

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

% *Reserved on: 14th September, 2018*
Decided on: 31st May, 2019

+ **CRL.A. 675/2017**

MAHENDER Appellant
Represented by: Mr. Jivesh Kumar Tiwari,
Advocate

versus

STATE Respondent
Represented by: Mr. Meenakshi Chauhan, APP
for the State with SI Rakesh
Malik, PS Seemapuri

CRL.A. 789/2017

VIKAS Appellant
Represented by: Mr. Manoj Kumar Sharma,
Advocate

versus

STATE OF NCT OF DELHI Respondent
Represented by: Mr. Meenakshi Chauhan, APP
for the State with SI Rakesh
Malik, PS Seemapuri

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

1. Mahender and Vikas challenge the impugned judgment dated 14th December, 2016 convicting them for offences punishable under Section 392/34 and Section 25 Arms Act. Mahender was also convicted for the offence punishable under section 397 IPC. Vide order on sentence dated 2nd January, 2017, they were directed to undergo rigorous imprisonment for a period of three years each and to pay a fine of Rs.2,000/- each, in default

whereof to undergo simple imprisonment for a period of one month each, for offence punishable under Section 392/34 IPC and rigorous imprisonment for a period of one year each and to pay a fine of Rs.1,000/- each, in default whereof to undergo simple imprisonment for a period of 15 days each, for offence punishable under Section 25 Arms Act. Mahender was also sentenced to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs.2,000/-, in default whereof to undergo simple imprisonment for a period of one month, for offence punishable under Section 397 IPC.

2. Assailing the conviction, Learned Counsel Vikas submitted that there was no recovery from him. Vikas has no criminal antecedents, thus, he be released on the period already undergone.

3. Learned Counsel for Mahender submitted that there were contradictions in the testimonies of Kartik (PW-1), SI Vineet (PW-3) and Ct. Lekh Ram (PW-4). As per the prosecution story, the incident took place at 1:45 P.M., however, Kartik stated that the incident took place at 12 midnight. Kartik stated that the appellant had thrown away the knife however, SI Vineet stated that on search, knife was recovered by Lekh Ram. However, Lekh Ram stated that the search had already taken place. The use of knife has not been proved.

4. Process of law was set into motion on 18th February, 2014 at around 2:08 P.M. wherein an information was received that two boys after snatching money from a person tried to run but they have been apprehended. Said information was reduced into writing vide DD No. 42B (Ex.PW-2/A) and was handed over to SI Vineet. He along with Ct. Puran rushed to the spot near Red Cross Hospital where Ct. Lekh Ram, complainant Kartik and

Dhaba Owner, Gaurav produced the appellants.

5. Complainant Kartik got recorded his statement wherein he stated that he was residing at Village Pur Kasia, District Pratapgarh, PS Udaipur, Uttar Pradesh with his family and he was working at Panditji Vaishno Dhaba in Seemapuri. On 18th February, 2014 at about 1:45 P.M., while he was returning to Dhaba after delivering food order at Deepak Petrol Pump, near Surya Nagar Redlight, and had reached near Foot Over Bridge, Near Dilshad Garden, Metroline, two boys caught him from his back. One of the boys came in front and put knife on his neck and took out wallet from the back pocket of his pant which contained Rs.400/-, some documents and photographs. His wallet was of black colour on which "Lee" was written. Thereafter, those boys after taking his wallet started running towards Red Cross Hospital. When he raised alarm, police officials and owner of the Dhaba namely Gaurav Sharma came there and chased the said two boys and caught them near Red Cross Hospital. On enquiry, the two boys revealed their name as Vikas and Mahender. On search, his wallet was recovered from Mahender and also a knife was recovered from him. On searching Vikas, a knife as recovered from the left pocket of his pants. Aforesaid statement was recorded vide Ex.PW-1/A.

6. SI Vineet prepared the rukka vide Ex.PW-3/A and sent the same at PS through Ct. Puran. Sketches of both the knives were prepared vide Ex.PW-1/C and Ex.PW-1/D. The wallet contained a photograph, 5 visiting cards, one note of Rs. 100/- and one note of Rs. 50/-, one note of Rs. 20/- and twenty three notes of Rs.10/- denomination. Case property was seized vide seizure memo Ex.PW-1/E to Ex.PW-1/G. Site plan was prepared on the pointing out of Kartik vide Ex.PW-1/B.

7. FIR No. 243/2014 (Ex.PW-2/B) was registered at PS Seemapuri for the offences punishable under Sections 392/411/34 IPC and Section 25 Arms Act.

8. Both the appellants were arrested vide arrest memos Ex.PW-1/H and Ex.PW-1/I, their personal search was conducted vide memo Ex.PW-1/J and Ex.PW-1/K and their disclosure statements were recorded vide Ex.PW-1/L and Ex.PW-1/M. Statements of Gaurav and Ct. Lekh Ram were recorded and supplementary statement of Kartik was also recorded.

9. Kartik (PW-1) deposed in sync with his statement made before the police. He also stated that the appellants took his Chinese Mobile phone. Further, he stated that he went back to the Dhaba and narrated the incident to the Dhaba owner, Gaurav. A police official was taking meals at the Dhaba. When he along with Gaurav were going towards the spot, both the appellants were seen coming towards the Dhaba. On seeing them, they started running away and threw away his mobile somewhere. During the cross examination, he denied the suggestion that he was working at Pandiji Vaishno Dhaba, Seemapuri. He also denied having gone to deliver food order at Deepak Petrol Pump near Surya Nagar red light and while returning, the incident took place. He further denied the suggestion that he did not tell the police about the robbery of the mobile phone. He stated that it was not recorded since he was not having the bill of the same. He neither admitted nor denied the suggestion that the cash amount robbed from his purse was Rs.400/-. He stated that he cannot confirm the exact amount because of lapse of time. He denied the suggestion that that one knife each was recovered from the pockets of the pants worn by the appellants. He denied the suggestion that the appellants had not committed the robbery or that they

were not present at the spot or that he got them falsely implicated.

10. Ct. Lekhram (PW-4) stated that on 18th February, at about 1:45 P.M., when he was taking meals at Vaishno Dhaba at Seemapuri Border, he heard the noise from footover Bridge near Dilshad Garden Metro Station. A boy named Kartik who was employee of the Vaishno Dhaba met him under footover bridge and informed that two boys snatched his purse showing him knife and that after robbing him, they ran away towards Red Cross Hospital. He along with Gaurav, son of owner of Vaishno Dhaba and other public persons ran towards Red Cross Hospital from where appellant Mahender and Vikas were apprehended.

11. Gaurav (PW-6) deposed that on 18th February, 2014, he had sent Kartik for delivery of food at Petrol Pump near Surya Nagar Red Light at about 1:00 P.M. At about 1:30 - 2:00 P.M., Kartik came back weeping and told him that someone had robbed his purse containing cash and also the payment received against the delivery of food by putting knife on his neck near the flyover which goes from Seemapuri towards Anand Vihar/ Surya Nagar red light. There was a small mark on the Kartik's neck. Thereafter, he took Kartik on his motorcycle and went towards the flyover. When they reached near the flyover, he saw both the appellants who were coming down from the flyover, started running on seeing them. They raised the alarm "*chor chor*" and chased the appellants and were over empowered near Red Cross Hospital with the help of police official. During his cross-examination, he stated that Kartik went to deliver the food at the petrol pump on bicycle. He did not tell the police that Kartik came to him while weeping. Police person was with him when Kartik told that the appellants had ran away at Red Cross Hospital. One constable who was also present at

Dhaba also ran towards the appellants on foot.

12. Mahender and Vikas in their statements recorded under Section 313 Cr.P.C. stated that they used to drive passenger vehicle and sometimes, used to visit Dhaba of Kartik and due to some dispute with regard to payment for food, they were falsely implicated in the present case. Kartik got them arrested from the bus stand of Seemapuri Border after calling the owner and police.

13. Case of the appellant is of false implication for the reason there was a dispute with regard to the payment of food however, Kartik was not the owner of the dhaba and was simply working with the dhaba owner. Minor contradictions in the testimonies of the witnesses qua the time of incident would not belie his version specifically when the appellants were apprehended at the spot.

14. For the evidence led by the prosecution and the recoveries made, this Court finds no merit in the appeals. Appeals are dismissed.

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

16. TCR be returned.

 (MUKTA GUPTA)
JUDGE

MAY 31, 2019

‘vj’