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

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Reserved on: September 12, 2023

Decided on: December 07, 2023

+ **CRL.A. 770/2023**

STATE OF NCT OF DELHI

..... Appellant

**Through: Mr. Yudhvair Singh Chauhan,
APP for the State with SI
Hemant, P.S. Sultanpuri**

V

TARVINDER @ POLY

..... Respondent

**Through: Mr. Gopal Sharma and
Mr. S. K. Tiwari, Advocates
with Respondent in person**

CORAM

HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

J U D G M E N T

1. The present appeal is filed under section 378 of the Code of Criminal Procedure, 1973 (hereinafter referred to as **“the Code”**) read with section 482 of the Code to impugn the judgment dated 25.01.2019 (hereinafter referred to as the **“impugned judgment”**) passed by the court of Sh. M.R. Sethi, ASJ-03, North West, Rohini Courts, Delhi (hereinafter referred to as the **“trial court”**) whereby



the respondent was acquitted for the offences punishable under sections 397/411 of the Indian Penal Code, 1860 (hereinafter referred to as “**IPC**”) and sections 25/27 of the Arms Act, 1959.

2. The factual background of the case is that Nitin (hereinafter referred to as “**the complainant**”) on 14.06.2016 at about 07:30 pm was going back to his house after playing and reached Basant Chowk, Sultanpuri, Delhi where one boy caught hold of him and tried to snatch his mobile phone. The complainant resisted snatching of mobile and then said boy put a knife on the abdomen of the complainant and snatched his mobile phone make Intex Aqua Power Plus IMEI nos. 911442503949912 and 911442503944920 and ran towards E-Block, Sultanpuri. The complainant went to his house and narrated the entire incident to his cousin namely Amar and also made a call on 100 number. The complainant along with his cousin Amar and 2-3 boys went towards E-Block, Sultanpuri in search of that boy and reached Shani Bazar Road where they apprehended the said boy. The public persons also gathered there. On search, mobile phone of the complainant was recovered from the right pocket of the pant of the boy. HC Maheshwar and Ct. Roshan Lal who were on emergency duty



also reached there and the said boy identified as Tarvinder @ Poly (hereinafter referred to as **“the respondent”**) along with the mobile phone was handed over to them. SI Amit (hereinafter referred to as **“the Investigating Officer”**) after receipt of DD no. 73B along with HC Satish also reached there. One *buttondar* knife was also recovered from right hand side *dub* of pant of the respondent. The Investigating Officer recorded statement of the complainant and also seized the mobile phone and *buttondar* knife. *Rukka* was also prepared and FIR bearing no. 0357/2016 was got registered under sections 392/397 IPC and sections 25/27/54/59 of the Arms Act, 1959. The respondent was arrested. The Investigating Officer conducted further investigation.

2.1 The Investigating Officer filed the charge sheet after conclusion of the investigation in the court of concerned Metropolitan Magistrate. The concerned Metropolitan Magistrate after taking cognizance and complying with section 207 of the Code, committed the case to the Court of Sessions as per section 209 of the Code. The court of Sh. Kanwal Jeet Arora, Additional Sessions Judge-03, North-West, Rohini Courts, Delhi vide order dated 29.09.2016 framed the charges for the offences punishable under sections 397 IPC and 411 IPC and



sections 25/27 of the Arms Act, 1959 against the respondent, to which he pleaded not guilty and claimed trial. The prosecution in support of the case, examined seven witnesses including the complainant as PW2 and the Investigating Officer as PW7. The statement of the respondent was recorded under section 313 of the Code wherein he denied incriminating evidence and pleaded false implication and innocence. The respondent stated that the complainant had taken money from him and the complainant has falsely implicated him in present case when he demanded money back from the complainant.

2.2 The trial court vide the impugned judgment had acquitted the respondent for the offences punishable under sections 397/411 IPC and sections 25/27 of the Arms Act, 1959.

3. The appellant/State being aggrieved by the impugned judgment, filed the present appeal and challenged the impugned judgment on the grounds that the impugned judgement is not sustainable and is based on imagination, presumption, conjectures and surmises. The impugned judgment is not based on the factual matrix and law. The trial court has erroneously concluded that the respondent was not guilty of the offences for which he was charged despite ample evidence led by the



prosecution. The trial court has failed to appreciate the testimony of the complainant as PW2 who supported the case of the prosecution. Sanction under section 39 of the Arms Act, 1959 was not required to be obtained by the Investigating Officer in the present case. The trial court has not properly appreciated the oral and documentary evidence led by the prosecution and ignored vital evidence leading to the acquittal of the respondent. The respondent ought to have been convicted. The impugned judgment is liable to be set aside. It was prayed that the impugned judgement be set aside and the respondent be convicted.

4. The respondent filed a reply to appeal.

5. The prosecution in support of its case examined the complainant as PW2 who supported case of the prosecution. Witnesses are considered to be an integral part of the administration of criminal justice and role of a witness is paramount in the criminal justice system for purpose of discovery of the truth during trial. It is utmost duty of a witness to disclose true facts before the court for appropriate decision of the case. The complainant as PW2 deposed that on 14.06.2016, at about 7:30 pm after playing at Phool Park, Jalebi



Chowk, Sultanpuri, he was going back to home and reached Basant Chowk, Sultanpuri where the respondent caught hold of him and tried to take out his mobile phone from his pocket. When the complainant/PW2 resisted him, the respondent put a knife on his abdomen and robbed him of his mobile phone make Intex Acqua Power Plus. The respondent thereafter ran away towards E-block, Sultanpuri side. The complainant/PW2 further deposed that he rushed to his house and informed about the incident to his cousin Amar who made a call at 100 number. The complainant along with Amar and 2-3 boys reached E-Block, Sultanpuri in search of the respondent where they apprehended the respondent. The search of the respondent was conducted and on search, mobile phone of the complainant/PW2 was recovered from the right pocket of the pant of the respondent. The local police also reached there and the respondent along with mobile phone was handed over to the police. The complainant/PW2 also deposed about investigation by deposing that his statement Ex.PW2/A was recorded. The police officer seized the mobile phone vide seizure memo Ex. PW2/B. The police officer also conducted search of the respondent and recovered a knife from possession of the respondent.



The police also seized knife vide seizure memo Ex. PW2/D after drawing sketch Ex.PW2/C. The respondent was arrested vide arrest memo Ex.PW2/E. The complainant/PW2 also identified mobile as Ex.P1 and knife as Ex.P2.

5.1 The complainant/PW2 in cross examination primarily deposed that he did not know the respondent but had seen the respondent once or twice in Sultanpuri area. The respondent was already present at the Basanta Chowk when the complainant/PW2 reached there. The complainant/PW2 had not informed the police at police booth immediately after incident. Amar made a call at 100 number and thereafter, the respondent along with Amar and 2-3 boys of locality namely Suraj, Pradeep and Akash had gone in search of the respondent. The police had not recorded statements of those 2-3 boys or any public person at the spot after the respondent was apprehended. The complainant/PW2 denied the suggestions that prior to this incident, he was having friendly relations with the respondent or that the complainant used to drink with the respondent prior to incident or that a dispute took place between the complainant and the respondent after having drinks and due to this, their relations became inimical and



the respondent was falsely implicated or that the mobile phone Ex. P1 was planted on the respondent or that the knife Ex.P2 was not recovered from possession of the respondent.

5.2 The prosecution also examined HC Maheshwar as PW5 and Ct. Roshan Lal as PW4 who after being informed of recording of DD bearing no.73B Ex. PW3/A reached Shani Bazar Road, Sultan Puri and deposed that they met with the complainant and Amar with the respondent. The Investigating Officer SI Amit/PW7 also came there and the respondent was handed over to him. The mobile phone Ex. P1 and the knife Ex. PW2 were also recovered from right pocket of the pant of the respondent which were seized by the Investigating Officer SI Amit/PW7. The Investigating Officer SI Amit/PW7 also prepared *rukka* after recording statement of the complainant Ex.PW2/A. The prosecution also examined the Investigating Officer as PW7 who deposed about investigation conducted by him.

6. The prosecution from evidence led by it was able to establish following facts:-

i. The complainant on 14.06.2016 at about 7:30 pm after playing at Phool Park, Jalebi Chowk, Sultanpuri was going back to his home and the respondent at Basant Chowk,



Sultanpuri tried to snatch mobile phone from the complainant.

ii. The respondent put knife Ex.P2 on abdomen of the complainant and robbed him of his mobile phone make Intex Acqua Power Plus Ex.P1 and then the respondent ran away towards E-block, Sultanpuri side.

iii. The complainant came to his house and informed about the incident to his cousin Amar who made a call at 100 number. Thereafter, the complainant along with Amar and 2-3 boys reached E-block Sultanpuri where the respondent was apprehended.

iv. Mobile phone Ex.P1 was recovered from the right pocket of the pant of the respondent. The respondent along with mobile Ex.P1 was handed over to PW5 HC Maheshwar and PW4 Ct. Roshan Lal who also reached at spot.

v. The Investigating Officer SI Amit PW7 after receipt of DD 73B also reached there and recorded statement Ex.PW2/A of the complainant. The Investigating Officer seized mobile phone Ex.P1 vide seizure memo Ex. PW2/B and on further search of the respondent, *buttondar* knife Ex.P2 was also recovered from possession of the respondent which was seized vide seizure memo Ex. PW2/D after drawing sketch Ex.PW2/C. The respondent was arrested vide arrest memo Ex. PW2/E.

7. The trial court in respect of the charge framed under section 25 of the Arms Act, 1959 held that the respondent cannot be convicted under section 25 of the Arms Act, 1959 for want of sanction from competent authority. It was observed as under:-

13. At the outset, it has been observed that no sanction U/s 39 Arms Act had been obtained by the investigating agency from the competent authority for prosecuting the accused U/s 25 Arms Act. Due to absence of any sanction, no order of



conviction can be passed against the accused U/s 25 Arms Act.

7.1 The trial court in respect of the offence punishable under section 397 IPC observed that perusal of testimonies of prosecution witnesses reflects contradictions which are material and shake the prosecution case from its very foundations. The relevant portion of the impugned judgment is reproduced verbatim as under:-

15. It had been claimed that accused had robbed the complainant of his mobile phone which was subsequently recovered and seized. In this regard the complainant had claimed that the mobile phone was of make intex Acqua Power Plus. Complainant Nitin had claimed that the mobile was recovered from pocket of pant of the accused and was then handed over by him to police. In this regard PW-5 during course of his examination in chief claimed that after SI Amit came to the spot, accused was handed over to him and one mobile phone was recovered from right side pocket of pant of accused. No doubt during course of his cross examination by id. PP he reverted back to the prosecution story and claimed that the phone had been handed over to him by Nitin, but during course of cross examination he claimed that the phone recovered was of Vivo. The controversy as to whether the phone recovered was of make Intex or Vivo has not been clarified.

16. There are material contradictions in testimonies of witnesses even regarding recovery of knife. PW-2 in this regard simply claimed that knife was recovered from possession of accused during his search. PW-4 claimed that it was recovered from right side 'aant' of the accused. PW-5 claimed that it was recovered from right side pocket of pant of accused alongwith the knife. To similar effect was statement of PW-6 who too claimed that knife was recovered



from right side pocket of pant of accused. He reiterated the said fact even during course of his cross examination. PW-7 again claimed that it was recovered from right side dub of his pant. Contradictions in this regard have not been reconciled.

17. PW-2 the complainant during course of his testimony claimed that after the incident he rushed to his house and informed his cousin Amar about the incident and it was Aman who made the call at No. 100. He admitted that many public persons were present when the accused was apprehended. During course of his cross examination he admitted that he had not informed the police officials present at the police booth near the spot, about the incident but had gone to his house which was at a distance of 800 - 1000 meters from the spot. He further claimed that he alongwith Amar, Suraj, Pradeep and Akash had gone in search of accused and had apprehended him at Shani Bazaar Road. Now Amar had expired before he could be examined in court. However Suraj, Pradeep and Akash who were claimed by the complainant to have accompanied him in search of the accused and in whose presence accused was apprehended, were neither cited nor examined by prosecution as witnesses in this case. Infact they were very material witnesses and their non examination casts shadow of doubt over genuineness of case of prosecution and leads this court to draw an inference that in case they were examined, they would not have supported case of prosecution. PW-4 HC Roshan Lai had admitted that none from nearby residential houses or shops had been called upon to join the proceedings at any stage.

18. As per case of prosecution the mobile phone said to had been recovered from possession of accused had been handed over by the complainant before HC Maheshwar, It was case of the prosecution that HC Maheshwar then produced the recovered mobile phone before the IO SI Amit (PW-7). However, reading of the seizure memo of mobile phone (Ex. PW-2/B) reveals that factum of the mobile phone having been handed over to SI Amit by HC Maheshwar was



nowhere recorded therein nor HC Maheshwar was a signatory to the said seizure memo. This by itself puts in doubt genuineness of the said document.

19. Moreover, knife converted into a pullanda was sealed with the seal of IO SI Amit with initials AS. The seal after use was claimed to have been handed over to HC Satish after use (as per PW-7). Now, when independent public person namely Nitin was present at the spot and infact had signed the seizure memo, the IO ought to have handed over the seal to the independent public person in order to maintain sanctity of seal.

20. Factum of the complainant having not reported about the incident to any police officer in Booth near the spot and rather his going to his cousin brother who resided at a distance of 800-1000 meters from the spot and telling him about the incident, in considered opinion of this court raises doubt about genuineness of his claim in that regard. Although during course of his cross examination the complainant had claimed that he did not know the accused prior to the incident, information sent to PCR by complainant's brother Amar, as per the PGR form mentioned "Jalebi chowk ke pass se caller ke bhai se jankar chaku dikha kar phone cheen kar le gaye hai...." This implies that as per information given to the PGR, culprit was known to the complainant. Although the PGR form had not been duly exhibited during course of trial, but still as it had been filed alongwith the charge sheet and was an admitted document of prosecution, reliance can be placed on it for benefit of the accused.

21. As regards apprehension of accused, testimony of PW-4 HC Roshan Lai runs contrary to claim of the prosecution or of the complainant. While it was case of the prosecution and the complainant that after robbing the complainant accused ran towards E-Block, Sultanpuri and the complainant went back home to return with his cousin and others and had been able to apprehend the accused on Shani Bazaar Road, PW-4 claimed that when he met the complainant and his brother, Nitin (complainant) while



handing over the phone to HC Maheshwar claimed that the accused had snatched his phone and had tried to run away but had been apprehended by him, his brother and others. This unchallenged testimony of PW-4 puts in doubt claim regarding apprehension of accused.

22. It is often said that every criminal trial is a voyage of discovery of which truth is the ultimate quest. Primary object of criminal trial is to ensure fair trial to the accused and also to the prosecution. If facts and circumstances and evidence on record of the present case are tested on the aforesaid touch stone, it is apparent that dark clouds of doubt hover over case of prosecution. Doubt is created in mind of this court about genuineness of claim of the complainant, investigating agency and the prosecution itself. Granting benefit of doubt to the accused, he is ordered to be acquitted in this case.

23. Accused accordingly stands acquitted.

8. The Additional Public Prosecutor for the appellant/State primarily argued that the impugned judgment is not sustainable being based on conjectures and surmises and the trial court has failed to appreciate the testimony of the complainant as PW2 which proved the prosecution case beyond reasonable doubt. There are no material contradictions in the testimonies of witnesses examined by the prosecution and the minor contradictions in the testimonies of witnesses as discussed and referred in the impugned judgment cannot be fatal to the case of the prosecution as they do not go to the root of the case and minor lacunas in investigation cannot affect the case of



the prosecution adversely. Hence, the impugned judgment is liable to be set aside.

8.1 The counsel for the respondent argued that present appeal is not maintainable as the trial court has passed the impugned judgment after considering material legal propositions. The prosecution has failed to prove recovery of knife Ex.P2 from the possession of the respondent. The complainant as PW2 has deposed in his examination-in-chief that mobile phone Ex.P1 was make Intex but the complainant/PW2 during cross-examination could not clear that mobile phone Ex.P1 was of Intex or Vivo company. The prosecution also did not cite the 2-3 boys who accompanied the complainant in apprehending the respondent as witnesses. The Investigating Officer SI Amit/PW7 also did not include any independent person in the investigation. The complainant did not rush to nearest police booth immediately after incident but went to the house of his *tau ji* (paternal uncle) which creates a doubt as to the prosecution story. The counsel for the respondent also referred cross-examination of the complainant as PW2 to point out the discrepancies. The counsel for the respondent defended the impugned judgment on the grounds that the complainant has not identified the mobile phone



Ex.P1; sanction under section 39 of the Arms Act, 1959 has not been obtained; the Investigating Officer has not recorded statement of any public witness; there are material contradictions in the testimonies of prosecution witnesses; substantial doubts have surfaced from evidence led by the prosecution; the respondent was falsely implicated in case. The impugned judgment is sustainable under law and cannot be set aside. The appeal is liable to be dismissed.

9. The perusal of the impugned judgment reflects that the trial court primarily relied upon contradictions in the testimonies of the prosecution witnesses by holding those contradictions as material contradictions good enough to shake the case of the prosecution from its very foundations. It is an accepted legal position that mere marginal variations, contradictions, discrepancies or improvements in the statements of witnesses cannot be fatal to the case of the prosecution. Only major contradictions, discrepancies or improvements on material facts can shake the very genesis of prosecution case and can create doubts as to the prosecution case. The Supreme Court in **State of Punjab V Jagir Singh Baljit Singh and Karam Singh**, AIR 1973 SC 2407 observed as under:-



A criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and fantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the crime with which he is charged. Crime is an event in real life and is the product of interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the courts should not at the same time reject evidence which is ex facie trustworthy on grounds which are fanciful or in the nature of conjectures.

9.1 The Supreme Court in Pawan Kumar @ Monu Mittal V State of Uttar Pradesh and Another, (2015) 7 SCC 48 held as under:-

When a witness is examined at length it is quite possible for him to make some discrepancies. No true witness can possibly escape from making some discrepant details. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence.

9.2 The Supreme Court in Bhagwan Jagannath Markad and Others V State of Maharashtra, (2016) 10 SCC 537 observed as under:-

While appreciating the evidence of a witness, the court has to assess whether read as a whole, it is truthful. In doing



so, the court has to keep in mind the deficiencies, drawbacks and infirmities to find out whether such discrepancies shake the truthfulness. Some discrepancies not touching the core of the case are not enough to reject the evidence as a whole. No true witness can escape from giving some discrepant details.

Only when discrepancies are so incompatible as to affect the credibility of the version of a witness, the court may reject the evidence.

Discrepancies may arise due to error of observations, loss of memory due to lapse of time, mental disposition such as shock at the time of occurrence and as such the normal discrepancy does not affect the credibility of a witness.

9.3 The Supreme Court in **Thoti Manohar V State of A.P**, Criminal Appeal No. 1739 of 2007 decided on 15.05.2012 observed that minor discrepancies on trivial matters not touching the core of the matter cannot bring discredit to the story of the prosecution. Giving undue importance to them would amount to adopting a hyper-technical approach. The court while appreciating the evidence should not attach much significance to minor discrepancies, for the discrepancies which do not shake the basic version of the prosecution case are to be ignored. It was further observed that no evidence can ever be perfect for man is not perfect and man lives in an imperfect world. Thus, the duty of the court is to see with the vision of prudence and acceptability of the deposition regard being had to the substratum of the prosecution story.



10. The trial court while discussing the discrepancies and contradictions in prosecution evidence observed that the complainant had deposed that the mobile Ex.P1 was recovered from pocket of pant of the accused/respondent and thereafter was handed over by him to police but PW5 HC Maheshwar deposed that mobile phone Ex.P1 was recovered from right side pocket of pant of accused/respondent after the Investigating Officer SI Amit/PW5 came to the spot. The trial court also observed that there are material contradictions in testimonies of witnesses regarding recovery of knife Ex.P2 as the complainant/PW2 deposed that knife Ex.P2 was recovered from possession of the respondent during his search while PW4 Ct. Roshan Lal deposed that it was recovered from right side "aant" of the respondent and PW5 HC Maheshwar and PW6 HC Satish deposed that the knife Ex. P2 was recovered from right side pocket of pant of the respondent. However the Investigating Officer SI Amit/PW7 also deposed that the knife Ex.P2 was recovered from right side dub of his pant. The prosecution could not reconcile these contradictions. The trial court further observed that as per the prosecution, the mobile phone Ex. P1 was handed over by the complainant to PW5 HC



Maheshwar and PW5 HC Maheshwar then produced the mobile phone Ex. P1 before the Investigating Officer SI Amit/PW7 but seizure memo of mobile phone Ex. PW2/B reveals that factum of the mobile phone having been handed over to SI Amit by HC Maheshwar was nowhere recorded therein nor HC Maheshwar was a signatory to the seizure memo Ex. PW2/B and these facts create doubts as to genuineness of seizure memo Ex. PW2/B. The trial court in the impugned judgment also observed that testimonies of the complainant and PW4 Ct. Roshan Lal run contrary to claim of the prosecution regarding apprehension of the respondent. The contradictions and discrepancies as referred and relied on by the trial court in impugned judgment are minor and insignificant and do not affect the prosecution case adversely. The trial court placed undue and unwarranted reliance on minor contradictions in the evidence led by the prosecution. The trial court should not have placed too much unnecessary reliance on insignificant variations and contradictions in the evidence led by the prosecution. The quality and quantity of evidence led by prosecution adequately proved that the respondent on 14.06.2016 at about 7:30 pm at Basant Chowk, Sultanpuri snatched the mobile phone Ex.P1 from



the complainant after placing knife Ex.P2 on abdomen of the complainant and the respondent was apprehended at E-Block, Sultanpuri by the complainant and his cousin Amar and on his search, mobile phone Ex.P1 and knife Ex.P2 were recovered from his possession. The argument advanced by the counsel for the respondent that there are material contradictions in the testimonies of prosecution witnesses is without any basis and legal force. The Additional Public Prosecutor rightly argued that the trial court in the impugned judgment unnecessarily placed reliance on minor and insignificant contradictions and discrepancies in testimonies of prosecution witnesses while acquitting the respondent.

11. The trial court in the impugned judgment also observed that as per testimony of the complainant/PW2, many public persons were present when the respondent was apprehended but none was included in the investigation. The trial court also observed that although Amar, cousin of the complainant who was cited as prosecution witness had expired but the Investigating Officer did not include, cite and examine Suraj, Pradeep and Akash who accompanied the complainant at the time of apprehending the respondent as prosecution witnesses being



material witnesses and their non-examination cast a shadow of doubt over the genuineness of the case of prosecution and led to adverse inference against the prosecution. The counsel for the respondent also argued that the Investigating Officer did not include any public person in the investigation which raises serious doubts as to the prosecution story. It is correct that place where the respondent was apprehended was a thickly populated area and the Investigating Officer did not include or attempt to include any independent or public person in the investigation despite opportunity and their availability and also did not include the boys namely Suraj, Pradeep and Akash who accompanied the complainant at time of apprehending the respondent. If any independent or public person or boys who accompanied the complainant at time of apprehending the respondent were not included, then it is not fatal to the case of the prosecution.

11.1 It is an accepted legal proposition that it is the quality and not the quantity of evidence which is necessary for proving or disproving a fact. The evidence should be cogent, credible and trustworthy. The Supreme Court observed in **Kuna @ Sanjaya Behera V State of Odisha**, 2017 SCC OnLine SC 1336 that the conviction can be based



on the testimony of single eye witness if he or she passes the test of reliability and that it is not the number of witnesses but the quality of evidence that is important. The Supreme Court in **Veer Singh and Others V State of UP**, (2014) 2 SCC 455 observed as under:-

Legal system has laid emphasis on value, weight and quality of evidence rather than on quantity, multiplicity or plurality of witnesses. It is not the number of witnesses but quality of their evidence which is important as there is no requirement under the Law of Evidence that any particular number of witnesses is to be examined to prove/disprove a fact. Evidence must be weighed and not counted. It is quality and not quantity which determines the adequacy of evidence as has been provided Under Section 134 of the Evidence Act. As a general rule the Court can and may act on the testimony of a single witness provided he is wholly reliable.

The prosecution does not require number of eye witnesses to prove its case beyond reasonable doubt. Even if there is one eye witness and his testimony is up to the mark, the conviction can be based upon the same. The Supreme Court in **Namdeo V State of Maharashtra**, (2007) 14 SCC 150 held as under:-

In the leading case of Shivaji Sahebrao Bobade v. State of Maharashtra, (1973) 2 SCC 793, this Court held that even where a case hangs on the evidence of a single eye witness it may be enough to sustain the conviction given sterling testimony of a competent, honest man although as a rule of prudence courts call for corroboration. "It is a platitude to say that witnesses have to be weighed and not counted since quality matters more than quantity in human affairs." In



Anil Phukan v. State of Assam, (1993) 3 SCC 282 : JT 1993 (2) SC 290, the Court observed; "Indeed, conviction can be based on the testimony of a single eye witness and there is no rule of law or evidence which says to the contrary provided the sole witness passes the test of reliability. So long as the single eyewitness is a wholly reliable witness the courts have no difficulty in basing conviction on his testimony alone. However, where the single eye witness is not found to be a wholly reliable witness, in the sense that there are some circumstances which may show that he could have an interest in the prosecution, then the courts generally insist upon some independent corroboration of his testimony, in material particulars, before recording conviction. It is only when the courts find that the single eye witness is a wholly unreliable witness that his testimony is discarded in toto and no amount of corroboration can cure that defect.

The testimony of the complainant as PW2 after being analyzed carefully inspires confidence and is trustworthy and can be safely relied upon. The testimony of the complainant/PW2 is cogent, consistent and narrative of necessary facts essential to constitute guilt of the respondent except minor and immaterial discrepancies and contradictions which do not affect root of the case of the prosecution. If the Investigating Officer did not include any public person in investigation or boys or any of them who accompanied the complainant in investigation, it is not fatal to case of prosecution. The argument advanced by the counsel for the respondent is without any legal force. There is legal force in the arguments advanced by the



Additional Public Prosecutor that the sole testimony of the complainant/PW2 is sufficient to prove the case of prosecution.

12. The trial court in impugned judgment observed that the Investigating Officer ASI Amit/PW7 after sealing the knife Ex.P1 with seal of AS and converting into *pullanda* handed over seal to PW6 HC Satish. The Investigating Officer should have given the seal after use to the independent witness i.e. the complainant who also signed the seizure memo Ex.PW2/D to maintain sanctity of seal. If the Investigating Officer SI Amit/PW7 did not hand over seal after use to the complainant and handed over the seal to PW6 HC Satish, it is not fatal to the case of the prosecution.

13. The trial court in impugned judgment further observed that the complainant has not reported about the incident to any police officer at the police booth situated near the place of incident and rather had gone to his cousin brother who was residing at a distance of 800-1000 meters from the place of incident and informed him about the incident. This has raised doubts about genuineness of claim of the complainant. The conduct of the complainant post incident was not unusual and against ordinary course of conduct. There was nothing abnormal or



unusual if the complainant had gone to his cousin's house immediately after the incident instead of approaching the police at the police booth which was situated near place of incident.

14. Section 313 of the Code empowers the court to examine the accused with the purpose to enable the accused to explain incriminating circumstances in the prosecution evidence. The Supreme Court in **Reena Hazarika V State of Assam**, Criminal Appeal No. 1330/2018 decided on 31.10.2018 observed that a solemn duty is cast on the court in the dispensation of justice to adequately consider the defence of the accused taken under section 313 of the Code and to either accept or reject the same for reasons specified in writing. The respondent in statement recorded under section 313 of the Code denied incriminating evidence and pleaded innocence and false implication and raised the defence that the complainant had taken money from him and the complainant has falsely implicated him in present case when the respondent demanded money back from the complainant. The respondent in cross-examination of the complainant as PW2 took a different defence that the complainant was having friendly relations with the respondent and used to drink with the



respondent prior to this incident. The complainant falsely implicated the respondent due to a dispute that took place between them after having drinks. The defence as taken by the respondent is sham, inconsistent and without any basis and does not inspire confidence of this Court.

15. The complainant as PW2 in cross-examination deposed that he did not know the respondent prior to the incident but had seen the respondent once or twice in Sultanpuri area. The trial court in the impugned judgment mentioned that the complainant in cross-examination deposed that he did not know the respondent prior to the incident but cousin of the complainant namely Amar sent information to PCR and in PCR form it was mentioned that ***"Jalebi chowk ke pass se caller ke bhai se jankar chaku dikha kar phone cheen kar le gaye hai....."*** The trial court accordingly observed that it implies that the accused i.e. the respondent was known to the complainant and relied on PCR form. The trial court on basis of PCR form has made a misconceived inference that the respondent was known to the complainant prior to the incident as the complainant as PW2 in cross-examination only deposed that he had seen the respondent 2-3 times in



Sultanpuri area but it does not prove any close acquaintance of the complainant with the respondent prior to the incident. The information recorded in PCR form also reflects that incident subject matter of FIR had actually happened. There is no evidence regarding any prior animosity or enmity between the complainant and the respondent. The trial court misdirected itself while reading the PCR Form to the benefit of the respondent.

16. A deadly weapon must have been used by the offender at the time of committing robbery and the word 'uses' should be given a wider meaning. The term "offender" under section 397 IPC is confined to the offender who uses any deadly weapon and use of weapon by offender for creating terror in mind of victim is sufficient even if no injury has been inflicted. The Supreme Court in **Ashfaq V State**, AIR 2004 SC 1253 held that what is essential to satisfy the words 'uses' for the purpose of section 397 IPC is the robbery being committed by an offender who was armed with deadly weapon which was within the vision of victim so as to be capable of creating a terror in the mind of victim and not that it should be further shown to have been actually used for cutting, stabbing, shooting, as the case may be. It was also



observed in **Vinod Kumar and Others V State**, 2007 (2) JCC 1011 that it is not necessary in order to attract section 397 IPC, the deadly weapon is to be used in the sense that by use of it the person has to be injured. The use of weapon is also there when the weapon is brandished and a person is robbed/looted under the fear of his life caused by the weapon. The complainant as PW2 deposed that when he resisted snatching of mobile phone Ex. P1 by the respondent then the respondent put knife Ex. P2 on abdomen of the complainant. Accordingly, it is proved and is reflecting from testimony of the complainant/PW2 that the respondent in commission of offence, used a *buttondar* knife Ex.P2. The weapon i.e. knife Ex.P2 was used to threaten the complainant and was within his vision although the complainant did not receive any injury but was terrorized and threatened by the respondent by the use of knife Ex.P2 to part with his mobile phone Ex.P1.

16.1 It is for the prosecution to prove that the weapon used in commission of offence as per section 397 IPC was a deadly weapon by producing or leading convincing evidence. In the present case, the respondent is stated to have used a knife Ex.P2 and it is for the



prosecution to prove that knife Ex.P2 was a deadly weapon. The issue which needs judicial consideration is that the whether the prosecution could prove that the knife Ex.P2 was a deadly weapon within the meaning of section 397 IPC. The Investigating Officer SI Amit/PW7 deposed on search that one *buttondar* knife Ex.P2 was recovered from the respondent which was taken into possession vide seizure memo Ex.PW2/D after drawing sketch Ex.PW2/C and *pullanda* was also prepared which was sealed by seal of 'AS'. The testimony of the Investigating Officer SI Amit/PW7 is also corroborated by respective testimonies of the complainant/PW2, Ct. Roshan Lal/PW4, HC Maheshwar/PW5 and HC Satish/PW6. The perusal of sketch Ex.PW2/C reflects that the knife was having a blade and handle and the blade was capable of inflicting fatal injury. The prosecution as such is able to prove that the knife Ex.P2 was a deadly weapon within the meaning of section 397 IPC.

17. The testimony of the complainant being the victim of the offence has to be accorded great weightage and a special status in law. The deposition of the complainant should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major



contradictions and discrepancies therein. Convincing evidence is required to discredit a complainant who is the victim of the crime. The testimony of the complainant as PW2 is trustworthy, reliable and is not suffering from any infirmity and can be safely relied upon.

18. An accused in a criminal trial is presumed to be innocent and the prosecution must establish the guilt of the accused beyond reasonable doubt. However, the Supreme Court in **Shivaji Sahabrao Bobade and Another V State of Maharashtra**, (1973) 2 SCC 793 emphasized that our jurisprudential enthusiasm for presumed innocence must be moderated by the pragmatic need to make criminal justice potent and realistic. The Supreme Court in **State of U.P. V Shanker**, AIR 1981 SC 897 observed that it is function of the court to separate the grain from the chaff and accept what appears to be true and reject the rest. The Supreme Court in **Gurbachan Singh V Sat Pal Singh and Others**, AIR 1990 SC 209 observed that exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicions and thereby destroy social defence. The Supreme Court in **Krishna Mochi and Others V State of Bihar**, (2002) 6 SCC 81 observed that there is sharp decline in ethical values



in public life and in the present days when crime is looming large and humanity is suffering and society is so much affected thereby, the duties and responsibilities of the courts have become much more. It was further observed the maxim “let hundred guilty persons be acquitted, but not a single innocent be convicted” is in practice changing world over and courts have been compelled to accept that “society suffers by wrong convictions and it equally suffers by wrong acquittals.” The Supreme Court in **Sujit Biswas V State of Assam**, (2013) 12 SCC 406 also held that suspicion, however grave, cannot take the place of proof and the prosecution cannot afford to rest its case in the realm of "may be" true but has to upgrade it in the domain of "must be" true in order to steer clear of any possible surmise or conjecture. The prosecution with quality and quantity of evidence led by it has proved beyond reasonable doubt the guilt of the respondent for offence punishable under section 397 IPC. As the prosecution has proved the guilt of the respondent for offence punishable under section 397 IPC in accordance with law, there is no need to give separate finding for offence punishable under section 25 of the Arms Act, 1959 and for offence punishable under section 411 IPC. The impugned



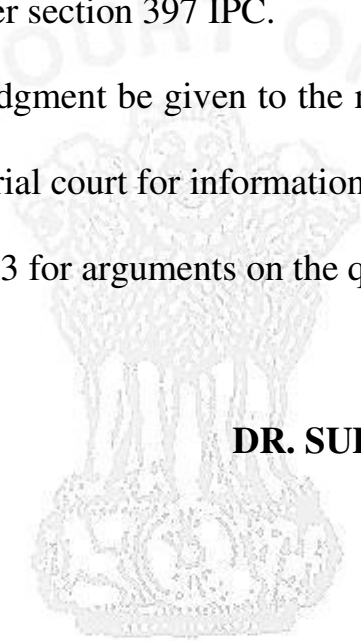
judgment passed by the trial court is based on unsustainable legal propositions and without appreciating prosecution evidence in the right perspective particularly the testimony of the complainant as PW2. The impugned judgment is liable to be set aside. Accordingly, the present appeal is allowed and the respondent is convicted for the offence punishable under section 397 IPC.

19. A copy of this judgment be given to the respondent free of cost and be also sent to the trial court for information and compliance.

20. List on 13.12.2023 for arguments on the quantum of sentence.

**DR. SUDHIR KUMAR JAIN
(JUDGE)**

DECEMBER 07, 2023
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