

## Ajay Kumar and Another Vs State (NCT of Delhi)

**Court:** Delhi High Court

**Date of Decision:** May 22, 2013

**Acts Referred:** Penal Code, 1860 (IPC) â€” Section 34, 392, 393, 394, 397

**Citation:** (2014) 1 JCC 317

**Hon'ble Judges:** Mukta Gupta, J

**Bench:** Single Bench

**Advocate:** Nawal Kishore and Appellants in Person, for the Appellant; Manoj Ohri, APP and PSI Seema, PS Mehrauli, Delhi, for the Respondent

### Judgement

Mukta Gupta, J.

By the present appeal the Appellants impugn the judgment dated 6th March, 2003 whereby they have been convicted for

offence punishable under Sections 392 /34 IPC and the order on sentence dated 6th March, 2003 whereby they have been directed to undergo

Rigorous Imprisonment for a period of three years and to pay a fine of Rs. 1,000/- each and in default of payment of fine to undergo Simple

Imprisonment for a period of one month each. FIR No. 426/2000 was registered at PS Mehrauli, Delhi under Sections 394 /397 /34 IPC on the

statement of one Karambir Singh who stated that about 2.00 p.m. on 4th July, 2000 he had gone to the bus stand to drop his children. After he

made his son board the bus and was helping his other son in boarding the bus, one person removed Rs. 560/- from his right side pocket of the

pant. He dragged that boy whose name later on came to be known as Ajay. In the meantime, companion of Ajay, whose name later came to be

known as Rajesh started beating him. The Complainant did not release Ajay from his grip and thus Ajay took out the knife and gave a blow on his

right hand as a result he got released. Both these people boarded a DTC bus. The Complainant chased the bus in the auto rickshaw and when the

bus stopped at the red light of Andheria Mod, he caught Ajay when he was getting down from the bus and again Rajesh came to his help and

started beating him. He raised alarm and with the help of the crowd he took Ajay to the provisional store and informed the police control room. In

the meantime Rajesh was also apprehended by the public.

2. PW 3 the Complainant though reiterated the version in the witness box however, failed to identify the Appellants. His version was that while he

was standing on the foot board of the bus someone removed Rs. 560/- kept in his right side pocket of his pant. He also stated that two persons

got down from the bus along with him and the bus left. When the culprit put his hand in the pocket of his pant, he caught his hand however, he was

able to release from his clutches and thereafter both these persons got down from the bus. It is thus not clear as to whether the incident took place

on the foot board of the bus or after getting down from the bus. This witness has further stated that when he told those persons that they removed

cash from his pocket, one of them gave a blow on his right hand and thereafter both of them boarded another bus. He chased them in the auto and

at the red light of Andheria Mod, he put the auto in front of the bus. Those two persons got down from the bus when he caught one of them. The

other person did not try to run away and both of them started beating him. The Complainant was given fist blows by those persons. He took one

of them to nearby provisional store and the other person followed them to that shop. They called up the police from the provisional store. They

were handed over to the police. Even on cross-examination by the learned APP this witness could not admit or deny the suggestion that the

Appellant present in Court were persons who had beaten him and were handed over by him to the police. He also denied the suggestion that the

Appellant Ajay dragged him and the Appellant Rajesh gave beatings to him. He further denied that the Appellants were the persons whom he

apprehended when he got down from the bus at the red light of Andheria Mod. Thus in the Court this witness has not identified the Appellants as

the person who committed the offence.

3. PW 2 ASI Gopal Singh stated that he was posted at PCR van and on receiving the information when he reached the spot, the public had caught

the Appellants herein. He handed over these two Appellants and the Complainant to the Duty Officer at PS Mehrauli. The version of this witness

thus corroborates the testimony of PW 3 and identification has been proved by him.

4. The Appellants were apprehended immediately after the incident. Neither the amount of Rs. 560/- nor the weapon of offence has been

recovered from their possession. No effort has been made by the police to trace whether the money or the weapon of offence were left by the

accused in the second bus which they boarded.

5. Further PW 4 Raj Kumar, the person who was running the provisional store has also not supported the prosecution case. The case of PW 2

ASI Gopal Singh is that after he passed on the information to the control room. He took the Complainant and the two accused to the Police

Station Mehrauli and handed over them to the Duty Officer. Even the case of PW 6 SI Satish Kumar is that on receipt of DD No. 12A he went to

Andheria Mod Red Light, Ahimsa Sthal and made no eye witness. In the meantime, he found that the PCR van had taken the two persons to the

police station. On reaching the Police Station he found that the Complainant and the accused have been sent to AIIMS for medical examination.

MLC of Karambir Singh, the Complainant has been exhibited as Ex. PW7/1. The MLC of Karambir Singh corroborates the version of Karambir

Singh though he has not identified the Appellants. The Complainant Karambir Singh received an incised wound on the right hand. Thus on the basis

of evidence on record, even if the prosecution has not been able to prove the robbery committed by the Appellant and causing of injury as no knife

or money was recovered, however, the prosecution has been clearly able to prove the offence under Sections 393 /34 IPC as there was clearly an

attempt to commit robbery. Sections 393 /34 IPC is an offence minor to Sections 392 /34 IPC and thus in this appeal the conviction of the

Appellants can be converted to one u/s 393 /34 IPC.

6. Learned counsel for the Appellant has relied upon Bishwanath Jha and Another Vs. State of Bihar, wherein it was held that the necessary

ingredients for offence of theft or attempt to theft are required to be proved. In the present case even if theft is not proved because of non-

recovery of money, the chain of events clearly prove the attempt of theft and thus attempt of robbery as defined u/s 393 IPC.

7. I have heard learned counsel for the parties on the quantum of sentence also. In the facts and circumstances of the case the sentence of the

Appellant is modified to rigorous imprisonment for a period of two years. The amount of fine has already been deposited. The appeal is

accordingly disposed of. The Appellants who are present in Court will surrender to custody within four weeks from today to undergo the remaining

sentence. Their bail bonds and surety bonds are cancelled.