

(2025) 08 DEL CK 0692

In the Delhi High Court

Case No : Criminal Appeal No. 280 Of 2021

Naushad @ Bombay

APPELLANT

Vs

State Govt. Of Nct Of Delhi

RESPONDENT

Date of Decision : 13-08-2025

Acts Referred:

Code of Criminal Procedure, 1973 — Section 161, 374(2)
Indian Penal Code, 1860 — Section 34, 392, 397

Citation : (2025) 08 DEL CK 0692

Hon'ble Judges : Manoj Kumar Ohri, J

Bench : Single Bench

Advocate : Rosy, Pradeep Gahalot

Final Decision : Allowed

Judgement

Manoj Kumar Ohri, J

1. The present appeals have been instituted under Section 374(2) of the Cr.P.C. seeking setting aside of the judgment of conviction dated 04.08.2021 and order on sentence dated 06.08.2021 passed by the learned ASJ-02, East District, Karkardooma Courts, Delhi in Session Case No.3550/2019 pertaining to case arising out of FIR No.163/2019 registered under Sections 392/34 IPC at PS-Mayur Vihar, Delhi.

While both the appellants were convicted for the offence under Section 392/34 IPC, the appellant/Naushad was additionally convicted for the offence under Section 397 IPC. While the appellant/Naushad was sentenced to rigorous imprisonment for 7 years, the appellant/Salman was sentenced to undergo rigorous imprisonment for a period of 4 years. Both the appellants were also directed to deposit fine of Rs.10,000/- with the State and in default of payment of fine, they were directed to undergo simple imprisonment for a further period of three months.

As both the appellants have been convicted and sentenced vide a common

judgment, the appeals are disposed of vide a common judgment.

3. The incident came into light on receipt of an information from the complainant/ Ram Kishore and recorded as GD no. 46A on 16.05.2019 at 13:51:39 hrs. In the description of the incident, it was mentioned that the caller had been robbed of four gold rings and cash of Rs.5,000/- on the flyover near foot over bridge, Mayur Vihar, Phase-1. The aforementioned DD was assigned to ASI Sunil Kumar, (PW7) who accompanied by Constable Pradeep, reached the spot, however, the complainant citing urgency left the spot without giving any statement to the police officials. The inquiry in the incident was later, assigned to SI Manoj Kumar Tomar

(PW-9) vide GD No.85A (Ex.PW3/B) on 16.05.2019 at 21:40:32 hrs. On that night, the statement of the complainant was recorded under Section 161 of Cr.P.C. wherein he stated that he was robbed of 4 gold rings weighing about 20 grams and Rs.5010/- at gunpoint.

Though FIR was initially registered under Section 392/34 IPC, the charge was framed under Section 392/397/34 IPC against the appellant/Naushad @ Bombay and under Section 392/34 IPC against the appellant /Salman @ Bappi.

5. The record reveals that the appellant/Naushad came to be arrested on 17.07.2019 in another case i.e., FIR No.231/2019 registered at PS Mayur Vihar wherein he was found in possession of pistol with one live cartridge and stolen scooty of make Activa, Honda. Thereafter, the appellant, on his disclosure about his involvement in the subject FIR, came to be arrested. When he disclosed about having committed the offence with his associate the appellant/Salman was also arrested on the same day.

6. The prosecution examined the complainant as PW-1. In his testimony, the complainant stated that on 16.05.2019, while he was going to Bhagirath Palace, Chandni Chowk on a motorcycle and had reached in front of Manas Apartment, the appellants came from behind on a scooty and enquired from him about the way to reach Seelampur. The appellants had put their scooty in front of his motorcycle. The driver of the scooty took out the key of his motorcycle. While pointing towards the appellant/Naushad, the complainant stated that he was the pillion rider who had put a pistol on his waist. While pointing out the appellant/ Salman, the complainant stated that he was the driver of scooty who robbed him of four gold rings and cash of Rs.5010/-. The appellants fled after committing the crime. He called PCR at 100 number, which reached the spot within 10 minutes. The police staff from PS Mayur Vihar also arrived at the spot. He accompanied the police officials to the police station. Since he had some urgent work, he left police station without giving any statement. Later, that day, his statement was recorded at the police station. As he had not stated about some facts, leading questions were allowed to be put. In his further deposition, he stated that he had identified the appellants on 19.08.2019 when they were being brought out by the police from a court.

7. The complainant was cross-examined, in which he stated that the PCR as well as the concerned SHO, along with 1-2 police officials, had also reached there. His statement was recorded by the police staff of the PCR van. The SHO was in police uniform. He accompanied the SHO in the gypsy to the police station where he remained for 20-25 minutes and left. Later, he went to police station again at 11.30 P.M. when his statement was recorded by SI Manoj Kumar Tomar. Thereafter, he, alongwith the IO and other officials, again visited the spot which they finally left at 12.45 am. He admitted that on none of the occasions, the police officials had asked any passerby to join the investigation. As the complainant had deposed that the appellants had enquired about the way to Seelampur and that they had parked their scooty in front of his bike, he was confronted with his statement recorded under Section 161 Cr. P.C. where he did not state so.

8. ASI Sunil Kumar who had first reached the spot was examined as PW-7. He stated that when he reached the spot, the complainant did not give any statement. Later the case was assigned to SI Manoj Kumar Tomar, who investigated the case, and he was examined as PW-9. He stated that after apprehension of the appellants in the present case, an application for TIP was moved. The appellants, however, refused to participate in the TIP proceedings. The other witnesses examined related to various aspects of the investigation.

7. Learned counsel for the appellant has called in question the impugned judgment by contending that the prosecution has failed to conclusively prove its case. The complainant is untrustworthy as his court deposition contained material improvements. The complainant had not provided any description of the appellants and thus, the identification during appearance at a later stage in the court, is of no consequence. It is further stated that the prosecution has failed to prove the ingredients of the offence as not only the alleged scooty used in the incident, but also the weapon used in commission of offence was never produced. Also, the robbed articles were never recovered in the present case. The complainant's deposition is also unreliable as his narration of events is contrary to what has been stated by the police witness. Lastly, it is contended that no public witness was examined which further weakens the prosecution case.

It is submitted that while the appellant/Naushad has remained in Judicial Custody for around six years and four months, including remission, the sentence of appellant/Salman was suspended by this Court vide order dated 17.10.2022 noting that he had undergone about two and half years of sentence.

8. Per contra, learned APP who appears for the State, while refuting the contentions submitted that though the complainant in his statement stated about use of gun, he submitted that as per the disclosure given by the appellants, the robbed articles were with another co-accused Danish, who remained untraced.

9. From the narration of facts noted hereinabove, it is revealed that the complainant's deposition is marred by material improvements and omissions.

From the initial information which was recorded in the GD till his deposition before the Court, the complainant has consistently and conveniently, either left out crucial details or invented details which are unsupported by any evidence. GD No. 46A (Ex. PW3/A) was registered around 1:50 p.m. In this, the mention of any pistol is conspicuously absent. The pistol was introduced hours later around 11 pm at night when the complainant gave his statement to the police, which is a material improvement.

10. There are several material discrepancies between the deposition of the complainant and his initial statement regarding the description of the incident. The factum of the appellants enquiring of the way to Seelampur or parking their scooty in front of the bike of the complainant was never mentioned in the statement given under Section 161 Cr.P.C. The complainant was duly confronted with his earlier statements at the time of cross-examination, however he could not furnish any satisfactory explanation. It also belies logic that despite the incident taking place in afternoon, the complainant could furnish no description of the appellants or the make or details of the scooty except the colour. It is nobody's case that any gunshot was fired. The testimony of the complainant on the aforesaid aspect, thus, is held to be untrustworthy.

11. It so appears that the complainant in his deposition has described a series of events which occurred in the aftermath of the incident which are not supported by even the police witnesses. In his court deposition, he stated that on being called on 100 number, PCR had reached in 10 minutes and also recorded his statement, however, no such statement is available on record. He further stated that SHO in police uniform along with 1-2 police officers had also reached the spot whereafter he accompanied them to the police station in the police gypsy. The said narration is in utter contrast to what has been stated by the police officer and seems like a figment of the complainant's imagination.

SI Sunil Kumar (PW7), who had first visited the place of incident around 2 p.m. along with Const. Pradeep, deposed that the complainant stated that he was having some urgent work and left the spot without giving any statement, rather stating that he would come to the police station in the evening. He neither mentioned that the SHO had come on spot, nor did he mention that the complainant had accompanied them to the police station in the police gypsy.

Thus, this entire narration by the complainant appears to be falsified and uncreditworthy. At this stage, the court also takes note of the fact that though the complainant has cited urgency as a reason for non-giving of statement, however, no such urgency was mentioned or explained during his examination.

12. Some other factors which merit consideration are that neither the gun used, nor the articles robbed were ever produced. The court also takes note of the fact that though the appellant/Naushad was stated to have been arrested in another FIR being found in possession of the pistol and cartridge, no attempt was made to exhibit the said pistol in the present case. Concededly, no robbed articles were

recovered in the present case. While it was contended on behalf of the State that the appellants refused to participate in the TIP, the appellants had furnished an explanation that their photographs were taken in the police station and they were shown to public persons whose identity was unclear to them.

13. It has also come in the testimony of the complainant that at none of the phases, police officials made any effort to join any public witness in the investigation. While it is true that non-joining of public witnesses by itself is not fatal to the prosecution case, that is only in the cases where other evidence put forth by the prosecution is cogent, credible and reliable. A reference may be made to the decision of Supreme Court in *Gian Chand v. State of Haryana*, (2013) 14 SCC 420 wherein it was held as under:-

35. The principle of law laid down hereinabove is fully applicable to the facts of the present case. Therefore, mere non-joining of an independent witness where the evidence of the prosecution witnesses may be found to be cogent, convincing, creditworthy and reliable, cannot cast doubt on the version forwarded by the prosecution if there seems to be no reason on record to falsely implicate the appellants.

13. It so happens that in the present case, the prosecution evidence is anything but cogent or reliable. The complainant has shown a tendency to improvise his version at every stage. The introduction of the factum of the pistol in later statement, the non-mention of the appellants asking for directions or putting their scooty in front of his own in the initial statement, the failure to give any sort of description of either of the appellants or the fact that, even the police witnesses don't support the complainant's version of the SHO coming to the spot, his statement being recorded and them going to the police station. While the incident pertains to the afternoon, the FIR came to be registered late at night. Though the complainant has stated that he had some urgent work, as has evidently been the pattern, he has failed to provide any details as to what this urgent work was.

14. While these contradictions, omissions and improvements might not be fatal to the prosecution case on their own, however, when a comprehensive view is taken of the entire facts and circumstances, these contradictions as to the material particulars cumulatively act to shake the very foundations of the prosecution version. In these circumstances, the non-joining of public witnesses despite the incident occurring on a busy public road also assumes importance. Despite all this, the conviction could still have been sustained provided that the deposition of the complainant was reliable and of a sterling quality, which is evidently not the case. Consequently, in the present case, looking into the contradictions between the version of the complainant and the police witnesses, this court is of the considered opinion that the complainant's deposition by itself is not sufficient to uphold the conviction.

15. Accordingly, the appeals are allowed and the conviction of the appellant/

Naushad under Section 392/34/397 IPC and that of appellant/Salman under Section 392/34 IPC is set aside and the appellants are acquitted of the said offences.

16. Since the sentence of appellant/Salman already stands suspended, let the appellant/Naushad be released forthwith if not required in any other case. The bail bonds filed by appellant/Salman stand cancelled and the sureties stand discharged.

17. A copy of this judgment be communicated to the concerned Trial Court as well as to the concerned Jail Superintendent.

18. Copy of this judgment be also uploaded on the website forthwith.