



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

% Reserved on : 27.08.2025
Pronounced on : 01.09.2025

+ **CRL.A. 16/2017**

STATE OF NCT OF DELHIAppellant
Through: Mr. Pradeep Gahalot, APP for State
with Insp. Mandep NR/Special cell

versus

AJAY DANIEL & ANRRespondent
Through: Mr. Jatin Sapra, Advocate for
respondent no. 2

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. By way of present appeal filed under Section 378 CrPC, the appellant/State seeks to assail the judgement dated 31.01.2015 passed by Ld. Additional Sessions Judge, Patiala House Courts, Delhi in Sessions Case No. 48/14 titled State vs. Ajay Daniel & Anr, arising out of FIR No. 129/2013 registered under Sections 394/397/34 IPC at P.S. Vasant Vihar, Delhi, whereby the respondents were acquitted.
2. The investigation commenced upon a complaint by one *Uday Menon* that on 12.04.2013, around 11.15-11.30 pm, while returning from his job at a BPO on a bus, he got down at Mallai Mandir bus stop. When he reached near Mishra Glass House while walking home, two boys came out of the park. One of them asked from where he was coming, and when the complainant did not reply, the boy caught hold of his hand and dragged to



side of the road near the shop shutter. The boys abused and gave beatings as well, asking him take out money. One of the assailants, described as healthy and taller, took out one *Khukhri*/big Knife from his pant and after threatening to finish him, stabbed the complainant with the knife on his right shoulder, wounding him. The assailants took his wallet containing voter ID card, PAN card and around Rs. 1200/- from his front pocket and then ran away.

3. Vide order dated 25.07.2013, charges were framed under 394/397/34/411 IPC against both the respondents, to which they pleaded not guilty and claimed trial. During the trial, in total, the prosecution examined 7 witnesses. The complainant *Uday Menon* was examined as PW2. *HC Ram Niwas Meena*, the initial IO, was examined as PW3. The second IO, *SI Mandeep* was examined as PW7. The rest of the witnesses were formal witnesses who deposed about various aspects of the investigation. In defence, the statement of the respondents was recorded under section 313 CrPC, wherein they pleaded innocence and false implication. In their defence, they produced 8 witnesses comprising of neighbours and eyewitnesses, whose testimonies would be discussed in detail later.

4. Learned APP for the State submits that erroneous observations have been made by the Trial Court with regard to the case of the prosecution merely because the accused persons were arrested on 13.04.2013 and they were identified by the victim on 24.05.2013 at Patiala House Courts. It is contended that the Trial Court has obviously ignored the fact that both the accused persons had refused TIP which was offered within about five days of the arrest of the accused and it was in this background that the victim PW-2 had identified the accused on 24.05.2013 when the accused had been



produced and the victim had come to collect his identity card etc. from the court. He further submits that recovery of the weapon of offence as well as the belongings of the victim were affected at the instance of the accused and this aspect has also been ignored by the Trial Court.

5. Learned Counsel for Respondent No.2 has defended the impugned judgement and submits that the respondent No.2 is innocent and rightly acquitted by the Trial Court. It is submitted that DW6 deposed that the complainant had a quarrel with some other persons and not the respondents. Moreover, though respondents were arrested on 13.04.2013, however, PW2 had stated that he identified the accused persons on 24.05.2013. It is further submitted that accused persons were residing in same locality as that of complainant and further that no weapon of offence was recovered from the spot.

6. As recorded in the order dated 03.08.2023, respondent No. 1 has passed away on 10.03.2022 during the pendency of this appeal, and hence the proceedings against him stand abated. The complainant *Uday Menon* was examined as PW2. He deposed that on 12.04.2013, around 11.15-30 PM, while he was returning home, he was stopped by the two persons who gave beatings to him and asked to handover his money. He further deposed that the healthy and taller boy, identified in Court as respondent No.1, stabbed him on his right shoulder with a Khukhri/big Knife and respondent No.2 took out the purse from his pocket and both the assailants fled from the spot. He further deposed that one of his neighbours, namely *Peter* informed the police at 100 number. He admitted that though he had a phone, he had not tried contacting the police.

7. *Kumar Peter*, the person who made the phone call to the police, was



examined by the defence as DW6. He admitted that his phone number is mentioned in DD No. 69A. As per his recollection, on the night of the incident, three- four persons were having quarrel with the complainant and when he tried to intervene, they all ran away. The respondents were shown to DW6 in Court, and he categorically stated that they were not present at the spot at the time of incident. Though an opportunity was given to cross examine him, the State chose not to exercise it.

8. DD No. 69A, which was recorded on 12.04.2013 at 11.40 pm on the basis of information received by DW6, only mentions about a quarrel and not any robbery. Another DD No.3A, which was recorded on 13.04.2013 at 01.54 am on information conveyed by duty Constable Ravi Kumar also only mentioned about quarrel and there is not even a whisper of any robbery. Ct. Ravi Kumar was examined as DW5 and admitted to making the call to the police station. The MLC of the complainant (Ex. PW7/B), prepared on 13.04.2013 at 12.36 am, in the brief alleged history, also mentions only assault.

9. SI *Mandeep* (PW7), who was entrusted with the investigation of the case, stated that in the evening of 13.04.2014, he received secret information that two persons wanted in the present case would come near water tank, DDA Park. At about 5.00 pm, on the pointing out of the secret informer, the respondents came to be arrested. No public persons were examined. He further deposed that Rs. 600/- was recovered from respondent No.1 who also led to the recovery of *Khukri* from the staircase of his house. Respondent No.2 led them to his house and took out a wallet from under his mattress which contained Rs. 600/- and the voter ID, PAN card of complainant.

In his cross examination, he admitted that both DD No. 69A and 3A



are regarding a fight. He further stated that the complainant had never described the number of notes, and he could not say whether the notes recovered from respondent No.2 were the same notes which were looted from the complainant or not and that no case property was sent for investigation of finger prints. Insofar as the ID cards of the complainant are concerned, it was admitted that the purse and the cards were never sealed and the recovery was in open condition.

10. Another version of arrest comes out in the testimonies of the defence witnesses. *Shiv Charan* (DW1), a neighbour of respondent No.2, deposed that the respondent No.2 was picked up by 3-4 policemen from his house on 13.04.2013 at around 7.00 am. *Jaiprakash*. (DW2), father of respondent No.2, stated that the complainant lives 50-60 yards from their house and was living in the area since 10-12 years and was acquainted with their family. He further stated that 3-4 police officials in civil uniform picked up respondent No.2 on 13.04.2013 at about 6.45 am to 7.45 am. One *Mukesh Sharma*, examined as DW7, deposed that police came to him on the morning of 13.04.2013 and showed him a photo of respondent No.1 and asked his address. When DW7 led them to his house, the police arrested the respondent No.1. DW8, *Pawan Sharma*, who was the cousin of DW7, deposed on similar lines.

11. Coming to the factum of identification of the accused by the complainant, in his deposition he stated that he had come to Patiala House Courts on 24.05.2013 to collect his ID Cards and PAN card when he identified the respondents and informed the IO regarding the same. In his cross-examination, he stated that he had been residing in Basant Gaon for the last 10-12 years and did not know the respondents from prior to the



incident. This identification by the complainant was more than a month after the arrest of the accused respondents. Learned APP has strongly contended that the accused were offered a TIP within 5 days of their arrest, however, they denied the same. In their statements under Section 313 CrPC, the respondents stated that they were shown to the complainant in the police station after their arrest and that is why they refused TIP proceedings.

12. The respondents stand acquitted by the Trial Court. Further, since respondent No.1 has died and proceedings *qua* him abated, what needs to be assessed is whether the acquittal of respondent No.2 was justified. The law pertaining to double presumption of innocence operating in favour of an accused at the appellate stage after his acquittal by the Trial Court is fortunately a settled position, no longer *res integra*. A gainful reference may be made to the Supreme Court's decision in Ravi Sharma v. State (NCT of Delhi), reported as **(2022) 8 SCC 536**, wherein it was observed, as hereunder:

"8. ...We would like to quote the relevant portion of a recent judgment of this Court in Jafarudheen v. State of Kerala [Jafarudheen v. State of Kerala, (2022) 8 SCC 440] as follows : (SCC p. 454, para 25)

"25. While dealing with an appeal against acquittal by invoking Section 378CrPC, the appellate court has to consider whether the trial court's view can be termed as a possible one, particularly when evidence on record has been analysed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the appellate court has to be relatively slow in reversing the order of the trial court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters."

13. At this juncture, it is also deemed apposite to refer to the decision of



the Supreme Court in Anwar Ali v. State of H.P., reported as **(2020) 10 SCC 166**, wherein it has been categorically held that the principles of double presumption of innocence and benefit of doubt should ordinarily operate in favour of the accused in an appeal to an acquittal. The relevant portions are produced hereinunder:

“14.1. In Babu [Babu v. State of Kerala, (2010) 9 SCC 189 : (2010) 3 SCC (Cri) 1179] , this Court had reiterated the principles to be followed in an appeal against acquittal under Section 378 CrPC. In paras 12 to 19, it is observed and held as under: (SCC pp. 196-99)

“... ”

13. In Sheo Swarup v. King Emperor [Sheo Swarup v. King Emperor, 1934 SCC OnLine PC 42 : (1933-34) 61 IA 398 : AIR 1934 PC 227 (2)] , the Privy Council observed as under: (SCC Online PC: IA p. 404)

‘... the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses.’

... ”

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.’

14. The complainant has deposed that the respondent No.2 took his purse



when the respondent No.1 attacked him with a knife and hence participated in robbery. However, his version is not supported by *Kumar Peter* (DW6) who knows the complainant and had witnessed the incident. As per him, a quarrel had taken place between the complainant and 3-4 persons, none of whom were the respondents. He was not cross examined to discredit this version despite opportunity. The contemporaneous documents, i.e. DD No. 69A, 3A and the MLC, all recorded within hours of the incident, mention quarrels and assault and not even a whisper of any robbery is made. The complainant stated that he had been living in the *Basant Gaon* for 10-12 years. As per PW3, the distance between the house of respondent No.2 and the complainant is only 500 metres. As per DW2, the complainant lived 50-60 yards away from respondent No.2 and he was acquainted with their family. Despite the fact coming on record that the assailants and the complainant were living in same village, if not the names, but the said fact has also not been stated at any of the initial stage. Further, though as per the prosecution the respondents were identified by the complainant on 24.05.2013 in Court, but both the respondents have stated that they were shown to the complainant in the police station itself, leading to rejection of TIP. Insofar as recovery from respondent No.2 is concerned, concededly, the purse and the cards were never sealed and the recovery was in open condition.

15. Considering the entire facts and circumstances and the prevailing position in law, I find no reason to take a different view from the Trial Court and uphold the acquittal of respondent No.2 for the offences under 394/397/34/411 IPC as the prosecution has failed to establish their case beyond reasonable doubt.



2025:DHC:7616



16. In view thereof, the appeal is dismissed.
17. A copy of this judgment be communicated to the learned Trial Court

(MANOJ KUMAR OHRI)
JUDGE

SEPTEMBER 01, 2025

ry