

IN THE COURT OF SHRI LAL SINGH  
ADDITIONAL SESSIONS JUDGE -05, WEST, THC,  
DELHI.

IN THE MATTER OF:

Case No.575/18

FIR No.285/18

PS Mundka

U/s 392/397/506 IPC & Sec.25 Arms Act

State

VERSUS

Suraj Bhan

S/o Sh. Ram Singh,

R/o H. No.493/7, Gali No.1,

Line Paar Netaji Nagar,

Bahadur Garh, Haryana.

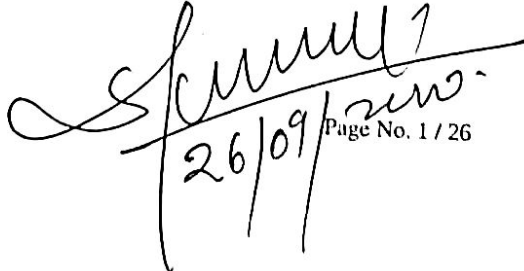
...Accused

Date of Institution : 27.08.2018  
Date of Reserving Judgment : 18.08.2020  
Date of Judgment : 26.09.2020

JUDGMENT

1. On 02.07.2018, DD No.10A was assigned to SI Rajbir Singh, who was present in the P.S., at that time and in the meanwhile, a PCR vehicle reached at the P.S., and the PCR officials produced two boys alongwith one button actuated knife (buttondar Knife) and a mobile phone before SI Rajbir Singh and they told him that the button actuated knife and

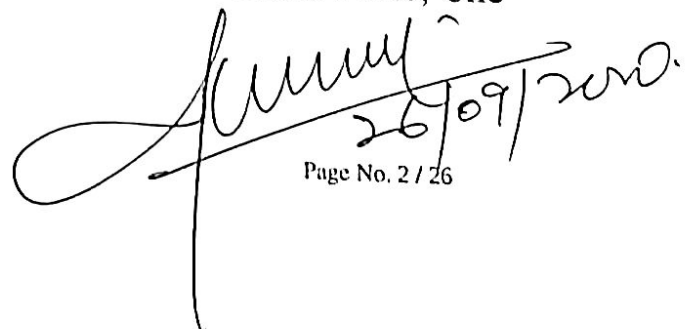
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mobile phone were recovered from the boy who was bleeding from his head i.e. accused. Thereafter, one of the boy (complainant) was left there in the P.S. itself and SI Rajbir Singh took the accused to DDU hospital Mangolpuri and he was treated there under MLC No.10462/18 and got conducted his medical examination and after that SI Rajbir Singh came back to P.S. and he recorded the statement of complainant Yusuf.

Complainant Yusuf in his complaint stated that on 02.07.2018, he was taking rest alongwith his helper namely Shamim, in his vehicle/truck bearing No. HR 63D 3755 near metro pillar no.595, Service Road, Rohtak Road. Complainant alleged that in the meanwhile at about 7:15 A.M., one boy/accused entered into the truck from the window of the truck and picked up his mobile phone from the dashboard of the truck and by then he (complainant) raised alarm and caught hold the said boy, however, the said boy (accused) had shown the knife to him and also threatened him to kill if he raise alarm and thereafter, the said boy/accused alighted from the truck after pushing him and after that accused tried to flee from the spot on his motorcycle CD Delux. Complainant also stated in his complaint that his helper namely Shamim had caught hold the motorcycle of accused from behind and in the meanwhile, one

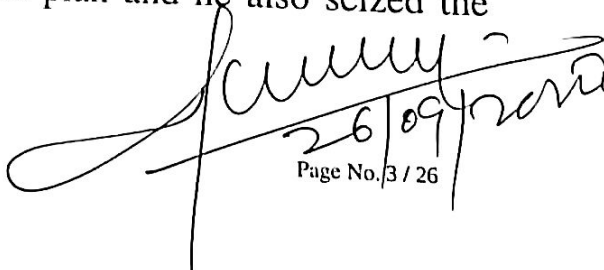
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passerby also placed his motorcycle in front of the motorcycle of accused and stopped the accused from fleeing from there. Complainant further alleged that thereafter accused picked up a blade from the table of barbar as situated on the roadside and after that accused inflicted self injury on his head from the said blade 4-5 times. Thereafter, complainant had called at 100 number and in the meanwhile, they also apprehended the accused. Complainant in his complaint stated that later on he came to know that the passerby who placed his motorcycle in front of the motorcycle of the accused, was also a police official, who helped them apprehending the accused. In the meanwhile PCR vehicle also came there at the spot and complainant had produced the accused as well as knife recovered from accused and his mobile phone to the PCR officials. The complainant also stated that later on he came to know the name of the accused as Suraj Bhan.

2. After recording statement of complainant, SI Rajbir Singh prepared rukka and handed over the same to duty officer for registration of FIR and accordingly got registered the FIR. IO/SI Rajbir has also took measurement of the knife and prepared the sketch of the same and also seized the knife as well as the mobile phone vide seizure memo. During course of investigation, IO prepared the site plan and he also seized the

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motorcycle bearing No. DL 4S BW 9967 of accused and also arrested the accused in the present case. Further, IO/SI Rajbir has recorded the statement of witnesses and after completion of investigation filed the charge sheet in the concerned court of Ld.MM. Thereafter, the matter was committed to court of sessions.

3. Vide order dated 29.10.2018, charge for the offence punishable U/s 392/397/506 IPC and offence punishable U/s 25 Arms Act. were framed against the accused to which accused pleaded not guilty and claimed trial.

4. In the instant matter, prosecution has examined 07 witnesses namely PW-1 HC Parveen and PW-1 HC Radhika, PW-2 Yusuf, PW-3 Shamim, PW-4 Ct. Jai Prakash, PW-5 SI Rajbir Singh and PW-6 Constable Amit.

In this case, two witnesses i.e. PW HC Parveen and HC Radhika were examined as PW-1. PW HC Parveen was examined on 25.02.2019 and PW HC Radhika was examined on 26.04.2019. Therefore, in view of the above, PW HC Radhika may be read as PW-1A.

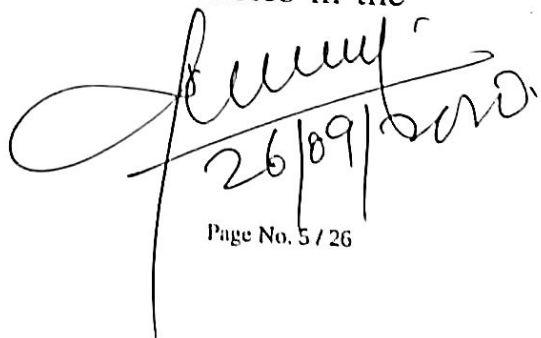
5. Thereafter, statement of accused u/s 313 Cr.P.C., was recorded in which accused denied the allegation against him and submitted that false case has been registered against him. In his statement u/s 313 Cr.P.C., accused also submitted



that on 01.07.2018, at about 9:30 to 10:00 A.M., police officials of P.S. Mundka called him to appear in the P.S. to conduct some enquiry from him on 02.07.2018 at 10:00 A.M., and accordingly, he alongwith his wife namely Anita reached P.S. Mundka on his motorcycle bearing No.DL 4S BW-9967, at about 10:30-11:00 A.M. He also submitted that on reaching P.S. Mundka, IO Rajbir Singh sent his wife out of his room and on the basis of his previous involvement in criminal cases, IO created pressure on him to put signatures on some blank paper and when he refused for the same, IO started abusing him and mercilessly beaten him and due to that he received injuries on his head. He also stated that IO had falsely implicated him in the present case.

6. Accused also examined his wife namely Ms. Anita as DW-1 in his defence evidence.

7. PW-1 HC Parveen was posted as MHCM at P.S. Mundka on 02.07.2018 and on that day, SI Rajbir deposited one motorcycle bearing No.DL 4S BW-9967, one sealed parcel containing buttandar knife, one mobile phone in unsealed condition and the articles recovered during personal search of accused Suraj Bhan and he made entry at Srl. No.1506 in register no.19 regarding deposition of abovesaid articles in the Malkhana vide Ex.PW1/A.

  
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Thus, PW-1 HC Parveen is a formal witness with whom the case property were deposited by SI Rajbir Singh.

8. PW-1A HC Radhika was posted as duty officer at P.S. Mundka on 02.07.2018. She deposed that at about 12:35 P.M., SI Rajbir Singh produced rukka before her and on the basis of rukka she got registered the FIR No.285/18, P.S. Mundka U/s 392/397 IPC and Section 25 Arms Act, vide FIR Ex.PW1/A and she also made endorsement on the rukka at portion A to A vide Ex.PW1/B and thereafter, she handed over the copy of FIR and original rukka to Ct. Ashish for further handing over the same to IO SI Rajbir Singh. PW HC Radhika had also issued certificate u/s 65B of Indian Evidence Act vide Ex.PW1/C.

In the cross examination she deposed that she had made Kayami entry in the DD register vide DD No.26A at about 12:35 P.M.

Thus, PW HC Radhika is also a formal witness who got registered the FIR in the present case.

9. PW-4 Ct. Jai Prakash was posted at P.S. Mundka in the intervening night of 01/02-07-2018. He deposed that at about 7:00 A.M. or 7:15 A.M., a call was received to the effect that one snatcher was apprehended near Metro Pillar No.595.

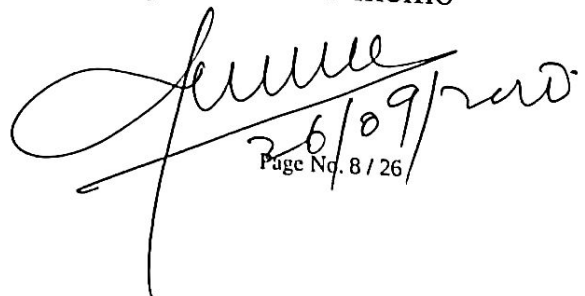
PW-4 also testified that when he and IO SI Rajbir Singh were

about to leave the P.S. to attend the call, by that time PCR officials brought two persons in the P.S. As per PW-4, PCR officials produced the complainant Yusuf and accused Suraj Bhan before the IO. PW-4 deposed that the accused was in injured condition and he was bleeding from head. Thereafter, he alongwith IO took the accused to S.G.M. Hospital and after medical examination, accused was brought back to P.S. PW-4 deposed that PCR officials produced one mobile phone make SAMSUG which was allegedly robbed by accused from Yusuf and they also produced one knife before the IO. Thereafter, IO got registered the FIR and took measurement of the knife and prepared the sketch of the same and seized the same vide Ex.PW2/C. Further, IO seized the mobile phone vide seizure memo Ex.PW2/B. As per PW-4 IO also seized the motorcycle of accused vide seizure memo Ex.PW4/A. Accused was arrested vide memo Ex.PW2/D. During trial PW-4 identified the accused. Further, during trial PW-4 also identified knife Ex.P-1, mobile phone Ex.P-2 and motorcycle Ex.P-3.

10. PW-5 SI Rajbir Singh, is the IO of the case. As per PW-5, he received DD No.10 at about 7:48A.M., regarding apprehension of one snatcher near pillar No.595 on Rohtak Road, from Teekri to Mundka, vide DD No.10 Ex.PW5/A. Thereafter, when he alongwith Ct. Jai Prakash were leaving the

P.S. to attend the abovesaid call, the PCR officials brought the accused Suraj Bhan and complainant Yusuf to P.S. PW-5 deposed that PCR officials produced one button actuated knife and robbed mobile phone before him. PW-5 deposed that accused had caused injuries on his head by himself after lifting a blade from the table kept by a barber on the roadside and accused was bleeding. Thereafter, he alongwith Ct. Jai Prakash took the accused to SGM hospital and got accused medically examined vide MLC Ex.PW5/B. PW-5 has also recorded statement of complainant. He also took measurement of knife and prepared the sketch of the same vide Ex.PW2/F and prepared the cloth parcel of the knife and seized the same vide seizure memo Ex.PW2/C and further he made endorsement vide Ex.PW5/C on the statement of complainant Yusuf and handed over the rukka to duty officer for registration of FIR.

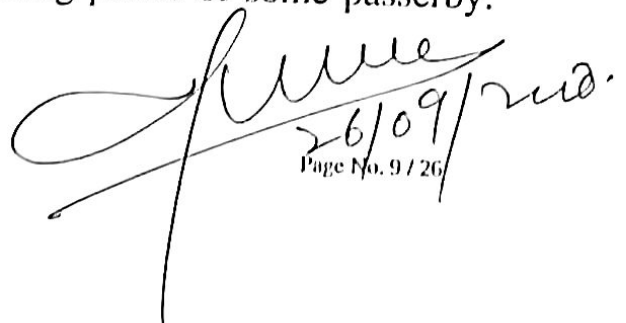
Thereafter, PW-5 alongwith complainant went to the spot and he prepared the site plan at the instance of complainant vide site plan Ex.PW5/D. PW-5 deposed that one motorcycle bearing registration No.DL-4S-BW-9967 was found stationed at the spot on which accused was alleged to be trying to flee from the spot at the time of incident. PW-5 brought the motorcycle in the P.S. Duty officer handed over the copy of FIR and original rukka to PW-5. PW-5 arrested accused Suraj Bhan vide memo

  
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Ex.PW2/D and also conducted his personal search vide memo Ex.PW2/E. He also recorded disclosure statement of accused vide Ex.PW5/E. PW-5 also seized motorcycle of accused vide memo Ex.PW4/A and also seized mobile phone of complainant vide memo Ex.PW2/B. During trial he identified the knife Ex.P-1, mobile phone Ex.P-2 and motorcycle of accused Ex.P-3. He also identified the accused.

11. PW-6 Ct.Amit was posted at P.S. Mundka on 02.07.2018. PW-6 deposed that on that day at about 7:15 A.M., he was patrolling the area of Mundka near pillar no.595 and at that time he was on his personal motorcycle. PW-6 testified that in the meanwhile, he saw one motorcycle make CD-Delux of black colour, stationed on the service road and one boy was doing "cheena Jhapti" with other boy near that motorcycle. Thereafter, he reached there and stopped his motorcycle at the spot. PW-6 deposed that the boy who was committing snatching with the other boy started fleeing away, however, he (PW-6) apprehended him and the said person (accused) was carrying a switch operated knife (button dar knife) by which he tried to cause injuries on his head. As per PW-6, accused disclosed his name as Suraj Bhan. Further, as per PW-6 victim called at 100 number and thereafter, PCR came at the spot. He deposed that victim made call to PCR after taking phone of some passerby.

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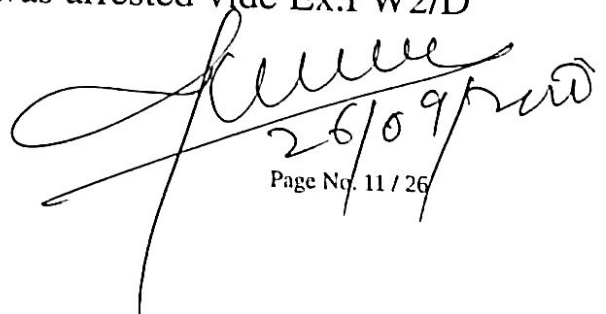
PW-6 specifically deposed that the victim had sustained injuries during the incident and accused Suraj Bhan also sustained injuries as he caused injuries to himself after the incident. As per PW-6 PCR officials took the knife from the possession of accused and produced the same before IO SI Rajbir Singh. PW-6 deposed that he alongwith Ct. Jai Prakash took the accused to S.G.M. hospital for medical examination and after that returned to P.S. As per PW-6, the robbed mobile phone make SAMSUNG was recovered from the accused and IO also prepared the parcel of mobile phone and knife and seized the same vide Ex.PW2/B and Ex.PW2/C. During trial PW-6 identified knife Ex.P-1 and mobile phone make SAMSUNG Ex.P-2.

12. PW-2 Yusuf, is the complainant. As per PW-2, at the time of incident, he was working with Sh. Karamveer of Bahadur Garh, and he used to drive his vehicle i.e. trailer No. HR 63D 3755. PW-2 deposed that on 02.07.2018 he alongwith Shamim were present in the vehicle i.e. trailer bearing No.HR 63D 3755, which was parked on service road Mundka and at about at 7/7:15 A.M., Shamim was lying on the seat adjacent to driver and he (PW-2) was sitting on the driver seat and he was not fast asleep at that time. PW-2 deposed that in the meanwhile, accused came from driver side and lifted his

mobile phone kept on the dashboard of the vehicle from the window of driver seat. PW-2 further deposed that accused had come on Hero Honda CD Delux motorcycle which he parked at a distance of 200 meters away from his vehicle. PW-2 also deposed that when accused was lifting his mobile phone then he got up and tried to apprehend his hand but he (accused) had shown him a knife and hence, he slightly backed. As per PW-2, accused started fleeing away towards his bike, however, his helper namely Shamim chased the accused and caught hold the neck of the accused and thereafter, accused Suraj Bhan continuously drove his bike for about 500 meters while Shamim was holding his neck and thereafter, bike of accused got disbalanced as Shamim was holding his neck and accused fell down with his bike. PW-2 stated that Shamim made a call at number 100 and after some time police officials from P.S. Mundka reached at the spot. He deposed that police took Suraj Bhan to P.S. PW-2 deposed that his mobile phone and knife used by accused were taken by the police. Police also recorded his statement vide Ex.PW2/A. PW-2 stated that police had also taken motorcycle of accused to P.S.

PW-2 deposed that mobile phone was seized vide seizure memo Ex.PW2/B and knife was seized vide memo Ex.PW2/C by the police. Accused was arrested vide Ex.PW2/D

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and his personal search was taken vide memo Ex.PW2/E. During trial PW-2 identified the accused Suraj Bhan. Further, PW-2 also identified button actuated knife Ex.P-1, mobile phone make Samsung Ex.P-2. Further, during his examination in chief, PW-2 also admitted that sketch of knife Ex.PW2/F, bears his signature at point-A and some public persons helped them after accused was being apprehend by Shamim. PW-2 also admitted that accused caused injury upon himself with blade which he was carrying in his purse.

13. PW-3 Shamim stated that in the year, 2018, he was working as conductor on the Trailer of Yusuf who is his brother in law. PW-3 deposed that 02.07.2018 he and Yusuf were taking rest at about 7:20 A.M., in the trailer bearing No. HR 63D 3355 which was parked near Tikri Border Mundka. PW-3 deposed that at that time, Yusuf was taking rest on the front seat and he was taking rest on the back in the cabin in the trailer. He further deposed that accused came from driver side and picked up the mobile phone of Yusuf which was kept on the dashboard of the trailer. PW-3 deposed that he got up at the time of incident and accused had shown knife to Yusuf and accused was saying that if he (Yusuf) would raise alarm, then he would stab him and hence, they got scared. As per PW-3, thereafter accused started fleeing towards his motorcycle and he and



Yusuf started chasing him. PW-3 further deposed that while accused was fleeing away on the motorcycle, then he caught him from his neck. PW-3 also deposed that thereafter accused dragged him for some distance and then he ( PW-3) pressed the clutch of the motorcycle and in the meanwhile, driver of one another motorcycle placed his motorcycle in front of motorcycle of accused due to which accused fell down with his motorcycle. PW-3 deposed that accused was apprehend by him and public persons. PW-3 also deposed that there was a barber shop at that place and accused picked up a blade from the shop and caused injuries to himself with the blade. As per PW-3, thereafter, Yusuf made a call at number 100 and after that police reached at the spot and mobile phone of Yusuf and knife used by accused were taken by police and thereafter, he alongwith Yusuf and accused were taken to P.S. by the PCR officials.

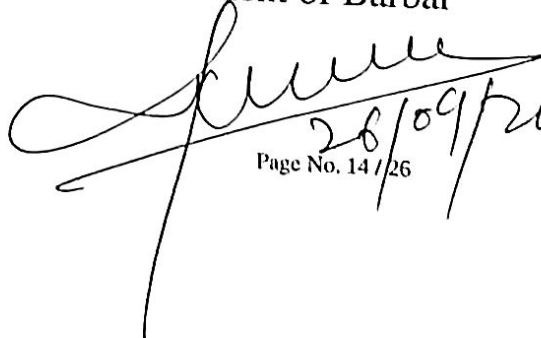
During trial PW-3 identified the accused and he also identified knife Ex.P-1 and Samsung mobile phone Ex.P-2.

14. I have heard the arguments of Sh. M.A. Khan, Ld. Addl. PP for the State as well as Sh. R.P. Sarwan, Ld. Legal Aid counsel for the accused, through video conferencing.

15. Ld. Addl. PP for the State submitted that accused committed the robbery and while coming the robbery, he also

used the knife as the accused had threatened the complainant to kill him, if he raises alarm. He also argued that PW-2 and PW-3 both the material witnesses have corroborated the incident. Further, the knife as used by accused during the incident was also recovered from him. He further argued that injury was caused to the accused after the incident and by then the offence was already committed by the accused. Ld. Addl. PP also submitted that accused and complainant were not known to each other, so as to falsely implicate the accused in the present case. He further submitted that the contradictions in the testimony of witnesses are minor contradictions, which are not so material to affect the merit of the case. He also submitted that accused was apprehended at the spot. Ld. Addl. PP submitted that prosecution has established its case against the accused.

16. Sh. R.P. Sarwan, Ld. Legal Aid counsel for the accused submitted that accused has not committed the alleged offence and he has been falsely implicated in present case. He argued that there are material contradiction qua the apprehension of accused as well as regarding injury caused to the accused allegedly by accused himself. He further submitted that there is material contradiction regarding recovery of mobile phone and knife. He further submitted that statement of Barbar

  
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was not recorded and moreover, the blade from which accused alleged to have cause self injury was also not recovered. He also argued that neither the independent witness were joined in the investigation nor they were examined. He submitted that prosecution has failed to prove the allegations against the accused.

17. I have considered the above submissions and perused the file as well as evidence on record.

18. As per PW-6 Ct. Amit, victim called at 100 number. PW-6 also testified that victim made a call to PCR after taking phone of some passerby, whereas PW-2/victim deposed that Shamim (PW-3) had made call at number 100 and after some time police officials from P.S. Mundka reached at the spot. However, PW-3 Shamim specifically deposed that PW-2 Yusuf made a call at number 100. Thus, there is clear contradiction as to actually who had made a call at number 100 immediately after the incident in the present case. There is no clarity as to who actually called at number 100, regarding the alleged incident from the spot. Moreover, the passerby from whose mobile phone a call at 100 number was stated to be made was neither joined in the investigation nor he was examined. The said passerby would have been the best person to tell whether actually any PCR call was made or not from his mobile

phone regarding incident. However, the said passerby was neither joined in the investigation nor examined by the prosecution and hence, same proves fatal to the prosecution version regarding PCR call stated to be made from the mobile phone of said passerby.

19. PW-2 (complainant) deposed that he is driver by profession and at the time of incident he was working with Sh. Karamveer of Bahadurgarh and used to drive his vehicle i.e. trailer bearing No. HR 63D 3755, whereas PW-3 Shamim who is brother in law of PW-2 Yusuf stated that he was working as conductor on the trailer bearing No. HR 63D 3355 with Yusuf. The abovesaid trailer/truck is stated to be the vehicle in which accused alleged to have committed robbery by lifting the mobile phone make Samsung of PW-2/complainant Yusuf and when complainant tried to apprehend the accused, then he (accused) had shown the knife to the complainant.

Thus, PW-2 & PW-3 have stated different number of the abovesaid vehicle i.e. trailer. Further, it is not very much clear as to whether the vehicle in question i.e. abovesaid trailer/truck belongs to complainant Yusuf or it was of Sh. Karamveer of Bahadurgarh, as PW-3 Shamim stated that he was working as conductor on the trailer of his brother in law Yusuf. PW-3 Shamim nowhere in his testimony stated that

vehicle/trailer belongs to Sh. Karamveer of Bahadurgarh. Moreover, statement of Sh. Karamveer of Bahadurgarh was not recorded by the police during the investigation nor any document in this regard is placed on record so as to show that complainant was driver of the abovesaid trailer stated to be owned by Sh. Karamveer of Bahadurgarh. Further, PW-2 Yusuf in his cross examination also admitted that he did not produce any document of vehicle or delivered goods in P.S. when he and accused were brought to P.S. PW-2 further categorically stated that police did not make any enquiry from Sh. Karamveer in his presence. Moreover, PW-5 IO/SI Rajbir Singh also stated that he did not make any inquiry from the complainant Yusuf regarding the vehicle No.63B 3755. So as to prove robbery alleged to be committed in the abovesaid vehicle, some material should have been collected by the police so as to establish that on the day of incident complainant was driver on the abovesaid vehicle stated to be owned by Sh. Karamveer Singh, Bahadurgarh. Further, PW-2/complainant in his complaint Ex.PW2/A as well as in his testimony stated that Shamim was his helper in the abovesaid vehicle and he nowhere stated that Shamim is also his brother-in-law. However, PW-3 Shamim in his testimony stated that PW-2 Yusuf is his brother in law, whereas in his statement u/s 161

Cr.P.C., Shamim stated that Yusuf is his friend of neighbouring village. Thus this all creates strong doubts about the alleged commission of robbery by the accused with the complainant Yusuf in the said vehicle/trailer.

20. As per PW-2 Yusuf at the time of incident, he was sitting on the driver seat and Shamim was lying on the seat adjacent to driver seat, whereas PW-3 (Shamim) stated that Yusuf was taking rest on the front seat and he was taking rest on the back in the cabin in the trailer. Therefore, there are material contradiction in the testimony of PW-2 and PW-3 on the said aspect. Further, as per PW-2/ complainant accused had come on Hero Honda CD Delux Motorcycle which he parked at a distance of 200 meter away from the vehicle. PW-2 stated that after committing the robbery accused was fleeing towards his bike. however, his helper Shamim chased him and caught hold of the neck of accused and thereafter accused continuously drove his bike for about 500 meters, while Shamim was holding his neck and thereafter bike of accused got disbalanced as Shamim was holding his neck and accused fell down with his bike, whereas PW-3 Shamim stated that he and Yusuf started chasing accused and he caught accused from neck and pressed the clutches of motorcycle of accused and in the meanwhile driver of another motorcycle placed his motorcycle in front of

the motorcycle of the accused due to which accused fell down with his motorcycle.

Thus, there is two contradictory versions on this point as PW-2/complainant stated that accused fell down from the motorcycle because PW-3 Shamim caught hold the neck of the accused, whereas PW-3 Shamim stated that driver of another motorcycle placed his bike in front of bike of accused and hence, accused fell down. Moreover, PW-3 Shamim had not stated the distance for which he was dragged by accused alongwith motorcycle, whereas PW-2 stated that accused had continuously dragged PW-3 Shamim for about 500 meters. Further, PW-3 Shamim stated that accused was apprehended by him (PW-3) and public persons, whereas PW-6 Ct. Amit specifically stated that accused was apprehended by him. All these material contradictions creates doubt about the prosecution version.

21. PW-6 Ct. Amit had stated that victim had also sustained injuries during the incident, whereas PW-3 Shamim who was alleged to be dragged alongwith motorcycle by the accused for quite some distance, categorically stated in his cross examination that he did not sustain injury at the time of incident. Moreover, PW-2 Yusuf in his cross examination denied the suggestion that Shamim did not sustain any injury

while he was being dragged by accused for about 500 meters. Thus, PW-6 and PW-2 stated that Shamim received injury during the incident, whereas Shamim stated that he did not receive any injury in the incident. Therefore, such a grave contradiction goes to the root of the case and makes the prosecution witnesses to the said aspect untrustworthy. Moreover, if Shamim would have been dragged for a distance of 500 meters, then, certainly he would have received at least some sort of injuries, however, Shamim specifically deposed that he did not receive any injury. Thus, it makes entire version of chasing the motorcycle of accused by Shamim immediately after the incident, untrustworthy.

22. Further, as per the prosecution version, immediately after the incident when accused was trying to flee from the spot and when he was apprehended, then he (accused) caused injuries to himself from the blade which was lying on the table of barber on the roadside. PW-2 Yusuf in his complaint Ex.PW2/A stated that when they were trying to apprehend the accused, then accused lifted a blade lying on the table of the barber on the roadside and caused self injuries on his head 4-5 times from the said blade. However, in his examination in chief PW-2 stated that accused caused injuries upon himself with the blade which he was carrying in his purse.

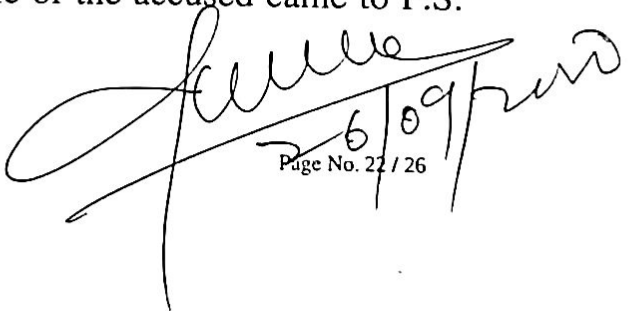


Thus, there is two contradictory version of PW-2 regarding the manner of injuries as caused to the accused as in his complaint Ex.PW2/A, he stated that accused lifted the blade from the table of the barber and caused injuries to himself, whereas in his testimony he stated that accused was carrying said blade in his purse.

Further, PW-3 Shamim stated that accused picked up a blade from the barber shop and caused injuries on himself with the said blade, whereas PW-6 who was also stated to be present at the spot while accused was trying to flee away, categorically deposed that the accused was carrying a switch operated knife (buttondar knife) by which he caused injuries on his head. Therefore, apparently there are contradictory versions regarding the weapon by which the accused alleged to caused injuries to himself as PW-2 and PW-3 stated that accused caused injuries from the blade, whereas PW-6 Ct. Amit stated that accused caused injuries with the knife. Therefore, such a glaring contradiction in the testimony of witnesses regarding the manner and the weapon from which accused alleged to have caused injuries to himself, makes the version of said witnesses unreliable to the said effect. Moreover, if the accused was carrying a knife at the time of incident, then why he would cause injuries to himself by blade, rather if he had intention to

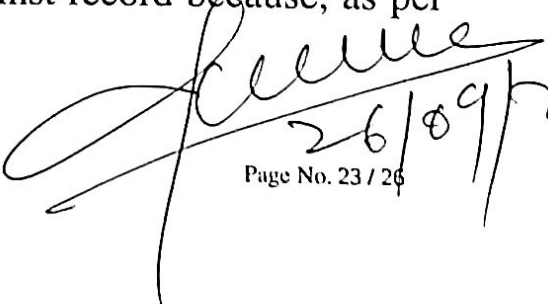
cause injuries to himself then he could have caused injuries to himself from the knife itself. Otherwise also, why accused would cause self injury, particularly when he was alleged to be trying to flee away from the spot after the alleged incident of robbery. There is no plausible explanation from any of the witnesses in this regard.

23. It is the defence of accused that he was called to P.S. by IO SI Rajbir Singh and hence, he went to the P.S. alongwith his wife on the motorcycle bearing No. DL 4S BW 9967 but after reaching the P.S., IO SI Rajbir Singh sent his wife out of his room and create pressure on him to put signature on some blank paper and when he refused for the same, then IO SI Rajbir abused him and also mercilessly beaten him and due to that he received injuries on his head. DW-1 Ms. Anita, who is wife of the accused deposed that her husband was called to P.S. by IO Rajbir and thereafter, on next date she alongwith her husband went to P.S. and met IO Rajbir Singh but he sent her out from his room and after two hours, her husband came out and while he came out she noticed bleeding on his head and thereafter, police took her husband to hospital. The presence of DW-1 Ms. Anita at P.S. on the day of incident is also established from the testimony of PW-2 Yusuf as in his cross examination PW-2 stated that wife of the accused came to P.S.

  
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and he saw her there. However, PW-5 SI Rajbir Singh denied if wife of accused visited the P.S. on the said day. Moreover, testimony of DW-1 Ms. Anita cannot be discarded simply because she is the wife of the accused. Rather, there is some force in her testimony as her presence at the P.S. on the day of alleged incident is also established by PW-2 as he stated that he had seen the wife of accused in the P.S. Thus in these circumstances, the manner of injuries as caused to the accused as well as the entire prosecution version regarding the alleged incident of robbery alleged to be committed by accused creates strong doubt.

24. As per PW-5 IO SI Rajbir Singh, PCR officials produced one buttondar knife and robbed mobile phone before him. The said mobile phone was seized by PW-5 vide seizure memo Ex.PW2/B and he also seized the button actuated knife vide seizure memo Ex.PW2/C. However, in the seizure memo Ex.PW2/C, it is mentioned that the button actuated knife was recovered from the possession of accused Suraj Bhan. Similarly, in the seizure memo Ex.PW2/B it is specifically mentioned that the mobile phone make Samsung was recovered from possession of accused Suraj Bhan. The seizure memo Ex.PW2/B and Ex.PW2/C were prepared by PW-5 Rajbir Singh. Thus, PW-5 has testified against record because, as per

  
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seizure memo Ex.PW2/B and Ex.PW2/C robbed mobile phone and button actuated knife respectively, were recovered from the possession of accused whereas in his testimony PW-5 categorically deposed that robbed mobile phone and button actuated knife were produced before him by PCR officials. Moreover, PW-2/complainant admitted in his cross examination that knife is Ex.P-1 and mobile phone Ex.P-2, were produced by him before the police. Thus, there is two contradictory version regarding the recovery of knife and robbed mobile phone and moreover PCR officials were not examined to clarify the same and all these creates doubt about the alleged recovery.

25. In the instant matter, it has come in the testimonies of prosecution witnesses that public persons were also present at the time of incident at the spot as they also helped apprehending the accused. Moreover, the PCR call was stated to be made from the mobile phone of one passerby. PW-2 Yusuf stated that some public person helped them after accused was being apprehended by Shamim. In his cross examination PW-2 stated about 20-25 public persons gathered at the spot after the incident and police made inquiry from them at the spot. PW-3 Shamim also categorically deposed that offender was apprehended by him and public persons. PW-6 Ct. Amit also stated that victim made a call to PCR after taking phone of

some passerby. Moreover, it has also come in the testimony of the IO that public persons were present at the spot. Thus, it shows that the public persons were present at the spot, however, neither any public persons were joined in the investigation nor they were examined. Non joining of the public persons in the investigation despite of availability, is certainly fatal to the prosecution case, particularly in the circumstances when there is no reasonable explanation from IO SI Rajbir Singh as to why he has not joined the public persons in the investigation. Moreover, the barber from whose table accused alleged to have picked up the blade and caused self injuries, was also not joined in the investigation. IO SI Rajbir Singh also deposed that he did not record the statement of Barber during the investigation. The owner of the barber shop/table would have been the best person to establish whether any such shop or table was actually situated or not at the roadside at the time of alleged incident. Though, Ld. Addl. PP argued that these are not relevant as while accused inflicted self injuries from the blade lying on the table of barber, by then the offence of robbery was already committed by accused. However, this contention of the Ld. Addl. PP is not tenable particularly in the circumstances that after the alleged robbery accused was stated to be trying to flee away from the spot and in this process, he lifted the blade from

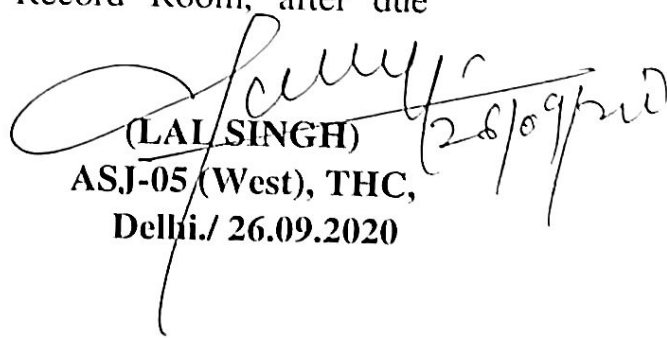
the shop/table of the barber and caused injuries to himself and hence, in view of the said scenario, these are relevant aspect so as to connect the accused with the alleged offence as well as to show his presence at the spot. Therefore, non joining of owner of the barber shop/table, the passerby from whose mobile phone PCR call was stated to be made regarding the alleged incident as well as public persons stated to be present at the spot, in the investigation are fatal to the prosecution case, particularly in the circumstances when there is no plausible explanation from the IO as to why they were not joining the investigation.

26. Thus, in view of the above discussion, the prosecution has failed to prove the offence alleged against the accused beyond reasonable doubt. Accordingly, the accused Suraj Bhan is acquitted for the offence punishable U/s 392/397/506 IPC and U/s 25 Arms Act.

27. Accused to furnish Bail Bond in terms of Section 437-A Cr.P.C., for a sum of Rs.10,000/- with one surety in the like amount.

28. File be consigned to Record Room, after due compliance.

**Announced in the Open Court  
on 26.09.2020**

  
(LAL SINGH)  
ASJ-05 (West), THC,  
Delli./ 26.09.2020

IN THE COURT OF SH. LAL SINGH, ASJ-05, WEST DISTRICT,  
TIS HAZARI COURT, DELHI.

Case No.575/18

FIR No. 285/18

PS: Mundka

State Vs. Suraj Bhan

Matter is taken up today in terms of order bearing No.26/DHC/2020 dated 30.07.2020 and order bearing No.322/RG/DHC/ 2020 dated 15.08.2020 of the Hon'ble High Court of Delhi and order bearing No.545/13726-13784/Misc/Gaz.DJ West/Delhi/2020 dated 31.08.2020 of the Ld. District & Sessions Judge, West, THC, Delhi.

26.09.2020

Present : Sh. M.A. Khan, Ld. Addl. PP for the State through VC.  
Sh. R.P. Sarwan, Ld. Legla Aid Counsel for the accused.  
Accused Suraj Bhan produced through VC from Central Jail No.1,  
Tihar.

Matter is listed today for judgment.

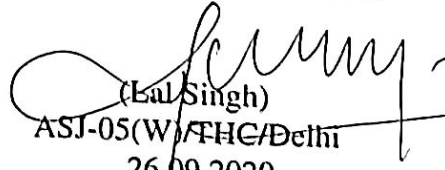
Vide separate judgment, accused is acquitted for the offence punishable U/s 392/397/506 IPC and U/s 25 Arms Act.

Further, it is ordered that case property of this case, if any, be disposed of/destroyed after expiry of period of filing of appeal, if any.

Accused to furnish bail bond in terms of Section 437A Cr. P.C, for a sum of Rs.10,000/- with one surety in the like amount and same shall be remained valid for a period of six months.

At this stage, Ld. Legal Aid counsel for the accused submits that today surety of the accused is not available and he is seeking some time to furnish the bail bond in terms of Section 437-A Cr. P.C.

Put up on 28.09.2020 for furnishing bail bond U/s 437-A Cr.P.C.

  
(Lal Singh)  
ASJ-05(W)/THC/Delhi  
26.09.2020