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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.L.P. 610/2019, CRL.M.A. 40360/2019**
STATE

.....Petitioner
Through: Mr. Yudhvair Singh Chauhan, Ld.
APP for the State with SI Sachin P.S.
Khajuri Khas.

versus

SHEIKH FARUKH

.....Respondent
Through: Respondent in person.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER
07.05.2025

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CRL.L.P. 610/2019

1. A Petition under Section 378(4) of the Cr.P.C has been filed on behalf of the State against the impugned Judgment of acquittal of the Respondent dated 26.07.2019 in FIR No.117/2017 registered at Police Station Khajuri Khas.
2. Learned Prosecutor submits that the Complainant had duly identified the Respondent/Accused during the TIP as well as in the Court despite which he has been acquitted.
3. For the reasons stated in the Leave to Appeal Petition as well as submissions made, Leave to Appeal is allowed.

CRL.APP. _____/2025 (To be numbered by the Registry)



4. Criminal Appeal under Section 378(1) of the Cr.P.C has been filed on behalf of the State to challenge the Judgment dated 26.07.2019 vide which the Respondent has been acquitted under Section 392/394/397 IPC in case FIR No.117/2017 Police Station Khajuri Khas.
5. **The case of the Prosecution** is that on 15.03.2017 at about 11:30 P.M while the Complainant Sh.Gaurav Sharma (PW1) was standing outside his house at A-173, Gali No.9, Khajuri Khas, Delhi, and attending to a phone call, two boys came from behind. One of them caught him from the back, while the other boy threatened him on the point of a knife by placing it on his chest. When he resisted their effort to snatch the mobile phone, he was stabbed with force on his chest and the two mobile phone of make Apple and Samsung Galaxy, were robbed by the two assailants.
6. On his Complaint an FIR No.117/2017 under Section 394/397/34 IPC was registered. During the investigations Respondent Sheikh Farukh was arrested in FIR No.246/2017 under Section 25 Arms Act on 26.05.2017, where he made a disclosure of having committed the offence in the present FIR.
7. On his Disclosure Statement Sheikh Farukh was formally arrested in the present case. His TIP was conducted on 03.06.2017, wherein the Complainant identified Sheikh Farukh, the Respondent. However, the co-accused Faimuddin was not identified and was discharged by the learned M.M.
8. The Chargesheet was filed against the Respondent for the offence under Sections 394/397 IPC.
9. The Charges were framed against him under Section 392/394/397 IPC.



10. The evidence was recorded of all the Prosecution Witnesses and the Statement of the Respondent was recorded under Section 313 Cr.P.C.

11. On appreciation of the evidence, the learned ASJ vide impugned Judgment dated 26.07.2019 acquitted the Respondent on account of his identity not being established. Aggrieved by the said Judgment of acquittal, the present Appeal, has been preferred. The grounds of challenge are that the identity of the Respondent got fully established not only in the TIP, but also from the testimony of the Complainant in the Court. The impugned Judgment is, therefore, liable to be set aside.

12. The Respondent present in person in the Court submits that he had no concern with the crime and has been implicated falsely in this case.

13. **Submissions heard and record perused.**

14. The pertinent fact is that the incident had occurred on 15.03.2017 at about 11.58 P.M. As per the Statement of the PW-1 Complainant Shri Gaurav Sharma, the Respondent had caught him from behind while the co-accused had stabbed him with a knife while snatching the two mobile phones and thereby committed the offence of robbery.

15. Pertinently, the Respondent had not been apprehended on the spot nor any recovery ever effected from him. He was arrested in another FIR No. 246/2017 after two months and thereafter, his TIP was conducted. Pertinent are the observations made by the learned ASJ in paragraph 10 of the impugned Judgment wherein it was observed thus:

“On the face of record, the case of the prosecution largely rests upon the identification of accused Sheikh Farukh by the complainant in TIP proceedings as well as his identification in the Court. However, the crucial fact to be noticed is that TIP proceedings were conducted



after a gap of about more than two months after the incident and accused were unknown to the complainant. Further, in cross-examination, PW-1 categorically deposed that he was called in the Police Station Khajuri Khas after three months of the Incident where he had Identified the accused. He also stated that police officials had shown him the photographs of the accused persons to Identify them before showing the actual culprits. In view of above, there is clear Infirmary In conduct of TIP proceedings as accused had been shown to witness prior to conduct of TIP rendering the very purpose futile.”

16. It is clearly evident that before conducting the TIP, the photograph of the Respondent had already been shown to the Complainant. There is no independent cogent evidence to establish his identity in the commission of the offence. There is a palpable doubt about the alleged involvement of the Respondent in the commission of the offence.

17. The benefit of doubt has rightly been granted vide impugned Judgment dated 26.07.2019.

18. There is no merit in the Appeal, which is hereby dismissed along with the pending Application(s).

NEENA BANSAL KRISHNA, J

MAY 7, 2025/va