



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

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Pronounced on: 30th June, 2025

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CRL.A.557/2025

STATE OF NCT OF DELHI

.....Petitioner

Through: Mr. Yudhvir Singh Chauhan,
Additional Public Prosecutor for State with
SI Neeraj Kumar

Versus

1. **Arun Kumar**
S/o Sh. Babu Ram
R/o 258/271, Gali No. 4, Nala Road,
Kapil Vihar, Mukund Pur, Delhi
2. **Imran @ Amit**
S/o Shri Yusuf Khan
R/o H. No. M-718, JJ Colony,
Shakurpur, Delhi
3. **Hemant @ Hanumant**
S/o Sh. Bhagwan Dass
R/o M-504, JJ Colony,
Shakurpur, Delhi

....Respondents

Through: Mr. Sulaiman Mohd. Khan,
Adv. (amicus curiae) with
Mr. Gopeshwar Singh Chandel, Mr. Taiba
Khan and Mr. Abdul Bari Khan, Advts. for
R-2 and R-3.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T



NEENA BANSAL KRISHNA, J.

CRL.A. 557/2025

1. Appeal under Section 378(1) of the Code of Criminal Procedure, 1973 (*hereinafter referred to as the "Cr.P.C."*) has been filed by the State against the judgment dated 13.02.2017 *vide* which the Respondents have been acquitted in FIR No. 0355/2013 under Sections 392/397/34 of the Indian Penal Code, 1860 (*hereinafter referred to as the "IPC"*) at P.S. Subhash Place.

2. ***Briefly stated***, the case of the Prosecution is that on 17.08.2013, the Complainant/Dalbir Singh while going for his duty to the PM Security Cell, at about 5.32 AM, reached near HP Petrol Pump after crossing the Wazirpur flyover. One motorcycle came from behind, which was being driven by Imran @ Amit with Afsaroon Choudhary sitting as a pillion rider, and was plying parallel to him. The pillion rider asked him '*bhai sahab kaha ja rahe ho*' to which, he replied he was going for his duty.

3. In the meanwhile, this motorcycle came in front of his motorcycle and stopped him. The pillion rider Afsaroon Choudhary took out the keys of his motorcycle. In the meanwhile, the second motorcycle on which Accused/Respondents Hemant @ Hanumant and Arun Kumar were sitting, (as later identified by the Complainant). The pillion rider of the first motorcycle i.e. Afsaroon Choudhary (who is a Proclaimed Offender) took out a country made pistol, aimed it towards the Complainant, and told him not to move or else he would fire.



4. The Accused on the second motorcycle also threatened him that '*jo tere paas hain nikal, nahi to goli mar dunga*'. The Accused Imran @ Amit (as was later identified), caught hold of the right hand of the Complainant and robbed him of his gold ring and gold *kada*. Thereafter, Afsaroon Choudhary, on gunpoint, told him to take out the wallet and took Rs.600 which was in his wallet.

5. The Complainant thereafter, went to the Police Station on his motorcycle and got the FIR No. 0355/2013 registered under Sections 392/397/34 at P.S. Subhash Place.

6. On 19/20.11.2013, Arun Kumar, Imran @ Amit, Hemant @ Hanumant and Afsaroon Choudhary, the 04 Accused in the present FIR, were apprehended in different *FIR No. 0353/2013 at P.S. Keshav Puram* by *SI Umesh Rana*. They made their disclosure statement Ex. PW7/A to Ex. PW7/D, respectively, wherein they made a disclosure about their involvement in the present incident.

7. The information was conveyed to the IO of the present case *vide* DD No. 5B dated 23.11.2013. SI Radhey Shyam, the IO, formally arrested the 04 Accused in this case on 10.12.2013.

8. Thereafter, he got Test Identification Parade (*hereinafter referred to as the "TIP"*) conducted on 13.01.2014, but all 04 Accused refused to get their TIP done.

9. The IO on completion of the investigations filed the Chargesheet in the Court and all the 04 Accused persons were summoned.



10. *Charge under Section 397 IPC was framed against Afsaroon Choudhary, while Charges under Sections 392/34 were framed against all the 04 Accused on 15.02.2014 to which they all pleaded not guilty.*

11. Afsaroon Choudhary was declared a Proclaimed Offender during the pendency of the trial *vide* Order dated 10.01.2017. The trial was continued against the remaining three Accused/Respondents.

12. *The Prosecution in support of its case examined 12 witnesses.* The most material witness is PW-1/Dalbir Singh, the Complainant. The other witnesses were all support witnesses, while PW-11/SI Umesh Rana was the IO in FIR No. 0353/2013 wherein the Respondents were arrested on 19/20.11.2013 and their disclosure statements Ex. PW-7/A to Ex. PW-7/D, were recorded.

13. *PW12/SI Radhey Shyam, IO, who deposed about the investigations conducted in this case.*

14. The statement of 03 Respondents/Accused as well as Afsaroon Choudhary was recorded under S.313 Cr.P.C. in which they denied all the incriminating evidence and pleaded their innocence.

15. The **learned ASJ in the impugned judgment** dated 13.02.2017 considered the prosecution evidence and observed that the manner in which the Respondents were apprehended and got identified by the Complainant, the delay in registration of FIR and non-recovery of any robbed items from the possession of the Respondents and the manner of identification of the Respondents by the Complainant, created a doubt on the prosecution story. **Benefit of doubt was given to the Respondents, who were acquitted *vide* judgment dated 13.02.2017.**



16. *Aggrieved by the said acquittal, present Appeal has been preferred by the State.*

17. *The grounds of challenge* are that the learned Trial Court erred in disbelieving the testimony of the Complainant, who not only supported the case of the Prosecution but also identified the Respondents. Furthermore, delay of registration of FIR by 02 hours, which has been duly explained by the Complainant, cannot be considered fatal to the Prosecution's case.

18. The Complainant had explained that he had sought help of some public persons to start his motorcycle to explain how he reached the Police Station as the keys of the motorcycle had been taken away by the Respondents.

19. It is a settled principle of criminal jurisprudence that minor inconsistencies in testimony of the Prosecution witnesses, cannot be the basis for disbelieving the Prosecution's case. No witness can be expected have video graphic memory and minor inconsistencies with no consequential effect, cannot be given undue importance.

20. It is asserted that mere non-joining of public witnesses from the Petrol Pump, is neither compulsory for the Complainant nor is it material, especially, when the Complainant was traumatised and was under the fear after the incident happened to him.

21. The Complainant has stated that he immediately went to the Police Station, which was at a distance of about 01 KM and thus, there was no necessity for him to inform the PCR. It has also not been appreciated that there was no previous enmity between the Complainant and the



Respondents, which would have prompted false implication of the Respondents.

22. It has not been considered that the Respondents had refused to join the TIP proceedings without any justification. Such refusal is a significant piece of evidence for drawing an adverse inference against the Respondents. The failure to participate in TIP would not make the subsequent identification of the Respondents in the Court as inadmissible, as has been held in the case of Md. Kalam @ Abdul Kalam vs. State of Rajasthan, AIR 2008 SC 1813 and Kanta Prasad vs. Delhi Administration, 1958 CrLJ 6981.

23. The Complainant had ample opportunity to look at the Respondents while he gave them a chase after he was robbed. The Complainant had duly identified the Respondents and the learned Judge fell into error in disbelieving the identification of all the Respondents by the Complainant during the trial.

24. In the end, it is submitted that the Respondents have been wrongly given the benefit of doubt to acquit them and the impugned judgment be, therefore, set aside.

25. ***The Respondents in their Reply*** have contended that the prosecution had failed to prove the complete chain of events and to prove its case beyond reasonable doubt. Reference was made to Thulia Kali vs. State of T.N., (1972) 3 SCC 393 wherein it was observed that delay in registration of FIR quite often results in embellishment which is a creature of afterthought. On account of delay, the report not only gets bereft of the advantage of spontaneity, but danger creeps in of the introduction of coloured version, exaggerated account or a concocted story, as a result of deliberation and



consultation. It is, therefore, essential that delay in registration of FIR should be satisfactorily explained.

26. In the present case, no recovery of alleged robbed articles was effected from the possession of the Respondents. The disclosure statement of the Respondents allegedly recorded in another FIR is not admissible in evidence to connect them with the commission of the offence and the benefit of doubt has been rightly granted to them.

27. Furthermore, it has been rightly noted by the learned ASJ that despite the Complainant having his mobile phone in his possession, he neither called the PCR nor did the IO try to establish the location of the incident through the CDR record. Furthermore, no CCTV camera footage from the site, was recovered. There was major contradiction in the testimony of the Complainant and the Supplementary Statement dated 13.01.2014 Ex. PW-1/DX regarding the identification of the Accused persons, which has been rightly appreciated by the learned ASJ.

28. It is contended that there is a presumption of innocence against the Respondents, which is the fundamental principle of criminal jurisprudence. Furthermore, the judgment of acquittal by the learned ASJ reinforces, reforms and strengthens the innocence of the Respondents. It is submitted that the learned Trial Court has rightly appreciated all the aspects of the alleged offence and has acquitted the Respondents.

29. *There is no merit in the present Appeal, which is liable to be dismissed.*

30. **Submissions heard and record perused.**



31. At the outset, it may be noted that while considering the Appeal against the judgment of acquittal by the learned Trial Court, the said judgment must not be lightly disturbed unless there are material grounds for doing so. In the case of *Jafarudheen and Others vs. State of Kerala*, (2022) SCC OnLine SC 495, the Supreme Court observed that the acquittal by the learned Trial Court gives a view, which can be termed as possible and adds to the presumption of innocence in favour of the Accused. The Appellate Court must be slow in reversing the order of the learned Trial Court rendering acquittal; rather the initial presumption of innocence gets doubled by such judgment of acquittal, which has made after close scrutiny of the entire evidence.

32. Similar principles have been stated in *Chandrappa v. State of Karnataka*, (2007) 4 SCC 415 wherein while reiterating that the Appellate Court has full power to review, re-appreciate and re-consider upon which the Order of acquittal is founded and various expressions such as “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc., are not intended to curtail extensive powers of the Appellate Court in an Appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the reluctance of the Appellate Court to interfere with the acquittal, rather than to curtail the powers of the Appellate Court to reconsider the evidence and to come to its own conclusion. *However, the Appellate Court must bear in mind that the double presumption of innocence operates in favour of an Accused, who has been acquitted. If two reasonable*



conclusions are possible on the basis of evidence on record, the Appellate Court should not disturb the findings of acquittal.

33. Guided by the aforesaid principles that the judgment of acquittal must be appreciated with care and caution in the light of presumption of innocence having been confirmed in favour of Respondents, the facts of the present case may be considered.

34. The star witness of the prosecution is PW-1 Dalbir Singh, the Complainant, who is Sub-Inspector ('SI') in Delhi Police posted in the PM Security Cell. He had left his house on 17.08.2013 at about 5.00 AM on his motorcycle to report for duty. At about 5.32 AM, when he reached near HP Petrol Pump after crossing the Wazirpur flyover, he was waylaid by a motorcycle, which was plying parallel to him for some time. The motorcycle was being driven by *Imran @ Amit* on which Afsaroon Choudhary was the pillion rider. The Accused stopped his motorcycle by bringing their motorcycle ahead of him and *took out the keys from his motorcycle*. Thereafter, Afsaroon Choudhary took out the gun and pointed it towards him. In the meanwhile, another motorcycle on which *Hemant @ Hanumant and Arun Kumar* were riding, also came alongside and stopped there. They all exhorted that he should handover whatever he was possessing or else he would be shot. Respondent No. 2-*Imran @ Amit* removed the gold ring and the gold kada that he was wearing and asked him to take out the purse, which had Rs.600/- in cash. The money was also taken away by the 04 Accused and they left the scene of crime.

35. The ***first aspect***, which has been considered by the learned ASJ is that the incident happened at about 5.32 AM near a Petrol Pump despite which



the Complainant did not seek the assistance from the persons at the petrol pump.

36. Though the incident happened near the petrol pump, but it cannot be overlooked that the time of incident was at 5.32 AM. There can be no presumption that at such early morning hour, the persons were present at the petrol pump. Likewise, there is no mandate that a victim must necessarily approach the public person present in the vicinity to seek help. It cannot be overlooked that he himself is a serving SI in the Delhi Police. He may not have sought the assistance of public persons but that in itself, can be no ground to discredit his testimony.

37. The *learned Trial Court further noted that despite being in possession of his mobile phone, he did not make any call to PCR.* It again boils down to his being a SI in Delhi Police and for this reason may not have considered it necessary to call the PCR. *Merely not calling the PCR, is again not a circumstance to discredit his testimony.*

38. The ***third aspect*** which was considered by the learned ASJ, is the ***delay of about 02 hours in registration of FIR.*** The incident happened at about 5.32 AM, while the FIR has been registered at about 7.30 AM as per the *rukka* Ex. PW-2/A. **The question arises whether the delay of 02 hours can be considered fatal to the case of the prosecution.**

39. As has been held in the case of *Thulia Kali* (supra), the question to closely scrutinise the delay in registration of FIR is to ensure that there is prompt reporting of the incident to prevent any embellishment or improvement being introduced in a Complaint if registered after some delay.



The possibility of consultation, distortion and concoction or introduction of coloured or exaggerated version, can also not be ruled out.

40. The place of incident was at a distance of barely 01 KM from the Police Station. Pertinently, as per the Complainant, the keys of the motorcycle had been taken away by the Accused. His explanation that he was able to ignite his motorcycle by taking the key of passerby, is difficult to comprehend. Further, on the one hand, it was being asserted on behalf of the prosecution that in the wee hours of the morning, the public persons were not present, but on the other hand, it is claimed that the key of the motorcycle of passerby, was used by the Complainant to ignite his motorcycle, which is self-contradictory.

41. However, his mode of reaching the Police Station on his motorcycle is of little consequence, but it does create a doubt about the happening of the incident. He himself being a SI, has not given any explanation as to what transpired in the 02 hours before the registration of FIR. He being a SI, should have reached the Police Station with promptitude, whether on motorcycle or otherwise to get the Complaint registered.

42. This aspect assumes importance as the Respondents/Accused persons after taking away his money, had left on their motorcycles. Any person would be in a rush to report the matter to the Police for the apprehension of the Accused persons and recovery of the robbed items. It is a known fact that with the delay, the chances of apprehension and recovery become bleak. Despite being aware of the investigative procedures and the promptitude required to report the matter for the earliest apprehension of the Accused persons, there was a delay of about 02 hours for which the Complainant has



given no cogent explanation. This circumstance creates a doubt of any such incident actually having taken place, when considered in the light of the fact that no PCR call was made to report the crime.

43. The delay of 02 hours in reporting the matter to the Police about a robbery may in itself not be of consequence, but in the present case, it has raised a doubt about the happening of the incident itself, for which the Respondents are entitled to a benefit of doubt.

44. The *next important aspect is the arrest of the Respondents*. According to PW-11 SI Umesh Rana, the 04 Accused were apprehended in FIR No. 0353/2013 at P.S. Keshav Puram on 19/20.11.2013 i.e. after -02 days of the incident. They made their disclosure statements Ex. PW-7/A to Ex. PW-7/D, respectively wherein they admitted the commission of the incident which is the subject matter of the present trial.

45. Admittedly, no recovery of any kind either of the robbed articles or of the alleged weapon of offence was made from any of the Respondents. They did not lead to any recovery. Their disclosure statement, therefore, is inadmissible in terms of S. 25 and S. 26 Indian Evidence Act. *The disclosure statements, therefore, cannot be considered as incriminating evidence against the Respondents*.

46. The only other evidence to link the Respondents to the commission of offence *was their identification by the Complainant*. Pertinently, they were apprehended on 19/20.11.2013 i.e. after 02 days of incident. The information about their arrest was conveyed to PW-12 SI Radhey Shyam, the IO *vide* DD No. 5B Ex. PW-10/A dated 23.11.2013. After getting information about their apprehension, the IO took his own time to formally



arrest them in the present case after about 20 days i.e. on 10.12.2023. There is no effort whatsoever made for the recovery of the robbed items.

47. The most significant link evidence could have been the identification of the Respondents. On 11.12.2013, Application was filed by PW-12 SI Radhey Shyam for getting **the TIP conducted of *the Respondents-Arun Kumar***. The TIP was fixed to be conducted at Rohini Jail on 12.12.2013. The Respondent-Arun Kumar, however, refused to get his TIP conducted.

48. Thereafter on 01.01.2014, Application was filed by the IO for getting the TIP of the other **03 Accused; namely, *Imran @ Amit, Hemant @ Hanumant and Afsaroon Choudhary*** conducted. They were produced before the learned MM on 13.01.2014, but they refused to get their TIPs done.

49. It cannot be overlooked that they had been apprehended on 19/20.11.2013 and had been in judicial custody since then and the TIP Application was sought to be done only on 13.01.2014, after almost three months.

50. According to the testimony of PW-5 Bhupender Singh, Ld. MM and the TIP proceedings Ex. PW-5/F to Ex. PW-5/H, the 03 Accused had been produced before the learned MM in muffled face. They, however, refused to get their TIPs conducted on the ground that their photographs have been taken in the Police Station.

51. From the aforesaid discussions and the testimony of PW-5 Bhupender Singh, it is evident that while Respondent-Arun Kumar was produced before the learned MM on 12.11.2013 and the TIP proceedings were conducted in Jail on 12.12.2013 wherein he refused to participate in the TIP proceedings,



the other 03 Accused were produced before the learned MM on 01.01.2014 for TIP, which they refused.

52. The case of the Prosecution was that the Complainant had incidentally visited the Court premises on 13.01.2014 on which date, the Accused were produced in the Court and he identified all the 04 Accused. His supplementary statement Ex. PW1/DX dated 13.01.2014 was recorded.

53. Incidentally as noted in detail, the Respondents had been produced on different dates in the Courts. Secondly, it has been stated that the Respondents had been produced in muffled face and there was no occasion for the Complainant to have seen their faces. Had he actually seen them, he should have explained how, when, where, he saw the Accused persons.

54. It is clearly an endeavour by the prosecution to somehow establish the identity of the Accused persons whereby the statement of the Complainant dated 13.01.2014 has been manoeuvred. The evidence as led by the prosecution, does not corroborate that all 04 Accused had been produced before the learned MM on 13.01.2014. The testimony of the Complainant that he had identified them on the said date, therefore, comes under the cloud.

55. It is also pertinent to note that the incident had happened in the wee hours i.e. about 5.32 AM on 17.08.2013 while the alleged identification has been done by the Complainant on 13.01.2014. It cannot be overlooked that the incident happened in one or two minutes and for the Complainant to have the graphic memory to be able to recognise them after a period of more than four months, is clearly doubtful.



56. Another significant aspect which has emerged from the testimony of the Complainant is that on his instance, the sketches of 04 Accused were prepared at the Police Station. However, PW-12 SI Radhey Shyam, IO, nowhere talks about having got sketches of the Respondents prepared. Also, if there were such sketches that were prepared, why the same has not been made part of the Chargesheet or has been exhibited in the evidence, is not understandable. The only explanation for non-production of the sketches is that no such sketches were prepared. It is only to establish the identity of the Respondents that the story of sketches being prepared in the Police Station, has been projected.

57. Furthermore, if the Complainant had been able to give the description which led to the preparation of sketches, there is no explanation as to why the description of the 04 Accused was not mentioned in the FIR in the first instance.

58. The learned ASJ has rightly disbelieved the identification of the Respondents by the Complainant. The Apex Court in the case of Gireesan Nair & Others vs. State of Kerala, (2023) 1 SCC 180, made a reference to the case in S.K. Umar Ahmed Shaikh vs. State of Maharashtra, (1998) 5 SCC 103 wherein it was held that where there is possibility of the Accused having been shown to the witnesses, their identification in the Court is meaningless.

59. Though, it is a settled law and has also been stated in the case of Md. Kalam @ Abdul Kalam (supra) and Kanta Prasad (supra) that merely because the TIP proceedings were not conducted to establish the identity of the Accused persons who are identified in the Court, would not make such



evidence inadmissible, but as detailed above, the manner in which the Respondents have been sought to be linked with the commission of the evidence on the basis of their identification is highly doubtful, and has been rightly rejected by the learned ASJ.

60. Therefore, the identification of the Respondents as sought to be established by the prosecution from the testimony of PW-1, is highly doubtful and has been rightly disbelieved by the learned ASJ.

61. To conclude, the learned ASJ has rightly held that the prosecution has failed to prove the identity of the Respondents as the perpetrators of crime, who have been rightly granted benefit of doubt.

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

63. Pending Applications are disposed of, accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

JUNE 30, 2025

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