SANGHI, J

MAY 14, 2015

B.S. Rohella/sr