

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

% *Judgment Reserved on: December 21, 2017*
Judgment Delivered on: January 03, 2018

+ **CRL.A. 411/2017**

ABDUL

..... Appellant

Represented by: Mr. Shiv Chopra, Mr. Mayank Mishra, Advs.

versus

THE STATE (NCT OF DELHI)

..... Respondent

Represented by: Mr. Amit Gupta, APP with Insp. Nafe Singh SI Naveen Kumar PS Seelampur.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By the present appeal, the appellant challenges the impugned judgment dated 25th February, 2017 convicting him for the offence punishable under Sections 394/34 IPC in FIR No. 316/2016 registered at PS Seelam Pur and the order on sentence dated 7th March, 2017 directing him to undergo rigorous imprisonment for a period of three years and to pay a fine of ₹500/- and in default to undergo simple imprisonment for a period of 2 months for the offence punishable under Section 394 IPC.

2. Learned counsel for the appellant contends that there are material contradictions in the testimony of Bittoo Kumar (PW-2). Bitto Kumar had stated that the appellant had caused injury on his head with the broken bottle, however, his version is not corroborated by the MLC Ex. PW-3/A. Even, Dr. Adiba (PW-3) does not mention about any injury on the head of Bittoo Kumar. Since the MLC does not state the nature of injury, thus,

benefit of doubt should be given to the appellant. Further, there are inconsistencies in his testimony with respect to the denomination of the currency as the complainant did not state the denomination in his statement recorded before the police. There is discrepancy in the sequence of events with respect to the fact that whether Bittoo Kumar was first taken to the police station or Jag Parvesh Hospital. There is a delay of 45 minutes in reporting of the incident to the police as the incident took place at 3:15 P.M. however, DD No. 21A was recorded at 4:00 P.M. Since the appellant has not been apprehended from the spot, it is urged that the appellant has been falsely implicated in the present case. No public witness was examined. Lastly, there is no recovery of the blood stain clothes or earth control or the weapon of offence.

3. Learned APP for the State on the other hand contends that these are only minor contradictions in the testimony of Bittoo Kumar which do not go to the root of the matter. Version of the injured is corroborated by the MLC Ex. PW-3/A. The appellant was apprehended from the spot.

4. Prosecution case sprung out from information received on 15th June, 2016 at 4:00 P.M. wherein it was stated that “*kudedan ke pass ek ladke ko blade maar diya hai*”. The aforesaid information was recorded vide DD No. 21A (Ex. PW-4/A) and was assigned to SI Brijveer Singh (PW-6). He along with Ct. Giriraj (PW-1) reached the spot and met Bittoo kumar who had caught hold of the appellant and stated that the appellant had committed robbery at the point of weapon. Thereafter, Bittoo Kumar was sent to Jag Parvesh Hospital for medical examination. Statement of Bittoo Kumar was recorded on the basis of which FIR No. 316/2016 [Ex. PW-6/B] was lodged at PS Seelam Pur for the offence punishable under Section 394/34 IPC. SI

Brijveer Singh along with the appellant and Bittoo Kumar again went to the spot when he inspected the spot and prepared the site plan [Ex. PW-6/C]. Appellant was arrested vide arrest memo Ex. PW-1/A1 and his personal search was conducted vide memo Ex. PW-1/A2. The disclosure statement of the appellant was recorded vide Ex. PW-2/B. Names of the associates of the appellant were revealed as Neeraj and Arif. Charge sheet was filed for offences punishable under Sections 394/397/34 IPC.

5. Bittoo Kumar deposed that on 15th June, 2016 while he was going to his house from Vishwas Nagar on his bike, around 3:00 P.M. – 3:15 P.M., he stationed his motorcycle near the dustbin at Red Light point, 66 Feet Road, Seelampur and went near the dustbin to urinate. In the meantime, three unknown persons came from behind and overpowered him. One of them tried to strangle his neck with his arm, while the other snatched his mobile phone of white colour make Karbon having dual sim. The third one took his purse from his back pocket. The purse contained ₹10,000/-, his driving license and some visiting cards. One of the three boys had also caused injury on his head, left hand and index finger of right hand with a sharp object and ran away. He further stated that it was the appellant who had caused injuries to him with broken bottle which was lying near the dustbin. Blood started oozing from his injuries. During his cross-examination, he stated that he could not identify all the assailants as he was strangled by the assailants from behind but the appellant was apprehended from the spot. He voluntarily stated that the appellant had hit the glass bottle on his head.

6. Dr. Adiba, Casualty Medical Officer, Jag Parvesh Chand Hospital stated that on 15th June, 2016 around 5:05 P.M, she had medically examined

Bittoo Kumar and prepared his MLC Ex. PW-3/A. On local examination, multiple abrasion were found present all over the neck, CLW present on left thumb of size 0.25 x 0.25 cm. Nature of injuries were simple and the kind of weapon used was blunt.

7. Contention of learned counsel that no reliance can be placed on the testimony of Bittoo Kumar as the MLC does not note any injury of head deserves to be rejected as Bittoo Kumar stated that the accuseds first overpowered him by neck and later gave injuries on head, left hand and index finger and as per the MLC injuries were found on the neck and index finger. Merely because there was no visible injury on the head will not belie the version of Bittoo Kumar. In the MLC the doctor opined the injuries to be simple and blunt. Abdul along with other accused having robbed Bittoo Kumar and having caused injuries to him, ingredients of offence punishable under Section 394/34 IPC made out, this Court finds no illegality in the impugned judgment of conviction and order on sentence.

8. Appeal is accordingly dismissed.

9. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record.

10. TCR be returned.

(MUKTA GUPTA)
JUDGE

JANUARY 03, 2018
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