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IN THE HIGH COURT OF DELHI AT NEW DELHI***Reserved on: 04th August, 2025******Date of Decision: 11th August, 2025***

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CRL.A. 278/2003

SHEKHAR PATHAK & ORS.

.....Appellants

Through: Ms. Tanya Agarwal, Advocate for
Appellant no. 1.
Mr. Tom Joseph and Ms. Arya
Krishnan, Advocates for Appellants
no. 2, 3 & 4.

versus

THE STATE

.....Respondent

Through: Mr. Satinder Singh Bawa, APP with
Inspector Sunil Kumar, SI Yashwant
Kumar and SI Kamal, PS Tughlak
Road.

CORAM:**JUSTICE RAJNEESH KUMAR GUPTA****JUDGMENT**

1. The present Appeal is filed by the Appellants under Section 374 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the “**CrPC**”) against the judgment dated 27th February, 2003 (hereinafter referred to as the “**impugned judgment**”) and against the Order-on-Sentence dated 9th April, 2003 (hereinafter referred to as the “**impugned Order on Sentence**”) passed by the court of Additional Sessions Judge, Patiala House Courts, New Delhi (hereinafter referred to as the “**Trial**”



Court”) in Session Case bearing No. SC No. 665/1996 arising out of FIR bearing No. 215/1991 registered at Police Station Tughlak Road, Delhi. The Appellants *vide* the impugned judgment were held guilty for committing the offences punishable under Sections 395/34 of the Indian Penal Code, 1860 (hereinafter referred to as the “**IPC**”). The Appellants *vide* the impugned Order on Sentence were sentenced to undergo Rigorous Imprisonment for a period of 3 years and to pay a fine of Rs.500/- each, under Section 395 IPC and in default of payment of fine, each of the convict were sentenced to undergo Simple Imprisonment for one month.

2. Briefly stated, the Prosecution’s case as reflected in the impugned judgment is as follows:

“That on 24.8.91 Ramesh Mandal came in the police station and stated that he is a TSR Driver and is driving TSR no. DR4899 and that yesterday, he had taken a passenger from Karol Bagh for going to Air Force Station and at about 9.15/9.30 when he reached there, the passenger gave him the money and left, and when he started for his house, he saw one boy aged about 17-18 years, his height was about 5’2“, wheatish complexion, and having small hair stopped him and told him that he had to go to New Delhi railway station via Air Force Station and he sat on his scooter as per his direction, he went to Air Force Station quarters, and he asked him to stop the scooter in a lonely place and went towards the quarters to fetch some goods, and at that time, five boys came from the backside and told him that he had come to sell the smake, and when he told him that he had come with the passenger, but by that time, the person who boarded his scooter again, came back, and one of them got hold of his hand from the back side, and two boys took out knives and threatened him that in case he will raise alarm, they will give him knife blows, and thereafter they took him towards the bushes. One boy took out the entire money which was in his pocket, and the second boy took search



and took out one black purse, some slips and driving license, and they also took the H.M.T. watch and threatened him that in case, he will raise alarm or inform the police, they will kill him with a knife. Thereafter, they ran away from the spot. He told these facts to 2-3 boys sitting there and narrated the entire incident that 5-6 boys have snatched his money and also taken away his watch and they should help him then, one of them told him that there is a Chowkidar on the gate, and he should go there, but he became nervous, and without telling anybody, he came back to his house and told the entire incident to his brother Shri Mandal, and then he came with his brother to Police Station. He further stated that the persons who took out the knife were of the age of 20-21 years, their height was 5'8", middle body, long nose, short hairs, like a Fauzi and was wearing red T-shirt and black pant, and the second body was of 19 to 20 years of age, middle body, small moustache, and was wearing white shirt and black pant and was holding black bag in his waist, and he had snatched his purse and watch. Another boy aged about 18-19 years long hair, middle body, wearing green colour shirt and can identify everybody on the basis of the statement case under section 395 IPC was registered and the investigation of the case was handed over to SI Jagjit Singh. Site plan was prepared, accused were traced and on the identification of Ramesh Mandal, Shekhar Pathak was arrested and a knife which was used by him was also recovered for which a separate case was registered under section 25/54/59 of the Arms Act and on enquiry, Shekhar Pathak, disclosed the names of Rajnish, Kishore, Rakesh and Naresh and he also disclosed their addresses. Their houses were traced and they were identified by the complainant and recovery of knife was affected from Naresh Kumar, for which a separate case under Section 25/54/59 of the Arms Act was registered. Thereafter, Rajneesh Grewal was also arrested at the identification of the complainant, and from his possession, one driving license, and one slip was recovered. Thereafter, Kishore was arrested and from his possession one looted



wrist watch was recovered. On 26th August, 1991, accused Rakesh was arrested and from his possession, Rs.300/- were recovered and efforts were made to trace accused Pappu, but he could not be traced. After completion of investigation, the challan was filed in the court.”

3. The Charge under Section 395 r/w 34 IPC and 397 IPC has been framed against all the accused to which they pleaded not guilty and claimed trial. The Prosecution, in order to prove its case, examined 08 witnesses. The statement of the Appellants were recorded under Section 313 Cr.PC, wherein the Appellants had denied incriminating evidences, pleaded innocence and claimed false implication. The trial resulted in conviction, as aforesaid. Being aggrieved and dissatisfied, the present appeal has been preferred by the Appellants. During the pendency of the appeal, the Appellant, namely, Rakesh Kumar has expired and *vide* order dated 04th May, 2016, the appeal was abated with respect to Appellant-Rakesh Kumar.
4. Learned counsel for the Appellants has argued that the Trial Court has passed the impugned judgment on the basis of surmises and conjectures, and which is against the facts of the case. There are material contradictions in the testimonies of the prosecution witnesses which make the case of the prosecution doubtful. From the evidence on record, prosecution has failed to prove its case beyond reasonable doubts against the Appellants. It is prayed that appeal be allowed and the Appellants be acquitted.
5. On the other hand, learned APP for the State has argued that the Trial Court passed the impugned judgment on the basis of the evidences on record. The evidences produced on behalf of the prosecution are reliable, trustworthy and prove the case against the Appellants beyond the reasonable doubt. The arguments of the Appellants are without any merits. The appeal



is liable to be dismissed.

6. PW-Ramesh Mandal, who is victim/complainant is the material witness of the case and was examined as PW-1. He has deposed that he is a TSR driver. On 24th August, 1991 i.e., the night between 23rd/24th, August, 1991, he started from Karol Bagh at about 08:30 P.M. and reached near Samrat Hotel dropped the passenger and thereafter, started towards his house. All the accused persons met him near the airport quarters and hired the scooter at about 09:30 P.M. Initially, one Appellant, namely, Kishore came to him and took him to the locality near the airport quarters. The remaining four Appellants came there, stopped his vehicle and got him out of the TSR. Thereafter, they snatched all his money. He had approximately Rs.800-900/- at that time and a wrist watch. Out of them, one of the accused persons took out the knife and threatened to kill him. However, he could not identify the accused person who had taken out the knife to threaten him. On the next day, he lodged an FIR with the police, which is Ex.PW-1/A. Thereafter, Appellant-Shekhar Pathak was arrested by the police in his presence. Subsequently, Appellant-Rajnish Grewal and the remaining co-accused persons were also arrested. A knife was recovered from the possession of Appellant-Shekhar Pathak. His purse containing driver license and bunch of papers was recovered from the Appellant-Rajnish Grewal. His watch was recovered from Appellant-Kishore. Rs.300/- belonging to him were also recovered from the accused persons. He accompanied the police to the area where Army personnel reside near Samrat Hotel, where he saw Appellant-Shekhar Pathak near the Hanuman Mandir located within the said complex. Appellant-Shekhar Pathak was apprehended at about 03:00 P.M. The remaining accused persons were apprehended in the evening. The



police had sealed the articles such as currency notes recovered from the accused persons, in his presence. Sealed after use was handed over to him.

7. PW-Jagjeet Singh was the Investigating Officer (hereinafter referred to as the “**IO**”) of the case and was examined as PW-8. He had deposed that on 24th August, 1991, investigation of the case was handed over to him and he prepared the site plan at instance of the complainant, which is Ex. PW-8/A. On that day, at about 06:35 P.M., Appellant-Shekhar Pathak was apprehended in front of Hanuman Mandir on the identification of the complainant. One *buttondar* knife lying on the top of the fridge was recovered from the residence of Appellant-Shekhar Pathak. Thereafter, Appellant-Rajnish, who was standing behind the *neem* tree was arrested on the pointing out of the complainant. Upon the personal search of the Appellant-Rajnish Grewal, one purse was recovered from the pocket of his trousers and the same was seized by seizure memo Ex.PW-1/P which contained a driving licence belonging to the complainant and the same was seized by seizure memo Ex.PW-1/O. Thereafter, Appellant-Naresh Kumar, who was standing in front of his residence, was arrested on being pointed out by the complainant and one *buttondar* knife from his possession was recovered. Thereafter, they proceeded to the residence of Appellant-Kishore at Old Willingdon Camp, from where he was apprehended. Upon his personal search, the robbed watch was recovered from the pocket of his trousers. On 26th August, 1991, Appellant-Rakesh Kumar was arrested on the identification of the complainant and a robbed amount of Rs.300/- was recovered from his possession. Although, there are residential quarters near the residence of Appellant-Shekhar Pathak, he does not remember whether any public person was called from there to join the investigation. Only the



mother of the Appellant-Shekhar Pathak was present at his residence. The Appellant-Shekhar Pathak had himself brought the knife and the raiding team had not gone inside his house. At the time of the arrest of the Appellant-Rajnish Grewal, women were present, but no request was made to them, to join the investigation. He does not remember whether any public person was asked to join the investigation. Appellant-Rajnish Grewal was arrested at about 07:40 P.M., and Appellant-Naresh Kumar was arrested at about 08:50 P.M. Appellant-Kishore was arrested at about 06:45 P.M. and was found wearing the robbed watch on his wrist. Appellant-Rakesh Kumar was arrested at about 03:30 P.M. on 26th August, 1991, in front of Taj Palace, where he was employed.

8. PW-3 Head Constable Om Parkash, PW-4 Constable Yogender Kumar, PW-6 Constable Megh Nath and PW-7 SI Raj Kumar had joined the investigation along with PW-8.

9. PW-3 has deposed that Appellant-Shekhar Pathak was arrested from Quarter No. C-6, New Willingdon Camp, New Delhi. However, PW-3 turned hostile later. In his Examination-in-Chief, he did not support the case of the prosecution. He further deposed that the articles recovered were not sealed by the concerned IO.

10. PW-4 had deposed that the Appellant-Shekhar Pathak was arrested from Quarter no. C6 and produced a knife from a bag at his residence. Appellant-Rajnish Grewal was arrested from his residence, and a driving licence, Rs.910/- and a purse were recovered from his possession. The driving license and the money were identified by the complainant. On being pointed out by the complainant, Appellant-Naresh Kumar was arrested and one *buttondar* knife along with wrist watch were recovered from his



possession. In his presence, the IO had recorded the *tehrir* at the place of incident at about 09:00 P.M., except that, no documents were prepared by the IO in his presence. Appellant-Kishore was arrested at about 09:15 P.M. from his residence.

11. PW-6 had deposed that Appellant-Shekhar Pathak was arrested from Quarter. No. C-6, New Willingdon Camp, New Delhi at about 03:00 P.M. Appellant-Rajnish Grewal was apprehended at about 07:45 P.M. from New Willingdon Camp and thereafter, Appellant-Naresh Kumar was arrested at about 09:00 P.M. from Old Willingdon Camp. Thereafter, Appellant-Kishore was arrested. He does not remember the exact time but deposed that it was night time. There was public at the place of apprehension of the accused. However, he does not remember whether any person from public was requested to join as a witness.

12. PW-7 had deposed that at about 03:00 P.M., Appellant-Shekhar Pathak was arrested from his house at Old Willingdon Camp and a knife was recovered from his possession. Thereafter, Appellant-Rajnish Grewal was arrested from his residence and one purse and driving license was recovered from him. Thereafter, Appellant-Naresh Kumar was arrested from his residence and a knife was recovered from his possession. Thereafter, they went to the residence of the Appellant-Kishore and recovered a watch belonging to the complainant. On 26th August, 1991, Appellant-Rakesh was arrested from Taj Palace Hotel and Rs.300/- was recovered from his possession. IO had prepared the site plan of Qtr. No. C-6, New Willingdon Camp, New Delhi. The Appellant-Shekhar Pathak had handed over a knife from a box inside the room, which was visible from outside.



13. On perusal of the testimonies of the aforementioned witnesses, who are the material witnesses to the case being present at the time of the arrest of the Appellants and the alleged recoveries affected from them, it is evident that there are material contradictions in their testimonies with regard to the place of arrest, timing of the arrest and the alleged recoveries.

13.1 PW-1 and PW-8 have deposed that Appellant-Shekhar Pathak was arrested near Hanuman Mandir at about 03:00 P.M., whereas the other prosecution witnesses have stated that he was arrested from his residence at New Willingdon Camp at about 07:00 P.M..

13.2. PW-1 and PW-8 have deposed that the robbed watch was recovered from the possession of the Appellant-Kishore. PW-8 has also deposed that the watch was recovered from the pocket of the trousers of the Appellant-Kishore. However, PW-4 had deposed that the said watch was recovered from the possession of the Appellant-Naresh Kumar. Seizure Memo, which is Ex.PW1/P, shows that the said watch was got recovered by the Appellant-Kishore from a bag kept in his room of his residence.

13.3. PW-7 and PW-8 have deposed that the robbed amount of Rs.300/- was recovered from the Appellant-Rakesh. However, PW-1 has deposed that the recovery was made from the possession of the accused persons and he has not specifically deposed that the said recovery was affected from the possession of the Appellant-Rakesh.

13.4. PW-1 has testified that the police had sealed the articles, such as currency notes that were recovered from the accused persons in his presence. The seal after use was handed over to him. On the other hand, PW-3 had deposed that the articles recovered were not sealed by the concerned IO.



A perusal of the seizure memos of the recovered articles shows that the seized articles were not sealed by the IO. There is no explanation by the prosecution as to why the alleged recovered articles were not sealed at the spot to prevent any manipulations as to the alleged recoveries. Therefore, it creates a doubt in the case of the prosecution as to the authenticity of the alleged recoveries from the Appellants.

13.5. PW-1 lodged the FIR, which is Ex. PW-1/A. In the said FIR, PW-1 has stated that six boys were involved in the commission of the alleged offence. However, during his deposition before the Court, PW-1 stated that five boys were involved.

14. Perusal of the testimonies of the prosecution witnesses also shows that public witnesses were not joined in the investigation, despite their availability at the spot of the alleged recoveries.

On non-joining of public witnesses, a coordinate bench of this Court in ***Pawan Kumar Vs. Delhi Administration (1987) CC 585 DHC*** has observed as under:

"Here is a case where no effort was made to join any public witness even though number of them were present. No plausible explanation from the side of the prosecution is forthcoming for not joining the independent witnesses in a case of a serious nature like the present one. It may be that there is apathy on the part of the general public to associate themselves with the Police raids or the recoveries but that apart, at least the I.O. should have made an earnest effort to join the independent witnesses. No attempt in this direction appears to have been made and this, by itself, is a circumstance throwing doubt on the arrest or the recovery of the knife from the person of the accused."

In the present case, the prosecution has failed to explain from the



evidences on record, why the public witnesses were not joined in the investigation, despite their availability at the spot. This creates a doubt in the case of the prosecution as to the manner of arrest of the Appellants and the alleged recoveries from them.

15. According to the case of the prosecution that on 23rd August, 1991 at around 09:15 P.M., the complainant (PW-1) informed one Sh. Amar Singh about the alleged incident of robbery.

Sh.Amar Singh has been examined as PW-2. However, during his examination, PW-2 did not support the prosecution's version and deposed that no such person had approached him with any complaint of robbery on the said date and time.

16. The prosecution has to prove its case beyond reasonable doubt against the Appellants. Keeping in view the evidence in the present case as discussed above, it is relevant here to mention the following judgments of the Hon'ble Supreme Court.

In **Wahid & Anr. vs. State Govt. of NCT Of Delhi** in **Criminal Appeal No.201 of 2020**, the Hon'ble Supreme Court has held as under:

“14. In cases where the FIR is lodged against unknown persons, and the persons made accused are not known to the witnesses, material collected during investigation plays an important role to determine whether there is a credible case against the accused. In such type of cases, the courts have to meticulously examine the evidence regarding (a) how the investigating agency derived clue about the involvement of the accused in the crime; (b) the manner in which the accused was arrested; and (c) the manner in which the accused was identified. Apart from above, discovery/ recovery of any looted article on the disclosure made by, or at the instance of, the accused, or from his possession, assumes importance to lend credence to the prosecution



case.”

Further, the Hon’ble Supreme Court in **Ashish Batham v. State of M.P.** (2002) 7 SCC 317 held as under:

“Realities or Truth apart, the fundamental and basic presumption in the administration of criminal law and justice delivery system is the innocence of the alleged accused and till the charges are proved beyond reasonable doubt on the basis of clear, cogent, credible or unimpeachable evidence, the question of indicting or punishing an accused does not arise, merely carried away by heinous nature of the crime or the gruesome manner in which it was found to have been committed.

Mere suspicion, however, strong or probable it may be is no effective substitute for the legal proof required to substantiate the charge of commission of a crime and grave the charge is greater should be the standard of proof required. Courts dealing with criminal cases at least should constantly remember that there is along mental distance between may be true’ and must be true’ and this basic and golden rule only helps to maintain the vital distinction between ‘conjectures’ and& ‘sure conclusions’ to be arrived at on the touch stone of a dispassionate judicial scrutiny based upon a complete and comprehensive appreciation of all features of the case as well as quality and credibility of the evidence brought on record.”

17. After a detailed analysis of the evidences of prosecution witnesses, this Court is of the opinion that the evidences are clouded with grave suspicion and are discrepant in material particulars. This creates significant doubts in the reliability of case of the prosecution.

18. Keeping in view the above discussions and the principles of law as laid down in the aforesaid judgments, the prosecution has miserably failed to establish the guilt of offence constituting robbery falling under Sections



2025:DHC:6699



395/34 IPC against the Appellants and so the conviction and the sentence imposed on them by Trial Court cannot be sustained. Accordingly, the impugned judgment and the impugned order on sentence are hereby set aside. The Appellants are acquitted of the charged offences. The appeal is accordingly, allowed.

19. Bail bond of the Appellants stands cancelled and their sureties discharged.

20. A copy of the order be sent to the concerned Jail Superintendent and the Trial Court for information.

RAJNEESH KUMAR GUPTA
JUDGE

AUGUST 11, 2025
v/ik