

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

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Reserved on: 2nd February, 2018

Decided on: 6th September, 2018

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CRL.A. 418/2017

AFTAB @ JHANGAL

..... Appellant

Represented by: Mr.Dinesh Malik, Advocate

versus

THE STATE (NCT OF DELHI)

..... Respondent

Represented by: Ms.Meenakshi Chauhan, APP
for the State

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By the present appeal, Aftab @ Jhangal challenges the impugned judgment dated 24th October, 2016 convicting him for the offences punishable under Sections 341/392/394/397/411/34 IPC in FIR No. 95/2014 registered at PS Anand Parbat and the order on sentence dated 25th October, 2016 directing him to undergo rigorous imprisonment for a period of five years and to pay a fine of ₹3,000/- and in default whereof to undergo simple imprisonment for a period of six months for the offences punishable under Sections 392/394/34 IPC, rigorous imprisonment for a period of seven years and to pay a fine of ₹3,000/- and in default whereof to undergo simple imprisonment for a period of six months for the offence punishable under Section 397 IPC, rigorous imprisonment for a period of two years and to pay a fine of ₹1,000/- and in default whereof to undergo simple imprisonment for a period of one month for the offence punishable under Section 411 IPC and simple imprisonment for a period of one month and to pay a fine of

₹500/- and in default whereof to undergo simple imprisonment for a period of ten days for the offence punishable under Section 341 IPC .

2. Learned counsel for the appellant contends that as per the prosecution case, there is a recovery of kitchen knife from the appellant and as per the sketch of the knife, it was 28 cm long, 18 cm blade and 10 cm handle and it is nowhere stated in the testimony of any prosecution witness whether it was recovered from his pant pocket or his hand. As per the size of the knife, it is highly improbable that it can come in the pocket of pant. Thus, the recovery of knife is highly doubtful and the appellant cannot be convicted for the offence punishable under Section 397 IPC. No Test Identification Parade of the appellant was conducted. The person who made a call to the police has not been cited as a prosecution witness. Lastly, as per the MLC, nature of injuries was opined to be simple. Complainant's evidence is not reliable and the appellant has been convicted solely on his testimony.

3. Learned APP for the State on the other hand contends that the appellant was properly identified. Furthermore, as per the DNA analysis, DNA profile generated from the source of gauze cloth piece and pants of JCL was 'similar' with the DNA profile from the source of pants of victim. Thus, complainant's version is duly corroborated.

4. Process of law was set into motion on 6th March 2014 at about 5:45 A.M. when ASI Suresh Chand received a phone call from the control room informing that one person was stabbed at Jakhira bridge. He reached the spot and found one person lying at the spot smeared with blood. On inquiry, the person revealed his name as Amit Kumar Singh. He was immediately shifted to Hindu Rao Hospital. On the way, Amit Kumar Singh told ASI Suresh Chand that 4 persons had stabbed him, robbed ₹26,000/- and took his

mobile phone. In the meantime, at 5:50 A.M, another information was received through wireless about a person being stabbed on Jhakira bridge. Aforesaid information was recorded vide DD No.9A (Ex.PW-3/A) and was assigned to HC Balram (PW-12). He along with Ct. Hari Narayan (PW-13) reached the place of incident and found blood on the road. They came to know that the injured has been shifted to the hospital. Thereafter, they conveyed the information to the duty officer and requisitioned the crime team. Crime team officials reached the spot and after inspecting the spot, they lifted the exhibits and the spot was photographed. Exhibits were seized vide seizure memo Ex.PW-9/B. The photographs of the spot were proved as Ex.PW-6/A to Ex.PW-6/G. On the same day at about 6:55 P.M., another DD No.11A (Ex.PW-2/A) was recorded on the basis of the information received from Duty Ct.Sunny of Hindu Rao Hospital to the effect that one injured namely Amit Kumar Singh has been admitted in the hospital. On receipt of DD No.11A, Ct. Ravi Kumar (PW-9) along with SI Vidyakar Pathak (PW-17) went to Hindu Rao Hospital. SI Vidyakar Pathak recorded the statement of the injured in presence of his brother namely Ajit (PW-10). On the basis of the aforesaid statement (Ex.PW-1/A) of Amit, FIR No.95/2014 (Ex.PW-7/A) was lodged at PS Anand Parbat for the offences punishable under Sections 394/397/34 IPC.

5. Thereafter, SI Vidyakar Pathak went to the spot and met HC Balram and Ct. Hari Narayan. In the meantime, Amit reached the spot along with his brother namely Ajit in the ambulance. Site Plan (Ex.PW-17/B) was prepared at the instance of Amit. Search for accused persons was conducted but they could not be found.

6. On 9th March 2014 at around 2:30 – 2:45 P.M., one informer came to

the office of Crime Branch and met HC Ajay Kumar (PW-15) and conveyed information to the effect that one person involved in an armed robbery of ₹26,000/- at Jakhira flyover would come there again after sometime. Consequently, he constituted a raiding team consisting of HC Jitender, HC Krishan, HC Karamveer and Ct. Rupesh and reached the informed place. At around 5:00 P.M., Aftab @ Jhangal (appellant herein) was apprehended at the instance of informer when he was seen coming from the side of Jhuggi towards the flyover. One kitchen knife and ₹5,750/- were found in his possession. After interrogation, he revealed about his involvement in the incident of robbery. Consequently, police officials of PS Anand Parbat were contacted and it was revealed that FIR No.95/2014 had already been registered concerning the said robbery. Kalandra (Ex.PW-15/C) was prepared by HC Jitender Kumar to this effect. Knife and cash were seized vide seizure memo Ex.PW-15/A and 15/B respectively. Aftab @ Jhangal was arrested vide arrest memo Ex.PW-15/D and his personal search was conducted vide memo Ex.PW-15/E. Disclosure statement of Aftab was recorded vide Ex.PW-11/J and he was formally arrested vide arrest memo Ex.PW-11/G.

7. On 10th March, 2014 SI Vidyaker Pathak along with Ct. Mehtab and Ct. Ashok reached near Jakhira Flyover pursuant to the secret information received regarding the presence of more accused persons suspected in the present robbery. At around 10:00 A.M. at the instance of secret informer they proceeded towards the railway line and apprehended 'N' and 'I'. On interrogation, both of them were found to be juveniles in conflict with law. 'N' produced ₹750/- from his possession and 'I' produced ₹640/- stating that it was the remaining robbed money. Aforesaid recovered money was seized

vide seizure memos Ex.PW-11/F and Ex.PW-11/E respectively. Both the JCLs got prepared the pointing out memo (Ex.PW-11/A) of the place where they had committed the alleged offence along with their companions. JCL 'I' got recovered the knife used by him in committing the robbery which was seized vide seizure memo Ex.PW-11/C.

8. After completion of investigation charge sheet was filed against the appellant for the offences punishable under section 394/397/411/34 IPC. Vide order dated 2nd September 2014, charge was framed for the offences punishable under sections 341/392/394/397/411/34 IPC.

9. Amit was examined as PW-1 in Court. He deposed in conformity with his complaint and stated that he was working as a sales executive at one Rexine shop situated in the area of Nabi Karim. On 3rd March 2014 he went to Ajmer, Rajasthan to take an order and collect the payment from there. In the evening of 5th March 2014, he boarded Haridwar mail from Ajmer and got down at Daya Basti railway station at about 5:00 A.M. Thereafter, he reached Jakhira Flyover bus stand to take bus to reach his house at Prem Nagar, Nangloi. At about 5:00-5:05 A.M. four boys came there and surrounded him. They tried to snatch his bag. Out of the four boys, two boys took out knives and assaulted him on his leg and hip and thereafter all the boys took his purse from the back pocket of his pant. The purse contained PAN card, SBI ATM card and Election I-Card. The accused persons had also taken ₹25,000/- from the above pocket of his jacket and also took his mobile phone of make Nokia, Model E-63 bearing number 9958847076 from the above pocket of his shirt and thereafter they all ran away.

10. Dr. Gaurav Kherra (PW-8), Senior Resident, Department of Orthopedic, Hindu Rao Hospital, deposed that initially injured Amit was

examined by Dr. Ishtiaq in Casualty and thereafter the injured was referred to the Orthopedic Emergency Department. On 6th March 2014 at 7:25 A.M., he examined Amit and made an endorsement on the overleaf of the MLC which was exhibited as Ex.PW-8/A and the endorsement on the overleaf as Ex.PW-8/B. As per the MLC PW-8/A, nature of injuries was opined to be simple with a sharp weapon and on local examination following injuries were found:

- a) Left elbow + F. arm. S. Bruise 3 X 0.5 cm*
- b) Left wrist: Sup.abrasion 1 X 0.5 cm ; tenderness*
- c) Right thigh: Deep Lacerated wound: 2 X 1X 1 cm; medial side of thigh bleeding.*
- d) Left thigh: Deep Lacerated wound lateral thigh 5 X 2 X 3 cm; bleeding*
- e) Left hip: tenderness, R.O.M.*

11. Ajit Singh, brother of the complainant, stated that at about 5:15 A.M. when he was present at his house, he received a call from his brother who asked him to come to Jakhira Flyover immediately. When he rushed to the place he found that his brother namely Amit was being shifted in an ambulance in injured condition. Thus, he also accompanied his brother to Hindu Rao Hospital.

12. Though a knife has been recovered from Aftab however, the said recovery is not connected with the offence as neither has the said knife been identified by Amit Kumar Singh nor any opinion rendered by the doctor that injuries to Amit were possible by the said knife nor the same was connected with any blood detected thereon. However, the identification of Aftab by Amit as one of the assailants who inflicted knife injury while committing

robbery is sufficient to prove the complicity of Aftab in the offence. Learned counsel for Aftab has assailed the identification as not proper. A perusal of the record reveals that Aftab was apprehended by officers of PS Crime Branch which information was received by SI Vidyaker Pathak on 10th March, 2014, whereafter he interrogated Aftab after permission from the Court and thereafter took police custody remand whereafter recoveries were made and pointing out memo was prepared. An application for conducting Test Identification Parade of Aftab was filed and he was sent to judicial custody. On 1st May, 2014 when the TIP was fixed, Aftab refused to undergo the same on the ground that his photographs were taken by the police officers of Special Cell. Aftab was never arrested by police officers of Special Cell. No suggestion was given to Amit that he was shown the photographs of Aftab. In his evidence Amit clearly stated that he had gone to Tihar Jail to identify the accused but no identification took place. The suggestion to Amit by Aftab that he caused no injury was refuted.

13. In view of the discussion as aforesaid, this Court finds no error in the impugned judgment convicting Aftab for offences punishable under Sections 341/392/394/397/411 IPC and the impugned order on sentence.

14. Appeal is dismissed.

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

16. TCR be returned.

(MUKTA GUPTA)
JUDGE

SEPTEMBER 06, 2018

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