



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

Date of reserving: 27th January, 2026

Date of Decision: 7th May, 2026

IN THE MATTER OF:

+ CRL.A. 705/2009

ANISH @ HERO

.....Appellant

Through: Mr. Archit Upadhayay, Advocate
(DHCLSC) with Mr. Piyush Gautam,
Ms. Muskan Aggarwal, Advs. with
Appellant-in-person.

versus

STATE

.....Respondent

Through: Mr. Satish Kumar, APP for the State
with SI Mahavir, PS DBG Road.

+ CRL.A. 991/2009

RAM AVTAR

.....Appellant

Through: Ms. Rakhi Dubey, Adv. (DHCLSC)
with Ms. Arpita Srivastava, Adv.

versus

STATE

.....Respondent

Through: Mr. Satish Kumar, APP for the State
with SI Mahavir, PS DBG Road.

CORAM:

HON'BLE MR. JUSTICE VIMAL KUMAR YADAV

JUDGMENT

VIMAL KUMAR YADAV, J.

1. It was either a failed attempt of robbery or a frame up, but what it was? Learned Trial Court has answered it in favour of the complainant by holding the Appellants guilty for committing robbery, use of deadly weapon



while committing robbery and one of the Appellant i.e. Ram Avtar was found in possession of a country made pistol with three live cartridges (out of which, one was loaded in pistol and two were in his pocket). Findings were recorded accordingly against the Appellant.

2. The Appellants, on the other hand, came up with the plea that it was nothing but a demand of remuneration by them from the complainant on account of the work carried out by them in the Beauty Parlour of wife of the complainant. The entire payment was not made by the complainant. Complainant Yashpal Kapoor lives in House No. 11084, Doriwala, New Rohtak Road, New Delhi-110005 and on the second floor of the same house, his wife was running a beauty parlour, which required some renovation and wood work and that's how the services of three persons who were namely Ram Avtar, Virender @ Viru and Anish @ Hero, were availed.

3. According to the Appellants, the total remuneration fixed was Rs. 37,000/-, but the complainant did not pay anything beyond Rs. 21,000/-. Since the work was arranged through Ram Avtar, therefore, the persons were pressing upon him to ensure that the complete payment is made. According to the Appellant, he alongwith two other persons had gone on behalf of the Appellant's, demanding his remuneration since he was under huge pressure. Instead of making the payment, according to the Appellants, they were falsely implicated in the instant case, whereby it was alleged that at about 10.30 PM on 02.11.2003, when they reached and rang the door bell of the first floor where Yashpal Kapoor was residing, an altercation took place, but the money was not paid. On the contrary, the complainant Yashpal Kapoor lodged a complaint against the Appellants by asserting that Ram Avtar put a country made pistol on his temporal region and demanded the valuables, however, Yashpal Kapoor somehow managed to prevent that



and in the ensuing scuffle, both Ram Avtar and Yashpal Kapoor came on the ground floor, where Yashpal Kapoor was joined by his brother Manmohan Kapoor, residing on the ground floor and that's how, according to the case of the prosecution, the Appellant Ram Avtar was apprehended.

4. Police came at the spot and based upon the complaint lodged by Yashpal Kapoor, a case was registered under Section 393, 394, 398/34 IPC and 25/27/54/59 Arms Act. Appellant Ram Avtar was arrested as he was found in possession of one country made pistol with three live cartridges, whereas his associates had managed to flee from there. The other two accused were subsequently arrested and chargesheet under Section 393, 394, 398/34 IPC and 25/27/54/59 Arms Act was filed against all the accused.

5. Learned Trial Court framed the charges under Section 394 read with 34 IPC and under Section 398 read with Section 34 IPC against all three accused persons, whereas under Section 25 Arms Act against Appellant Ram Avtar.

6. After examining 11 witnesses, the Appellants were given an opportunity to explain their defence and their statements were recorded under Section 313 Cr.P.C.

7. On conclusion of the arguments, the learned Trial Court found a case beyond reasonable doubts against all the accused persons under Section 394 IPC and against Appellant Ram Avtar under Section 398 IPC and 25 Arms Act and convicted them vide Judgment dated 13.08.2009 and Order on Sentence dated 18.08.2009 by ordering Appellant Anish @ Hero and Virender @ Viru to undergo Rigorous Imprisonment (RI) for three years each with fine of Rs. 2000/- each, in default of payment of fine, Simple Imprisonment (SI) for two months each under Section 394 IPC was also awarded. Appellant Ram Avtar was sentenced to RI for seven years under



Section 394 IPC with fine of Rs. 3000/-, in default of payment of fine, SI for three months and seven years under Section 398 IPC. Appellant Ram Avtar was also sentenced to undergo RI for one year with fine of Rs. 2000/-, in default of payment of fine, SI for two months for offence under Section 25 of Arms Act.

8. While assailing the impugned judgment, it is asserted on behalf of Appellant Ram Avtar that he has been falsely implicated in this case and the country made pistol was planted upon him. He has clean antecedents, never involved in any other offence. He is plying the TSR for last more than 20 years and at the relevant time also, he was plying the TSR.

9. It is contended on behalf of Appellant Ram Avtar that at the relevant time, he was a young man, whereas the complainant was 63 years of age, therefore, in these circumstances, when the Appellant was armed, why he did not use the firearm while he was placed in such a confrontational situation. He was overpowered despite being armed. If the robbery was the motive, then in that case, why would he scuffle with the target especially when he was already armed and when the complainant was an easy target. The circumstances are very unusual and do not go hand in hand with the nature of crime and the circumstances in which the crime allegedly took place.

10. It is not the case of the prosecution that PW1 had a lot of money stashed in the house and this information was with the Appellants. If they had to commit robbery, they would not have rang the door bell, that too of the complainant's first floor house. Apart from that, it is submitted that the testimonies on record are full of contradictions, which make the case further vulnerable to doubt and suspicion. For instance, the evidence reflects that Ram Avtar was still having *katta* in his possession, when the police arrived



and it was recovered from him. Whereas, PW3 and PW4 stated that country made pistol was produced by Yashpal Kapoor and was not recovered from Appellant Ram Avtar. It is thus, submitted that the case of the prosecution is full of doubts and suspicion and is not credible enough to hold the Appellant Ram Avtar guilty.

11. Alternatively, it is submitted that the Appellant may be extended the benefit of probation, since he was naive and young when the offence had allegedly taken place and now he has travelled too far in his life, having family and responsibilities. Therefore, when there is no involvement of any other kind of illegal act except the present one, the Appellant deserves to be considered for the benefit of probation.

12. The contention on behalf of Appellant Anish @ Hero also revolves around the same facts. It is contended that even as per the case of prosecution, Appellant Anish @ Hero had nothing to do with the armed robbery, he was neither armed nor any Arms were recovered from his possession. However, it has been submitted further that he was not present there at the spot, but was called at the police station, where he was initially detained and subsequently arrested.

13. The learned APP, on the other hand, came up with the plea that the evidence on record clearly reflects that the Appellant Ram Avtar was involved in the armed robbery alongwith two other Associates and was arrested from the spot itself. Therefore, there appears no reason to question the identity or arrest of Appellant Ram Avtar. He has though examined DW1 Shri Sheruddin @ Sheru, but his testimony is not strong enough to clearly wipe off the case and take the Appellant Ram Avtar out of the clutches of the evidence led by the prosecution.

14. The recovery of arms and ammunitions is there and the CFSL



confirms that the same falls within the definition of Arms and Ammunition, in terms of report Ex. PW-10/G.

15. As regards Appellant Anish @ Hero, it is further submitted that he may not actively involved in the offence of robbery, but then he was an accomplice, which stands proved and therefore, he is equally liable for the offence of robbery. Those who stand and stare are also responsible and the Appellant Anish @ Hero, in the instant case, is not a mere spectator here.

16. On the face of it the complainant PW-1 Yashpal Kapoor and his brother Manmohan Singh examined as PW-2 should not be disbelieved. There was no animosity or enmity between the complainant and his brother on one side, and the accused persons on the other, then why would they depose something against them? However certain irreconcilable circumstances are there which put a question mark on the veracity of the case of the prosecution when the evidence is appreciated in its totality.

17. The case of the prosecution on the scale of credibility, probability and trustworthiness is also not convincing enough. The evidence which could be there in such a case is the testimony of the victim and those who present at the spot including policemen and public. Thus, when such a huge responsibility is there on the shoulders of the complainant, having the potential to render life of the individual's topsy turvy, then the evidence is required to be scrutinized, analyzed and visualized very meticulously and comprehensively.

18. In the instant case, apart from certain minor slips here and there, some major issues are there which could not be reconciled by the prosecution. Right from the very inception the case seems to be on a slippery wicket. According to the complainant / victim the assailants, three in number rang the door bell of the first floor house of the complainant and the door was



opened. The pistol was put on the head of the complainant thus, the motive was robbery. On the other hand, the contention coming from the side of the Appellant / accused persons is that there was some dispute with regard to the payment of the work done by the accused persons in the Beauty Parlour of the wife of the complainant. According to the defence, the bone of contention is the non-payment of the balance amount of Rs. 16,000/- out of Rs. 37,000/- fixed inasmuch as only Rs. 21,000/- was paid by the complainant out of Rs. 37,000/-. The case of the Appellant on the other side is that they were demanding the balance amount from the complainant, who in turn, framed them in the instant case.

19. The testimony of the star witnesses PW-1 and PW-2 are to be read along with the circumstances which are there and seems highly improbable. When the case in its entirety is tested on the parameters of normal human conduct, reason and logic then the case of the prosecution starts corroding. These facts and circumstances start assuming importance and become quite significant in view of the fact that the whole case of the prosecution is primarily based upon the testimony of two brothers. When the testimony on record is further dug deep then the case of the prosecution starts collapsing.

It is highly unusual and unacceptable that the robbers would go to commit a robbery and bypass the ground floor and straightaway go to the first floor. If the motive was to commit robbery then the ground floor was an easy target. It is not the case of the prosecution that some information was there with the Appellants / Accused that huge amount of money or valuables are available on the first floor house belonging to the PW-1 Yashpal Kapoor. It has come in the evidence that the wife of Yashpal Kapoor was running a beauty parlour on the second floor of the same house and the Appellant and some other labourers worked there in the beauty parlour for about 2-3



months. In these circumstances it is nearly impossible that the Appellants would go to rob the house of PW-1 in un-muffled condition if their motive was to rob.

20. Additionally, it is again highly unusual and unacceptable that a person who was armed with a fire arm and three live cartridges, one of which was already loaded, would meekly surrender before a 63 year old man or his brother or for that matter the crowd, if any which congregated at the spot. Incidentally, there are divergent depositions with regard to the public gathering at the spot. In a cold Delhi night of November, the movement gets restricted on the roads, people prefer to remain in the confines of the warmth of their home. In such circumstances, gathering / crowd of the people would only be there when something unusual happens.

21. A robbery is definitely something which is not usual. It has also been deposed by PW-1 that his wife and maid went towards that portion of the first floor, which was adjacent to the road raising hue and cry to attract the attention of the people. In such circumstances, it is not unusual, that people may gather but according to PW-1 no crowd gathered during the said incident, wherein PW-2 stated that on hearing the quarrel persons in the neighbourhood did not collect as it was already 10:30 PM. PW-1 and PW-2 both are very sure that none from the vicinity gathered despite the ruckus created at the house of PW-1 and PW-2. However, the PW-2 Manmohan Kapoor in his cross-examination says that people might have gathered on the spot at the arrival of the police.

22. Interestingly, police witnesses have a different version. According to them a police patrol consisting of Ct. Ramesh Chander PW-3 and Head Constable Krishan Kumar PW-4, were on patrolling duty, who were joined by SI Ashok Kumar PW-10. They all in unison stated that they noticed the



crowd gathered and that is how the police arrived at the scene. Although this too is not very clear inasmuch as that PW-1 and PW-2 says that somebody had called the police and that is how police came at the spot, but the statement of PW-2 demolishes the version of the police witnesses when PW2 says that crowd might have collected after the arrival of the police. This indicates that when there being no information with Police, but seeing the crowd, they went to the spot, which was elusive as per the testimony of PW-1 and PW-2.

23. The scale of improbability further tilts against the prosecution when the deposition of PW-1 is further taken into consideration where he says that the Appellant Ram Avtar had put a country made pistol on his head when the door was opened. At 10:30 PM in a cold night, one rarely has a visitor and in case, if somebody has rang the door bell then the occupants of the house take precaution to ascertain as to who is there. It seems either the victim did not assail and carelessly opened the door or that he found that the persons, who has come are known to him. The only reason for the visitors could be their involvement in the construction / repair of the beauty parlour run by the wife of PW-1 Yashpal Kapoor. This gives some credence to the version of the defence that there was a dispute with regard to the payment of work done and that was not being settled by PW-1. This, seemingly, forced the workers/contractor to approach the PW-1 to settle the account. This alone could have persuaded PW-1 Yashpal Kapoor to open the door. This further indicates that there was no intention to commit robbery.

24. If that was so then how come this case has shaped up the way it has. There is no clear-cut answer to it but again if it was an attempted robbery then the Appellant should have covered their faces and if they were cornered, as has been deposed by PW-1 and PW-2, then there was no reason



with the Appellant Ram Avtar, not to use his pistol which was loaded at that time in order to make his escape good. His two other associates allegedly made their escape good and though they were not even armed with any fire arm. They were at the most carrying knives although no evidence to that effect is there except a reference in the Disclosure Statement, but then in the absence of any recovery that cannot be taken into consideration.

25. On the count of a recovery of the country made pistol also witnesses are at variance, as according to PW-1 he apprehended Ram Avtar and the country made pistol was taken from his hand. PW-2 initially stated that he could not recollect from which part the *katta* was recovered from Ram Avtar, whether from his hand or from pocket or from the ground, and thereafter, says that he, for the first time, probably saw the *katta* in the hand of Ram Avtar and police recovered the same from him. Incidentally, PW-3, PW-4 and PW-10 have deposed says that the *katta* was handed over by PW-1 to the Investigating Officer. PW-10 also stated that when they reached there he saw Yashpal Kapoor snatching *katta* from accused Ram Avtar.

26. Against the backdrop of these facts and circumstances it is very amazing that those who were not armed or armed with knives at the most, were able to escape from the scene despite the fact that nobody was there except Yashpal Kapoor and his brother Manmohan Kapoor. Whereas, their third accomplice Ram Avtar, who was carrying a loaded country made pistol with two additional live cartridges in his pocket, was neutralized by a 63 years old man and the Appellant did not even attempt to fire a gunshot in the air or otherwise to escape from the scene. This is not digestible.

27. The case of the prosecution further becomes doubtful due to the uncertainty of numbers given by the police witnesses qua the public persons and even if that is ignored, there is no answer with the prosecution as to why



those 4-5 persons, according to Investigating Officer who were interrogated, were not made a witness to bring credence of the prosecution. This way the fate of the Appellants has been entirely given into the hands of the complaint and his brother and the policemen.

28. And when the testimony has cracks on vital issues and otherwise seems improbable, then in that eventuality recording a finding against the Appellants would not be safe, secure unless cogent and credible evidence is there.

29. The case should be believed or disbelieved has been discussed herein-before and it reflects that the credibility or trustworthiness to the testimony of PW-1 and PW-2 cannot be attached to the extent that the Appellants should be held responsible for the offences charged with. Then again why the Appellant should be believed or disbelieved inasmuch the evidence is evidence after all coming from whichever side. Appreciation of evidence should be neutral without there being any scope of partisan or bias approach towards anyone or any side.

30. The way prosecution intends to succeed, the defence also can crave for the same. Whereas the prosecution stands on better footing on account of structured investigation and trained policemen to investigate and deal with the matters. It is not correct in most of the cases qua the defence evidence. Testimony of Sheruddin, the contractor qua the work of the Beauty Parlour of the wife of PW-1 reflects that it was secured by Ram Avtar and Sheruddin as a contractor carried out the work with the assistance of the other persons including Appellant Anish, and Virender and may be some more persons. This fact has been admitted by PW-1 also that the Beauty Parlour of his wife was repaired / wood work was done by contractor Sheruddin. So the shreds of truthfulness or possibility in the version of the



defence surfaces when this aspect is juxtaposed to the evidence brought on record. The element of improbability gets strong and the discrepancies and variances in the deposition of the prosecution witnesses further renders it highly unsafe to rely on such testimony as has been brought in by the prosecution to hold the Appellants responsible for such serious offences.

31. As regards, the co-accused Anish @ Hero and Virender @ Viru, the aspect with regard to Virender @ Viru is not required to be looked into as no appeal has been preferred from his side. However, Anish @ Hero has preferred an appeal assailing the judgment asserting that there is practically no evidence against him inasmuch as he was neither arrested from the spot, nor he was present there, his identification is under doubtful circumstances and cannot be treated as proper so as to fasten the liability upon him. The alleged recovery of the knife is also not above board inasmuch as there is no independent public witness to the same.

32. Appellant Anish @ Hero has been roped in the instant case based upon the disclosure statement of Ram Avtar, but then that disclosure statement is not admissible in the sense that no recovery, as such, has been made on the basis of said disclosure statement. As regards identification, it has been put forth on behalf of Appellant Anish @ Hero that he had refused to participate in the TIP on account of the fact that he was shown to the complainant / witness in the Police Station. Incidentally, this fact has been admitted by PW-1 in his deposition and that takes away the wind from the sails of the prosecution's case, so far as identification of Appellant Anish @ Hero is concerned. This becomes all the more important when, despite admitting that workers were coming to do the wood work of Beauty Parlour on the second floor of the house, he has expressed his inability to identify any of the labourers. As per prosecution, the connection of Appellant Anish



@ Hero to the whole episode is on account of non-payment of dues, which clearly reflect that he too worked there at the Beauty Parlour. PW-1 Yashpal Kapoor is non-committal and categorically admitted that he is not in a position to recognise the accused persons present in the Court on that day i.e. 07.02.2007 that they had done the job work in the Beauty Parlour of his wife or not.

33. The two persons referred in the deposition of Yashpal Kapoor (PW-1) are Virender @ Viru and Anish @ Hero. Thus, identification of these two persons comes under cloud. The relevant portion of the cross-examination of PW-1 is reproduced herein-below:

“After two days of the incident, I went to Police chowki and police told me that two more accused had been apprehended in my case and those two accused persons were shown to me by the police. Now, I do not remember whether at that time, I told the police if those two accused persons, shown to me, were also involved in the offence or not. I do not remember whether on that day, IO scolded me for not identifying those persons.”

34. In view of the aforesaid clear cut admission on the part of PW-1 Yashpal Kapoor, the aspect of identity of Anish @ Hero, cannot be fixed confirmed and established to connect him with the offence.

35. Apart from aforesaid facts and circumstances, there are certain other aspects which do not appeal to reason and logic, for instance, the maid and the wife of PW-1, were the other two witnesses who could have spoken about the material aspect of forced entry into the house, use of *katta*, the process of committing the offence and to fix the identification of the persons involved, but for the reasons best known to the Investigating Agency, their statements were not recorded, therefore, they were not examined in the Court as witnesses. It may not be fatal as such, but then given the overall circumstances of the case, it becomes another factor to put the question mark



on the credibility of the prosecution's case.

36. In view of the aforesaid facts and circumstances, the Appellants are given the benefit of doubt and acquitted of the charges. The case property be confiscated to the State and be destroyed after the expiry of period of appeal.

37. As a result, the appeals succeed and Appellants are acquitted of the charges, Bail Bonds stand discharged.

38. Both the appeals stand disposed of, accordingly.

VIMAL KUMAR YADAV, J

MAY 07, 2026/akc/hk