

(2025) 12 DEL CK 0015

Delhi HC

Case No: Criminal Appeal No. 281 Of 2018

Arun Naidu@ Anna(In
Jc)Presently At Tihar Jail

APPELLANT

Vs

State(Nct Of Delhi)

RESPONDENT

Date of Decision: Dec. 8, 2025

Acts Referred:

- Code of Criminal Procedure, 1973- Section 313, 428
- Indian Penal Code, 1860- Section 34, 394, 397, 411
- Arms Act, 1959- Section 25, 27, 54, 59

Hon'ble Judges: Manoj Kumar Ohri, J

Bench: Single Bench

Advocate: A. K. Tiwari, Digam Singh Dagar

Final Decision: Allowed

Judgement

Manoj Kumar Ohri, J

CRL.M.A. 11960/2018 in CRL.A. 695/2018

1. This is an application filed by the appellant/Lalit Singh @ Sanjay @ Nepali seeking condonation of delay of 40 days in filing the captioned appeal.
2. For the reasons stated therein and considering that the impugned judgment is common to both appeals, the present application is allowed and the delay of 40 days in filing of the appeal is condoned.
3. The present application is disposed of as above.

CRL.A. 281/2018 and CRL.A. 695/2018

1. These connected appeals seek to assail the judgment of conviction dated 07.02.2018 and the order on sentence dated 17.02.2018 passed by the learned Additional District and Sessions Judge, South District, Saket Courts, New Delhi in SC No. 7825/2016 arising out of FIR No. 471/2016 registered under Sections 394/34 IPC at P.S. Saket.

The appellant/Lalit Singh @ Sanjay @ Nepali was convicted under Sections 394/34 and 397 IPC alongwith Sections 25/27/54/59 of the Arms Act, while the appellant/Arun Naidu @ Anna was convicted under Sections 394/34 and 411 IPC.

The appellant/Lalit Singh was sentenced to undergo RI for a period of 7 years, for the offence punishable under Section 397 IPC; and RI for a period of 7 years alongwith fine of Rs.5,000/-, in default whereof he would undergo RI for 6 months, for the offence punishable under Section 394/34 IPC. The sentences were directed to run concurrently, the benefit under Section 428 Cr.P.C. was granted to the appellant/Lalit Singh, and no separate term was imposed for the offences under the Arms Act as the aforesaid sentences were held to be sufficient to subsume the same.

The appellant/Arun Naidu, on the other hand, was sentenced to undergo RI for a period of 4 years alongwith payment of fine of Rs.5,000/-, in default whereof he would undergo SI for 6 months, for the offence punishable under Section 394/34 IPC. He was also sentenced to undergo RI for a period of 2 years for the offence punishable under Section 411 IPC. The sentences awarded to him, too, were directed to run concurrently; and he, too, was granted the benefit under Section 428 Cr.P.C.

2. The case of the prosecution is that on 19.06.2016, at about 12:30 A.M., Vijay Kumar Sharma (PW-1) and Rajat Gupta (PW-2) were travelling from Nizamuddin Railway Station to Saket in a TSR driven by Chander Dev (PW-4). They were intercepted by three boys on a motorcycle, including the appellants herein. The two appellants alighted from the bike and went to either side of the TSR. While the appellant/Lalit Singh approached PW-1 and demanded money at knifepoint, the appellant/Arun Naidu came to PW-2's side. On PW-1's refusal to part with his money, the appellant/Lalit Singh stabbed him twice on the left thigh and called out to the third boy on the motorcycle, who came towards them with a bigger knife, upon seeing which out of fear PW-1 handed over his purse to them, from which they removed Rs.3,500/- before returning the purse back to PW-1. The appellant/Arun Naidu, on the other hand, removed Rs.32,000/- from PW-2. The injured PW-1 was taken to the hospital thereafter, where his MLC recorded two stab wounds admeasuring 1-2 cm on the back side of his left thigh, which were later opined to be simple in nature.

3. The appellant/Lalit Singh was found driving a stolen motorcycle on 20.06.2016 and was consequently arrested in connection with FIR No. 57/2016 registered at P.S. Ambedkar Nagar. The appellant/Arun Naidu was arrested the next day, on 21.06.2016. The third assailant in question was a juvenile and was therefore tried separately. Upon completion of investigation, the chargesheet was filed, and a charge under Sections 394/34 IPC was framed against both the appellants; with additional charges under Sections 397 IPC and Sections 25/27/54/59 Arms Act being framed against the appellant/Lalit Singh; and an additional charge under Section 411 IPC being framed against the appellant/Arun Naidu, to all of which they respectively pleaded not guilty and claimed trial.

4. The prosecution examined 15 witnesses in support of its case, with the most material witnesses being Vijay Kumar Sharma/PW-1, the injured witness; Rajat Gupta/PW-2, the other victim present in the TSR; and Chander Dev/PW-4, the driver of the concerned TSR.

ASI Bidhi Chand (PW-3) recorded the FIR. SI Vijay Pal (PW-5) deposed as to the apprehension of the CCL. ASI Raj Kumar (PW-6) proved the arrest of the appellant/Lalit Singh and the recording of his disclosure statement. Ct. Sukhbir (PW-7) deposed as to the recoveries made at the instance of the appellants from Jahapanah jungle, stating that first the appellant/Lalit Singh led the police party to a Pir Baba Majar, from where he got recovered a knife lying buried in the earth (Sketch is Ex. PW-7/A and Seizure Memo is Ex. PW-7/B); and thereafter the appellant/Arun Naidu led the police party to an entry gate of the Jahapanah jungle, from where he unearthed a polythene bag containing Rs.3,500/- (Seizure Memo is Ex. PW-7/C). PW-8/Dr. Sarmad and PW-11/Dr. Kamal Preet Palta proved the MLC of the injured witness/PW-1 and the opinion that the injuries sustained by him were simple in nature. PW-12/Ms. Pooja Shrotriya, Junior Forensic Chemical Examiner, deposed as to the finding of human blood on the recovered knife and seized clothes of the injured witness PW-1. PW-9/ASI Krishan Kumar and PW-13/SI Ravi Shankar Tyagi were the primary Investigating Officers. PW-10/HC Vijender, posted as MHCM at the relevant time, proved the Malkhana entries and the sending of sealed exhibits to the FSL for examination. PW-15/Ct. Ajit Singh deposed as to the deposit of the stolen motorcycle in relation to the appellant/Lalit Singh's arrest.

5. PW-1/Vijay Kumar Sharma stated that he and PW-2 had come from Agra for an interview, hired a TSR from Nizamuddin Railway Station to Saket Metro Station, and near

Select City Mall around midnight a motorcycle with three boys stopped them. Two came towards the TSR. The appellant/Lalit Singh, identified by the witness in Court, showed him a knife and said "paise nikal paise nikal". On the refusal of the witness, he was stabbed twice on his left thigh, upon which he became perturbed but still did not hand over his purse. Thereafter, the appellant/Lalit Singh called out to the boy (CCL) on the bike, who came towards them with a larger knife. At this point, the witness handed over his purse, from which Rs.3,500/- were removed and the purse was handed back to the witness. The other assailant, identified as the appellant/Arun Naidu, took Rs.32,000/- from PW-2. The appellants thereafter fled. The witness requested the TSR driver to drive him to the nearest hospital as he was bleeding profusely. PW-1 identified the appellants in Court, as well as the knife in question as Ex.P-1. Notably, he deposed that the police had taken him to some other police station to identify the accused persons.

In cross-examination, he accepted the suggestion that he was called to the police station almost every alternate day and that he would go there with his friend and a couple of other persons. He admitted that the knife identified by him in Court had been shown to him by the police and that the I.O. had told him that he would be required to identify the same in Court. He further admitted that the I.O. had called him to identify the accused and he was shown the concerned knife on the same day. He also stated that he had first gone to P.S. Saket, and then to another police station.

6. PW-2/Rajat Gupta corroborated PW-1's testimony on material particulars, including that 3 boys on a motorcycle had stopped the TSR that he and PW-1 were travelling in, and that the appellant/Lalit Singh (identified by him in Court) stabbed PW-1 and removed Rs.3,500/- from him while the appellant/Arun Naidu (identified by him in Court) removed Rs.32,000/- from the witness. He identified the recovered knife as the one used in the incident in question upon it being produced in Court. The witness stated that 2-3 days after the incident, the police had called him for TIP.

In cross-examination, he admitted that he had identified the accused once or twice at police station and once in Court during TIP. The witness stated that he did not know at which police station he had identified the accused as the police had taken him there, however, he stated that the said police station was different and not the same as the one he and PW-1 used to go to in connection with the present case. He further stated that it was 2-3 days after the incident that they first identified the accused persons at the police station.

7. PW-4/Chander Dev, the driver of the TSR, stated that on the night of 18/19.06.2016 he had picked up two passengers from Nizamuddin Railway Station to take to Saket Metro Station. Near Select City Mall, 3 boys on a motorcycle overtook and stopped the TSR, robbed both passengers, and also stabbed one of them. He stated that he could not identify anyone in Court as the persons who had looted his passengers; that he could not describe the two boys who had looted his passengers; and that he did not want to say anything more about the case. Upon the appellants being shown to the witness one by one, he failed to identify either of them. He described the motorcycle as red with some writing on the number plate.

In his cross-examination, he stated that he may not be able to identify even the passengers who were looted in his TSR if they came before him. He stated that the motorcycle in question did not have a number plate.

8. The statements of both the appellants were recorded under Section 313 Cr.P.C., wherein they both generally denied all the allegations put to them and claimed false implication. They denied knowing each other and being present at the spot of the incident at the relevant time. With respect to the alleged recovery, the appellant/Arun Naidu stated that the police simply removed Rs.3,500/- from his pocket and that he was not even taken to Jahanpanah jungle. The appellant/Lalit Singh also denied being taken to Jahanpanah jungle and stated that no knife was recovered at his instance. The appellant/Arun Naidu further put forth a defence of alibi by stating that he was severely ill since before the date of the incident and was recovering at his sister's house at the relevant time. The appellant/Lalit Singh took the defence that he was falsely embroiled in the present case after being wrongly arrested in connection with another case registered at a different police station (P.S. Ambedkar Nagar). Notably, both the appellants stated that their photographs were taken and shown to the key witnesses and the said witnesses had deposed based on the same.

9. While the appellant/Lalit Singh did not lead any defence evidence, the appellant/Arun Naidu examined his mother, Smt. Tulsi, as DW-1; and his sister, Pooja, as DW-2. Both the defence witnesses deposed as to producing the appellant/Arun Naidu before the police on 19.06.2016 and stated that he had been severely ill since before the date of the incident and therefore could not have been present at the spot of the incident at the time of the alleged occurrence.

10. Learned counsel for the appellant/Arun Naidu submits that the appellant has been falsely implicated in the present case. It is submitted that no weapon was recovered from him; that the alleged recovery of Rs.3,500/-from an open place near a gate of the Jahapanah jungle without the joining of any public witnesses is unbelievable; and that the TSR driver/PW-4 did not identify him. It is contended that even if the recovery of money stated to have been carried out at the appellant's instance is believed, at best a case under Section 411 IPC is made out, and he has been convicted under Section 394 IPC through the aid of Section 34 IPC, which is unsustainable.

11. Learned counsel for the appellant/Lalit Singh submits that the appellant was arrested in connection with FIR No. 57/2016 registered at P.S. Ambedkar Nagar and has been falsely implicated in the present case. It is submitted that PW-4 did not identify the appellant/Lalit Singh; that the alleged recovery of the knife that was statedly buried under the ground at Jahapanah jungle, without the joining of any public witnesses, is unreliable; and that there is no expert opinion linking the recovered knife to the injury in question, which in any event was opined to be simple in nature. It is further contended that the FSL report only showed human blood with no reaction; and that no prints were lifted either from the TSR or the knife.

12. The learned APP for the State has opposed the present appeals and supported the impugned judgment. It is submitted that PW-1 and PW-2 are reliable and consistent witnesses whose testimonies clearly establish the role of both appellants. Learned APP argues that PW-4, though unable to identify the appellants, corroborated the incident on material particulars. It is further urged that the knife recovered at the instance of the appellant/Lalit Singh was found to contain human blood and that the recovery of money at the instance of the appellant/Arun Naidu formed part of the same chain of events. He submits that the non-joining of public witnesses during recovery proceedings is not fatal to the prosecution case in light of the credible victim testimonies and the corroborative medical as well as forensic evidence on record.

13. I have heard the learned counsels for the parties and gone through the record.

14. PW-1 has categorically deposed that the police had taken him to another police station to identify the accused persons. In his cross-examination, he admitted that he was called to the police station almost every alternate day and that the knife later identified by him in Court had already been shown to him by the police, with the I.O. coaching him that he would be required to identify it in Court. He further admitted that the I.O. had called him specifically for the purpose of identifying the accused and the knife, and that he had gone first to P.S. Saket and thereafter to another police station.

15. PW-2 similarly stated that 2-3 days after the incident he was called by the police for TIP proceedings. In cross-examination, he once again stated that he and PW-1 had identified the accused persons for the police and that he had identified them once or twice at a police station and once in Court during TIP. Notably, no TIP was conducted in the present case as the appellants had refused to join the proceedings. Both the appellants have stated in their respective statements under Section 313 Cr.P.C. that their photographs were taken and shown to the key witnesses and that the said witnesses had deposed based on the same.

16. Despite the appellants being strangers to PW-1 and PW-2, no judicial TIP was conducted. The purpose of a TIP is to establish that a witness claiming to have seen the culprit at the time of the incident can identify them in the midst of other people. The Supreme Court in Gireesan Nair Vs. State of Kerala (2023) 1 SCC 180 has held as follows:-

"28. We may, at the outset, note that the eyewitnesses questioned by the prosecution did not give out the names or identities of the accused participating in the riot and involved in the destruction of public property. Therefore, the IO (PW 84) had to necessarily conduct a TIP. The object of conducting a TIP is threefold. First, to enable the witnesses to satisfy themselves that the accused whom they suspect is really the one who was seen by them in connection with the crime. Second, to satisfy the investigating authorities that the

suspect is the real person whom the witnesses had seen in connection with the said occurrence. Third, to test the witnesses' memory based on first impression and enable the prosecution to decide whether all or any of them could be cited as eyewitnesses to the crime (*Mulla v. State of U.P.* [*Mulla v. State of U.P.*, (2010) 3 SCC 508, paras 44, 45 & 55 : (2010) 2 SCC (Cri) 1150]).

29. TIPs belong to the stage of investigation by the police. It assures that investigation is proceeding in the right direction. It is a rule of prudence which is required to be followed in cases where the accused is not known to the witness or the complainant (*Matru v. State of U.P.* [*Matru v. State of U.P.*, (1971) 2 SCC 75, para 17 : 1971 SCC (Cri) 391]; *Mulla v. State of U.P.* [*Mulla v. State of U.P.*, (2010) 3 SCC 508, paras 41 & 43 : (2010) 2 SCC (Cri) 1150] and *C. Muniappan v. State of T.N.* [*C. Muniappan v. State of T.N.*, (2010) 9 SCC 567, para 42 : (2010) 3 SCC (Cri) 1402]).

17. Dock identification, in a case where the accused is not previously known to the victim, especially when it takes place after a long time has passed between the incident and the identification in Court, is a weak piece of evidence. Reference may be made to the decision of Supreme Court in Nazim Vs. State of Uttarakhand 2025 SCC OnLine SC 2117, wherein it was held that:-

"41. Both PW-3 and PW-4 thus identified the Appellants for the first time in court. No TIP was conducted, even though PW-3 admitted he had never known the accused earlier. It is well settled that dock identification without a prior TIP has little evidentiary value where the witness had no prior familiarity with the accused. In P. Sasikumar v. State3, this Court acquitted the accused on precisely this ground..."

42. The Court further explained that TIP is only part of the investigative process and that the substantive evidence is dock identification; however, where the accused is a stranger to the witness and no TIP is held, courts must exercise extreme caution in accepting such identification. The following paragraph of P. Sasikumar (supra) is indicative of the same:

"21. It is well settled that TIP is only a part of police investigation. The identification in TIP of an accused is not a substantive piece of evidence. The substantive piece of evidence, is only dock identification that is identification made by witness in court during trial.

23. [...] In cases where an accused is a stranger to a witness and there has been no TIP, the trial court should be very cautious while accepting dock identification by such a witness.

24. [...] We are of the opinion that not conducting a TIP in this case was a fatal flaw in the police investigation and in the absence of TIP the dock identification of the present appellant will always remain doubtful. Doubt always belongs to the accused."

18. Once the appellants were already shown to PW-1 and PW-2 at the police station(s), their dock identification in Court became meaningless. In Jafar Vs. State 2024 SCC OnLine 310, the complainant was already shown to the accused in the police station. No TIP was conducted. Though he identified the accused in Court, not much value was assigned to it by the Supreme Court, which held as under:-

"8. Anil Kumar (PW-8), who is the Investigating Officer (IO), has also admitted that PW-1 identified the accused persons by seeing them at the police station. He has further admitted that no identification parade was conducted. As such, it can be seen that the identification of the appellant herein by PW-1 is quite doubtful as no identification parade has been conducted. PW-1 clearly states that he has identified the accused persons since the police had shown him those two people.

9. In the absence of proper identification parade being conducted, the identification for the first time in the Court cannot be said to be free from doubt. ..."

19. PW-2 was unable to specify at which police station these identifications took place, stating only that it was not the police station they ordinarily visited for the present case. He further stated that the first police station identification occurred 2-3 days after the incident in question.

20. The evidence on record unmistakably establishes that the appellants were shown to both the victims at a police station prior to their identifying them in Court during trial, and in view of the decisions as reproduced above, the same does not hold much value.

21. Furthermore, the TSR driver/PW-4, who is the only independent witness to the incident in question, did not identify either appellant even when they were shown to him individually in Court. His testimony has not provided any corroboration on the critical issue of identity.

22. It is also worth mentioning that the alleged recoveries of the weapon of offence as well as the cash from under the ground in Jahapanah jungle stand on an equally fragile footing. No public witnesses were made party to the concerned recovery proceedings, and both the appellants have categorically denied ever being taken to Jahapanah jungle

by the police.

23. Although the FSL report confirms the presence of human blood on the recovered knife, there is nothing on record to show that the said blood was of the injured witness/PW-1. No DNA analysis was conducted, despite such analysis being both feasible and invaluable in linking the recovered knife to the incident in question.

24. In these circumstances, where both PW-1 and PW-2 have categorically admitted that the appellants were shown to them at a police station before their identification in Court; where PW-1 has acknowledged that the I.O. had showed him the knife in advance and coached him as a witness to identify it in Court; where both victims admitted being taken to a different police station for identification of the accused; where PW-4 failed to identify either appellant; and where the recoveries are shrouded in doubt, this Court is of the considered view that the prosecution has not managed to establish the identity or involvement of the appellants beyond reasonable doubt. The benefit of doubt in such circumstances enures to the appellants.

25. Accordingly, the impugned judgment of conviction and the order on sentence are set aside and the present appeals are allowed.

26. The personal bonds furnished by the appellants stand cancelled and their sureties are discharged.

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