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

+ **CRL.A. No.554/2001**

Date of Decision : 26th April, 2017

SUDESH@VINOD APPELLANT

Through Ms.Geeta Luthra, Sr. Adv. with
Ms.Parul Sharma, Adv.

Versus

STATE RESPONDENT

Through Mr.Panna Lal Sharma, Additional
Public Prosecutor for the State.

WITH

CRL.A. No.563/2001

VIVEK@BABLOO@RAHUL APPELLANT

Through Ms.Geeta Luthra, Sr. Adv. with
Ms.Parul Sharma, Adv.

Versus

STATE RESPONDENT

Through Mr.Panna Lal Sharma, Additional
Public Prosecutor for the State.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

P.S.TEJI, J

1. Both these appeals are disposed of together by this common judgment as the same have been preferred against a common judgment of conviction and order on sentence.

2. The present appeals have been filed by the appellants i.e. Sudesh@Vinod (Appellant in Crl.A. No.554/2001) &

Vivek@Babloo@Rahul (Appellant in Crl.A. No.563/2001), aggrieved by the judgment of conviction dated 30th July, 2001 convicting the appellants finding them guilty under Section 394 of the Indian Penal Code (IPC) and order on sentence dated 31st July, 2001 vide which the sentence was passed under Section 394/34 of the IPC against the appellants to undergo rigorous imprisonment for a period of four years. The accused were granted benefit of Section 428 Cr.P.C.

3. The facts in brief are that on 19th October, 1999 SI Kali Ram along with HC Uday Singh, HC Vinod Kumar and Ct.Daya Prakash while on patrolling duty at Ajmeri Gate, New Delhi Railway Station, noticed two boys running towards them while the complainant i.e. Ramesh Chand Sharma, was chasing them, shouting “Pakdo Pakdo” upon which SI Kali Ram with the help of his above mentioned colleagues, apprehended them. The accused Sudesh@Vinod (Appellant in Crl.A. No.554/2001), was having Rs.220/- in his hand. As per the statement of the complainant, he was conductor in white line bus and that on 19th October, 1999 while he was counting cash in the bus, the said two boys came inside and threatened him to hand over the cash else they would kill him and upon denial by the complainant one boy i.e. Vivek@Babloo@Rahul (Appellant in Crl.A. No.563/2001), caught hold of his collar while Sudesh snatched cash from him and gave blade injury on the left side of his neck and right side of his knee. The complainant raised noise upon which driver of the bus alighted from the bus and one Raju, helper in the bus, also approached. Thereafter, the accused persons, who ran towards outer gate side of the Railway Station, were chased by all these persons by saying “pakdo pakdo” when police also approached and apprehended

them. Thereafter, recovery of Rs.220/- was effected from the accused Sudesh; ruqqa was prepared at the spot; case was registered; complainant was medically examined and pant of the complainant and shirt of the accused were taken into possession which were sent to the Forensic Science Laboratory. It emerges from the record that charges under Sections 394/397/34 of the Indian Penal Code were framed against the accused to which they pleaded not guilty and claimed trial.

4. The appellants were held guilty by the learned Additional Sessions Judge, Delhi and by an order dated 30th July, 2001, both the appellants were sentenced to undergo rigorous imprisonment for a period of four years under Section 394/34 of the IPC.

5. The main ground of challenges are that in the evidence i.e. at the time of examination before the Trial Court, the complainant stated that he did not remember the date, month and year of incident; he could not identify the person who assaulted him at his neck by sharp weapon while he was sitting on the middle portion of the bus and distributing tickets and that in the trial court, the complainant stated that the accused took away Rs.240/- while in the statement recorded under Section 161 Cr.P.C., he stated that a sum of Rs.220/- was snatched in the robbery. There was non-examination of the doctor who was an important witness. No MLC was prepared in this case and only CR No.48287 was there in which it was stated on a plain paper that wound was not fresh and appeared to be six-eight hours old and that the time of incident was 3.45 p.m. meaning thereby the victim was injured before the incident. The plea of the appellant regarding the evidence of PW-9 was not considered by the court below. Weapon of offence was not recovered by the police and in absence thereof, offence under

Sections 394/397 were not made out. Evidence of PW 5 were not taken into consideration. The incident occurred on 19th October, 1999 at 2.55 p.m. while the time shown in the arrest memo was 4.00 p.m. There is delay in lodging the FIR.

6. Per contra, argument advanced by learned Additional Public Prosecutor for the State is that the appellants were rightly held guilty under Section 394/34 of the Indian Penal Code. It was submitted that on 19th October, 1999, while SI Kali Ram along with his colleagues, were on patrolling duty at Ajmeri Gate, NDRS, they heard the noise “pakdo pakdo” and they apprehended the accused persons who were coming towards them. Thereafter, upon apprehension of the accused persons, recovery of Rs.220/- was effected from the accused Sudesh and that the complainant was found having injuries on his neck and knee.

7. I have heard learned senior counsel for appellants as well as learned Additional Public Prosecutor for the State.

8. The prosecution had examined as many as nine witnesses namely PW 1 HC Sh.Shashi Bhushan; PW 2 Ramesh; PW 3 Mukesh Kumar; PW 4 SI Kali Ram; PW 5 HC Vinod Kumar; PW 6 HC Babu Lal; PW 7 Const.Daya Parkash Kaushik; PW 8 Sh.Yogesh Kumar & PW 9 Const.Dalip Singh. The statement of the accused persons Sudesh and Vivek were recorded under Section 313 of the Cr.P.C.

9. It emerges from the record that vide order dated 1st November, 2002 passed by this court, the sentence of the appellant Sudesh was suspended during the pendency of the appeal while the sentence of the accused Vivek was suspended vide order dated 19th February, 2003. As per the nominal roll dated 14th September, 2001, in respect of the accused Sudesh, as on 12th September, 2001,

he had undergone the sentence of three years seven months and fifteen days while the accused Vivek as per the nominal roll, as on 19th February, 2003, had undergone the sentence of one year eight months and seven days.

10. Upon hearing the rival contentions of the parties at length, evidence led is being examined.

11. PW 1 HC Shashi Bhushan in his statement stated that on 19th October, 1999 while he was posted at Police Station New Delhi Railway Station, he received ruqqa Ex.PW 1/A from PW 7 Ct.Daya Parkash on the basis of which he registered FIR and thereafter handed a copy thereof along with ruqqa to PW 7.

12. PW 2 Ramesh in his statement stated that he did not remember the date, month and year of the incident but only the fact that the same occurred about two years back when he was working as conductor in white line route bus. PW 2 further stated that on the date of incident at about 1.00 p.m., when the bus reached at New Delhi Railway Station while he was sitting on the middle portion of the bus and was distributing tickets to passengers, somebody assaulted him on his neck with sharp edge weapon. He further stated that he could not identify these persons for the reason that he became unconscious. The driver of the bus also alighted. PW 2 stated that from his cash bag, the persons took away a sum of Rs.220/- and that the persons present in the court were not among those boys who assaulted him on the date of incident; snatched Rs.220/- from him and caused injury on his neck. He further added that the accused present in the court were neither apprehended by him nor by the driver Mukesh and the helper Raju. PW 2 stated that Ex.PW 2/A bore his signatures at point 'X' but he did not give that statement to police. This witness stated that one sealed parcel

bearing the FSL seal was opened; one blood stained pant which he was wearing at the time of incident was taken into possession by the investigating officer, who thereafter sealed the same with the seal of KRS, vide memo Ex.PW 2/B which bore his signature at point 'X'.

13. PW 3 Mukesh Kumar who was the driver of the bus, in his statement stated that he knew nothing about the case and that he saw only the crowd when he stopped the bus at New Delhi Station. He further stated that the conductor of the bus i.e. PW 2 Ramesh was assaulted by somebody. PW 3 stated that the accused persons present in Court were never apprehended by him with the help of helper Raju and that Ramesh was injured. This witness stated that his statement was not recorded by the police.

14. PW 2 Ramesh & PW 3 Mukesh Kumar are the star witnesses of the present case. PW 2 is the victim of the incident with whom the alleged robbery had taken place apart from assaulting him. The case of the prosecution is that on the date of incident, both the appellants robbed Rs.220/- from PW 2 who was deputed as conductor on a bus. The case of the prosecution has not been supported by PW 2. In his testimony, he has stated that though he was robbed and assaulted but the accused persons/appellants herein present in the Court were not amongst those persons who had robbed him or assaulted him.

15. PW 3 Mukesh Kumar was deputed as driver in the bus in which the robbery had taken place. As per prosecution, PW 3 had seen the incident and also identified the accused persons when they were allegedly apprehended at the spot. But this witness has also not supported the case of the prosecution. He has specifically stated that he saw only the crowd when he stopped the bus at New

Delhi Railway Station. He categorically stated that none of the appellants was ever apprehended by him or by anyone else.

16. In view of the testimony made by PW 2 & PW 3, the prosecution has failed to establish beyond reasonable doubt against the appellants that they had robbed PW 2 or assaulted him on the date of incident as they were not identified being robbers or assailants by both these witnesses.

17. Perusal of impugned judgment of conviction shows that the court below based its reasoning on the basis of testimony of police officials and the documents prepared. But the fact remains that none of the police officials was witness to the incident of robbery or assault to PW 2. As per the case of prosecution itself, the role of police officials came into play only after the apprehension of appellants from near the spot. Since they were not the eye witness to the incident, it is not safe to base the conviction of the appellants on the basis of testimony of police officials and the documents prepared in the absence of their identification by PW 2 & PW 3.

18. In view of the above discussed evidence, this court is of the considered opinion that the prosecution has not been able to prove its case against the appellants beyond reasonable doubt to the effect that they had committed the robbery or assaulted PW 2 on the date of incident and thus the appellants deserve to be acquitted.

19. Consequently, as discussed above, the judgment of conviction and order on sentence passed against the appellants are set aside. The appellants are accordingly acquitted.

20. The appellants are on bail. Their bail bonds and surety bonds stand discharged.

21. Both the appeals are accordingly allowed and disposed of.

(P.S.TEJI)
JUDGE

APRIL 26, 2017

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