



2024:DHC:7385



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

Reserved on: 11.09.2024

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Pronounced on: 20.09.2024

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CRL.A. 982/2001

YUSUF

.....Appellant

Through: Ms. Vrinda Kapoor Dev (Amicus Curiae), Advocate with Ms. Saumya Soni and Mr. Vishal Vaid, Advocates

versus

STATE GOVT. OF N.C.T. OF DELHI

.....Respondent

Through: Mr. Aashneet Singh, APP for State with SI Rahul Kumar PS New Friends Colony, New Delhi

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present appeal has been filed against the judgement of conviction dated 26.11.2001 and order on sentence dated 27.11.2001 passed by learned Additional Sessions Judge, Delhi in the case arising out of FIR No.215/1999 registered under Sections 397/365/392/279/34 IPC at P.S. New Friends Colony, Delhi.

Vide the impugned judgement and order on sentence, the appellant was convicted for the offence punishable under Sections 394/34 IPC and sentenced to undergo rigorous imprisonment for a period of 3 years along with a fine of Rs 1000/-, in default whereof, he was directed to further undergo simple imprisonment for 2 months. The benefit of Section 428 Cr.P.C. was also extended to the appellant.

2. Pithily put, the facts as noted by the Trial Court, are as under:-

“On 5.4.99 at about 1.10 p.m. someone informed Police Post Jamia Nagar that one person who has committed robbery of



an Esteem car and thereafter had caused an accident from that car had been apprehended at the crossing of Agra Canal. The information was recorded vide D.D NO.9 and was worked to SI K.P. Singh who reached the spot. Complainant Baljinder Singh met him there. The accused Yusuf was found apprehended on the spot. He had been beaten by public. One knife was also recovered from his possession. The IO SI K.P. Singh recorded the statement of the complainant Baljinder Singh and seized car No. PB 15A 0889 in an accidental condition. One brief case was also found lying on the front left seat of the car. One cycle and one cycle rickshaw found in an accidental condition were also seized on the spot. IO recorded statement of cyclist Rafakat and rickshaw puller Safhal Hussain.

2. *Baljinder Singh alleged that he was driver of Mr. Santosh Bansla and used to drive car No. PB 15A 0889. On that day, they came to Delhi, and reached New Friends Colony at about 12.45 p.m. Mr. Bansal had some work in his bank. He asked Baljinder Singh to take care of the money kept in the car. Baljinder Singh took U turn and parked the car on the road and started listening music. In the meantime, one person aged about 25 years with curly hairy came to the car yielding a knife in his hand. He put the knife on the neck of Baljinder Singh and pushed him on the rear seat of the car. He snatched the key of the car and sat on the driver seat. In the meanwhile another person aged 23-24 years entered the car from the rear left door and put a country made pistol on the neck of Baljinder Singh and made him to start the car. He removed purse of Baljinder Singh containing Rs.700/- and his Driving Licence. Out of that amount Rs.200/-were returned to him. The person sitting on the driver seat took the brief case and put it on the front seat. When they reached the crossing after about 8-10 minutes that person hit a rickshaw and cycle rickshaw, when the car stopped those persons got down from the car. One person who was driving the car was apprehended by the police.*

3. *The case of the prosecution is that on the same day the accused Nadim was arrested from a park and one purse containing Rs.200/- and Driving Licence of the complainant Baljinder Singh along with some visiting Cards were recovered*



from his possession. Nadim is alleged to be the other person involved in the robbery.”

3. The chargesheet was filed against the appellant and co -accused *Nadeem*. Charge under Section 397 of IPC read with section 34 thereof was framed against both the accused persons. Separate charge under Section 279 IPC was framed against the present appellant. The accused pleaded not guilty to the charge and claimed trial. In the trial, a total of 11 witnesses were cited by the prosecution to prove its case. The driver of the car being the complainant i.e. *Baljinder Singh* was examined as PW2. *Santosh Kumar Bansal*, the owner of the car was examined as PW1. The other witnesses were formal in nature, who deposed relating to various aspects of investigation.

The appellant in his statement recorded under Section 313 Cr.P.C. claimed innocence and false implication. Notably, while the co-accused *Nadeem* was acquitted, the appellant was convicted and sentenced.

4. The present appeal came to be filed in the year 2001. The appellant's sentence was suspended. However, subsequently, when the appeal was taken up for hearing, the appellant could not be traced. All efforts to serve the appellant and his counsel at known addresses remained futile. Even NBWs remained unexecuted. Eventually faced with this deadlock, *Ms. Vrinda Kapur*, Advocate was appointed as an *Amicus* to represent the appellant.

5. Learned Amicus assailed the impugned judgment on multiple counts. The primary contention being on lack of appellant's identification as well as that of weapon of offence. Further, the veracity of depositions has also been doubted having material improvements and contradictions. The



complainant's version of receiving an injury and becoming unconscious is not supported by an MLC. On the strength of above submissions, learned Amicus seeks setting aside of appellant's conviction.

6. Learned APP, on the other hand, argued for dismissal of the appeal by submitting that the impugned judgement does not suffer from any infirmity and that the appellant has been rightly convicted in light of the material which has come on record.

7. As per prosecution case, the incident statedly occurred at 12:45 pm on 05.04.1999 near Bank of Baroda situated in New Friends Colony, Delhi. *Baljinder Singh*, the injured complainant deposed that he was working as a driver for *S. K. Bansal* and on the day of if the incident, he dropped *Mr. Bansal* outside Bank of Baroda and parked his car on the opposite side. A person came from behind and gave a fist blow on his head on which he lost consciousness. When he recovered, he found himself near a police post. Thereafter, police apprehended the man who had given fist blow to him. Though the appellant was present in court, the injured did not identify him. He was declared hostile. He denied that the suggestion that the person apprehended by the police was named *Yusuf*. He specifically denied the suggestion that *Yusuf* was present in court on that day and refused to identify the appellant. Another suggestion that *Yusuf* was the person apprehended by the police, was also denied. He stated that the car had hit a cycle rickshaw and a cycle. He admitted that his purse containing Rs.200/-, driving license and visiting card was recovered from other person. In cross examination conducted on behalf of the appellant, he reiterated that after being hit on the back of his head, he lost consciousness and did not see any accident with either rickshaw or the cycle. He further stated that the police official had



taken his signatures on blank papers. On a Court question, he replied that he had not seen the person who had given him the fist blow.

From above, it is evident that while being cross-examined by the Ld. APP, the witness admitted that another person had sat in the car who had snatched his purse, driving license etc. however on being cross-examined by the Defence Counsel, he stated that he had become unconscious after the first fist blow and regained consciousness in the police station. At no point of time, the witness identified the present appellant or assigned any role to him.

8. The owner of the car, S.K. Bansal (PW-1) was also declared hostile and denied the suggestion of coming to know of taking away of his car after he came out of the bank.

9. At this stage, it is pertinent to look at the testimony of *Parvez* i.e. PW3 who ran a mechanical shop near the place where the alleged accident of the esteem car had taken place. As per his testimony, it was a Sikh gentleman who was being beaten by the public and when the proprietor of the shop approached the public as to why the beatings were being given, it was revealed that he was the driver of the car. PW3 further failed to identify the appellant to be present at the spot of the incident and even denied the suggestion that the person was found in possession of a knife.

10. The trial court relied upon the testimony of Head Constable *Ashok Kumar* (PW-7) who had deposed about seeing the accident and recovery of knife from the possession of the appellant, who was apprehended at the spot. As per his testimony, the co-accused *Nadeem* had ran away. To a similar extent is the testimony of PW11 i.e. SI K.P. Singh who deposed that the appellant Yusuf was found in possession of knife, however the personal



search memo (exhibited as Ex.PW5/1) prepared by him, which has come on record, does not reveal the recovery of any knife.

11. The appellant has been convicted for the offence punishable under Section 394 with aid of Section 34 IPC. As evident from the discussion above, the appellant has not been identified either by the injured or the independent witness, *Parvez*. The injured has not ascribed any role to the appellant. The only evidence of police witnesses is having seen the accident and recovery of knife from the appellant. Notably, none of the police witnesses deposed as to who was driving when the accident occurred. Insofar as recovery of knife is concerned, as per testimony of HC Ashok Kumar, a separate FIR under Section 25 AA was registered, however there is no further record of that FIR available on the record of this case.

Be that as it may, to hold appellant guilty under Section 394 IPC, the incident of robbery needed to be established and that it was committed by him which had resulted in hurt. The prosecution has failed to establish its case on all the counts. As already noted above, neither injured nor the independent witness has identified the appellant. The police witnesses did not identify him as the person who was driving the car. There is no MLC of the injured on record. The knife was not even put to the injured.

12. Upon a careful analysis of the testimonies as well as the material placed on record, this Court finds merit in the submissions of learned Amicus that there is no material on record to hold the appellants guilty under Section 394/34 IPC. Consequently, the appeal succeeds and the appellants conviction under Sections 394/34 IPC is set aside. The Court records its appreciation for the valuable assistance rendered by Ms.Vrinda Kapoor Dev, Advocate as Amicus Curiae.



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13. The appeal is disposed of in the above terms.
14. A copy of this judgment be communicated to the concerned Trial court alongwith the records as well as to the concerned Jail Superintendent for information.

MANOJ KUMAR OHRI
(JUDGE)

SEPTEMBER 20, 2024/js/na