

\$~R-14 & R-15

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

*Judgment Reserved on: May 19, 2016*

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*Judgment Delivered on: May 31, 2016*

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**CRL.A. NO. 1239/2014**

MUKESH KUMAR

..... Appellant

Through: Ms.Suma Chauhan, Adv.

versus

STATE.

..... Respondent

Through: Mr. Amit Ahlawat, APP for State

AND

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**CRL.A. NO. 1282/2014**

SIKANDER @ KALU

..... Appellant

Through: Appearance not given

versus

STATE.

..... Respondent

Through: Mr. Amit Ahlawat, APP for State

**PRATIBHA RANI, J.**

1. The appellants Mukesh Kumar and Sikander @ Kalu have impugned the judgment dated 17<sup>th</sup> December, 2013 by filing separate appeals impugning their conviction and order on sentence dated 3<sup>rd</sup> January, 2014 whereby they have been convicted for committing the offence punishable under Sections 392/34 IPC. The appellant Mukesh Kumar has also been

convicted for the offence punishable under Sections 397 IPC. They have been sentenced as under:-

**Appellant Mukesh Kumar**

- (i) Under Section 392/34 IPC R.I. for a period of four years with fine of ₹ 5,000/- and in default, to undergo SI for three months
- (ii) Under Section 397 IPC R.I. for a period of seven years

**Appellant Sikander @ Kalu**

- (i) Under Section 392/34 IPC R.I. for a period of four years with fine of ₹ 5,000/- and in default, to undergo SI for three months

2. The case of the prosecution is that on 28<sup>th</sup> March at 9.45 p.m. DD entry No.125-B was recorded at PS Sultanpuri to the effect that information has been received telephonically about some persons being trying to robbed a caller near B-1 Park, Main Road, Sultanpuri, Delhi who had informed the Police Control Room and information was conveyed by lady constable REnu to PS Sultanpuri. The DD No.125-B was assigned to ASI Rajender Singh who along with Constable Surender Singh reach B-1 Park, Main Road, Sultanpuri, Delhi. He met the complainant Mohit Kumar who made the statement exhibit PW-2/A on the basis of which case FIR No. 233/2013 was registered by DD No. 3-A at 12.05 a.m. on 29<sup>th</sup> March, 2013. The Statement of the complainant is to the effect that he is resident of Gali No.6, Bhooto Wali, Ashok Mohalla, Nangloi, Delhi aged about 24 years and his mobile number is also mentioned in the complaint. He reported that he was doing a private job in Jain Nagar. On that date, he was going for his duty and at about 9.30 p.m. when he reached near B-1 Park, Main Road, Sultanpuri, two young boys came in front of his cycle. He stopped the cycle and immediately

thereafter they put a 'knife' on his neck and from the rear pocket of his pant took out his purse. He raised alarm and public persons collected there and the two boys started running brandishing the knife in the air were apprehended by him with the help of public persons. Somebody called PCR. When the police arrived and both the persons whose name were revealed as Mukesh & Sikander were handed over to the police along with the knife and purse. Legal action was prayed against both of them.

3. After completion of investigation charge-sheet was filed. The accused persons pleaded not guilty to the charge. During the course of trial five prosecution witnesses were examined. In their statement under Section 313 Cr.P.C. both the appellants pleaded their innocence. However, believing the testimony of the complainant and other official witnesses, learned trial Court convicted them for the following reasons:-

*“16. So far as the contradictions in the testimony of PWs as argued by Ld. Defence counsel for the accused are concerned, the same are only minor contradictions which do not go to the root of the case. thus, the Prosecution case cannot be disbelieved on account of the minor contradictions or inconsistencies in the testimony of PWs. In **State of UP Vs. Krishna Master & Ors. 2010 CrL J. 3889**, it was held by the Hon'ble Supreme Court that minor discrepancies, not touching core of case, cannot be ground for rejection of evidence in entirety.*

*17. It has emerged from the evidence of PWs discussed above that the accused persons robbed the complainant/PW-2. The accused Mukesh put knife on the neck of PW2 and the co-accused Kalu @ Sikander had taken out his purse/wallet which was seized vide seizure memo Ex.PW2/B. PW2 has proved his statement Ex. PW2/A. Site plan was also prepared at the instance of PW2 by the IO. The sketch Ex.PW-2/C of the knife which was recovered from accused Mukesh was also prepared by the IO. PW2 correctly identified the accused persons who robbed him and the accused Mukesh who used the knife at the*

*time of incident. The accused persons were apprehended at the spot. Whereas, the accused persons have not proved on record that on the day of incident, the accused persons were not present at the spot. Even, DW1 to DW4 have not supported the case of the accused persons since no complaint was filed to any higher police official or any other authority regarding taking of the accused persons by the police officials.”*

4. On behalf of the appellants the legal aid counsel have submitted that the statement of the complainant and the police officials was not sufficient to prove the guilt of the appellant beyond reasonable doubts. They have further submitted that the incident reported was of attempt to commit a robbery but they have been charged for committing the offence of robbery and for use of deadly weapon while committing the offence. The complainant has not suffered any injury, no recovery has been effected from any of the appellants and no public witnesses has been joined despite presence of public persons being claimed at the time of occurrence. It has been submitted that the evidence adduced in this case was not sufficient to prove the guilt of the appellants beyond reasonable doubts hence the appeal may be allowed and the appellants may be acquitted.

5. On behalf of the State, Mr.Amit Ahlawat, APP has submitted that the occurrence has taken place when the complainant was going on his cycle to report for his duty. Both the appellants have been apprehended at the spot and knife has been recovered from Mukesh who had put the same on the neck of the complainant while committing the robbery. Both the appellants were apprehended at the spot hence their identity also cannot be questioned. Thus, the impugned order does not suffer from any illegality or infirmity and appeals may be dismissed.

6. In this case PW-2, Mohit Kumar is the complainant who has narrated the incident as under:-

*“I reside at the above said address along with my family and I was having a private job at Jain Nagar. On 28.03.2013 I was going to my work place at Jain Nagar being at night duty via Sultanpuri and when at about 9.30 p.m. I reached at B-1 Park Sultanpuri, there suddenly two boys came in front of my bicycle and caught hold the handle of my bicycle and stopped the ame. Thereafter one out of said boy put a knife on my neck and the other boy took out my wallet from the back side pocket of my pants. Thereafter I raised an alarm and the accused who was having knife in his hand started brandishing the knife and he along with his associate started running away, public persons gathered there and I with the help of public persons apprehended both of them. Public persons gave beatings to both the said boys. Someone out of the public dialed 100 no. and PCR arrived at the spot. On interrogation the names of said boys revealed to be Mukesh S/o Mukhtiar Singh and Kalu @ Sikander. Both the said persons were handed over to the police. My wallet was containing cash ₹300/- and my ID Card.”*

7. In his cross-examination he has stated that he did not know who informed PCR and that both the accused persons were taken to the police station and he was also taken to the police station by constable who was on patrolling duty in that area. He reached police station at about 10.00-10.30 p.m. He did not inform about the incident to his family. From the police station he left for his workplace where he was working as a helper under training for which no salary was paid to him.

8. PW-4, Constable Surender Yadav who had accompanied the IO to the spot stated that on receiving DD No.125-B before the IO he reached the spot. There one Mohit met them who produced accused Mukesh Kumar & Sikander @ Kalu who had been apprehended with the help of public persons alongwith one knife and purse.

9. PW-5, ASI Rajinder Singh, the IO has stated that on 28<sup>th</sup> March, 2013 at about 9.45 p.m. on receipt of DD No.125-B, he along with constable Surender Yadav reached the spot where one Mohit met them and produced both the accused persons as well one knife & purse before them. In his cross-examination he has stated that he made efforts to join the public witnesses but none came forward.

10. The DD entry 125-B in this case was about attempt to commit robbery. PW-2, the complainant stated that he had not made any call. When the police visited the spot the complainant had produced both the accused persons as well the knife and his purse. The question arises that how the complainant alone could manage to apprehend both the accused persons one of them being armed with knife and he single handedly not only overpowered both of them but also snatched knife from them and also took back his purse.

11. The DD entry 125-B specifically records about information *kuch ladke mujhe lootne ki koshish kar rahe hai* meaning thereby caller was none else but the complainant. If the complainant was all alone at that time, it is not believable that in respect of incident that has taken place at 9.30 p.m., reported to PCR at 9.45 p.m., till the local police reached the spot the complainant could remain standing there in control of both the accused persons by holding them as well the knife after recovering his purse as well.

12. In the FIR it is mentioned that public persons have given beatings to both the accused persons. However, the appellants have not been got examined medically which again is a very serious lapse on the part of the investigating officer. Thus, the nature of the injuries suffered by the accused persons and the manner in which they have been caused or the

weapon/object used for causing the injuries to the appellant remained unexplained.

13. The arrest memo shows that information has been given to the mother of Sikander @ Kalu at 1.15 a.m. and to father of Mukesh at 1.25 a.m. Both these arrest memos bear the signatures of the complainant Mohit Kumar. It is PWs own version that he was not getting any salary and that he was going for second shift starting from 10.00 p.m. to 10.00 a.m. next day and that he was only a helper under training. In that case, it is highly probable that after remaining in police station upto 1.25 a.m. (as per arrest memo) he would proceed on cycle to his work place in Jain Nagar which is far away from Sultanpuri again risking his life at such an odd hour after the incident of robbery being committed at knife point. The complainant, PW-2 Mohit Kumar was having a mobile. The fact that he had not informed either his employer or at his residence about the incident, itself raises serious doubts about the truthfulness of his version.

14. After carefully considering the submissions of the complainant I find his version to be highly improbable. As per him, at 9.30 p.m. the incident has taken place and at 9.45 p.m. he informed the police about an attempt of robbery being committed by some person without informing that those persons have been apprehended by him with the help of public persons. Improbability in the version of the complainant that while the two robbers were running away brandishing knife he chased and apprehended them and took back not only his purse but also disarmed them by taking the knife from them. It is his own version that when the police came to the spot he produced both the appellants along with knife and his purse before the Investigating Officer. No public person is a witness in this case despite prosecution version that both the appellants have been given beatings by the public

persons. Even their MLC have not been prepared to ascertain the nature of the injuries and explained the same. Otherwise also in respect of the incident that had taken place at 9.30 p.m. the complainant could not have waited till 9.45 p.m. to inform about attempt to commit robbery and wait further for the police to arrive at the spot. It may be necessary to mention here that complainant has nowhere stated as to at what stage he took back his purse from the appellants and also disarmed them by taking knife from them.

15. Therefore, in the facts and circumstances noticed above, I have no hesitation to hold that the prosecution story is full of improbabilities, inconsistencies and contradictions. The learned trial Court wrongly convicted the appellants by placing reliance on the testimony of the complainant and the police officials ASI Rajender Singh & Constable Surender Yadav.

16. Resultantly, the impugned judgment dated 17<sup>th</sup> December, 2013 and order on sentence dated 3<sup>rd</sup> January, 2014 are set aside.

17. Both the appellants are acquitted of the charge. They be released, if not required in another case.

18. Appeal stands disposed of in above terms.

19. TCR be sent back alongwith copy of this order.

20. A copy of this order be sent to the concerned Jail Superintendent for information and necessary compliance.

**PRATIBHA RANI, J.**

**MAY 31, 2016**

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