



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

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*Reserved on: 23rd April, 2025
Pronounced on: 30th June, 2025*

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CRL.A. 549/2025

STATE GOVT. OF NCT OF DELHI

.....Petitioner

Through: Mr. Yudhvir Singh Chauhan, APP for
State with SI Deepa, P.S.: Seelampur.

versus

1. MUJAHID @ LADDU

S/o Sh. Zahid R/o H.No. Z-3/27,
Photo Chowk, Welcome, Delhi.

2. MEHTAB

S/o Sh. Faimood R/o Z-3/30,
Photo Chowk, Welcome, Delhi

.....Respondents

Through: Mr. Harsh Prabhakar (Amicus
Curiae), Mr. Dhruv Chaudhary and
Mr. Shubham Sourav, Advocates.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. Appeal under Section 378 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as "Cr.P.C."*) has been filed by the Appellant against the Impugned Judgment dated 27.04.2017 of the learned Special Judge (NDPS) / ASJ, Delhi *vide* which the Respondents/accused were acquitted for offence under Sections 394/397/34 Indian Penal Code, 1860 (*hereinafter referred to as "IPC"*).



2. **Brief facts of the case** are that on 16.08.2013 at about 09:30 PM, the Complainant/Sarfaraz was allegedly robbed of his Mobile Phone make LAVA and cash of Rs.500/- by the two Respondents - Mujahid @ Laddu and Mehtab. Also, Respondent No. 2/Mehtab attacked him with a blade on his neck causing injuries.
3. He was taken to GTB Hospital, where his MLC was prepared. He, after being discharged from the Hospital went to the Police Station to get his Complaint registered, where he saw that the two Respondents were already present, who had been apprehended in another incident of robbery. The Complainant identified the two Respondents as the culprits. On his Complaint, FIR No. 357/2013 under Sections 394/397/411/34 IPC was registered at Police Station Seelampur. The Respondents were arrested and their disclosure statements were recorded. Sum of Rs.500/- was recovered from Respondent No.1/Mujahid @ Laddu and Rs.30/- from Respondent No.2/Mehtab.
4. On completion of investigations, Chargesheet under Sections 394/397/411/34 IPC was filed on 14.11.2013 against both the Respondents.
5. **Charges** under **Sections 394/34 IPC** was framed against both the Respondents, while **additional charge under Section 397 IPC** was framed only against Respondent No.2/Mehtab.
6. Prosecution in respect of its case, **recorded 15 witnesses in all**. The most material witness was **PW-2/the Complainant** who proved his Complaint.
7. Statements of the Respondents were **recorded under Section 313 IPC**, in which they pleaded their innocence.



8. *Learned ASJ in his impugned judgment dated 27.04.2017* observed that there was a material contradiction in the testimony of the Complainant and the Police Witnesses about the time of alleged incident. Also, according to the Prosecution, both Respondents had been apprehended at about 10:00 PM while as per their own case, they were committing another similar offence of Section 394 IPC, at this time. The Respondents could not have been at two places at the same time. The Complainant claimed that after discharge from the Hospital, he saw the two Respondents at the Police Station, who he identified as the assailants. However, learned ASJ noted the huge time discrepancies, to conclude *that there was a doubt about the timing of the incident and the identity of the Respondents in the Police Station.*

9. Also, it was noted that there was a huge discrepancy emerging from the MLC of the Complainant, wherein the time of preparing of it is indicated as 11:15 PM, while according to the Complainant, he was discharged from the Hospital at around 10:30 - 10:25 PM.

10. It was also observed that the alleged recovery of blade used for inflicting injury on the Complainant, was recovered from open space in Tikona Park, Welcome on the next day and was therefore, doubtful. *The benefit of doubt was extended to both Respondents, who were acquitted.*

11. *Aggrieved by the acquittal, the State has preferred present Appeal and to challenge the impugned judgment.*

12. The **grounds of challenge** are that the testimony of the Complainant, which was corroborated by PW-5/HC Banwari Lal, fully established the commission of offence. The minor contradictions in the statements of PW-



4/Ct. Sunil, PW-2/Sarfaraz (the Complainant) and PW-5/HC Banwari Lal, were not on material particulars.

13. Reference was made to the case of Leela Ram vs. State of Haryana, AIR 1999 SC 3717, where, the Apex Court observed that some discrepancies were bound to occur in the narrations of different witnesses when they speak on details and alleged contradictions, which are not material cannot be used to jettison the evidence of Prosecution in its entirety.

14. It is further contended that it has not been appreciated that the Complainant had been taken for medical examination and thereafter, he came to the Police Station for registration of FIR. In the interim, another FIR No. 356/2013 in respect of the subsequent event of robbery, had already been registered.

15. Recovery of the surgical blade had also been discarded for no cogent reason. It has also not been considered that the Complainant has no cogent reason to falsely implicate the Respondents.

16. It is therefore, submitted that impugned judgment dated 27.04.2017 be set aside and the Respondents be convicted under Sections 394/397/34 IPC.

17. **Respondent No.2/Mehtab filed his Reply**, wherein he has submitted that learned ASJ has rightly appreciated the prosecution evidence. The testimony of PW-2 Sarfaraz (the Complainant) is riddled with contradictions and embellishments.

18. Furthermore, the identification of the Respondents by the Complainant at the Police Station, is also doubtful. Considering that the Complainant was unable to specify which of the two Respondents had inflicted the alleged injury, it is fortuitous that the Complainant happened to



identify the Respondents, who were incidentally present at the Police Station.

19. No TIP of Respondents was ever conducted. Recovery of the blade from open Park at the instance of Respondent No.2/Mehtab on the next day, has also been rightly disbelieved.

20. ***It is submitted that there is no merit in the present Appeal, which is liable to be dismissed.***

21. **Submissions heard and record perused.**

22. The case of the prosecution is that on 16.08.2013 at about 09:30 PM, the Complainant/Sarfaraz was robbed of his Mobile Phone make LAVA and cash of Rs.500/-, and injury inflicted on his neck by a surgical blade, in the process of alleged robbery.

23. The most material witness is **PW-2/Sarfaraz (the Complainant)**, who in his Statement, Ex.PW-2/A essentially deposed on similar lines, as his Complaint, wherein he had explained that he, after finishing his work at about 09:00 PM, had travelled with his employer, Islam, who dropped him at *Mulla Ji* Hotel, Welcome to take his food from where he left after the dinner. At about 09:30 PM, when he reached '*pulia*' spot, both the Respondents caught hold of him and one of them inflicted injuries with a surgical blade and both snatched his mobile phone and Rs.500/-. He then called the PCR, which arrived and took him to GTB Hospital, where he was given treatment. Thereafter, he went to the Police Station for registration of his Complaint, where he found both the Respondents present, whom he identified as his assailants.



24. **The first aspect for determination is the identity of the Respondents.**

25. Pertinently as per the Complainant, after robbing him, the assailants admittedly escaped, while the Complainant was taken to GTB Hospital by PCR. As per MLC, Ex.PW-1/A, he reached the Hospital at about 11:15 PM and narrated that the incident happened at about 10:15 PM. As per his MLC, he was found to have suffered *lacerated wound of 2x1 c.m. on the left side of the neck and had tenderness on the left side of his chest*. The injuries were opined as simple in nature by **PW-12/Dr. Mohd. Faizul Haque**.

26. The factum of the Complainant having been taken to GTB Hospital by PCR is corroborated by MLC, wherein it is indicated that he was brought to the Hospital by PW-13/HC Iliyas Khan, PCR *baker-52*. According to the Complainant, he thereafter went to the Police Station for getting his Statement recorded. His testimony till this point is fully corroborated by that of PW-4/Ct. Sunil, who had accompanied PW-5/HC Banwari Lal to the scene of crime after receiving information of the incident *vide* DD No.29A, Ex.PW-13/B.

27. According to the testimony of both these Witnesses PW-4/Ct. Sunil and PW-5/HC Banwari Lal, when they reached the spot of incident, they found that none was present and were told that the Complainant has been taken to the GTB Hospital. They accordingly went to the Hospital, but did not find the Complainant. They then returned to the Police Station, where the Complainant was already present and his Statement was recorded by **PW-5/HC Banwari Lal** for registration of FIR. The FIR was accordingly registered at 01:35 AM on 17.08.2013. The testimony of the Complainant,



PW-4/Ct. Sunil and PW-5/HC Banwari Lal is essentially consistent about the sequence of events.

28. While the sequence of events and procedural aspects were consistent, a detailed examination of the evidence reveals significant issues regarding the incident and allegations of the Complainant. **Major contradiction was found with regard to alleged identity of the Respondents.**

29. To understand this contradiction regarding identity of the accused person, it is essential to examine the Prosecution's version about how the Respondents were apprehended and brought to the Police Station through a subsequent incident of similar nature.

30. The Prosecution claimed that after committing the crime, both Respondents committed another act of robbery at around 10:00 PM. In this incident, the victim, **PW-14/Shahbaj** stated that although the Respondents' attempt to rob him failed, but it led to the registration of FIR No. 356/2013 based on his statement.

31. According to the Prosecution, this second incident happened at about 10:00 PM, i.e. immediately after the first incident, which is subject matter of the present case. The Respondents had been apprehended red handed and had been brought to the Police Station.

32. It is worth noting here that although the second incident occurred later. The second incident has been proved by PW-14/Shahbaj, who was the victim/Complainant in FIR No.356/2013 which was registered immediately. In contrast, in the present case, the injured person was first taken to the hospital and his statement was recorded afterward. Therefore, despite the



second incident occurring subsequently, its FIR was registered before the FIR in the present case.

33. Thus, the entire case fits into the sequence of events, but again *question is of identity of the Respondents.*

34. There is no testimony of the Complainant that he had seen the assailants. It cannot be overlooked that the incident happened at around 09:30 PM on a *pulia* and there is no evidence that the Complainant had enough opportunity to see the Respondents. There is definitely a doubt about the Complainant being able to identify the Respondents, when he subsequently reached the Police Station.

35. Another aspect which is of extreme significance, is that allegedly the Complainant/Sarfaraz's Mobile Phone make LAVA along with cash of Rs.500/- had been snatched from him by the Respondents. However, as per the prosecution, the Respondents committed another offence immediately thereafter. If so was the case, *the Mobile Phone of the Complainant* should have been recovered from the possession of the Respondents, while no recovery of mobile phone was made.

36. It is also significant to note that while from the personal search of Respondent No.1/Mujahid @ Laddu, five notes of Rs.100/- were recovered, but they have been recorded in his personal search and **have not been identified as the case property** nor has this money being seized.

37. Pertinently, the Complainant in his testimony had deposed that neither his Mobile Phone nor his money was recovered from the Respondents. This indeed is surprising and not understandable considering that the Respondents had been apprehended soon after the first incident.



38. The absence of recovered stolen property becomes complex when considered alongside the circumstances of the recovery of the alleged weapon of offence.

39. In this context, it is pertinent to note that allegedly Respondent No.2/Mehtab had inflicted blade injury on the neck of the Complainant. As already stated above, if they had been apprehended soon after the first incident, while committing the second incident of robbery, there appears to be no occasion or opportunity for them to dispose of the blade (alleged weapon of offence) in an open park, which is at a distance of about 100 meters from the spot of incident. No explanation is forthcoming as to how and when did the Respondents leave the spot and disposed of the alleged weapon of offence. Significantly, if according to the Prosecution, the second incident followed the present incident, it is evident that the Respondents intended to commit further acts of Robbery. If so was their intent as reflected from the sequence of incidents, the intention of Respondents was to commit further crime. It is highly improbable that in these circumstances they would dispose of the weapon of offence. Learned ASJ has rightly rejected the recovery of the blade from an open Tikona Park found subsequently on the next date i.e. 17.08.2013 at about 05:00 PM.

40. This alleged recovery of surgical blade assumes greater importance in the light of the injury suffered by the Complainant as stated in MLC, Ex.PW-1/A. The Complainant suffered a lacerated wound measuring 2 x 1 cm on the left side of the neck. Had the injury been inflicted by a surgical blade, it would have been an incised wound, not a lacerated one.



41. **PW-1/Dr. Gaurav**, who has approved MLC, Ex.PW-1/A and **PW-12/Dr. Mohd. Faizul Haque**, who had proved the nature of injury as Ex. PW-12/A have not been questioned about whether the alleged surgical blade could have caused the lacerated wound as suffered by the Complainant. Therefore, there is doubt of the alleged blade so recovered, at the instance of Respondent No.2/Mehtab, being the weapon of offence.

42. Learned ASJ had also noted the discrepancies in the timings by observing that if the Complainant he had reached the Police Station from the Hospital at about 10:30 PM, was incorrect since he was in the Hospital at 11:15 PM, as per MLC Ex.PW-1/A. It cannot be considered as a major contradiction, since the Complainant had come to depose in the Court on 14.11.2013 and such minor variations in the timings cannot be ground to disbelieve the occurrence of the incident.

43. Though there was a minor contradiction in the timing as stated by PW-2/Sarfaraz (the Complainant), but as already noted above, the entire sequence of the offence fits into each other and such minor discrepancies could not have been the basis to disbelieve the testimony of the complainant. However, as noted above, the identity of the Respondents is definitely not being proved by the prosecution beyond reasonable doubt and the learned ASJ has rightly raised the doubt about the identity of the Respondents with regard to their involvement in the crime.

44. ***The benefit of doubt has rightly been extended to the Respondents under Section 394/34 IPC and they have been rightly acquitted.***

45. Though, Respondent No.2/Mehtab had also been charged under Section 397 IPC for allegedly inflicting injury with the blade on the neck of



the complainant, while committing the alleged offence of robbery. However, the Complainant in his cross-examination has stated that he was not in a position to identify, which of the two Respondents had inflicted the injury.

46. In any case, it is doubtful that the alleged surgical blade was indeed the weapon of offence. *Learned ASJ has rightly acquitted Respondent No.2/Mehtab under Section 397 IPC.*

Conclusion:

47. To conclude, learned ASJ cogently appreciated the testimony of the Prosecution Witnesses and has rightly granted benefit of doubt to both the Respondents.

48. There is no merit in the present Appeal, which is hereby dismissed.

49. Pending Application, if any, also stand disposed of.

**(NEENA BANSAL KRISHNA)
JUDGE**

JUNE 30, 2025/R