

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

% Decided on: 1st June, 2017

+ **CRL.A. 1672/2014**

KHEL BAHADUR

..... Appellant

Represented by: Mr. S.K. Sethi, Adv. DHCLSC
with appellant produced in
custody.

versus

STATE

..... Respondent

Represented by: Mr. Ravi Nayak, APP for State
with SI Dharmendra Pratap
Singh PS Samaipur Badli.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. Convicted for offences punishable under Section 397 read with Section 392 IPC, Khel Bahadur challenges the impugned judgment dated 25th August, 2014 and the order on sentence of the even date directing him to undergo rigorous imprisonment for a period of seven years and to pay a fine of ₹1,000/- for offence punishable under Section 397 IPC. No separate sentence was imposed with respect to offence punishable under Section 392 IPC.

2. Assailing the conviction, Learned Counsel for the appellant contends that though the case of the prosecution is that soon after the incident the complainant made a PCR call and on the Police reaching the spot, appellant and 'A' the juvenile were apprehended from near the place of incident and

thereafter the FIR was registered, however in the rukka the complainant did not state that the appellant is the one who showed him the knife. In his deposition before the Court the complainant for the first time stated that the appellant was the person who showed him the knife at the time of incident. Though appellant and the co-accused were apprehended from the same park from where the recovery was made, however when the appellant was apprehended no knife was recovered from him. As per the complainant there was no light in the park from where the appellant was apprehended, however SI Sanjay and Constable Dhananjay, the two witnesses of the recovery of the knife on 26th December, 2012 allegedly carried out in the evening, stated that they were not carrying torches with them and the area was lit by mercury light. From the testimony of the witnesses, time of the recovery of the alleged weapon of offence is also doubtful. Despite the fact that the incident took place where many public persons were present, there being two CNG stations nearby, public witnesses were neither associated at the time of apprehension of the appellant and the co-accused nor at the time of recovery of the alleged weapon of offence. No site plan was prepared from where the weapon of offence was allegedly recovered. PCR officials who reached the spot have not been examined as prosecution witnesses. As per the complainant after he made the PCR call, the PCR officials with SI Sanjay from PS Samaipur Badli reached the spot at 8.30 PM in Police gypsy whereas SI Sanjay in his cross-examination stated that he went to spot by private motorcycle, thus examination of the PCR officials was necessary to clarify these facts. There are contradictions in the testimony of Arvind Kumar complainant and the investigating officer SI Sanjay and Constable Anil. Arvind Kumar deposed that there were three boys who were trying to

hide themselves in the park at the alleged place of apprehension whereas the two Police officials in their depositions did not claim as to where the three boys were present. They stated that the accused persons were apprehended from the park situated behind the CNG station. It is thus prayed that the appellant be acquitted of the charges framed and in the alternative since there is a material improvement on the aspect that the appellant was the person who showed the knife he be acquitted for charge for offence punishable under Section 397 IPC and released on the period undergone.

3. Learned APP for the State on the other hand submits that immediately after the incident, the complainant made a PCR call and on the Police reaching near the place of occurrence i.e. a park near the CNG pump where the incident took place, two accused i.e. the appellant and 'A' the juvenile were apprehended on the identification of the complainant and FIR was registered. In the rukka, complainant clearly stated that he was shown knife by one of the accused, the other took away his wallet and the third took away his mobile phone threatening him that in case he made a noise he would be killed. Learned APP further contends that since all the material facts were stated in the rukka merely by identifying as to who was the accused who showed the knife in the deposition in Court would not amount to an improvement. Further there is no cross-examination of the complainant on the point that appellant was not the accused who had shown the knife to him. Pursuant to the disclosure statement of the appellant, knife was recovered from the bushes from the park where the appellant and co-accused were apprehended which further fortifies the fact that appellant was having the knife. Since one of the witnesses has clearly stated that the recovery of the knife was made at 4.00 PM and the other stated to be in the

evening hours even in the absence of torch there being complete visibility, it cannot be said that the Police officers could not have got recovered the weapon of offence as alleged. Learned APP further contends that since appellant has been duly identified to be the person who showed knife to the complainant, he be not acquitted for offences punishable under Section 397 or 392 IPC.

4. Process of law was set into motion on 26th December, 2012 when a PCR call was received at 8:18 P.M. wherein the caller informed that three boys had given beatings to him and had robbed him of his cycle, mobile and wallet with cash of Rs. 1,500/- at the point of knife. The aforesaid information was recorded as DD No. 44A (Ex. PW-3/A) and was assigned to SI Sanjay Kumar who along with Ct. Anil reached the spot near CNG Pump, Lower GTK Road, SGT Nagar. On reaching the spot, he met the complainant Arvind Kumar who stated that three persons had robbed him. In the meantime, Beat HC Shakti Raj also reached the spot. Thereafter, all of them went in search of the robbers and saw three people behind the CNG park. One of them managed to escape, however, two of them were apprehended and were identified by Arvind Kumar as the persons who robbed his mobile phone and wallet by pointing a knife.

5. SI Sanjay Kumar recorded the statement (Ex. PW-4/A) of Arvind Kumar wherein he stated that he was a resident of House No. 101/19, City Farm Road, Alipur, Delhi and worked at the Head Office of Patiala Cargo Roadlines Ltd., Sector-3, Rohini (Near Deepali Chowk, M2K Cinema) as a Peon. He was a permanent resident of Village Babarpur, PS Pali, Distt. Hardoi, Uttar Pradesh. On 26th December 2012, he left the office on his cycle for official work, met a person named Goldy at SGT Nagar and took

the payment from that person. While he was cycling and was approximately 50 meters away from CNG Pump, situated at Lower GTK Road, at about 7.45 P.M. suddenly three boys came in front of his cycle, stopped the same and forcibly made him get down from the cycle. One of the three boys pointed out a knife at him, second one robbed his wallet which had ₹1,200/- and the third one forcibly took mobile phone from his pocket and told him that if he would raise his voice, they would kill him. All the three boys then ran away from there. Thereafter, he ran towards CNG Pump from where he called at 100 number from the phone of a passerby. He then searched the boys with the help of police officials and found two of them in the park behind CNG Pump. The two boys were identified by him and then police arrested them. The name and address of the two boys was revealed as Khel Bahadur @ Kalu s/o Ram Bahadur r/o Jhuggi near the restroom, Bhagwanpura, Samaypur, Delhi and 'A'. His wallet which was of maroon colour and had his photograph was found from the possession of Khel Bahadur and his 'Micromax' mobile phone of yellow and black colour with number 9971740858, was found from the possession of 'A' (juvenile). The third boy succeeded in running away with his money.

6. On the basis of the aforesaid statement, FIR No. 501/2012 (Ex. PW-3/B) was registered under Sections 392/411/34 IPC at PS Samaipur Badli. The robbed purse having the photograph and visiting card was seized vide seizure memo Ex. PW-4/B and the mobile phone vide seizure memo Ex. PW-4/C. SI Sanjay Kumar arrested Khel Bahadur vide arrest memo Ex. PW-1/A, recorded his disclosure statement vide Ex. PW-4/D and prepared the site plan Ex. PW-4/E at the instance of Arvind Kumar. On the next day, Khel Bahadur led SI Sanjay Kumar along with Ct. Dhananjay and Ct.

Vikrant to the place of occurrence and from there to the park behind SGT Nagar and from inside the bushes, Khel Bahadur got recovered a knife used in the commission of offence. SI Sanjay Kumar prepared the sketch of the knife Ex. PW-4/F, measured the knife, the length being 25.5 cm and that of the blade being 15.5 cm. He seized the knife vide seizure memo Ex. PW-4/G. Charge for offences punishable under Sections 392/397/411/34 IPC was framed against the appellant by the Learned Additional Sessions Judge vide order dated 23rd July, 2013.

7. Arvind Kumar who was examined as PW-4 deposed in Court in sync with his statement made before the police. He also stated that Khel Bahadur was armed with a knife and pointed the same towards his abdomen and in the meantime, his accomplice named 'A' (juvenile) robbed his purse which was kept in the back pocket and the third boy (who could not be arrested by the police) robbed his 'Micromax' mobile phone from the front right-side pocket of his pants. A sum of ₹48,500/- received from Goldy which he had kept in the front left-side pocket of his pant could not be robbed as Khel Bahadur and his accomplices did not notice the said pocket. He left his cycle at the spot and managed to reach the CNG Pump where he noticed one person on TSR and upon his request that person gave his mobile phone to make a call to the police. He called at his office and informed Ashwani about the incident. In his cross-examination, he stated that Ashwani to whom he made a call at the office had not reached the spot till the time he along with the police remained there. The robbed wallet also had one visiting card along with the cash and his photograph. He denied the suggestion that the wallet Ex. P-1 did not belong to him or that the same was not maroon in colour. He admitted that he did not have any

documentary proof of ownership of the mobile phone. He denied the suggestion that knife Ex. P-3 was not the same knife which was shown to him at the time of robbery. He denied the suggestion that his photograph was planted in the wallet by police. He denied the suggestion that he was deposing falsely or the case properties did not belong to him. He also denied the suggestion that Khel Bahadur had been falsely implicated by him due to enmity and/or that he had nothing to do with the commission of the offence.

8. In his statement recorded under Section 313 Cr.P.C., Khel Bahadur stated that he had been falsely implicated in this case by police officials after forcibly lifting him from near his house when he was returning from his work on the pretext of making some enquiry from him. Nothing was recovered from his possession or at his instance and the alleged recovery was planted upon him to falsely implicate him in the present case.

9. From the deposition of the complainant as noted above it is apparent that he was waylaid on 26th December, 2012 at about 7.45 PM when he reached approximately 50 meters away from the CNG Pump, at lower GTK Road. On the accused leaving the complainant after looting him, the complainant made a PCR call from the mobile phone of one of the passers-by and on the Police reaching the spot, search was made and on the identification of the complainant, appellant and the other accused who was a juvenile were apprehended from a park near the CNG station. From the possession of the appellant, wallet of the complainant with his photograph was recovered and from the co-accused his mobile phone was recovered. All these facts have been duly mentioned in the rukka which is a contemporaneous document prepared immediately on the spot. The only improvement pointed out by learned counsel for the appellant is that in the

rukka while apprehending the complainant did not identify the appellant to be the person who showed him the knife. It is trite law that FIR is not the encyclopedia of the entire prosecution case and non-mentioning of complete details in the FIR would not discredit the otherwise credible testimony of the witness. [See State of U.P. Vs. Naresh & Ors. (2011) 4 SCC 324 and Surjit Singh @ Gurmit Singh Vs. State of Punjab (1993) Supp (1) SCC 208.] Since FIR was registered on the statement of the complainant and after the appellant and co-accused were apprehended with the wallet, money and the mobile phone, the first occasion for the complainant to make the statement after registration of the FIR was before Court wherein he identified the appellant as the person who had shown him the knife. Arvind Kumar, the complainant has been cross-examined at length by the counsel for the appellant and there is no suggestion whatsoever to this witness that the appellant was not the person who showed knife to the complainant.

10. Contention of learned counsel for the appellant that the recovery from behind the bushes from the park was not possible as the Police officers were not carrying torch with them and there was no light as deposed by the complainant deserves to be rejected as SI Sanjay Kumar categorically stated that the recovery of the weapon of offence from bushes was made at 4.00 PM on 27th December, 2012 and Ct. Dhananjay stated that it was in the evening hours. Even in December it cannot be said that at 4.00 PM in the evening one needs light to recover objects. Further non-association of the public witnesses at the time of recovery does not vitiate the recovery pursuant to a disclosure statement made under Section 27 of the Indian Evidence Act as held by this Court in the decision reported as 1990 CrL.J. 414 Sunil Kumar Vs. State. The contention that no site plan of the place

from where recovery of alleged weapon of offence was made is also required to be rejected as the site plan is made of the place of incident and not of the place from where recovery is made.

11. In view of the discussion aforesaid, the prosecution has been able to prove beyond reasonable doubt that Khel Bahadur committed offences punishable under Section 397 read with Section 392 IPC. The impugned judgment of conviction and order on sentence are thus upheld.

12. Appeal is dismissed.

13. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record and intimation to the appellant.

14. TCR be returned.

(MUKTA GUPTA)
JUDGE

JUNE 01, 2017
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