

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

RESERVED ON : 20th MAY, 2016

DECIDED ON : 3rd JUNE, 2016

+ **CRL.A.1021/2015**

ASIF

..... Appellant

Through : Ms.Manika Tripathy Pandey,
Advocate with Mr.Ashutosh Kaushik,
Advocate.

VERSUS

THE STATE (NCT OF DELHI)

..... Respondent

Through : Mr.Tarang Srivastava, APP.

AND

RESERVED ON : 31st MAY, 2016

DECIDED ON : 3rd JUNE, 2016

+ **CRL.A.1035/2015, CRL.M.A.Nos.6128-29/16 & CRL.M.B.915/16**

SARDAR @ ILYAS

..... Appellant

Through : Mr.R.P.S.Bhatti, Advocate.

VERSUS

STATE (GOVT. OF NCT OF DELHI)

..... Respondent

Through : Ms.Meenakshi Dahiya, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Aggrieved by a judgment dated 01.08.2015 of learned Addl. Sessions Judge in Sessions Case No.50/14 arising out of FIR No.162/12 PS

GTB Enclave by which the appellants – Asif (A-1) was held guilty for committing offences punishable under Sections 394/397/411/309/34 IPC and Sardar @ Ilyas (A-2) was held guilty for committing offences punishable under Sections 394/411/34 IPC, they have filed the instant appeals. By orders dated 07.08.2015, they were sentenced to various prison terms with fine. All the sentences were to operate concurrently.

2. Briefly stated, the prosecution case as reflected in the charge-sheet was that on 10.08.2012 at about 02.00 p.m., at GT road, opposite Jhilmil Metro Station, Delhi, the appellants in furtherance of common intention robbed complainant – Mukhtiar Ahmed and deprived him of cash and other articles. He was also inflicted injuries by a knife. It is further alleged that in order to prevent any action against himself, A-1 attempted to commit suicide by stabbing himself. On receipt of information recorded by Daily Diary (DD) No.30B (Ex.PW-12/A) on 10.08.2012 at PS GTB Enclave, the investigation was assigned to ASI Bacchu Singh. After recording victim's statement (Ex.PW-1/A) the Investigating Officer lodged First Information Report. A-1 was apprehended at the spot. Since he had sustained injuries, he was admitted at GTB Hospital. Subsequently, A-2 was arrested. Application for conducting TIP was moved; A-2, however, declined to participate in it. Pursuant to A-2's disclosure statement, the robbed articles were recovered from his house. Upon completion of investigation, a charge-sheet was filed against the appellant for committing various offences in the Court. The prosecution examined nineteen witnesses to prove its case. In 313 Cr.P.C. statements, the appellants denied their involvement in the crime and pleaded false implication. The trial resulted in

their conviction as aforesaid. Being aggrieved and dissatisfied, the instant appeals have been preferred.

3. I have heard the learned counsel for the parties. Appellants' counsel urged that the Trial Court did not appreciate the evidence in its true and proper perspective. A-1 was falsely implicated by the complainant for the self-inflicted injuries on his body. No crime weapon was recovered from A-2. The Trial Court committed grave error to base conviction on the testimonies of interested witnesses without any independent corroboration. Despite availability of number of independent public persons, none was associated at any stage of the investigation. The Investigating Agency had also shown the accused persons to the complainant and there was no occasion to participate in the TIP proceedings. Numbers of inconsistencies and infirmities have emerged in the statements of the prosecution witnesses. No finger prints were found on the knife recovered in this case. Recovery of ₹26,000/- at A-2's instance is highly doubtful. It is unbelievable that A-2 would not spend the robbed cash and keep it intact for number of days. A-2's counsel urged to get conduct lie detection test to prove his version. Learned Addl. Public Prosecutor urged that no valid reasons exist to disbelieve the testimony of the complainant who had no ulterior motive to falsely implicate the appellants in the crime.

4. On 10.08.2012, Mukhtiar Ahmed - the complainant along with his friend PW-4 (Manoj Mittal) had boarded a private minibus to go to Seemapuri border. The bus was fully crowded. The appellants present in the bus removed cash ₹27,000/-, PAN card and some other documents from the left side pocket of the complainant's pant. The other assailant removed the purse from the right pocket, it contained ₹1,500/- and visiting cards. The

complainant confronted the individual who had removed the purse. On that, after inflicting injuries on his hands, the assailants alighted from the moving bus and fled the spot. They were chased. The complainant succeeded to apprehend A-1 at the spot. The police arrived and A-1 was handed over along with recovered articles. In complaint (Ex.PW-1/A), complainant - Mukhtiar Ahmed gave all these details and claimed to identify the assailant who had succeeded to flee the spot.

5. In his Court statement as PW-1, the complainant proved the version given to the police at first instance without any variation. He identified both the appellants to be the individuals who had robbed him of his cash and other articles inside the bus. He further attributed and assigned specific role to each of the appellants for committing robbery and inflicting injury to him. He specifically deposed that there was a huge rush in the bus and both the accused persons started pushing him. A-1 put knife on his stomach and removed his purse from his back pocket. A-2 removed ₹27,000/- and PAN card from the left side pocket of his pant. The purse contained ₹1,500/- and visiting cards of his shop. When he tried to remove the knife which was placed on his abdomen, A-1 caused injuries on his right palm. His friend Manoj came to his assistance. On that, both the accused persons got down from the running bus. They were chased by them and were successful to apprehend A-1. On that, A-1 to avoid action, inflicted injuries on his stomach and neck with a knife in his hand. The police officials who had arrived the spot took both of them to GTB Hospital for medical examination. The complainant also identified the case property recovered in this case. He further deposed that subsequently he came to know that robbed cash ₹27,000/- and PAN card was recovered from A-2. In the cross-

examination, he elaborated that on that day, he had come from Vilaspur, Distt. Rampur. After 4 or 5 days, he came to know about A-2's arrest and recovery of the cash and PAN card. He denied that A-2 was falsely implicated in this case. He further denied that A-1 was roped in due to personal rivalry with him.

6. On scrutinising the entire testimony of the victim, it reveals that despite cross-examination, no material infirmities could be extracted or brought out to discredit his version. No ulterior motive was assigned or attributed to the injured victim for falsely implicating the accused persons with whom he had no prior acquaintance. The complainant who had come to Delhi from Vilaspur, Distt. Rampur had intended to go to Seemapuri by a bus. The accused persons were identified by him without any hesitation to be the individuals who had not only robbed him but had also inflicted injuries to him. The occurrence had taken place during day time and the complainant had direct confrontation with the accused persons. Apparently, he had enough reasonable opportunity to recognise the assailants and identify them in the Court. A-1 was apprehended at the spot. Since he had sustained injuries on his body, he was taken to GTB Hospital and was medically examined vide MLC (Ex.PW-14/A). The MLC records A-1's arrival time at the hospital at 2.55 p.m. A-1 failed to explain as to how and under what circumstances, he sustained injuries on his body. A-2 was apprehended subsequently on the pointing out of the secret informer and robbed articles were recovered pursuant to his disclosure statement from his house. These were seized vide seizure memo (Ex.PW-8/C). The complainant identified the recovered case property in the Court. The police officers are not expected to plant the huge cash of ₹26,000/- from their own

pocket to falsely implicate A-2. Moreover, application was moved by the Investigating Officer during investigation to hold Test Identification Proceedings. A-2 for the reasons best known to him declined to participate in the TIP proceedings. Adverse inference is to be drawn against him for refusing to participate in the TIP proceedings. Complainant was categorical to identify A-2 to be the individual who had robbed him of the cash ₹27,000/- along with PAN card. In the absence of any prior animosity, the independent witness who was not even a resident of Delhi, was not expected to falsely implicate an innocent one.

7. PW-4 (Manoj Mittal) has fully corroborated and supported complainant's version without any inconsistency. He too identified both the appellants to be the individuals who had not only robbed the complainant but had also inflicted injuries to him. Nothing material could be extracted in the cross-examination to disbelieve his presence along with complainant inside the bus at the relevant time.

8. Medical evidence further corroborates the complainant's version. Soon after the occurrence, he was taken to GTB Hospital and was medically examined vide MLC (Ex.PW-13/A). Incise looking wound measuring 4 cm x 1 cm over right hand was found at the time of his medical examination. PW-13 (Dr.Mohd. Perwez) proved the MLC (Ex.PW-13/A). He was not cross-examined.

9. Recovery of crime weapon i.e. knife and robbed articles from A-2's possession further lend credence to the complainant's version. The complainant had no motive to fake the incident of robbery. It was specifically alleged that pursuant to A-2's disclosure statement cash ₹26,000/- was recovered from his house in the presence of his family

members A-2 did not examine any witness from the family or neighbourhood to falsify prosecution's version in this regard.

10. The Trial Court has dealt with all the relevant aspects and the impugned judgment based upon fair appreciation of the evidence needs no intervention. Minor discrepancies or infirmities highlighted by the appellants' counsel are of no consequence as they do not go to the root of the case. Conviction as recorded by the Trial Court is confirmed.

11. Perusal of the Trial Court record reveals that the appellants are involved in number of criminal cases. Status report reveals that A-1 was involved in twelve criminal cases for committing various offences. A-1's Nominal Roll dated 08.04.2016 reveals that he is involved in case FIR No.145/11 under Sections 382/411/34 IPC PS GTB Enclave.

12. Considering the gravity of the offence where an innocent visitor to Delhi was deprived of his valuable articles and was also caused injuries for no fault of his, no leniency is called for.

13. Sentence Orders are modified to the extent that default sentence for non-payment of fine ₹4,000/-, shall be SI for one month each in all. Other terms and conditions of the Sentence Orders are left undisturbed.

14. The appeals stand disposed of in the above terms. Pending applications stand disposed of. Trial Court record be sent back forthwith with the copy of the order. A copy of the order be sent to the Superintendent Jail for information.

(S.P.GARG)
JUDGE

JUNE 03, 2016 / tr