

**THE COURT OF SH. KAPIL KUMAR  
METROPOLITAN MAGISTRATE-05, CENTRAL,  
TIS HAZARI COURTS, DELHI**

**CNR No. DL CT-02-008520-2019  
CIS No. 5075/19  
FIR No. 35/19  
PS. Daryaganj  
State Vs Wasim @ Akkil  
U/s. 394/411/34 IPC**

**JUDGMENT  
(Through VC)**

- |                                      |                                   |
|--------------------------------------|-----------------------------------|
| 1) The date of commission of offence | : 07.02.2019                      |
| 2) The name of the complainant       | : Kuldeep Kumar<br>S/o Sohan Lal  |
| 3) The name & parentage of accused   | : Wasim @ Akkil<br>S/o Islamuddin |
| 4) Offence complained of             | : 394/411/34 IPC                  |
| 5) The plea of accused               | : Pleaded not guilty              |
| 6) Final order                       | : Convicted                       |
| 7) The date of such order            | : 22.07.2020                      |

**Judgment announced on : 22.07.2020**



**THE BRIEF REASONS FOR THE JUDGMENT:**

- 1) The case of prosecution against the accused is that on 07.02.2019 at about 2:30 PM near Delite Cinema, Asaf Ali Road, he along with his associate (since not traceable) in furtherance of their common intention committed robbery of mobile phone make Samsung J-2 Pro and Rs 20,000/- from the complainant and while committing robbery caused simple hurt to the complainant by sharp edged weapon.
- 2) After completion of investigation, charge sheet was filed against the accused. In compliance of Sec. 207 Cr.PC, documents supplied to the accused. Arguments on point of charge were heard. Vide order dated 23.04.2019, a charge u/s 394/34 IPC, in alternative U/s 411 IPC, was framed upon the accused, to which he pleaded not guilty and claimed trial.
- 3) In support of its case, prosecution has examined five witnesses. Accused not disputed the factum as to the registration of present FIR ExA1; DD no. 48A dated 07.02.2019 ExA2 and MLC of the complainant dated 07.02.2019 ExA3. After conclusion of prosecution evidence statement of accused was recorded U/s 313 Cr.PC(as per section 281(1) Cr.PC) in which accused denied all the allegations and opted not to lead DE.
- 4) I have heard the arguments of Ld. APP for State and Ld Counsel for accused. I have also perused the record carefully.
- 5) It is the cardinal principle of criminal justice delivery system that the prosecution has to prove the guilt of the accused beyond reasonable doubts. No matter how weak the defence of accused is but the golden rule of the criminal jurisprudence is that the case of prosecution has to stand on its own legs.



6) The prime witness of the present case is the complainant Kuldeep Kumar examined as PW1 by the prosecution. PW1 deposed that on 07.02.2019 he boarded the bus of rote no. 753 from Paharganj to go to Red Fort. He deposed that at about 2:30 PM when the bus reached near Delite Cinema he was manhandled by two persons. He deposed that one person took out his mobile phone and Rs 20,000/- cash from the right hand side pocket of his jeans and tried to hand over those articles to his associate. He deposed that he apprehended that boy with the help of public person but in the meantime the associate of the accused fled away from the spot. The complainant/PW1 correctly identified the accused as one of the person who robbed him. PW1 further deposed that when the accused was apprehended by him he took out some sharp edged weapon and hit him on his hand. He deposed that someone called at 100 number and police came at the spot. PW1 further deposed that Rs 5000/- in the denomination of currency notes of Rs 500/- were recovered from the possession of the accused. He deposed that PCR took him to the LNJP Hospital and there only his statement Ex.PW1/A was recorded. He deposed that police seized Rs 5000/- from the possession of the accused vide seizure memo Ex.PW1/B and also prepared site plan Ex.PW1/C. The accused was arrested and personally searched vide Ex.PW1/D and Ex.PW1/E respectively. PW1 identified the currency notes which were recovered from the possession of the accused by the photocopies Ex.P1 (colly).

7) Perusal of examination-in-chief of complainant reveals that he supported the case of the prosecution in all aspects. His testimony is specific qua the identification of the accused and to the entire incident. PW1 was cross-examined by Ld Defence Counsel but nothing came on record helpful

for the case of the accused.

8) During the cross-examination, Ld Defence Counsel tried to bring on record the defence of mistaken identity. Ld Defence Counsel put a suggestion to the complainant that some other person took out articles from his pocket and the accused has been falsely implicated as he was standing behind the complainant. The complainant denied this suggestion and impliedly denied the suggestion of false implication of the accused or the mistaken identity. However, by virtue of this suggestion of Ld Defence Counsel that the accused was standing behind the complainant the presence of the accused at the spot has been impliedly admitted. This further strengthens the case of the prosecution as far as the identification of the accused is concerned.

9) This court does not find any reason to disbelieve the testimony of the complainant. Complainant specifically deposed that he apprehended the accused and there he was assaulted by the accused on his hand by sharp edged weapon for which blood started oozing out from his hand. The testimony of complainant has natural flow. During the cross-examination complainant deposed that all the documents were prepared at the spot but he signed those documents in the hospital as he suffered injury in his hand. This kind of answers can be there from a natural witness only.

10) It was argued that the police officials not made any public person as witness in the present case and the complainant is interested witness. This submission of Ld Defence Counsel has no merits as it is well settled law that the quantity of the evidence is not material rather the quality of the evidence is material. The complainant sustained the test of the cross-examination and he is the victim of the present case. He being the injured witness, his

testimony is required to be given extra weightage. Reliance on this aspect can be placed upon judgments titled as **Ram Lagan Singh vs State of Bihar AIR 1972 SC 2593**; **Dinesh Kumar vs State of Rajasthan (2008) 8SCC 270**; **Vishnu & Ors vs State of Rajasthan (2009) 10SCC 477** and **Annareddy Sambasiva Reddy vs State of Andhara Pradesh AIR 2009 SC 2261**.

11) The issue as to the evidentiary value of injured witness was taken by Hon'ble Apex Court in judgment titled as **Jarnail Singh vs State of Punjab (2009) 9SCC 719** wherein it was held that-

*'Darshan Singh (PW4) was an injured witness. He had been examined by the doctor, his testimony cannot be brushed aside lightly. He had given full details of the incident as he was present at the time when the assailants reached at the tubewell. In Shivalinghappa Kallayanappa Vs State of Karnataka 1994 SUPP (3) SCC 235, this court held that the deposition of injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case. It is proved that he suffered the injuries during the said incident.*

12) On the *trite* that the testimony of injured has a greater sanctity the reliance could also be placed upon judgments titled as **State of UP vs Kishanchand (2004) 7SCC 629**; **Krishan vs State of Haryana 12 SCC 459** and **Abdul Sayeed vs State of MP Criminal Appeal no. 1243/2007**

decided on 14.09.2010 by Hon'ble Apex Court.

13) Being guided by the above-mentioned judgments it can be safely stated that the complainant of the present case is a trustworthy witness. He is not a interested witness rather he is the natural witness. The testimony of complainant instills the faith of this court.

14) The testimony of the complainant also got corroborated by the testimony of police officials specifically as that of PW2 ASI Mukesh Kumar, PW3 Ct Rahul and PW5 ASI Satish Kumar. They deposed as to the presence of the accused in the spot when they reached at the spot after receiving the information as to the present case, the fact as to the injury in the hand of the complainant and the recovery of Rs 5000/- from the possession of accused. All these police officials sustained the test of cross-examination on these aspects.

15) The testimony of complainant that he sustained injury on his hand when he was assaulted by the accused while attempting to flee from the spot got corroborated vide documentary evidence in the form of MLC Ex.A3. The accused not disputed the MLC ExA3 in which it is mentioned that the complainant suffered incised wound on his hand due to a sharp weapon. This MLC was got prepared just after the incident and is a reliable document. This proves that the complainant suffered simple injuries in the incident in question when he was assaulted by the accused.

16) In view of the above-discussion it is proved on record that on 07.02.2019 at about 2:30 PM near Delite Cinema accused along with his unknown associate in furtherance of their common intention robbed the complainant of his mobile phone and cash of Rs 20,000/-. It is also proved on record that the accused assaulted the complainant by a sharp weapon

while he was trying to flee from the spot after committing robbery for which complainant suffered simple injuries on his hand. In these circumstances it is clear that during the cause of committing robbery the accused voluntarily caused simple hurt to the complainant and thus all ingredients of the offence U/s 394/34 IPC proved on record against the accused and he is convicted accordingly.

17) Since the accused is convicted for the offence U/s 394/34 IPC he cannot be convicted for the offence U/s 411 IPC for which he was charged in alternative.

18) Accordingly, accused Wasim @ Akkil S/o Islamuddin is hereby convicted for the offence U/s 394/34 IPC. Copy of judgment be supplied to the convict free of cost. Be heard on point of sentence.

Announced through VC  
on 22.07.2020

(Kapil Kumar)  
MM-5/Central District  
Tis Hazari Courts/Delhi,

Received copy of  
Judgement.

  
22/7/20



L.T.B  
Wasim