

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

% Reserved on: 23rd January, 2018
Decided on: 11th September, 2018

+ **CRL.A. 70/2017**

PARVINDER

..... Appellant

Represented by: Mr. Hirendra Kumar,
Advocate.

versus

STATE

..... Respondent

Represented by: Ms. Meenakshi Chauhan, APP
for the State with ASI Phool
Kanwar, PS Mundka.

+ **CRL.A. 76/2017**

AKASH

..... Appellant

Represented by: Mr. Sahil Jain, Advocate.

versus

STATE (N.C.T OF DELHI)

..... Respondent

Represented by: Ms. Meenakshi Chauhan, APP
for the State with ASI Phool
Kanwar, PS Mundka.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. Parvinder and Akash challenge the impugned judgment dated 22nd December, 2016 convicting them for offences punishable under Section 392/34 IPC and the order on sentence dated 29th December, 2016 directing them to undergo rigorous imprisonment for a period of two years each and to pay a fine of ₹1,000/- each, in default whereof to undergo simple imprisonment for a period of 15 days each. Sumit (the co-accused) was also convicted vide the impugned judgment, however, he was released on the

period undergone by the learned Additional Sessions Judge.

2. Assailing the conviction, learned counsel for Parvinder contends that FIR in the present case was registered against some unknown persons. Though the PCR van was stationed near the place of incident, however, the complainant was asked to call on 100 number and despite the fact that officials in PCR van were informed, they were not made witnesses. The owner of Accent car, from where the accused persons were arrested, was not made a witness in the present case. The owner of robbed motorcycle was also not made a witness in the case. No recovery was affected from the appellant in the police custody. Furthermore, since the appellant was shown to the complainant after arrest, the appellant refused to participate in the TIP proceeding. No public witness was associated despite the fact that incident took place at 2:30 P.M. and public was present at the alleged check post. The prosecution story is concocted and the appellant has been falsely implicated in the present case. Lastly, it is urged that the appellant has no prior criminal antecedents, thus he be released on probation or the period already undergone.

3. Learned counsel for Akash, in addition to the aforestated arguments, submits that appellant is the sole bread earner in the family. Thus, he be acquitted.

4. Learned APP for the State on the other hand submits that DD No. 22A which records about the robbery has been duly proved by the duty officer SI Bahadur Singh (PW-2). The appellants were arrested in another FIR and on the basis of their disclosure statements, they were formally arrested in the present case on 3rd January, 2014 after making formal application before Court. Pistol was recovered from the possession of Akash. No suggestion

was given to the complainant in his cross-examination that the appellants were shown to him before the TIP proceedings. Lastly, the robbed motorcycle which was lying abandoned was recovered on the basis of secret information.

5. Process of law was set into motion on 5th December, 2013 at around 2:31 P.M. on receipt of information stating that three boys have robbed a motorcycle bearing no. DL 8S BE 5772, Apache green colour from Bakkarwala. Aforesaid information was recorded vide DD No. 22A [Ex.PW-2/A] and was entrusted to SI Bahadur Singh (PW-2). He along with Ct. Adesh (PW-1) went to B-2, Lok Nayak Puram, Bakkarwala where they met the complainant Animesh Mishra who gave his statement regarding robbery of his motorcycle by three boys on the pretext of asking address. Statement of Animesh Mishra was recorded vide Ex. PW-2/B. On the basis of the aforesaid statement, FIR No. 307/2013 [Ex. PW-4/A] was recorded at PS Mundka for the offence punishable under Section 382/34 IPC. Thereafter, SI Bahadur Singh prepared the site plan [Ex.PW-2/D] on the pointing out of the complainant. On 26th December, 2013, SI Nanak Ram received secret information that three persons were going to commit a criminal act near Rawata Mode. SI Nanak Ram along with Ct. Pramod Kumar, Ct. Inderjeet and Ct. Ravi reached Surehra Mode. They stopped one Accent car, on checking the car, three persons were found in the car whose names were revealed as Akash, Parvinder and Sumit. On search, one country made pistol with one live cartridge was recovered from Sumit. Akash, Sumit and Parvinder were formally arrested on 3rd January, 2014 vide arrest memos Ex.PW-3/A, Ex.PW-3/B and Ex.PW-3/C respectively. Disclosure statement of Sumit was recorded vide Ex.PW-9/A wherein he stated that he

along with Akash and Parvinder robbed motorcycle from one boy. On 8th January, 2014, at the instance of secret informer, motorcycle bearing no. DL-8S BE-5772 was recovered from Kasba Farukh Nagar, Gurgaon, Haryana, near Kalia Bas Village and the same was seized vide seizure memo Ex. PW-3/D. Thereafter, proceedings for TIP were initiated against the accused persons however, they refused to participate in TIP proceedings. On completion of charge sheet was filed for offence punishable under Sections 392/397/382/34 IPC. Vide order dated 31st July, 2014, charge was framed for the offences punishable under Sections 392/397/34 IPC.

6. The complainant Animesh Mishra was examined as PW-5 in Court. He deposed that on 5th December, 2013, he was going to Bakkarwala village on the motorcycle of his brother-in-law (Saurabh Mishra) bearing no. DL 8S BE 5772, Apache green colour. Three boys gave him signal to stop. After stopping the motorcycle, they started asking the location of an address. He got down from the motorcycle and while he was telling them the location, two of them switched on the engine of the bike and the third one also sat with them on the motorcycle, showed him pistol and fled away towards nala on the bike. He ran after them. Near the nala, one police vehicle was stationed. He told police officials about the incident. He pointed towards Akash as the person who showed him the pistol.

7. Despite extensive cross-examination nothing adverse has been elicited from the cross-examination of Animesh Mishra who saw a police vehicle which was stationed near nala and also called 100 number. Further the appellants refused to undergo the test identification parade on the pretext that their photographs were taken in the police station and they were shown to the witness however, nothing has been elicited on this count from the

cross-examination of Animesh Mishra who stated that for the first time he saw the accused in the Court and identified them.

8. Learned Trial Court rightly held that the motorcycle of Animesh baring No.DL 85 BE 5772 was recovered on the basis of secret information and not on the disclosure statement of Sumit. Hence the said recovery is not admissible against Sumit or any of the appellants under Section 27 of the Indian Evidence Act, however, the said fact does not belie the version of Animesh Mishra that the three accused stopped him on the pretext of asking the location of an address and when he got down to tell the same, the three of them ran away on his motorbike.

9. Learned Additional Sessions Judge acquitted the appellants for offence punishable under Section 397 IPC on the ground that Animesh Mishra did not clarify which accused showed him the pistol however, the testimony of Animesh Mishra is clear who identifies Akash as the person who showed him the pistol like weapon. However, in the absence of a leave to appeal by the State against acquittal of Akash for offence punishable under Section 397 IPC this Court cannot convict Akash for the said offence.

10. In view of the cogent and convincing testimony of Animesh Mishra duly corroborated by the fact that his motorcycle which was robbed was later recovered and he identified the appellants as the two accused who robbed the vehicle, this Court finds no error in the conviction of the appellants for offence punishable under Section 392/34 IPC or the order on sentence.

11. Appeals are accordingly dismissed.

12. Appellants will undergo the remaining sentence.

13. Copy of this order be sent to Superintendent Jail for updation of the

Jail record and intimation to the appellants.

14. TCR be returned.

(MUKTA GUPTA)
JUDGE

SEPTEMBER 11, 2018
‘vn’

