

**Sher Khan Vs. the State**

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**Court :** Delhi

**Decided On :** May-22-2014

**Judge :** S. P. Garg

**Appellant :** Sher Khan

**Respondent :** The State

**Judgement :**

\* IN THE HIGH COURT OF DELHI AT NEW DELHI RESERVED ON :

15. h MAY, 2014 DECIDED ON :

22. d MAY, 2014 + CRL.A. 985/2011 & CRL.M.B.No.560/2014 SHER KHAN .....  
Appellant Through : Mr.Imran Khan, Advocate. Versus THE STATE .....  
Respondent Through : Mr.Lovkesh Sawhney, APP. CORAM: HON'BLE MR.  
JUSTICE S.P.GARG S.P.GARG, J.

1. Challenge in this appeal is to a conviction recorded under Sections 392/397/34 IPC by a judgment dated 28.05.2011 of learned Addl. Sessions Judge in Sessions Case No.118/10 arising out of FIR No.90/2010 PS Kalyan Puri. By an order dated 01.06.2011, he was sentenced to undergo RI for seven years with fine ` 1,000/-.

2. Briefly stated, the prosecution case as projected in the charge-sheet was that on 26.03.2010 at about 11.00 P.M. at Khichripur Main Road, near Community Bhawan, Delhi, he and his associate Sikku (nor attested) robbed Jitender Bhati of `

1,200/- and a gold chain at knife point. The police machinery came into motion on getting information of the incident at 2316 hours and Daily Diary (DD) No.94B (Ex.PW-15/A) came into existence. HC Sukhvir Singh to whom the investigation was assigned went to the spot along with Const.Bijender and came to know that the victim had already been taken to Lal Bahadur Shastri Hospital, Khichripur, Delhi. He recorded complainant - Jitender Bhat's statement (Ex.PW-1/A) there and lodged First Information Report. Efforts were made to find out the culprits but in vain. On 07.04.2010, the appellant was arrested in case FIR No.107/10 PS Kalyanpuri. His involvement in the incident emerged pursuant to disclosure statement recorded therein. The accused declined to participate in the Test Identification Proceedings. Statements of the witnesses conversant with the facts were recorded. After completion of investigation, a charge-sheet was submitted against the appellant; he was duly charged and brought to trial. To prove its case, the prosecution examined fifteen witnesses. In 313 statement, the appellant pleaded false implication stating that his previous involvement in some criminal cases led the police to apprehend him as suspect in this case. He did not examine any witness in defence. The trial resulted in his conviction as aforesaid. Being aggrieved and dissatisfied, he has preferred the appeal.

3. Appellants counsel urged that the Trial Court did not appreciate the evidence in its true and proper perspective. No crime weapon or robbed article was recovered from the appellants possession who was arrested in some other case after about ten days of the incident. PW-4 (Deepak Nagar) disclosed in his statement before the Court that the appellant was known to him for the last two or three years and he resided in a nearby locality. Despite that, the appellant was not named in the First Information Report. The police was unable to apprehend and arrest Sikku. It is unclear as to which of the assailants had inflicted injuries to the complainant by a knife. Learned Addl. Public Prosecutor urged that the complainant, PW-2 (Mahkar Singh) and PW-4 (Deepak Nagar) have fully supported the prosecution case and no material discrepancy could be extracted to disbelieve them.

4. The incident took place at around 11.00 P.M. on 26.03.2010 when the complainant and his cousin Mahkar Singh were going to see his Bua - Bala residing at house No.147, Village Khichripur. They were waylaid by the assailants

who robbed the complainant of ` 1,200/- and gold chain at knife point and also inflicted injuries to him. The injured was taken to Lal Bahadur Shastri Hospital and was medically examined by MLC (Ex.PW-10/A). It records the arrival time of the patient at 11.20 P.M. He was admitted by Deepak Nagar (PW-4). Six incise stab wounds were found on the body. PW-10 (Dr.K.Tyagi) medically examined him and the nature of injuries was given as simple caused by sharp object. In the First Information Report lodged in promptitude, the complainant gave vivid description of the incident in which he was not only robbed but was also injured. While appearing as PW-1, he fully supported the prosecution and proved the version given to the police at the first instance without any variation. He identified the appellant as one of the assailants who was armed with a knife and inflicted injuries to him while committing robbery on his person. In the cross-examination, his testimony could not be shattered and no discrepancies or contradictions could be elicited to disbelieve him. No ulterior motive was assigned to the complainant to falsely recognise and identify the appellant as one of the assailants. The complainant had no prior animosity or acquaintance with the appellant to falsely rope him as he was a resident of village Khodna Kala outside Delhi. Multiple injuries were sustained by him in the incident and he was not expected to let the real culprit / offender go scot free and to name an innocent one. The appellant declined to participate in the Test Identification Proceedings. Adverse inference is to be drawn against him for that. Nothing has come on record to show if the appellant was shown in the police station. No such suggestion was put to the complainant in the cross-examination if he had visited the spot or the police station at any time after the incident where the appellant was shown to him. Statement of the complainant is in consonance with medical evidence and there is no variance between the two. In the absence of prior enmity, the injured / victim cannot be disbelieved. The Trial Court specifically observed in the statement of the complainant that he was having 4 inches stab injury mark on his left cheek. PW-2 (Mahkar Singh) who fled the spot due to fear brought Deepak Nagar from the residence of complainants bua and thereafter, the victim was taken to Lal Bahadur Shastri Hospital. He also identified the appellant as one of the assailants who had taken out a knife to assault Jitender Bhati.

5. It is true that PW-3 (Deepak Nagar) in his deposition before the Court claimed that the appellant Sher Khan was known to him for last two or three years as he lived in the same village Khichripur. It is also true that the appellant was not named in the First Information Report and his involvement in the present case surfaced only after he made disclosure in case FIR No.107/10 PS Kalyanpuri in which he was arrested on 07.04.2010. It appears that Deepak Nagar was not a witness to the incident and was introduced as such to strengthen the prosecution case. PW-2 (Mahkar Singh) has stated that when he and Deepak Nagar arrived at the spot, none of the assailants was present at the spot. It is unbelievable that the assailants would remain present at the spot for long duration after robbing the complainant. Exclusion of Deepak Nagars statement from consideration would not dilute or discredit the otherwise cogent and clinching evidence of the complainant coupled with medical evidence. Recovery of the crime weapon or robbed articles is not fatal to the prosecution as the appellant could be arrested only after about ten days of the incident. The appellant did not give plausible explanation to the incriminating circumstance appearing against him. The complainant attributed specific and precise role to him in the incident. The weapon used was apparently deadly as number of incised stab wounds were inflicted and one of the wounds as observed by the Trial Court was of 4 inches in size. The minimum sentence prescribed under Section 397 IPC is seven years which cannot be modified or altered.

6. In the light of above discussion, the appeal is unmerited and is dismissed. Pending application also stands disposed of. Trial Court record be sent back immediately with the copy of the order. A copy of the order be sent to the Superintendent jail for information. (S.P.GARG) JUDGE MAY22 2014/tr

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