



IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION

APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRA 375 OF 2006

SK. NAWSAD ALI & ORS.

VS

THE STATE OF WEST BENGAL

With

CRA 16 of 2007

DEEPAK KEJRIWAL

Vs.

STATE OF WEST BENGAL

For the Appellant Nos. 2

and 3 (In CRA 375 of 2006) : Mr. Himanshu De, Sr. Adv.
Ms. Monami Mukherjee. Adv.

For the State

: Mr. Saibal Bapuli, A.P.P,
Mr. Partha Pratim Das, Adv.

For the Appellant No. 1

: Mr. Anirban Mitra, Adv.

(High Court Legal Aid Authority)

Last heard on : 05.02.2026

Judgement on : 05.05.2026

Uploaded on : 05.05.2026

**CHAITALI CHATTERJEE DAS:-**

1. This is an appeal against an order of conviction under Section 392 of IPC against 4 Appellants passed by the Learned Additional District and Session Judge 3rd Fast Track Court, Bichar Bhavan Calcutta in S.T. NO.1 of August, 2005 whereby the appellants were sentenced to suffer 5 years and to pay a fine of Rs. 1000/- in default to suffer Rigorous Imprisonment for an additional period of 3 months.

Brief fact of the case

2. On treating the statement made by Hasibul Hasan on 20.4.2004 recorded by S.I D.I the F.I.R was registered as cognizable offence was reported under section 154 Cr.P.C at Burrabazar Police Station against 3 unknown persons including the present appellant. The content of the statement was that on 20.4.2004 at about 18.30 hrs. he returned to his office after performing different jobs entrusted by Sri Shambhu Nath Dutta ,the proprietor of the Firm M/s. Laxmi Stores ,where the complainant was working as a sales person. At about 20.00.hrs he was delivered a navy blue colored side bag marked 'Club' which contained Rs. 6,30,000/- and two invitation card of Md. Sahabuddin and Raghu Nath Prasad Gupta ,other than Bank statement and other documents, to deposit the said amount at the house of Sri Dutta. Accordingly he left his office and was proceeding along Brabourne Road when he was attacked by 3 unknown persons or more who threatened him in front of M/S Swatik PINS (P) LTD ,19 Synagauge ,Kolkata -700001 by showing some hard substances in their hands .They specifically stated to handover the bag otherwise he will be killed . He became puzzled and perplexed and then the persons assaulted him and took the money and the document kept inside the



bag despite the resistance made by him and the straps of the bag remained with him when they took the bag. The description of the accused persons given by the complainant was like, one of them medium complexion, 5'10" in height wearing full sleeved check shirt and light colored full pant and was of medium built. The other miscreant was also of medium complexion approx. 5'5" height well-built having bulging stomach and wearing half sleeved shirt and full pants. Another miscreant was of medium complexion, with 5'2" height wearing half sleeved shirt and full pant. He too was of medium built and bulging stomach. After that he shouted for help but the miscreants managed to escape with the bag itself along with the money and documents .He then went back to his shop and told the entire incident to Sri. S. Dutta .Thereafter he came to police station .He further stated that the money were of Rs. 500/-and 100/- denominations .

3. In course of investigation the complainant identified the present appellant in T.I. parade and the Navy blue colored side bag was found from Dipak Kejriwal the Appellant in CRA 16 Of 2007 who was arrested on 23.4.2004 and an amount of Rs. 5,30,000/- along with some documents were found from his possession. On 22.4.2004 the other two accused persons were arrested and accordingly the charge sheet was submitted against them .The police arrested 5 accused persons and shown arrest one accused person who was in custody in connection with another case. The charge was framed against all the 6 accused persons under Section 395/397 IPC and the content of the charges were read over and explained to them to which they pleaded not guilty and claimed to be tried. Hence the trial commenced.



4. The learned Sessions Court after assessing the evidences adduced by the prosecution witnesses as well as considering the submissions made before the court and on the basis of the materials exhibited, passed the order of conviction against all of them punishable under Section 392 IPC when acquitted all from the charge under Section 397 IPC. The Learned trial court also acquitted one accused Anarul from all the charges. Being aggrieved thereby the present appellants preferred the criminal appeal being CRA 375/2006 and the accused Dipak Kejriwal filed CRA 16 of 2007. Both the appeals were heard analogously.

Submissions

5. The bone of contention of the argument advanced by the Learned Senior Advocate representing the present appellants is that the actual number of the accused persons was highly doubtful as the eye witness qua the complainant specifically mentioned about 3 to 4 persons when the arrest was made of 6 persons. The amount recovered as alleged is Rs 5,30,000/- when the amount was carrying Rs 6,30,000/- .The complainant/P.W1 could not establish that he was an employee of that shop and he was never entrusted to carry money by P.W 3 to his residence at Salkia on any day. P.W. 3 could not produce any convincing evidence that he gave the amount to the P.W. 1. The son Rinku Dutta in whose presence the money was alleged to be handed over was not examined. The seized articles being MAT Exhibit I and II did not contain any signature of P.W. 1 and the garments did not contain any label.

It was strenuously argued by the Learned Senior Counsel Mr. De that T.I Parade was not in conformity with law and no specific role was attributed to



the accused persons. That apart the T.I Parade was done after 23 days of the incident which has no legal value. Further argued that it was said by the suspects before the Learned Magistrate that they were shown to the witnesses at Burrabazar P.S lock up and hence such T.I Parade has got no evidentiary value. Furthermore it was mentioned that the complainant identified the accused by touching their head which can never be accepted being the manner of identification. Additionally there was delay of 13 days in examining the vital witness P.W. 4 who was the witness to the arrest of 4 accused persons namely Sk.Manirul, Sk.Najrul, Zakir Zamadar, Sk.Nawsad from Howrah Railway Station. The questions put before the accused persons while examining g under Section 313 Cr.P.C were not in conformity with the provision as number of questions were clubbed together which practice has been deprecated by the Hon'ble Supreme Court. The Learned Senior Counsel relied upon the following decisions- ***Deny Bora versus State of Assam***¹; ***Pankaj versus State of Rajasthan***²; ***Wakil Singh and Others versus State of Bihar***³; ***Tapan Sarkar and Others versus State of West Bengal***⁴; ***Ramesh Baburao Davaskar and others versus State of Maharashtra***⁵ ; ***Bala Krushna Swain versus State of Orissa***⁶; ***Budhsen and Another versus State of UP***⁷;

¹ (2014) 14 SCC 42

² (2016) 16 SCC 192

³ (1981) SCC OnLine SC 482

⁴ (2018) 18 SCC 772

⁵ (2007) 13 SCC 501

⁶ (1971) 3 SCC 192

⁷ (1970) 2 SCC 128



Shekh Hasib alias Tabarak versus State of Bihar⁸; Gayadin versus state of MP⁹; K. Pounammal versus State Represented by Inspector of Police¹⁰

6. The learned Prosecution on the other hand argued that it was a case of dacoity, started on the basis of the statement of the P.W 1 as F.I.R and in T.I Parade the P.W 1 identified the accused persons. It is submitted that the word touching by the head implied he identified the person and it has been wrongly interpreted by the Learned advocate of the appellant as there remains no scope of ambiguity .It is further argued that the provision of T.I. Parade is only for the investigation purpose and for corroboration while identifying in dock before the court. The accused persons were identified in court by the complainant. Moreover no prejudice was caused to the victim for delay and cannot be fatal for the prosecution and P.W. 7,8 and 9 corroborated the prosecution case. There is no column mentioned in the form where it is to be mentioned that the suspects must be of similar height /colour etc. and even if some lapses are found that cannot be fatal for the prosecution .The learned Session Court after considering the entire facts and circumstances passed the order of conviction hence this appeal is not maintainable and is liable to be dismissed.

Analysis

7. In order to bring home the charges the prosecution has adduced as many as 12 witnesses. P.W. 1 is Sk Hasibul Hassan who claimed to be the salesman of Laxmi stores and he sells articles and collect cash on behalf of his firm.

⁸ (1972) 4 SCC 773

⁹ (2005) 12 SCC 267

¹⁰ (2025) SCC On Line SC 1784.



He deposed that on 20.8.2004 on the ground floor of the shop at about 8 pm the proprietor gave an amount of Rs. 6,30,000/- in a bag and told him to take the money to his house. Inside the bag excepting the amount other papers, visiting card and one cheque book were there. While he was going towards the house of his proprietor along with Brabourne street near Swastik Pins Pvt. Ltd at about 8.15pm 4 to 5 persons surrounded him and tried to snatch the bag and threatened him to hand over the bag to them otherwise they would kill him. The witness further deposed that as he refused to handover, one of them kicked in his belly and snatched the bag and the strap/handle of the bag remained with him when they took the bag. He shouted Decoit, Decoit and the local people chased them. He returned to the shop and narrated the Proprietor Sambhu Nath Dutta and his friend Nizamuddin and then he went to Burrobazar Police Station. By the time he reached the Burrabazar Police station he found one of the accused already apprehended. Then he and Sambhunath and Nizamuddin reached at Burrabazar Police station and informed about the incident. The police prepared a seizure list in respect of the handle of the said bag which he handed over to police where he put his signature. He also signed on the lable pasted on the sealed pack of such handle. Before the learned court the said handle was produced which was marked with Mat. Exhibit I. The Navy Blue bag in a sealed packet was also produced which was identified by the P.W 1. The other articles as described were found from the said bag were marked with MAT exhibit III. He identified 4 accused persons who were present at the time of occurrence and at Alipore Jail. This witness described how he identified the accused at the correctional



home ,out of 50 persons of different height and complexion ,standing in a queue and he identified Deepak, Zakir, Sk.Manirul and Sk. Nausad . This witness could not produce any identity card of the shop and he denied the suggestion put to him that he runs separate business in the name and style of Master Quick Service, a courier service at Uluberia ,in the room of Laxmi stores. He specifically stated that the amount was given in presence of Rinku Dutta, the son of the proprietor.

8. P.W. 2 Md. Nasimuddin who had a shop in the name and style of Lakshmi Store at 33 Brabourne Road and on 20.4.2004 he was sitting in the shop of Lakshmi Stores at about 8.15 P.M. and at about 8.20 p.m when the employee of Sambhnath ,Hasibul came and informed Sambhunath in front of him that 4/5 unknown persons kicked in his belly and robbed him of the bag containing an amount of Rs 6,30,000/-. He further corroborated that he ,Hasibul and Sambhunath went to the Burrobazar police station to report the incident.On 18.5.20004 again he went with Sambhunath to deposit certain documents including Income Tax paper.

9. P.W 3 is the Proprietor of Laxmi Store Sambhunath Dutta .He deposed before the court that on 20.4.20024 at 8p.m he asked his employee Hasibul to take Rs 6, 30,000/- in a Navy Blue bag with CLUB marked,to his house after 20/25 minutes , Hasibul came back to his shop with the strap of the bag only in his hand when he and his friend Nasimuddin were gossiping in his shop. According to this witness the complainant said about 5/6 persons who took the money. This witness otherwise fully corroborates the prosecution case and he also submitted his business documents before the police who seized those documents. It further transpires that the witness further submitted the



Income Tax returns for the year ending 31.3.2004 .After executing a bond he took back the amount of Rs 5,30,000/- however he admitted that he had no document to show that he handed over Hasibul the amount of Rs 6,30,000/-.

- 10.** P.W. 4 Kishanlal Sarkar is a Hawker and sells Combs on the Footpath. According to him there were 4/5 persons who tried to snatch the bag and then after snatching they tried to flee away .He could identify only one person Sk. Anarul. His shop was situated on the footpath in front of 19, Synagauge Street .From his cross examination it could be gathered that police often filed petty cases against him since he occupies footpath that he denied to have any acquaintance with the police office.
- 11.** Therefore from the above nature of evidence there remains no room left to doubt that the complainant was not entrusted to take an hefty sum of Rs. 6,30,000/- by his employer qua the proprietor to take such money to his house and in order to carry out the same Hasibul started his journey when some persons attack him and robbed him of the Navy blue coloured bag which was marked with CLUB. The defence tried their best to establish that the complaint was not an employee of Laxmi Stores but as the proprietor of said Store Sambhunath himself admitted that he handed over the money to him and obviously there is no reason to doubt the existence of such hefty amount inside the bag. It further gets corroboration when from the possession of Dipak an amount of Rs 5, 30.000/- were recovered, seized which was returned to the complainant under a Bond and allowed to be used by the court. So far the accused Deepak from whose possession the amount was recovered was further corroborated by the Bus Conductor and the person besides whom he was sitting in the Bus. Therefore primarily against Deepak sufficient materials



existed and the Learned Trial Court also passed the order of conviction considering the entire evidence of documentary and oral which needs no interference. The said Accused has expired during pendency of the appeal and hence this appeal got abated so far Deepak is concerned.

12. The question raised on behalf of the Learned Defence Counsel that the present accused persons were not arrested with Deepak but all of them were placed for identification on the same day when accused was not placed with them. It is his contention that the identification of the accused persons and the procedure adopted for identification was not in conformity with the law laid down in this regard and against them no other corroborative evidence are forthcoming.

13. The evidentiary value of Test Identification Parade has been discussed in the judgement relied on in the case of **Budhsen (supra)** by the Learned Defence counsel. Before the Hon'ble Supreme Court the entire case rests upon the identification of the appellants which was founded solely on the test identification parade. In para 7 of the said Judgement it was held that-

"7. Now, facts which establish the identity of an accused person are relevant under section 9 of the Indian Evidence Act. As a General rule, the substantive evidence of a witness is a statement made in the court. The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The evidence in order to carry conviction should ordinarily clarify as to how and under what circumstances he came to pick out the particular accused person and the details of the part which the



accused played in the crime in question with reasonable particularity .The purpose of a prior test identification ,therefore, seems to be to test and strengthen the trustworthiness of that evidence .It is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceeding .There may ,however, be exceptions to this general rule ,when for example ,the court is impressed by a particular witness ,on whose testimony it can safely rely ,without such or other corroboration .The identification parades belong to the investigation stage .They are generally held during the course of investigation with the primary object of enabling the witnesses to identify persons concerned in the offence, who were not previously known to them. This serves to satisfy the investigating officer of the bonafides of the prosecution witnesses and also to furnish evidence to corroborate their testimony in court .Identification proceedings in their legal effect amount simply to this: that certain persons are brought to jail or some other place and make statements either express or implied that certain individuals whom they point out are persons whom they recognize as having been concerned in the crime .They do not constitute substantive evidence”

14. In this case the Learned Magistrate who held T.I Parade of Anarul deposed as P.W 6. He said that the suspect was mixed with 11 other persons of same height, appearance and stature. The witness Kishanlal Sarkar identified by



holding his ganglee in course of T.I Parade. The Magistrate gave his opinion that the suspect and the witness remained in court room before holding T.I. Parade and there is every possibility of collusion. The Learned Trial Court considering the testimony passed the order of Acquittal in favour of Anarul since the T.I. Parade was vitiated.

P.W. 8 S.K Mukherjee the learned Metropolitan Magistrate held the T.I Parade of other 5 accused persons when the complainant was the witness. The Magistrate said did not meet with the suspect before holding T.I. Parade and did not know the complexion and religion of the suspects before such identification test .He specifically stated that he followed all the required procedure for holding T.I.P. It is found that he did not mention in his report in which manner he mixed up the suspects and U.T.Ps.

15. In the decision of ***Sheikh Hasib alias (Tabarak) (supra)*** it was held by the Hon'ble apex court that the object of Test Identification Parade is to corroborate substantive evidence of witness given in court. It was further observed that Identification parades are ordinarily held at the instance of the investigating officer for the purpose of enabling the witness to identify either the properties which are the subject matter of the investigation or the persons who are alleged to have been concerned in the offence .Such Test or Parades belong to the investigation stage and they serve to provide the investigating authority with materials to assure themselves if the investigation is proceeding on right lines .So it is desirable that test parade are held at the earliest possible opportunity .The Hon'ble Supreme court acquitted the appellant since the test Identification parade was held after a delay of 15 days. In that case



two Test Identification Parade held on the same date within half an hour of each other and PW10 was present in both the parades but in the first parade the appellant was not placed and no reason was assigned for his non-inclusion.

16. Therefore from the observations as discussed above it is established that the test identification parade are not the substantive evidence when the statement of the witness in court is an substantive evidence and the object of the test identification parade is to facilitate the witness to identify either the properties involve or the persons concerned against whom the allegations are levelled specially in absence of any direct evidence. It is used for the purpose of corroboration.

In the instant case so far Anarul is concerned he was shown arrested on 5.5.2004 and his T.I. Parade was held on 11.8.2004 but the other accused persons were arrested on 22.4.2004 ,23.4.2004 and 5.5.2004 and their T.I parade was held on 15.5.2004 .Therefore the Learned Advocate tried to impress upon the court as no reason was assigned as to why Sk.Anarul was not placed in T.I parade along with the others .But fact remains Anarul was not identified by the complainant and he was shown arrest on 5/5/2004 .The witness who identified Anarul was not present on the date when the other 5 accused persons were identified .Therefore the facts and circumstances of the two cases are different and no question to that extent was put to the I.O and hence question of giving explanation never arose but fact remains there was delay in holding the test for more than 15 days when the police arrested all the accused .



17. The further point raised regarding delay in examination of P.W.4 Kishanlal Shonkar who was present at the time of arrest of 4 accused persons on 22.4.2004 at the waiting lounge of Howrah Railway Station and his statement was recorded on 3/5/2004 that is after 13 days delay without any explanation, In the decision of **Balakrishna Swain vs State of Orissa (supra)** where it was held that unjustified delay on the part of the I.O. in recording statement of material eyewitness during investigation of the case will render evidence of such witness unreliable. In that case the concerned witness was inimically disposed to the deceased and was an interested witness and he was not examined till after 10/11 days of the incident.

18. In the case of **Gayadin (supra)** on careful perusal, it is found that the evidence adduced by those witnesses were not relied upon and credibility were questionable because the statement of the said witnesses who claimed to be the eye witnesses of the gruesome offence were examined long after 20/22 days when no case was made out that they were not available. In the instant case the I.O. specifically denied that the witness named Kishanlal Shonker in the arrest Memo and the person present at the T.I. parade of Anarul was the same person. In his report the Learned Magistrate mentioned about the possibility of collusion and against such order of acquittal no appeal is preferred. P.W. 5 is Shamim Akhter who boarded a bus at Babughat for going to Cuttck in the afternoon at 4.30pm when police officer arrested a person sitting beside him and the police officials searched the person and recovered 5,30,000/- from the arrested person name Deepak Kejriwal .So far the seizure lost and the money which was recovered from him was duly proved before the



court and hence the prosecution duly proved that on the relevant day Deepak Kejriwal committed such offence .The point is how far the prosecution has been able to prove that the preset appellant were with him . The complainant gave the statement immediately after the incident whereby it was sated that he was accosted by 3 persons or more who threatened him by showing some hard substance in their hands. The complainant disclosed about assault by their persons and later before court said he was kicked in his belly and he have the description of three persons who were present there but before the court he gave the number as 4-5 persons .He did not consult any doctor though alleged about assault by 3 persons .

19. The vivid description given by the complainant in his statement clearly suggests presence of three persons which has been subsequently developed into 4to 5 persons. So taking his statement as true that he was assaulted by three persons certainly raises a suspicion that he did not sustain any injury. His testimony manifest presence of 4to 5 persons but he was kicked only by one of them in his belly but failed to substantiate as he did not consult any doctor. It is settled law that the F.I.R is not an encyclopedia and all the details of the incident may not find place therein but in the instant case the statement was given immediately after the incident before the police which shows the glaring inconsistencies .The P.W. 2 Nasimuddin heard the incident from Hasibul who told him about 4to 5 persons and he was kicked by one of them in his belly .Interestingly P.W. 3 Sambhunath Dutta who was also with Nasimuddin at the same place and heard from Hasibul at the same time further increased the number of persons as 5to 6 who surrounded Hasibul and



kicked him and robbed him. The P.W. 11 Ashoke Kumar Singha the officer who recorded the statement deposed that Hasibul stated before him that he was assaulted by the accused persons and he send Hasibul to Medical College and Hospital but such fact was not found in the case record. He also did not examine any doctor. The appellants were arrested by P.W 12 but he did not supply the G.D entry copy to the accused person. He did not contact the GRP office at Howrah Station and the witness signed in the arrest memo was not examined. He did not held any medical checkup of the accused after arrest. The learned Magistrate who held the T.I. Parade stated before the court that the suspects informed him that they were shown to the witness when the suspects were at Burrabazar police station lock up. In his report the height and complexions were not mentioned.

20. Therefore clubbing together and the embellishment found ,in absence of any recovery from either of the Appellant , who were not arrested with the principle accused Deepak Kejriwal ,since deceased , and placing them with said Deepak Kejriwal though their arrest were prior to the arrest of Deepak,since deceased raises a cloud of suspicion .No iota of materials are there to show they were arrested from the Howrah station lounge area ,no G.D Entry produced with the case record ,and most importantly the statement of the Magistrate regarding the exposure of the suspect by the witness creates serious doubts about their presence at the spot . The learned Magistrate acquitted Anarul on the ground of defective test Identification but passed the order of conviction against them without having sufficient materials to establish the same. In the decision of ***Manoj Munna vs State of***



Chattisgarh¹¹ the Hon'ble Supreme Court observed that it's a settled proposition that whenever any doubts emanates in the mind of the court, the benefit shall accrue to the accused and not the prosecution. That apart there is a delay of sending the F.I.R to the learned Magistrate after 2 days without having any plausible explanation also creates a doubt since as per the mandate of section 157 Cr.P.c. within a period of 24hrs the F.I.R to be sent to the nearest Magistrate .

21. Lastly the charge against all the 6 accused were under 395/397 IPC but the order of conviction was passed under Section 392 of the Indian Penal Code but no parameters were discussed to establish that the offence under Section 392 IPC was commenced and therefore it can never be said that the prosecution was able to prove the case beyond all reasonable doubts.

Conclusion

22. Accordingly this Criminal Appeal being CRA 375 OF 2006 is hereby allowed.

23. The judgement and order of conviction passed by the Learned Trial court is hereby set aside. All connected application stands disposed of.

24. The appellants be discharged from their respective bail bonds

25. CRA 16 of 2007 is dismissed being abated.

26. No order as to the costs.

27. The department is directed to forward a copy of the order along with the TCR forthwith to the concerned court for taking appropriate steps.

¹¹ 2025 INSC 1466



28. Urgent Photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

[CHAITALI CHATTERJEE (DAS), J.]

