

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

CRL. A. 1023/2015 & CRL. A. 360/2015

Reserved on : 07.11.2019

Date of Decision : 18.11.2019

IN THE MATTER OF:

MANOJ Appellant

Through: Mr. Anwesh Madhukar and Ms.
Prachi Nirwan, Advocates.

versus

STATE Respondent

Through: Ms. Manjeet Arya, APP for State.

AND

KHEM PAL @ HEM PAL Appellant

Through: Mr. K. Singhal, Advocate.

versus

STATE Respondent

Through: Ms. Manjeet Arya, APP for State.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

1. The present appeals have been filed challenging the common impugned judgment dated 27.11.2014 passed by the Addl. Sessions Judge in FIR No.162/2014, registered under Sections 394/397/411/34 IPC at Police Station Kotwali, Delhi.

2. Vide impugned judgment on conviction, the appellants were convicted for the offence under section 394/34 IPC and Section 411 IPC and vide order on sentence dated 02.12.2014 the appellants were sentenced to undergo RI for a period of two years and nine months along with fine of Rs.2,000/- for the offence under section 394/34 IPC, in default to undergo SI for one month and SI for six months along with fine of Rs.2,000/- for the offence under section 411 IPC, in default to undergo SI for 10 days.

3. As the aforesaid appeals arise out of a common impugned judgment, arising out of the same FIR, both the appeals are taken up for hearing together and decided by this common judgment.

4. The facts as noted by the Trial Court are as under:-

“The prosecution’s case is that on 19/02/2014 at about 10 pm complainant was going towards Old Delhi Railway Station. Near the parcel gate one accused collided with him, he asked him as to why he had pushed him, on this two more accused persons caught him from behind, one accused hit him with blade which caused injuries on his neck and hand while the other robbed the mobile phone and purse containing Rs.2,650/-, ID card, Adhar card, Railway ticket, two photograph, Accused fled from the spot. Complainant informed the police and was taken to hospital where MLC was prepared. IO searched for the accused but accused were not found. On 26/02/2014 on the basis of secret information, accused persons were arrested from Chhata rail chowk in presence of the complainant. On basis of disclosure statement, accused Khempal got recovered purse containing Rs.700/-, two photograph from his jhuggi and the other accused Manoj got recovered Adhar card of complainant alongwith Rs.600/- from beneath the stone near Rain Basera, Hanuman Mandir Yamuna, Delhi”.

5. After completing the investigation, the charge sheet was filed against the appellants under Sections 394/397/34 and Section 411 IPC. The appellants pleaded not guilty and claimed trial. The prosecution cited 9 witnesses in support of its case against the appellants.

6. The complainant, Sumanto Malik was examined as PW-1. He deposed that on 19.02.2014 between 9 a.m. to 2 p.m. while he was going towards old Delhi Railway Station, one person collided with him, which resulted in a quarrel. In between, two more boys came from behind and one of them inflicted injury on his palm and neck with a blade. The accused persons also robbed him of his purse containing Rs.2,650/-, the ID card, the Aadhar card, a ticket and two photographs. He identified both the appellants as the accused persons who robbed him and identified the appellant Khempal as the person who caused injury on his hand and neck with the blade. He deposed that the appellant Manoj caught him from behind.

ARREST AND RECOVERY

7. The appellants were arrested on 26.02.2014 at the pointing out of the complainant as well as on the secret information. The appellants made a disclosure statement. At the instance of the appellant Khempal, a purse containing Rs.700/- and two photographs of the complainant were recovered from his jhuggi and at the instance of the appellant Manoj, Rs.600/- and a photocopy of the Aadhar card of the complainant were recovered from his jhuggi. Besides the complainant, (PW-8) & (PW-9) were witnesses to the arrest as well as recovery of the aforesaid articles from the appellants.

8. Learned counsel for the appellants contended that the presence of the complainant at the time of the arrest is doubtful as the arrest was made on the basis of a secret information. In this regard, the complainant deposed that he had gone to the Police Station to know the status of his complaint when the secret information was received and thereafter, he accompanied the Police party. Learned counsel for the appellant Khempal sought to challenge the recovery of article on the ground that the appellant was a vagabond and had no place to reside. Learned APP for the State, on the other hand, has pointed out that all the documents prepared in the investigation show that the appellant Khempal was a resident of a jhuggi. The appellant mentioned the same address in his statement recorded under Section 313 Cr.P.C. where while answering Question No.27, he stated that he was arrested from his house. It is relevant that no such suggestion was given to any of the recovery witnesses.

MLC

9. The complainant, Sumanto Malik, after the incident had gone to the Police Station where DD No.5A (Ex.PW-6/C) was recorded, whereafter the complainant was taken to Aruna Asaf Ali Hospital. The MLC of the complainant (Ex.PW-5/A) was exhibited by Dr. Preeti Prabhakar. Learned counsel for the appellants contended that the MLC of the complainant does not show any neck injury. In this regard, it is noted that although no neck injury was mentioned but a small contused incised wound on the right hand was mentioned in the MLC. The nature of injury was opined to be simple and sharp.

10. Learned counsel for the appellants has raised another contention with respect to the identity of the accused. In this regard, the *Rukka* mentioned that the complainant could identify two of the accused persons and had given description that one of the accused persons was having a cut mark near the left eye and was wearing half sleeve shirt. The Trial Court noted that the description given in the *Rukka* matched with the facial profile of the appellant Khempal.

11. Lastly, it was contended that no one from the *malkhana* was examined. In this regard, it is noted that the recovery witnesses have deposed about the deposit of the case property. Further, at the time of their testimony, the exhibits were brought by the record keeper and no objection was taken on behalf of the appellants at that time.

CONCLUSION

12. In view of the testimony of the complainant, duly corroborated by his MLC as well as the identification of the accused and the case property, the appellants' conviction and sentence is upheld. Consequently, the appeals are dismissed. As per the nominal roll of the appellant Manoj, he was released from the jail on 01.07.2016 after undergoing the sentence. As per the nominal roll received of the appellant Khempal, he has also served his sentence in the present case on 02.08.2016 and was released from jail on 19.08.2016 on the payment of the fine amount.

13. A copy of this judgment be sent to the Trial Court.

(MANOJ KUMAR OHRI)
JUDGE

NOVEMBER 18, 2019/ 'dc'