

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

% *Reserved on: 21st January, 2019*
Decided on: 2nd July, 2019

+ **CRL.A. 62/2016**

DEEP SINGH @ DEEPLA @ DEEPAK Appellant
Represented by: Mr. Kartichay Mathur,
Advocate DHCLSC

versus

STATE Respondent
Represented by: Mr. Ashok Kumar Garg, APP
for the State with SI Manoj Kr.
Tomar, PS Mayur Vihar

+ **CRL.A. 472/2016**

PREETAM @ SHRIKARAN Appellant
Represented by: Mr. Aditya Vikram and Mr.
Avinash, Advocates DHCLSC

versus

STATE & ANR. Respondents
Represented by: Mr. Ashok Kumar Garg, APP
for the State with SI Manoj Kr.
Tomar, PS Mayur Vihar

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

1. Deep Singh and Preetam challenge the impugned judgment dated 23rd September 2015 whereby Deep Singh was convicted for offences punishable under Sections 394/397 IPC and Preetam was convicted for the offence punishable under Sections 394 IPC and 25 Arms Act and the order on

sentence dated 29th September 2015 whereby Deep Singh was directed to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs.25,000/- for the offences punishable under Sections 394/397 IPC, in default to undergo simple imprisonment for a period of six months and Preetam was directed to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.25,000/- for the offence punishable under Sections 394 IPC, in default to undergo simple imprisonment for a period of six months and rigorous imprisonment for a period of three years and to pay a fine of Rs.500/- for the offence punishable under Section 25 Arms Act, in default to undergo simple imprisonment for a period of one month.

2. Learned counsel for Deep Singh contends that as per the complainant's testimony four persons got down from the TSR. He has further stated in his testimony that once the three persons were apprehended 60-70 public persons gathered there but none of them have been examined by the prosecution. He further submits that Deep Singh was not apprehended from the spot but rather was apprehended 2 months 10 days later. He further submits that Deep Singh declined to undergo TIP as the Investigating Officer had already got him identified.

3. Learned counsel for Preetam pointing out to the various inconsistencies in the testimony of the complainant submits that the complainant in his examination in chief stated that after he was discharged from the hospital he alongwith the Investigating Officer went to Chilla village near Queen Mary School but in his cross examination he stated that after he was discharged from the hospital he went to the Police Station and signed the documents over there. The complainant has further deposed in his testimony that he had chased the offenders on the motorcycle of an unknown

person but Ct. Sanjay Kumar and Ct. Ram Kishan have deposed that they had seen the complainant riding as a pillion on the motorcycle driven by Ct. Sumit. The complainant has also deposed that he reached the police station at about 10:45 P.M. while the Investigating Officer has deposed that he had left the Police Station at around 10:00 P.M. and remained in the hospital with the injured for about 1-1.5 hours. The complainant has further stated that he left the police station finally around 12:30 A.M. – 1:00 A.M. but his signatures are present on the arrest memo and the personal search memo of the accused persons which were stated to be prepared at 3:45 A.M. The complainant has stated that his statement was recorded in the police station while the Investigating Officer has deposed that he recorded the statement of the complainant in the hospital. He further submits that there are various inconsistencies in the deposition of the witnesses with respect to the recovery of knife from Preetam. He further points out that the three injuries as per the MLC are Contused Lacerated Wounds however an injury caused by a knife is never a lacerated or contused wound but an incised wound. He further submits that the complainant's wallet or phone were not recovered and the site plan has also not been signed by the complainant. He submits that in a case when two views are possible the one which favours the accused has to be adopted by the court. Reliance is placed upon the decisions of the Supreme Court reported as (2007) 3 SCC 755 State of Goa v. Sanjay Thakran and (2007) 4 SCC 415 Chandrappa v. State of Karnataka.

4. Per contra, Learned APP for the State submits that the testimony of the complainant is consistent throughout and he is a reliable witness. His version is corroborated by the injuries received. Moreover, he has correctly

identified the appellants. The injuries have also been proved in the MLC.

5. Process of law was set into motion on 19th August 2011 at about 9:50 P.M. when telephonic information was received about one injured Deepak who was admitted to LBS hospital. Aforesaid information was recorded vide DD No.31-A (Ex.PW-1/C) and assigned to SI Sanjay Kumar. On reaching LBS hospital he collected the MLC and the parcel containing jeans of injured. He recorded the statement of the complainant wherein he stated that on 19th August 2011 after he boarded bus route number 355 from Connaught Place to New Ashok Nagar he recollected that he had to go to his friend's house at Laxmi Nagar because of which he got off at Samachar Apartments bus stop at Delhi Noida Road. When he was walking towards buses coming from Noida at around 8:30 PM, one TSR bearing No. DL-1-RL-2892 came from the direction of Akshardham Mandir. Four to five boys got down from TSR and gave him kick and fist blows. One of the men forcefully took out his purse from his back pocket which had his ATM card of ICICI Bank, Driver's License, PAN Card, Voter ID Card, Visiting Cards and four notes of 500 rupees. Another man forcefully took his mobile Nokia C-101 bearing mobile number 9971020807. When he tried to resist, two men out of which one of the men who was of short height and was wearing a black shirt threatened him with a knife. The man with the short height gave him a blow with a knife on his knees due to which he sustained injuries on both his legs. All four men fled the scene in the TSR and drove towards Samachar Apartments. Thereafter he sat on an unknown person's motorcycle and chased the TSR. He met two police officials near Samachar Apartment and informed them of the incident. Constable Sumit chased the TSR on his motorcycle. After seeing the police, the TSR fled into Chilla Village near

Queen Mary School. He then called out to a police car which also started chasing the TSR. The road ahead was closed so all four suspects attempted to get off the TSR and run. However, three suspects were caught and since a crowd had gathered, they started beating the suspects. Police saved the persons namely 'R', Preetam Kumar @ Shrikarand and 'T' from the public. The person who attacked the complainant with the knife could not be apprehended by the police at the spot. On search, his Voter ID card, PAN card and 500 rupees currency notes were recovered from TSR Driver 'T's' pocket. A buttondar knife was recovered from Preetam and one 500-rupee note was recovered from 'R'. The recovered items were seized in separate parcels with seal of SK and taken into possession vide seizure memos Ex.PW-2/E and Ex.PW-2/F. The sketch of the knife was prepared vide Ex.PW-2/B and it was seized vide seizure memo Ex.PW-2/C. The TSR bearing no. DL-1-RL-2892 was taken into his possession vide seizure memo Ex. PW2/G. Thereafter the police removed him to LBS Hospital. Aforesaid statement was recorded vide Ex.PW-2/A. On the basis of the aforesaid statement, FIR No. 198/2011 (Ex.PW-1/A) was lodged at PS Mayur Vihar PH-I for the offences punishable under Sections 394/397/411/34 IPC and Sections 25/27 Arms Act.

6. Preetam was arrested vide Ex.PW-2/H, his personal search was conducted vide Ex.PW-2/M and his disclosure statement was recorded vide Ex.PW-9/A. 'R' was arrested vide Ex.PW-2/K, his personal search was conducted vide Ex.PW-2/O and his disclosure statement was recorded vide Ex.PW-9/C. 'T' was arrested vide Ex.PW-2/L, his personal search was conducted vide Ex.PW-2/P and his disclosure statement was recorded vide Ex.PW-9/B. Thereafter, he alongwith the complainant and the accused

persons went to the spot. A pointing out memo was prepared at the instance of the accused persons vide Ex.PW-2/Q and the site plan was prepared at the instance of the complainant vide Ex.PW-11/A.

7. During the course of investigation, 'T' and 'R' were declared minors and report qua them was transferred to the Juvenile Justice Board.

8. On 28th October 2011, SI Sanjay Kumar on basis of a secret information arrested Deepak Singh @ Deepla @ Deep Singh (Appellant herein) from near Aggarwal Sweets, Trilok Puri vide arrest memo Ex.PW-2/J, his personal search was conducted vide personal search memo Ex. PW2/N and his disclosure statement was recorded vide Ex.PW-4/A. An application for Judicial TIP of Deep Singh was filed but he refused to participate in the same. Deep Singh led them to various spots in Trilok Puri and Kalyan Puri for recovery of knife and mobile phone but they could not be recovered.

9. On inspection of the TSR it was found that its chassis number belonged to vehicle No. DL-1-RL-1506 whereas number plate found affixed on said TSR was DL-1RL-2892. It was found that TSR No. DL-1-RL-1506 was reported to be stolen at PS Shakarpur vide FIR No.525/2011. Information regarding recovery of abovesaid TSR was sent to PS Shakarpur and the HC Suman Pal took the TSR into his possession from malkhana of PS Mayur Vihar and deposited it in the malkhana of PS Shakarpur.

10. Charge was framed against Deep Singh @ Deepla @ Deepak for offences punishable under Sections 394/397/34 IPC and against Preetam Kumar for offences punishable under Sections 394/397/34 IPC and Sections 25/27 of Arms Act vide order dated 10th October 2012.

11. Deepak Kumar Singh (PW-2), complainant deposed in sync with his

statement made before the police. In his cross-examination conducted by the counsel for Deep Singh he stated that he had seen the appellant Deep Singh in the Police Station when he had gone to inquire about the progress of the present case. He further stated that he had identified the appellant Deep Singh as one of the assailants before the Investigating Officer in the Police Station. He further stated that his statement was recorded between 11:00 P.M. to 12:00 A.M. on 18th August 2011.

12. Sukram Pal (PW-7), TSR Driver stated that he used to ply his TSR No. DL-1-RL-2892 , Engine No. 77118 , Chassis No. 18448. He had purchased the TSR from Shiva Auto Dealer in 2008. Initially, The TSR was in name of Raju and original documents of TSR were lost for which he lodged NCR (Ex.PW-7/A) dated 7th September 2011 in PS Kalyan Puri. He also stated that the TSR was stolen on 7th September 2011 at 3:00 A.M. On 25th October 2011, the TSR was transferred in his name.

13. Sh. JP Nahar (PW-8), Relieving Judge (East), Karkardooma Courts, stated that the TIP for appellant Deep Singh was conducted on 3rd November 2011 vide Ex.PW-8/A but appellant Deep refused to participate in the TIP proceedings.

14. Dr. Rajni (PW-3), CMO, LBS Hospital, stated that on 19th August 2011 at about 9:30 P.M., the complainant/injured Deepak was brought for medical examination. She prepared the MLC vide Ex. PW-3/A. On examination, the following injuries were found on the injured which were opined to be simple:

- a. *CLW of approx. 6cm X 1.5cm over left knee*
- b. *CLW of approx. 4cm X 1cm over right knee posteriorly*
- c. *CLW of approx. 5cm X 1 cm over right knee laterally*

15. Deep Singh in his statement recorded under Section 313 Cr.P.C. stated that he was falsely implicated in the present matter and no recovery was made from him. He was standing outside his house and purchasing some eatables when police came in a Santro car and lifted him.

16. Preetam in his statement recorded under Section 313 Cr.P.C. stated that he was falsely implicated in the present case and no recovery was made from him. 'T' who was his friend called him to Chilla Village as some quarrel was going on but he did not go there. The police lifted him from his house after tracing Call Detail Record.

17. As noted above, appellant Preetam was apprehended at the spot soon after the incident when the complainant followed the accused and met the police officer. Ultimately when the TSR was stopped, the complainant was on the motorcycle driven by Const. Sumit hence there is no contradiction as pointed out in the testimonies of the prosecution witnesses. The recoveries have been made at the spot and the TSR was seized immediately. It is the case of the complainant that initially he was given kick and fist blows and then when he resisted, his mobile phone was taken and he was threatened with a knife and the man with the short height gave him blow with a knife on his knees. Thus, the injuries with the knife were cumulative with the injuries caused by kicks and fists, thus accounting for lacerations and contusions. Minor variations in the statements of the witnesses as to the timings as to when the statement was recorded or when they got free from the place of incident or the police station would not otherwise discredit the credible testimony of the prosecution witnesses.

18. Deep Singh undoubtedly was arrested later on as he managed to escape from the spot however the present is not a case of fleeting glimpse

but where the complainant was first given fist and kick blows thereafter threatened, money and mobile phone taken and again injuries inflicted. Deep Singh was produced in a muffled face before the Court however he refused to undergo the Test Identification Parade which fact has also been deposed to by the learned Metropolitan Magistrate (PW-8). No case was made out as to when Deep Singh was shown to witnesses and this fact was not put to the complainant in his cross-examination. Hence, the plea taken is an after-thought.

19. In view of the discussion aforesaid, this Court finds no error in the impugned judgment of conviction and order on sentence. Appeals are accordingly dismissed.

20. Copy of this order be sent to Superintendent Central Jail Tihar for upadation of the Jail record.

21. TCR be returned.

(MUKTA GUPTA)
JUDGE

JULY 02, 2019
‘vj/rk’