

Mukesh Kumar vs State

Mukesh Kumar vs State

SooperKanoon Citation : sooperkanoon.com/1276309

Court : Delhi

Decided On : Jan-05-2026

Judge : Hon'Ble Dr. Justice Swarana Kanta Sharma

Appeal No. : CRL.REV.P./495/2017

Appellant : Mukesh Kumar

Respondent : STATE

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment reserved on: 18.12.2025

Judgment pronounced on: 05.01.2026

Judgment uploaded on: 12.01.2026

+ CRL.REV.P. 495/2017 MUKESH KUMARPetitioner Through: Mr. Ayush,
Amicus Curiae along with the petitioner-in- person.

versus

STATERespondent Through: Mr. Manoj Pant, APP for the State

CORAM:

HONBLE DR. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

Index to the Judgment

FACTUAL BACKGROUND	2
SUBMISSIONS BEFORE THE COURT	4
ANALYSIS & FINDINGS	6 A.
Testimonies of the Prosecution witnesses	
7 B. Recovery of the Alleged Stolen Property	9 C. Whether the Ingredients of Robbery
Are Made Out	10 D. Whether the Offence of Theft Is
Made Out	16

DR. SWARANA KANTA SHARMA, J

1. The petitioner herein has been convicted, in case arising out of FIR bearing no. 428/2015, registered at Police Station Saket, Delhi

CRL.REV.P. 495/2017 Page 1 of 18 for the commission of offence punishable under Section 392/411 of the Indian Penal Code, 1860 [hereafter IPC], by the learned ACMM, South District, Saket Courts, Delhi [hereafter Trial Court]. He was convicted vide judgment dated 02.01.2016 for offence under Section 392 of IPC and was sentenced to rigorous imprisonment for a period of seven years and payment of fine of 10,000/- vide order on sentence dated 04.01.2016 by the learned Trial Court. His appeal against the conviction, i.e. Criminal Appeal No. 27/2016, was dismissed by the learned Additional Sessions Judge, South District, Saket, New Delhi [hereafter Appellate Court] vide impugned

judgment dated 03.11.2016, however, the sentence was modified to

the extent that he has been directed to undergo rigorous imprisonment for a period of four years alongwith payment of fine of 10,000/-. By way of this revision petition, he has assailed the judgments and orders passed by the learned Trial Court and Appellate Court. FACTUAL BACKGROUND

2. The brief facts of the case, as emerging from the prosecution

version, are that on 07.04.2015 at about 8:15 a.m., the complainant, namely Arvind Singh, had been travelling in a bus plying on Route No. 34 from M.B. Road, Lado Sarai to Badarpur, within the jurisdiction of Police Station Saket. It is alleged that during the said journey, the petitioner had dishonestly removed the complainants purse from his pocket without his consent. It is further stated that one of the co-passengers had alerted the complainant about the removal

CRL.REV.P. 495/2017 Page 2 of 18 of the purse. It is further alleged that, in order to retain the stolen property, the petitioner had threatened the complainant and his friend, Jitender, with instant harm by using a blade. The purse, which allegedly contained the complainants driving licence and cash amounting to 100/-, had been recovered from the possession of the petitioner, who had been apprehended at the spot. Thereafter, the friend of the complainant had made a call at the 100 number, pursuant to which the police had reached the spot. The FIR had thereafter been registered on the basis of the complaint lodged by the complainant.

3. During investigation, the recovered purse was seized vide

seizure memo Ex. PW-1/B and a site plan was prepared. The petitioner was thereafter formally arrested. Chargesheet was filed after completion of investigation for offence under Sections IPC were framed against the petitioner

vide order dated 18.06.2015.

4. During the course of trial, the prosecution examined four

witnesses. The petitioner did not lead any defence evidence; however, his statement under Section 313 of the Code of Criminal Procedure, 1973 [hereafter Cr.P.C.] was recorded, wherein he claimed that he had been falsely implicated due to a quarrel with the complainant at the bus stop.

5. Upon conclusion of trial, the learned Trial Court convicted the petitioner for the offence punishable under Section 392 of IPC and CRL.REV.P. 495/2017 Page 3 of 18 sentenced him to undergo rigorous imprisonment for a period of seven years along with payment of fine of 10,000/-.

6. In appeal, while the learned Appellate Court upheld the conviction, it reduced the substantive sentence from seven years to four years, without any alteration in the fine imposed.

7. Aggrieved thereby, the petitioner has approached this Court by way of the present revision petition. SUBMISSIONS BEFORE THE COURT

8. The learned amicus curiae appearing for the petitioner submits

that the prosecution has failed to establish its case beyond reasonable doubt and that the findings recorded by the learned Trial Court as well as the learned Appellate Court are vitiated by a misapplication of law. It is contended that the purse of the complainant was not recovered from the possession of the petitioner. It is further argued that neither was the alleged blade, stated to have been used by the petitioner, recovered, nor did the complainant or PW-2 sustain any injury in the alleged incident. The learned amicus curiae further argues that the prosecution failed to examine any independent public witness, despite the incident having allegedly taken place in a public bus in the presence of several passengers, which casts serious doubt on the prosecution version. According to the learned amicus curiae, the essential ingredients of the

offence of robbery are not made out in the present case. It is argued that even if the prosecution version is accepted at face value, the conviction of the petitioner under Section

CRL.REV.P. 495/2017 Page 4 of 18 392 of IPC is unsustainable, as no weapon was recovered and no injury was caused either to the complainant or to PW-2, and at best, the allegations would constitute an offence of theft. The learned amicus curiae has also pointed out various inconsistencies and investigative lapses. It is also stated that no bus ticket was recovered from or produced by the complainant, PW-2, or any other co-passenger; no effort was made by the Investigating Officer (I.O.) to verify the presence of the complainant and the petitioner inside the bus; and no call detail records were placed on record to support the prosecution case. It is further contended that although the prosecution claims that all concerned persons had alighted at Saket Metro Bus Stand, which is a CCTV-covered public place, no CCTV footage was collected or produced during trial. Additionally, it is argued that the purse was not recovered from the possession of the petitioner, as the prosecution witnesses have categorically deposed that the purse was handed over to the police by PW-1 himself. This aspect, according to the learned amicus curiae, stands corroborated by the testimonies of PW-2, PW-3, and PW-4. On these grounds, it is argued that the present revision petition be allowed.

9. Per contra, the learned APP appearing for the State submits

that the offence in question is of a serious nature. It is argued that the petitioner had initially committed theft of the complainant's purse in a moving bus and, upon being apprehended, had taken out a blade and threatened the complainant with the intention of causing harm, thereby attracting the offence of robbery. The learned APP submits

CRL.REV.P. 495/2017 Page 5 of 18 that PW-1 and PW-2 have categorically deposed against the petitioner and have remained consistent in their version that the petitioner had stolen the purse of PW-1 and had threatened them by using a blade. The learned APP further argues that the petitioner has previous involvement in similar offences and that as many as nine FIRs have been registered against him, which clearly indicates that he is a habitual offender. It is also argued that although the petitioner was initially sentenced to rigorous imprisonment for a period of seven years along with payment of fine of 10,000/-, with a default sentence of two months simple imprisonment, the learned Appellate Court had already taken a lenient view by reducing the substantive sentence to four years rigorous imprisonment while maintaining the fine amount. In view of the overall facts and circumstances of the case, and since all the prosecution witnesses have supported the prosecution version, the learned APP submits that the present revision petition deserves to be dismissed.

10. This Court has heard arguments addressed by the learned amicus curiae appearing for the petitioner and the learned APP for the State, and has perused the material available on record. ANALYSIS & FINDINGS

11. The principal issue that has emerged for consideration in the

present case, upon a careful examination of the rival contentions advanced on behalf of the parties, is whether the offence alleged to have been committed by the petitioner constitutes the offence of CRL.REV.P. 495/2017 Page 6 of 18 robbery, or whether the facts on record disclose only an offence of theft simpliciter. A. Testimonies of the Prosecution witnesses

12. It is a matter of record that the prosecution examined four

witnesses in support of its case. PW-1 is the complainant, PW-2 is the complainant's friend, namely Jitendra, and PW-3 and PW-4 are the police officials associated with the investigation. No independent public witness was examined by

the prosecution

13. The statement of the complainant (PW-1) was initially

recorded under Section 161 of the Cr.P.C., on the basis of which the FIR came to be registered. Thereafter, the complainant was examined as a prosecution witness before the Court. One of the principal submissions advanced on behalf of the petitioner is that the complainant has made material improvements in his testimony. It is, therefore, necessary to examine and compare the statements of the complainant to assess the merit of this contention.

14. In his statement recorded under Section 161 of Cr.P.C., the

complainant stated that one person, i.e. the present petitioner/ accused, had been standing near him in the bus and had removed his purse from his pocket and attempted to flee. He further stated that the accused was apprehended by the passengers of the bus and that the purse was recovered from the accused by the complainant himself. It was also stated that the accused had threatened the complainant and his friend, Jitendra (PW-2), and attempted to escape. In the

CRL.REV.P. 495/2017 Page 7 of 18 complaint, the complainant specifically stated that mujhe aur mere dost Jitendra ko blade se marne ki dhamki de raha tha aur bhagne ki koshish kar raha tha.

15. When examined before the Court as PW-1, the complainant

broadly reiterated the incident. However, he made a further statement to the effect that the petitioner had threatened him and his friend by taking out a blade and by saying, Agar najdeek aaoge toh mar dunga. It is pertinent to note that this specific statement did not find mention in the complainants statement recorded under Section 161 of Cr.P.C.

16. PW-2, Jitendra, the friend of the complainant, is the only

eyewitness examined in the present case. Upon a careful perusal of his testimony, it is evident that he has substantially supported the version of PW-1. He has deposed that on 07.04.2015 at around 8:15 a.m., he and the complainant had boarded a bus from Lado Sarai and were travelling towards Saket Metro Station, when the petitioner had removed the purse of PW-1 from his pocket. He further stated that the accused was apprehended by other passengers in the bus and that the accused attempted to threaten them by using a blade.

17. PW-3 and PW-4 are the police witnesses, being the constable

and the I.O., respectively. Both witnesses deposed that they had received DD No. 11-A regarding a thief who had been apprehended at Saket Metro Station. Upon reaching the spot, they found PW-1 and PW-2 present along with the petitioner. They stated that PW-1 and

CRL.REV.P. 495/2017 Page 8 of 18 PW-2 narrated the incident that had taken place in the bus and produced the purse, which contained a driving licence in the name of the complainant and a 100 currency note. The purse was seized by PW-4 vide seizure memo Ex. PW-1/B. PW-3 further deposed that 10-15 public persons were present at the spot at that time. The personal search of the petitioner was conducted vide memo Ex. PW-1/D; however, nothing was recovered from his person.

18. Before proceeding further, it is also pertinent to note that the

complainant (PW-1) and his friend (PW-2) have consistently stated in their respective testimonies that the petitioner had threatened them by using a blade. However, it is an admitted position on record that neither the complainant nor PW-2 sustained any injury in the alleged incident.

19. On the other hand, the medical record of the petitioner is

available on record. The MLC of the petitioner reflects that he had sustained injuries, which stand corroborated by the testimonies of PW-1 and PW-2, wherein it has been stated that the petitioner was apprehended by the passengers of the bus and was beaten by them. The injuries noted in the MLC of the petitioner are as follows:

Abrasion on the left side of the nose measuring 0.5 cm. Swelling on the right lower forearm measuring 3 2 cm, accompanied by swelling and redness. B. Recovery of the Alleged Stolen Property 20. It is evident from the prosecution evidence that the purse in CRL.REV.P. 495/2017 Page 9 of 18 question had already been recovered by the complainant and his friend prior to the arrival of the Investigating Officer at the spot. The said purse was thereafter handed over to the Investigating Officer upon his arrival.

21. The recovered purse was seized by the Investigating Officer vide seizure memo Ex. PW-1/B. As per the seizure memo and the deposition of the prosecution witnesses, the complainant handed over a black-coloured purse containing a 100 currency note and the driving licence of the complainant, which was stated to have been recovered from the pocket of the pants of the petitioner.

C. Whether the Ingredients of Robbery Are Made Out

22. One of the core issues requiring consideration in the present

case is whether the offence alleged against the petitioner satisfies the statutory ingredients of robbery. For this purpose, it is necessary to examine the definition of robbery as contained in Section 390 of the IPC, which reads as under:

390. Robbery.- In all robbery, there is either theft or extortion. When theft is robbery - Theft is robbery if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause to any person death or hurt or wrongful

restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint. When extortion is robbery - Extortion is robbery if the offender, at the time of committing the extortion, is in the

CRL.REV.P. 495/2017 Page 10 of 18 presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint to that person or to some other person, and, by so putting in fear, induces the person, so put in fear then and there to deliver up the thing extorted.

23. To determine whether the offence of robbery is attracted, it is

necessary to examine when an act of theft assumes the character of robbery within the meaning of Section 390 IPC. In cases where the foundation offence is theft, every theft does not ipso facto amount to robbery. Theft is elevated to the offence of robbery only when it is accompanied by violence, or threat of violence. of a particular nature, and at a particular stage.

24. Section 390 of IPC makes it clear that theft becomes robbery

if, the offender - for the purpose of committing the theft, or while committing the theft, or while carrying away or attempting to carry away the stolen property - voluntarily: causes or attempts to cause death, hurt, or wrongful restraint; or induces fear of instant death, instant hurt, or instant wrongful restraint.

25. Thus, two essential requirements must coexist for theft to

amount to robbery. First, there must be use of violence or threat of instant violence of the nature contemplated under Section 390 of IPC. Second, such violence or threat must be directly connected with the theft, that is, it must be employed to facilitate the commission of theft CRL.REV.P. 495/2017 Page 11 of 18 or the carrying away of the stolen property.

26. In the present case, the sole basis on which the offence has

been treated as robbery, and not as theft, is the allegation that the petitioner had threatened the complainant and his friend with a blade and attempted to cause harm to them.

27. However, the evidence on record does not lend support to this

allegation. It is an admitted position that when the personal search of the petitioner was conducted in the presence of the complainant and PW-2, no incriminating article was recovered from his possession. Notably, the alleged blade, which is stated to have been used by the petitioner to threaten the complainant and his friend, was never recovered.

28. Further, the allegation of threatening with a blade itself suffers

from material inconsistencies. In the FIR as well as in the statements recorded under Section 161 of Cr.P.C., the complainant and PW-2 had merely stated that the accused had threatened to cause injury with a blade. There was no specific assertion that the accused had actually taken out or shown any blade. However, while deposing before the learned Trial Court, PW-1 introduced the allegation that the accused had taken out a blade and threatened him and his friend by saying, agar najdeek aaya toh maar dunga. PW-2, on the other hand, did not depose to any such specific threat or utterance by the accused. He neither stated that the accused had taken out a blade nor that the accused had threatened to kill him if he came close. His testimony is

CRL.REV.P. 495/2017 Page 12 of 18 confined to the statement that the accused threatened us to give injury with the help of a blade.

29. Thus, the version of PW-1 before the Court, to the extent it pertains to taking out a blade and threatening him and PW-2, does not find corroboration either from the earlier statements or from the testimony of PW-2.

30. Even if the testimony of PW-1 is accepted at its face value, the

sequence of events remains unclear as to whether the alleged threat with the blade was extended before the petitioner was apprehended and the purse recovered, or thereafter. This ambiguity is discernible clearly from the testimonies of PW-1 and PW-2 themselves.

31. PW-1, inter alia, has deposed as under:

Some passenger had seen him while he was taking out my purse. They apprehended him. The said person took out blade and threatened me and my friend by stating that "Agar

Najdeek Aaya Toh Mar Dunga". Passengers caught held

him. I got recovered the said purse from the said person inside the said bus.

32. PW-2, however, has stated:

...I alongwith my friend and public persons apprehended the accused inside the said bus. We searched the accused and found the said purse inside his left pocket of his pant. The accused threatened us to given injury with the help of a blade. Thereafter, the public persons started to beat him

33. If the version of PW-2 is taken into consideration, a clear possibility emerges that by the time the alleged threat was extended,

CRL.REV.P. 495/2017 Page 13 of 18 the stolen property had already been recovered from the possession of the petitioner. Once the stolen property stood recovered and the petitioner had been apprehended by the passengers, any subsequent threat could not have been for the purpose of committing the theft or for carrying away the stolen property. At best, such conduct may be construed as an attempt to threaten so as to escape from the custody of the passengers, but it does not satisfy any of the ingredients of Section 390 of IPC for elevating theft to the offence of robbery.

34. To reiterate, it must be noted that the specific allegation of

taking out a blade and threatening with hurt finds mention only in the testimony of PW-1 recorded before the learned Trial Court. It does not find place either in the FIR or in the statement under Section 161 of Cr.P.C. of PW-1, nor is it supported by the statement under Section 161 of Cr.P.C. or the testimony of PW-2.

35. It is also pertinent to note that no independent public witness

was examined in the present case and the prosecution case rests solely on the testimonies of the complainant and his friend. The alleged incident is stated to have occurred in a public place, namely a moving bus, where the petitioner was apprehended not only by the complainant but also by several co-passengers. It further emerges from the testimony of PW-1 that when they alighted from the bus at Saket Metro Station along with the petitioner, they were accompanied by approximately 10-15 passengers. The relevant portion of the testimony of PW-1 reads as under:

CRL.REV.P. 495/2017 Page 14 of 18 Around 10-15 passengers were alighted from the said bus at Saket Metro Station with us. All passengers i.e. 10-15 in number, were caught held and alighted accused Mukesh from bus.

36. Similarly, PW-3, while deposing before the Court, stated that upon reaching the spot, around 10-15 public persons were present there. The relevant portion of the testimony of PW-3 is reproduced hereinbelow: We met the complainant at bus stand near Metro Station. Ten- fifteen public persons were present at the spot when we reached at the spot.

37. It is well settled that when an alleged incident of robbery is

alleged to have taken place in a public place such as a bus, road, market, or train, the passengers or bystanders present at the spot are the most natural and independent witnesses. Where, despite their admitted presence, the prosecution fails to examine such witnesses and no

plausible explanation is forthcoming for their non-examination, such omission constitutes a notable lapse in the investigation. In the present case, none of the public witnesses, i.e. any other passenger travelling in the bus, was made a witness. Neither were their statements recorded under Section 161 of Cr.P.C., nor were they eventually examined before the learned Trial Court.

38. This lapse assumes more significance in the facts of the present

case, where there is non-recovery of the alleged weapon of offence i.e. blade, the absence of any injury on the complainant or PW-2, and where the conviction rests solely on the testimonies of the CRL.REV.P. 495/2017 Page 15 of 18 complainant and his friend, which themselves suffer from inter se contradictions with respect to the alleged use of a blade for threatening them.

39. In such circumstances, the prosecution evidence is required to

be scrutinised with greater circumspection, and in the considered opinion of this Court, the petitioner is entitled to the benefit of doubt as the offence punishable under Section 392 of IPC has not been proved beyond reasonable doubt. D. Whether the Offence of Theft Is Made Out

40. As discussed hereinabove, the petitioner is entitled to benefit

of doubt insofar as the offence of robbery is concerned. The question that remains for consideration is whether the acts attributed to the petitioner constitute the offence of theft.

41. The definition of theft is contained in Section 378 of the IPC, which reads as under:

Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.

42. The essential ingredients of the offence of theft under Section 378 of IPC are:

- (i) a dishonest intention to take movable property;
- (ii) such property being taken out of the possession of any person without that persons consent; and CRL.REV.P. 495/2017 Page 16 of 18
- (iii) movement of the property in order to effect such taking.

43. To constitute the offence of theft, it is not necessary that the

offender should succeed in carrying away the movable property. The offence is complete the moment the property is moved with a dishonest intention and without the consent of the person in possession thereof.

44. Applying the aforesaid principles to the facts of the present

case, it is evident that the offence of theft is clearly made out against the petitioner. The prosecution evidence establishes that the petitioner, with a dishonest intention, had removed and moved the complainants purse from his pocket without his consent. The fact that the petitioner was apprehended immediately and was unable to carry away the purse does not dilute the commission of theft, as the act of moving the property itself is sufficient to attract the offence under Section 378 of IPC.

45. Accordingly, the acts attributed to the petitioner squarely fall within the ambit of theft as defined under Section 378 of the IPC.

46. Section 379 of IPC provides for punishment of theft, which is as under:

379. Punishment for theft. -Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

47. A plain reading of Section 379 of IPC makes it evident that the offence of theft is punishable with imprisonment which may extend

CRL.REV.P. 495/2017 Page 17 of 18 up to three years, or with fine, or with both; thus conferring discretion upon the Court to award an appropriate sentence

depending upon the facts and circumstances of the case.

48. In the present case, it is not in dispute that the petitioner has

already remained in judicial custody for a period of about two years and seven months. Having regard to the nature of the offence, the period of incarceration already undergone by the petitioner, and the fact that the incident in question pertains to the year 2015, this Court is of the considered opinion that the ends of justice would be met by sentencing the petitioner to the period of imprisonment already undergone by him.

49. Accordingly, while the conviction of the petitioner under

Section 392 of IPC is set aside, the petitioner is convicted for the offence punishable under Section 379 of IPC and is sentenced to undergo imprisonment for the period already undergone.

50. The revision petition is disposed of in the above terms.

51. Before parting with the judgment, this Court places on record

its appreciation for the able assistance rendered by the learned amicus curiae, Mr. Ayush, who argued the matter on behalf of the petitioner and assisted this Court in the effective adjudication of the case.

52. The judgment be uploaded on the website forthwith. DR. SWARANA KANTA SHARMA, J JANUARY 05, 2026/zp TD/RB CRL.REV.P. 495/2017 Page 18 of 18

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com