2026:DHC:1084

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of reserving judgment: 8th January, 2026

Date of decision: 10th February, 2026

IN THE MATTER OF:

\+ CRL.A. 429/2003

FEROZ AHMAD .....Appellant

Through: Mrs. Rajdipa Behura, Sr. Adv. with Mr. Philpmon Kani, Ms. Neha Dobriyal, Advs.

versus

STATE OF NCT OF DELHI .....Respondent

Through: Mr. Yudhvir Singh Chauhan, APP for State with SI Deepak Chandra, PS Naraina.

CORAM:
HON'BLE MR. JUSTICE VIMAL KUMAR YADAV

JUDGMENT

VIMAL KUMAR YADAV, J.

1. In criminal law, as in other spheres of society, identity rather identification is of utmost importance to so many aspects of life, as also to fasten the liability. Offence took place, noticed but then what? So unless, the culprit is not brought to book no purpose would be served. And how to do that unless certainty about the complicity of assailant is there. There comes identification and without it criminal law would be of no use. You can't hold a ghost responsible for the offences, neither can a person who is not responsible.

2. The Special Staff of South West District of Delhi Police/Operation Cell South West arrested one Feroz Ahmad on 11.02.2001 in case FIR 36/2001 under Section 25 of the Arms Act which was registered at Police Station Mayapuri. A disclosure statement led to the recovery of a briefcase mark VIP from the Jhuggi of the Appellant Feroz Ahmad, which was the subject matter of the case of Robbery, on 28.06.2000 at 8:30 PM in the parking of Naraina Industrial Area Phase-II. A case qua which was registered by Police of Police Station Naraina in which two persons were allegedly robbed by the Appellant and one Rashid, who could never be arrested.

3. The concerned Police Station i.e. Naraina was thereafter, informed and the Investigating Officer took over the investigation of the FIR No. 150 of 2000 which was registered at Police Station Naraina. SI Bhram Jit Singh (PW10) after taking over the investigation from SI Samar Pal (PW8), carried out certain pending investigations, which primarily included test identification parade (TIP) of the Appellant. The Appellant refused to undergo TIP on the plea that he was shown to the complainant and that his photographs were taken too.

4. Since the FIR was already registered in the Police Station Naraina and the recovery of the briefcase, in which the sum of Rs. 20,000/- was there at the time of robbery already affected sans cash, therefore, SI Bhram Jit Singh filed the chargesheet against Appellant Feroz Ahmad inasmuch as the co-accused could not be arrested.

5. Appellant/accused Feroz Ahmad was ultimately held guilty to the charges framed under Section 394/34 and 397 IPC through the impugned

judgment dated 27.11.2002 and was sentenced to undergo RI for a period of 07 years under Section 397 IPC, RI for a period of 05 years under Section 394/34 and to pay fine of Rs. 1,000/- in default to further undergo RI for a period of 03 months, vide order dated 27.11.2002.

6. Against the backdrop of aforesaid facts, the instant appeal was preferred which primarily revolves around the fact that the learned Trial Court did not consider the contentions raised on behalf of the Appellant and the impugned judgment is bereft of proper reasoning, apart from the fact that as contended on behalf of the counsel for the Appellant, the FIR is ante-timed or some manipulation is there while registering the case.

7. To hammer her point learned Senior Counsel for the Appellant drew the attention of the Court on certain facts, which relate to the registration of the FIR, dispatch of the rukka, arrival of the victim at the hospital and the distance between the place of occurrence and the Police Station and emergence & disappearance of Mukesh Gupta and Navneet; as companions of the victim Ajay Jain.

8. According to the learned Senior Counsel for the Appellant, it is not possible to record/register FIR at 09:30 PM, inasmuch as the victim reached at the Hospital at 09:25 PM, as can be seen from the MLC Ex. PW4/A, and DD No. 26A dated 28.06.2000. Wherefrom the victim was, according to MLC Ex.PW4/A accompanied by one Navneet when Mukesh Gupta was with the victim at the time of incident. However, there is no whisper on record as to when Navneet came to accompany the victim Ajay Jain. Whereas, the one (Mukesh Gupta), who too was a kind of victim at the time of the incident, was seemingly not there.

9. There is some issue connected with the registration of FIR as highlighted by the counsel for the appellant inasmuch as PW-1 HC Than Singh says that he received rukka at 11.35 pm while working as Duty officer and registered FIR No.150/2000. In the cross examination he says that rukka was brought by Ct. Jaibir at 9.30 pm and he started writing FIR immediately, which was concluded by him at 11.30 pm. He has admitted that he did not record FIR No.149/2000 or 151/2000. He has also admitted in the reexamination by learned APP that he recorded DD No.26A about the victim in the instant case, being admitted in Agarsain Hospital. The DD No. 26A was assigned to SI Samar Pal who went to the hospital with Ct. Jaibir and recorded the statement of victim at about 10:30 pm. He gave the rukka to Ct. Jaibir and send him to Police Station to get the FIR registered at about 11 pm while he along with Mukesh Gupta left for the spot. The mix up in time is evident and that puts a question mark on the sanctity of the proceedings especially when it is noticed that Police Station and Agarsain Hospital are very near to each other.

10. Learned Counsel for the Appellant has relied upon the following judgments in order to hammer her point with respect to the aspect of refusal of TIP and its implications:-

a. Kamal vs. State (NCT of Delhi), 2023 SCC Online SC 933;

b. Gireesan Nair vs. State of Kerala, (2023) 1 SCC 180;

c. State of MP vs. Chamru, (2007) 12 SCC 423;

d. Arif vs. State, 2015 SCC Online Del 6903; and

e. Sumit vs. State (Delhi High Court) Crl. Appeal No.1172/2013.

11. In all these five judgments, it has come on record that the accused was already shown or that the complainant had an occasion to see the accused before the TIP. This fact has been admitted by the witnesses in their statements as well. As such these judgments are of no avail, so far as the cause of the Appellant is concerned.

12. As regards the judgment in ***Vinod Singh vs. Govt. of NCT of Delhi***, 2011 SCC Online Del 2645, the witness had identified the accused after five years of the incident which makes the identification questionable in itself. The TIP was refused in case titled ***Murari vs. State***, 2011 SCC Online Del 1983 and it was justified according to learned Counsel for the Appellant as there were circumstances where the witnesses could have seen the accused apart from the assertion that the photographs of the accused were taken and so is the case in respect of ***Manoj Kumar vs. State,*** 2015 SCC Online Del 10851, where not only the photographs of the accused were taken but the investigating officer mixed up the date of TIP. The complainant did not accept the fact that he had gone to participate in the TIP. All these situations make the identification in the court questionable and refusal justified.

13. However in the instant case, no such circumstance or situation is there except probably that the accused has asserted that his photographs were taken. But it could not be pointed out as to when such photographs were taken and where was the occasion for the witness to see the appellant / accused has also not been pointed out specifically.

14. Learned APP for the State, on the other hand, stood by the judgment and submitted that the discrepancies and inconsistencies are minor and do not affect the core issue in the hand. And as regards, the other aspects raised

by the learned Senior Counsel for the Appellant, learned APP submitted that credence of the case of the prosecution is inbuilt and automatic in the facts itself inasmuch as robbery was not confined to mere taking away the valuables, but the victim was shot at too. The MLC prepared in this context, which is Ex.PW4/A, clarifies and fortifies the fact that gunshot injuries were there, it may be a different case that firearm which was used to commit the robbery and the fire arm that is the pistol recovered by the special staff could not be connected with the instant case. It nonetheless gives credence to the case of the prosecution inasmuch as overall testimony of the victim, which has been corroborated by the injuries sustained by him, and the recovery of the briefcase Ex. P-1 and visiting cards Ex. P-2 fortifies it.

15. Having considered the submissions made by the rival sides, it is evident that the Appellant has questioned the impugned judgment primarily on two counts that there is no evidence to show that it was the Appellant Feroz Ahmed, who actually committed the crime or the alleged recovery of the briefcase was actually the briefcase of the complainant and that it was recovered from the possession / jhuggi of the Appellant.

16. The evidence reflects that there was little or no possibility to actually see faces of the assailants inasmuch as it has come in the testimony of PW2 (Ajay Jain) that there was darkness at the place of incident. The sequence of events, as narrated, also reflects that it was for a very brief period that the victims had the occasion to see the assailants and in such circumstances when the star witness of the prosecution / complainant Ajay Jain examined as PW2 categorically says that he is not sure about the identity of the Appellant and that he had certain vision / eye issues also then in such an

eventuality there is practically no evidence left on record to connect the Appellant with the offence.

17. PW2 Ajay Kumar Jain has deposed before the Court touching the aspect of identity, as reproduced below, where he is uncertain, both in his examination in chief and his cross examination:

> *"Mukesh Gupta tried to open the door from the driver side and I was also started entering from the another side of that vehicle to sit in that car in the meanwhile, 2/3 boys attacked on us, I felt that someone had fired on my shoulder and I received injury on my shoulder due to that fire arm. I started bleeding and those boys snatched briefcase from my hands they also snatched bag from the hands of Mukesh Gupta. It seems that accused present today in the court is the same person who was one of the accused person present on that day. Mukesh Gupta took me to the hospital at Punjabi Bagh at Mahraja Agersen Hospital. When I received injury I got pertup but I could seen the boys who are the age of 20-22 years. There as no light at the spot. It is correct that in the month of June there is dark after 8 or 8.30 pm. I could see the deem faces of those boys. After that incident I have seen the boys today only. My eyes are weak and I have a long sight problem but I can see things at distances. My statement was recorded only once. My statement as recorded by the police in the hospital. No other person accompanied me and Mukesh Gupta at the hospital. First we went to a small clinic at Naraina and later on we went to Maharaja Agarsain Hospital.*
>
> *"Aaj jo ladka mane phachana vo mujhe vohi lag raha lakin me confirmation se nahln kehi sakta"because I saw him on that day in dark. It is incorrect to suggest that I am identifying the accused as he is standing with police. Navneet did not accompany with me at the hospital."*

18. It is evident that there was an element of doubt qua the identity of the Appellant, right from the beginning. Apart from that the circumstances as narrated about the incident that there was no light at the spot and it

becomes dark in the month of June at around 08:00 - 08:30 pm and that he could see the dim faces of those boys, coupled with the fact that he had some eye issues relating to the vision. In such circumstances how far it would be appropriate to trust his identification. The aspect of identification seems to be, on a shaky wicket and cannot be trusted to record a finding against the appellant.

19. Incidentally, Mukesh Gupta was the other victim whose deposition may also be looked into:

> *"At about 8:30 pm we started from our office and reached car parking area A-77 arian Phase I where my car was parked. When I tried to open the driver said lock of that car in the menatime 2 boys came there and snatched my bag from hands and briefcase from the hands of Ajay Jain and they fired on Ajay Jain and made him injured. I took him to my car to the hospital at Maharaja Agarsain Hospital. I did not seen that boys".*

20. In the cross examination he has stated that one or two persons accompanied him to the hospital. The PW3 has categorically stated that he did not see the assailants. It is not that only Ajay Jain was robbed but Mukesh Gupta was also robbed of his bag. In such circumstances when Mukesh having no eye sight problem was unable to notice any of the assailants, how Ajay Jain was able to see the assailants. The testimony of the witnesses PW2 and PW3 when appreciated against these facts then the element of uncertainity reflected by PW2 Ajay Jain in his statement about the identity of the assailants / Appellants gets answered and the answer is that there is no clear cut and definitive identification of the appellant.

21. It has been contended on behalf of Appellant that there is no proper identification of the appellant and therefore the benefit of this doubt accrues

to the Appellant. In order to fortify her contentions, learned counsel for the Appellant has place reliance on the following judgments:-

a. ***Hardial Singh vs. State of Punjab 1992 Supp(2) SCC 455;***
b. ***Jafar vs. State of Kerala 2024 SCC Online SC 310; and***
c. ***Venkatesha & Ors. Vs. State of Karnataka 2025 SCC Online SC 129.***

22. So far as judgment in ***Hardial Singh's Case (supra)*** is concerned, where it actually was found that there is no proper identification then it would be inappropriate to fasten the liability upon the accused, but where identification is there coupled with refusal to participate in the TIP, then in that case no confusion remains, notwithstanding the fact that the identification was for the first time in the court after the incident.

23. The Test Identification Parade (TIP) is not a substantive piece of evidence rather a tool in the investigation process. It is usually relied upon and used by the courts as a piece of corroborative evidence. In any case, it cannot be substituted for substantive evidence which remains to be the statement made by the witness before the court or in the court, which includes identifying the assailant as well.

24. In ***Malkhan Singh Vs. State of Madhya Pradesh,*** (2003) 5 SCC 746 where the TIP is linked to the requirement of Section 9 of the Evidence Act, 1872 and coupled with the caution that in the absence of a TIP, the weight to be attached to the identification of the accused in Court is a matter for the courts of fact to decide.

25. Similarly, in ***Vijay @ Chinee Vs. State of Madhya Pradesh***, (2010) 8 SCC 191, after a discussion on the subject, it was concluded that,

> *"..... the test identification is a part of the investigation and is very useful in a case where the accused are not known beforehand to the witnesses. It is used only to corroborate the evidence recorded in the court. Therefore, it is not substantive evidence. The actual evidence is what is given by the witnesses in the court."*

26. As a general rule, identification of the accused for the first time in the court without there being any corroboration whatsoever cannot form the sole basis for conviction. Although there may be exceptions to the general rule as was observed in judgment titled "***Budhsen & Anr. Vs. State of UP***" 1970 Crl.L.J. 1149.

27. What are those circumstances and situations where the identification in the court for the first time may be considered worth for recording the conviction.

28. In ***Dana Yadav Vs. State of Bihar***, AIR 2002 SC 3325, the Supreme Court culled out certain exceptions to the ordinary rule that identification of an accused for the first time in the Court is a weak type of evidence. Relying on ***State of Maharashtra Vs. Sukhdev Singh & Anr***., (1992) 3 SCC 700 and ***Ronny @ Ronald James Alwaris Vs. State of Maharashtra,*** (1998) 3 SCC 625, the Apex Court noted that where the witness had a chance to interact with the accused or where the witness had an opportunity to notice the distinctive features of the accused which lends assurance to his testimony in the Court, the evidence of identification in the court for the first time by such witnesses cannot be thrown away merely because any identification parade was not held.

29. In the instant case, no such circumstance is available which may have

given the victim sufficient opportunity to observe the assailant so as to have an imprint on his mind about the assailant's identity. Things happened in a whiff of moment leaving practically no scope for the victim to observe the facial or physical features of the assailants as has been deposed by PW-3 Mukesh Gupta, that he could not see the assailants at all.

30. It is only the victim Ajay Jain examined as PW-2 who has stated something about the identity of the assailants. However the circumstances reflect that he too was not in a position to clearly ascertain the identity and to top it all, even he deposed that he had "vision issues" and therefore there seems to be practically no possibility that he had noticed the assailants so as to identify them. It was dark there, which further made it difficult to note the features relevant to identify an individual. In such a scenario, it would be very unsafe to record a finding against the appellant, especially when there is no corroborative evidence, leave alone any cogent piece of corroborative is there.

31. The arrest of the accused was in separate case by the Special Staff / Operation Cell of the South-West District under Section 25 of the Arms Act. The disclosure made in that case led to the so called recovery of the briefcase. Astonishingly it contained the visiting cards of the complainant Ajay Jain and some other papers having direct connection with the complainant. It is against the common sense, logic and reason of a reasonably prudent man that a criminal would keep the briefcase with such papers which may connect briefcase with the offence / complainant. This is not digestible, especially when the offence took place on 28.06.2000 and the so called recovery of the briefcase was affected on 12.02.2001. And to top it

all, those papers were worthless for the Appellant. In such circumstances, why would he keep them even after a lapse of eight months.

32. There is no independent witness to the recovery of the briefcase from the jhuggi of the Appellant. It is a matter of common knowledge that most of the jhuggi clusters are densely populated and possibility of having an independent witness is very much there. This becomes all the more relevant when the police team knew before hand, based upon the disclosure, that they were going to recover some robbed items. In that eventuality, the police team was under an obligation to ensure that the recovery is fool-proof and should have, in such circumstances, joined some independent public witness. Although it is not mandatory but then the circumstances reflect that it could have been rather should have been done by the police officials very easily. It appears that no effort was made at all to join any public witness either from the vicinity or otherwise. It is understandable that the police team may not get the public person from the neighbourhood, but having armed with advance information to affect recovery, the police team should have had some public witness with them to make the recovery credible.

33. There is a huge time gap in the deposition of witnesses so far as recovery of briefcase is concerned inasmuch as one of the witnesses PW5 says that the briefcase was recovered at 08:00 AM when they reached there and whereas another witness i.e. PW6, who too was part of the same team of the Special Staff / Operation Cell of the South-West District, has stated that the recovery was affected from jhuggi of the Appellant at about 02:00 AM when the team reached there. The other aspect would not have gained significance as to which side of the jhuggi the briefcase was lying but when

juxtaposed against the overall circumstances of the case then this also becomes relevant as according to PW5 it was recovered from the left side of the jhuggi and the same briefcase was recovered from right side of the jhuggi, according to PW6. Howsoever, insignificant it may appear but it adds to the circumstances against prosecution.

34. The aspect of identity of the Appellant further comes into play and goes against the case of the prosecution when in the evidence of the Investigating Officer it appears that post the arrest of the Appellant in the case under the Arms Act registered with the police station Mayapuri, the TIP of the Appellant was proposed in the instant case, for which he was taken to the Court on production of warrant but was unmuffled initially. On 26.02.2001 the Appellant refused to undergo the TIP on the plea that his photographs were taken and that he was shown to complainant. This contention on behalf of the Appellant gains ground and strength in view of the supplementary statement of the victim Ajay Jain recorded on that very day as has been deposed by PW-10. The application for conducting the TIP was moved as can be seen from Ex PW-9/C, D & E. The complainant has surfaced at the Court complex out of nowhere. He was not even called and was not required to be there. In his statement under Section 161 Cr.P.C, it is reflected, being conscious of the limited use of such statement, nevertheless it is the prosecution's document from which it cannot runaway or object. Ajay Jain says that he was present there in the Court premises for some work but that seems to be nothing but a ploy as otherwise he would have specified as to what was the reason which brought him into the Court premises on that very day when the Appellant was produced, in unmuffled

face. Although subsequently the Appellant was put under face wrap but by then damage was already caused to the case of the prosecution.

35. The Investigating Officer has not conducted fair investigation, as can be inferred from the fact that Appellant was arrested in a separate case and on the basis of the disclosure statement, the Appellant got connected with the instant case. An application for production warrant was moved on 13.02.2001 by SI Bhram Jit, the Investigating Officer, pursuant to which the Appellant was produced in the Court on 26.02.2001. He was, with the permission of the Court, interrogated and arrested by SI Bhram Jit on 26.02.2001 and on that very day application for conducting TIP was also moved. Pursuant to the production warrant when the Appellant was produced in the Court, as has been mentioned by the Investigating Officer also, but neither the Investigating Officer has cared to record in his application where he writes that Appellant is present or for that matter the Magistrate concerned as to whether the Appellant was in muffled face or otherwise. It can be easily visualised that the Appellant was produced from the lock up to the Court of the Magistrate and he was unmuffled during all this period as was in the Court also, giving sufficient opportunity to the witnesses to see and Police to show the Appellant.

36. This may appear insignificant but then it becomes important when the overall facts and evidence in this case are looked into. PW2 has categorically stated in his examination that Mukesh Gupta accompanied him to the hospital whereas the MLC Ex.PW4/A clearly records presence of Navneet along with victim Ajay Jain. In examination-in-chief PW2 has categorically stated that Mukesh Gupta took him to the hospital i.e Maharaja

Agarsain hospital at Punjabi Bagh. In cross examination PW2 again categorically states that no other person accompanied him and Mukesh Gupta to the hospital. This mysterious character Navneet emerges out of nowhere and goes with the victim to the hospital. Who he was, how come he was there accompanying victim or found with the victim in the hospital whereas victim PW2 Ajay Jain has categorically stated that only Mukesh Gupta accompanied him to the hospital and specifically stated that Navneet did not accompany him. On this aspect PW3 Mukesh stated in his cross examination that one or two persons accompanied them to hospital. These facts may not affect the core issue in hand in the case of robbery but then why and what for such depositions have come in the version of two most important witnesses / victim examined as PW2 and PW3 respectively.

37. In this context, two supplementary statements were recorded by the Investigating Officer under Section 161, reference of which has come in the cross-examination of the Investigating Officer PW-10, SI Bhram Jit. He has categorically stated that he recorded two supplementary statements of the complainant, who indentified the accused on 26.02.2001. It is the day when the Appellant was produced before the Court on production warrant in unmuffled face. Appellant was produced in muffled face only when he was taken to the Magistrate concern for the purpose of TIP.

38. In the cross-examination PW-10 says that the complainant met him before showing the arrest of the accused in the instant case. He is unsure about the two statements recorded by him as to whether it was recorded on the same day or otherwise. Incidentally, both the statements bear a date of 17.05.2001. He has also admitted this fact in the cross-examination that

when the accused was produced in Court his face was not muffled, in the same breath he says, however, I muffled his face when I produced him before the link Magistrate for TIP. He also admits that he recorded the supplementary statement of the complainant after the objections were raised by Prosecution Branch. He straight away denies that the supplementary statement of the complainant was recorded on 26.02.2001. On this issue, the complainant has a different version as he has categorically stated that his statement was recorded by the Police only once in the hospital. Then, wherefrom and how the two supplementary statements dated 17.05.2001 have come on record. Incidentally, it is the same Investigating Officer, SI Bhram Jit Singh, who had filed the charge-sheet, therefore, he cannot run away from these statements.

39. In addition to that, the complainant-Ajay Jain examined as PW-2 has stated in his cross-examination that he saw the Appellant/accused in the Court only after the incident. In such circumstances, the supplementary statement recorded by the Investigating Officer about the identification of the Appellant by the complainant in the Court on 26.02.2001, is apparently, wrong and nothing but one attempt to fill up the lacunas of the investigation. Thus, it is evident that the aspect of identification of the Appellant to connect him with the instant case is not aboveboard rather very doubtful. There is no definite identification inasmuch as the complainant Ajay Jain examined as PW-2 also says that he is unsure about the identity of the Appellant although he stated before the Court that the Appellant seems to be one of those assailants who had robbed him but in the same breath stated that he is unsure and cannot say for sure. It is therefore, not possible to find

any connection between the Appellant and the offence of robbery, thus his conviction cannot be sustained.

40. However, the recovery of the briefcase, which has been identified by the PW-2 Ajay Jain and the fact that it was recovered from the possession of the Appellant is there, although witnesses have goofed up on the aspect of recovery as well. The briefcase, as such, becomes stolen property as defined in under Section 410 Indian Penal Code. It can be argued that the Appellant had received and retained, if not robbed, the briefcase therefore, he is liable for keeping the stolen property with him. The Appellant has no answer to this, or for that matter he could not account for the briefcase except saying that he has no concern with the briefcase whatsoever and that it was not recovered from his possession.

41. As discussed earlier the recovery of the briefcase is also doubtful. As such it would, therefore be unsafe to hold the Appellant responsible for the offence of Section 411 IPC either.

42. In view of the foregoing discussion, and considering the entire gamut of facts and circumstances, it is apparent that it would be unsafe to tie the incident of the robbery with the Appellant. Especially that the appellant has not been identified in a clear and cogent manner, the recovery is doubtful, there is a mix up in the recording of the FIR giving scope for manipulation and there is a mysterious individual Navneet who has emerged out of nowhere though insignificantly but in the entirety of the case, adds to the doubtful circumstances. It appear that the case of the prosecution against the accused is not credible enough. As such it would not be appropriate and safe to hold the Appellant guilty of the offence of robbery.

43. As a result, the appeal is allowed. The Appellant is given benefit of doubt and he stands *acquitted* of the charges. Copy of the judgment be transmitted to the Trial Court.

VIMAL KUMAR YADAV, J

February 10, 2026
ps/hk