

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

% *Judgment reserved on : May 19, 2016*
Judgment delivered on: May 23, 2016

+ **CRL.A 885/2015**

MOHD PARVEJ Appellant
Represented by: Mr. Imran Khan, Adv.

versus

STATE Respondent
Represented by: Ms. Rajni Gupta, APP for State

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. By the instant appeal the appellant Mohd. Parvej challenges the impugned judgment dated 25th February, 2015 whereby he has been convicted for the offence punishable under Section 394/34 IPC in FIR No.67/2013 registered at PS Sarai Rohilla Railway Station (in short 'SRRS') and the order on sentence dated 26th February, 2015 directing him to undergo Rigorous Imprisonment for a period of two years and to pay a fine of Rs.5,000/- and in default to undergo SI for one month.

2. The prosecution case in brief is that on 24th October, 2013 at 5.00 AM an information recorded vide DD No.4PP (Ex.PW-2/A) was received at PP Kishan Ganj Railway Station informing that two persons have been stabbed and robbed by pointing the knife and the Railway Master was not taking any action. Another DD No.5PP (Ex.PW-2/B) was received around 5.50 AM and it was informed that one Heera Lal Shah was taken to Hindu Rao Hospital in an injured condition in PCR van. On the same day, at 7.30 AM

another DD being DD No.6PP was received at PP Kishan Ganj Railway informing that in Daya Basti Railway Station somebody snatched the callers/complainant's belongings by pointing the knife.

3. On receipt of DD no. 4PP SI Jai Maseeh PW-11 along with Ct. Yogender went to the spot i.e Dayabasti Railway station. On reaching the spot he neither found any eye witness nor the complainant. He came to know that the injured had been taken to the Hindu Rao Hospital. Thereafter, he went to the hospital and got the MLC of injured Heera Lal Shah. He recorded the statement of Heera Lal Shah (Ex.PW 6/A) regarding snatching of Rs.5,000/- and bag of Sanjeev containing documents by pointing the knife. On the basis of the statement of Heera Lal Shah (PW6), FIR No. 67/13 (Ex.PW10/A) was registered under Sections 394/34 IPC at PS S.R.R.S.

4. PW-6 Heera Lal was lying on a bench at platform no.1 on 23rd October, 2013 around 4-5:00 A.M. Three boys came and robbed him by pointing the knife. ₹5,000 (which were in the denomination of ₹1,000 each) were taken out forcibly from the pocket of his pant, the other accused held his hand and the third accused inflicted injury by knife at two places on his buttock and he shouted "*chor chor*". After robbing him they went to platform no.2 and looted the bag of another boy who was sitting on the other platform.

5. SI Jai Maseeh also prepared the site plan (Ex.PW11/B) at the instance of Heera Lal Shah. He further recorded the statement of other victim Sanjeev (Ex.PW11/C) from whom the bag was snatched and who had called at 100 number. Sanjeev stated that he and his brother had got down from the express train and were sitting at platform No.2 when they saw three boys

running away after robbing and inflicting injury to Heera Lal Shah at platform No.1. Those boys came running to platform No.2 and snatched his bag. The three boys were aged 20-25 years, thin and medium built and he could identify them.

6. PW-7 HC Veer Singh posted at PS Sarai Rohilla on 24th November, 2013 was on patrolling duty at Dayabasti Railway station at about 6.45 PM, when he heard someone shouting “*chor chor*”. He along with the complainant apprehended one person after chasing him who revealed his name as Phool Hasan. The complainant revealed his name as Santosh (informant in FIR No. 75/13) who caught the other person his name being Mohd. Parvej. One mobile phone was recovered from the possession of the Mohd. Parvej.

7. On receipt of DD No. 22PP on 24th November, 2013 PW-4 ASI Raghuraj Singh reached platform no.1, Dayabasti Railway station where he met HC Veer Singh and the complainant Santosh. They produced Phool Hasan and Mohd. Parvej who were arrested in FIR no.75/13 PS Sarai Rohilla wherein they disclosed about their involvement in FIR No.67/13. SI Jai Maseeh PW-11 moved an application for conducting TIP of both the accused but both of them refused to participate in TIP proceedings.

8. Dr. Saurabh Saxena examined PW-6 on 24th October, 2013 vide MLC Ex. PW1/A. Dr. Nandan Sur PW-1 appeared as a witness and proved the MLC Ex.PW-1/A prepared by Dr.Saurabh Saxena by identifying his handwriting and signature. As per Ex.PW-1/A the injuries suffered by Heera Lal were two incised wounds on the hip region, which injuries were simple in nature.

9. Learned counsel for appellant contends that although the appellant

was arrested in the case pertaining to FIR no. 75/13 but he was made accused in the present case as well. Further no recovery was made at the instance of the appellant. It was also contended that PW-6 admitted in his cross-examination that there was no light either at the Platform or in the surrounding area, thus it was a case of mistaken identity. He further submitted that no adverse inference can be drawn against the appellant for refusing Test Identification Parade as the appellant had already been shown to the witness in the Police station.

10. Learned APP for the State contends that even though the platform may be dimly lit at 4.30 AM however still there was sufficient light and the site plan shows that there was running tea stall where the complainant was lying on the bench. The complainant is neither a resident of Delhi nor knew the accused or the police prior to the incident and there is no reason why he should falsely implicate. Mohd. Parvej and the co-accused was arrested in FIR 75/2013 where they made a disclosure statement whereafter production warrants were issued. Mohd. Parvej was directly produced in Court in muffled face where he refused to undergo TIP. Thus, there was no chance for the investigating officer to show the face of the appellant to the witnesses. The learned Trial Court convicted Mohd. Parvej on the basis of the testimony of the injured/eye witness (PW-6) who not only identified both the accused persons but also specified the role of each one. Furthermore, the rough sketch (Ex.PX1 to PX3) made on the description given by PW-6 matched more or less with the accused persons. The learned Trial Court also placed reliance on the MLC of the victim (PW-6) which corroborated the testimony of PW-6.

11. Heera Lal deposed that though there was no overhead light but there

was light in the surrounding. As per the site plan there was tea stall near the bench where Heera Lal was lying. He denied the suggestion that he was sleeping at that time and had not seen the accused. Thus, the contention that this was a case of mistaken identity deserves to be rejected.

12. From the evidence on record and the testimony of investigating officer, it is evident that Mohd. Parvej was not in the custody in this case and he was directly produced in muffled face in the Court. Thus, an adverse inference is required to be drawn against the appellant for refusing the TIP. Mohd. Parvej has been rightly identified by the complainant. The fact that two incised wounds were inflicted on Heera Lal and he was asked to part with money, Heera Lal had every opportunity to see the appellant and the co-accused. The testimony of Heera Lal cannot be brushed aside merely because Sanjeev the other victim could not be produced in Court as he was not traceable for want of correct address.

13. In view of the aforesaid discussion, I find no error in the impugned judgment of conviction and order on sentence. The appeal is consequently dismissed.

14. The appellant will undergo the remaining sentence.

15. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record.

16. TCR be returned.

(MUKTA GUPTA)
JUDGE

MAY 23, 2016
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