

IN THE COURT OF MS. RAJ RANI, ADDL. SESSIONS JUDGE-04,
(NORTH-WEST DISTRICT) ROHINI COURTS, DELHI

IN THE MATTER OF :-

Case No. 53359/16

FIR No: 249/16

U/s: 392/394/307/397/411 IPC

PS : Begum Pur

STATE

Versus

- 1. Neetu @ Seeta
S/o Sukhbir
R/o Village Ulhana,
Madina, District Sonipat
Haryana (accused was declared
PO vide order dated
09.04.2018)**
- 2. Pradeep @ Golu
S/o Sh. Mahendra Pal
R/o Tej Colony
Near Ice Factory, Rohtak
Haryana**

Complainant:-

Sh. Manoj Aggarwal

S/o Sh. Yoghesh Chander

R/o H. No. 53, Pkt-7, Sec-22

Rohini, Delhi

Date of receipt of file in Sessions Court : 02.08.2016

Date of judgment : 04.07.2019

J U D G M E N T:-

- 1.** By this judgment, I shall conclude the trial of the case FIR No.249/16, Police Station Begum Pur against accused Pradeep @ Golu for the offences punishable Under Section 392/394/397/307/411/34 IPC. The offences so committed are well within the cognizance of this Court wherein the accused persons are facing the trial.

2. The case of the prosecution is that on 14.03.2016 complainant/PW7 Manoj Aggarwal was coming from his factory to go to his home in his Mahindra XUV car bearing registration number DL-4C-AB-7553. At about 10.30pm, when he reached at Begumpur chowk, he stopped his said car to purchase fruits. When he alighted from his car, accused persons came from his backside. Accused Neetu caught hold of him and accused Pradeep tried to snatch the key of his car from him. Accused Pardeep tried to fire towards him but the weapon did not work. Accused gave beatings to complainant and they had robbed the complainant of his Mahindra XUV car in which a black bag containing cash amount of Rs. 1,00,000/-, loaded revolver, eight cartridges and a bag containing account books of his factory in it. Complainant ran towards Begumpur Chowk in the direction in which there was an office of a property dealer. When he was running, accused Pradeep had fired aiming at him. Thereafter accused persons took the car away towards Kanjhawala. Complainant called at number 100 and DD no. 38A dated 14.03.2016 was recorded in this regard. Police reached the spot and one bullet led was recovered from there. Pursuant to said call, PW12/Ct. Jitender whose duty was at Picket at Auchandi Border, received a wireless message on the wireless set about the robbery of Mahindra XUV car of complainant. At about 11.00 pm, PW12 saw robbed Mahindra car coming at a very high speed from Mungeshpur side which was being chased by a PCR van. The driver of said car stopped it and two persons alighted from the said Mahindra XUV 500 car and started running. PW12 with the help of Ct. Ankit/PW13 apprehended accused Neetu @ Seetta. Accused Pardeep @ Golu had managed his escape from the spot, after alighting from the said car and ran towards the fields. On conducting general search of accused Neetu, one pistol was recovered from the dub of his pants. Thereafter on 23.03.2016 IO got conducted TIP of accused Neetu @ Seetta and complainant identified the accused. On 10.04.2014 accused Pardeep @ Golu was arrested and he was also identified by complainant in TIP. Pursuant to his disclosure statement accused Pardeep

got recovered black bag Ex.P1.

3. The present case was assigned to this Court after the committal of proceedings by the concerned Ld. Metropolitan Magistrate to the Sessions Court. Before committal of the proceedings, the compliance of Section 207 Cr.P.C was made by Ld. Metropolitan Magistrate by supplying the complete set of charge sheet to the accused.
4. The charge-sheet has been filed u/s 392/397/307/411/34 IPC against both accused persons and after hearing arguments on the point of charge, charge for the offences punishable under Sections 392/394/307/34 IPC was framed against both accused persons and separate charge u/s 397 IPC was framed against accused Pradeep and separate charge u/s 411 IPC was also framed against accused Neetu by the Ld. Predecessor of this Court to which accused persons pleaded not guilty and claimed trial.
5. During trial of the case, accused Neetu @ Seetta had absconded and vide order dated 09.04.2018 he was declared proclaimed offender. Since, accused Pardeep @ Golu has faced the complete trial, the present judgment is being pronounced with respect to accused Pradeep only.
6. In order to bring home the guilt of the accused persons, the prosecution has examined Seventeen witnesses.

PUBLIC WITNESSES

7. The prosecution has examined complainant Manoj Aggarwal as PW7 who has deposed that he resides at House No.53, Pocket-7, Sector -22, Rohini, Delhi alongwith his family and he is running a factory of manufacturing burners of gas stoves at Firozpur, Haryana. On 14.03.2016, he was coming from his factory to go to his home via Kanjhawala road in his Mahindra XUV car

bearing registration number DL-4C-AB-7553, however, he was sure that it was 7553 but not sure about the complete number but the said vehicle is on superdari with him now. At about 10:30 PM, he reached at Begum pur chowk and stopped his said car to purchase fruits. When he alighted from his car, suddenly two boys came from his backside. One out of them caught hold of him and other tried to snatch the key of his car from him and one out of them was trying to fire towards him with a weapon which he was having in his hand but the weapon did not work. They gave beatings to him. The assailants had muffled their faces below eyes. They snatched the key of his car. He ran towards Begum pur chowk in the direction in which there was an office of a property dealer. He heard noise of firing from his back and thereafter those two boys started his vehicle and took it away towards Kanjhawala after taking U-turn from Begumpur Chowk. There was a black colour bag in his said car in which Rs. One lakh cash, his licensee revolver loaded with six cartridges and seven or eight live cartridges were kept by him. Some account books of his factory were also there in his said car. He made his complaint Ex.PW-7/A to the police. Witness voluntarily deposed that his signatures were obtained on blank papers. He had dialed number 100. Police had also called the Crime team at the spot and got the spot inspected. Police prepared site plan at his instance. Later on he came to know that one bullet led was also recovered from the spot but the same was not recovered in his presence. He did not remember the dates on which he had visited the Jail for the purpose of identification of accused persons. Firstly, he had visited Tihar Jail and on the second occasion he had visited Rohini Jail and there he had identified the accused persons. Witness voluntarily deposed that the photographs of the accused persons were shown to him in the Police Station prior to their judicial TIP. His on Oath statement regarding identification of accused Neetu dated 23.03.2016 in TIP proceedings is Ex.PW-2/A. His on Oath statement regarding identification of accused Pradeep dated 05.05.2016 in TIP proceedings is Ex.PW-3/A.

8. PW 7 was declared hostile and was cross examined by the Ld.Addl. PP for State. In his cross examination, witness denied the suggestion that he had not stated to the police in his complaint Ex.PW-7/A that the assailants were covering their faces below eyes or that rather he had stated that he can identify both the assailants. The witness was confronted with his complaint Ex.PW-7/A where the fact that assailants were covering their faces below eyes is not mentioned and rather the complexion, physique of the assailants and the claim of the witness that he can identify the said assailants is mentioned. Witness admitted the suggestion that the complete registration number of his Mahindra XUV car was DL-4C-NB-7553. The witness further denied the suggestion that one out of the said assailants who was tall and comparatively thin in comparison to other assailant had fired aiming at him. PW7 further denied the suggestion that the bullet led was found outside the gate of Shankar Property Dealer. Witness denied the suggestion that IO got recorded the FIR through Ct. Mandeep on the basis of his statement. He had not stated to the Ld. MM while conducting TIP of accused Neetu @ Seeta on 23.03.2016 that his photographs had already been shown to him in the Police Station perhaps by a policeman. PW 7 voluntarily deposed that Ld. MM had not asked him on this issue. He did not know the name or the rank of said person who had allegedly shown to him the photographs in mobile phone. Witness voluntarily deposed that said man was in plain clothes. He did not remember the make of that mobile phone. He further voluntarily deposed that it was a camera phone. He did not remember what was the colour and description of the clothes which accused Neetu was wearing in the said photograph which was allegedly shown to him. He was not administered oath prior to recording of his statement which is at Mark X on Ex.PW-2/A. PW7 further deposed that he had correctly identified both the accused persons during TIP. The witness voluntarily deposed that the photographs of both the accused persons were shown to him by the IO prior to their TIP.

POLICE WITNESSES

- 9.** PW1/HC Laxman Das deposed that on the intervening night of 14/15.03.2016 while working as Duty Officer at PS Begum Pur from midnight to 8.00am, on receipt of Rukka mark A from SI Ravinder Kumar through Ct. Mandeep, he had got recorded FIR no. 249/16 u/s 392/397/307/34 IPC & 25/27 Arms Act through computer operator and gave rukka after endorsement EX.PW1/A and print out of FIR Ex.PW1/B to Ct. Mandeep. The supporting certificate under section 65B of Indian Evidence Act is Ex.PW1/C.
- 10.** PW-4/Ct. Sandeep deposed that on 06.05.2016 he was posted at PS Begumpur as constable. On that day he joined the investigation of the present case alongwith SI Ravinder Kumar. Accused Pradeep @ Golu, was on police custody remand. Accused Pradeep @ Golu led the police party consisting of himself and SI Ravinder Kumar to Begum Pur Chowk and pointed out the place, from where he alongwith his associate had robbed Mahendra, XUV car in the night of 14.03.2016, vide pointing out memo Ex. PW-4/A. Thereafter accused Pradeep led the police party to Katewara Chowk and he took out a bag from the bushes which were there in a vacant plot near transformer in front of Jawahar Navodaya Vidyalaya, Mungesh Pur, Delhi. The said bag was seized by the IO vide seizure memo Ex. PW-4/B. Thereafter he alongwith IO and accused came back to PS. Case property was deposited in malkhana and he returned the seal of IO to him. PW4 identified black bag Ex.P1 which was recovered at the instance of accused Pradeep.
- 11.** PW5/ASI Ramesh Chander deposed that on 14.03.2016 while working at Duty officer at PS Bawana from 5.00pm to 9.00am, on receipt of Rukka from SI Uday, he had got recorded FIR no. 152/16 u/s 186/353 IPC and Sec 3 of the Damage of Public Property Act and Section 25 Arms Act on the computer through operator and gave its print out EX.PW5/A to Ct. Vikram for

being delivered to SI Uday Singh. Earlier he had recorded DD no. 26A on receipt of telephonic message about the XUV 500 snatched from the area of PS Begumpur having been caught with one person with the help of PCR staff at the picket of Auchandi Border from Ct. Jitender at 11.05pm. After taking down the information in Roznamcha, he had telephonically informed SI Uday Singh about it for taking necessary action. The information was also given to the SHO who had proceeded to the spot. The copy of DD entry is EX.PW5/B.

- 12.** PW-6 Ct. Mandeep Kumar deposed that in the intervening night of 14-15.03.2016, he was posted at PS Begumpur as constable. On that night, he was on emergency duty with SI Ravinder Kumar and were already in the area of PS Begumpur in connection with some other call and there, SI Ravinder received information from the PS at about 10.45pm, on telephone regarding the contents of DD No.38A and thereafter, they both reached at Begumpur chowk. There, complainant Manoj Aggarwal met them and he told that he had made the call at number 100 with the mobile phone of one passer by. SI Ravinder recorded the statement / complaint of Manoj. Thereafter, as per the statement of Manoj Aggarwal, they inspected the spot and one bullet led was found lying outside the gate of office of Shankar Property dealer. IO SI Ravinder called crime team at the spot and got the spot inspected and photographed. IO handed over him the rukka and he went to the PS and after getting the FIR registered, came back at the spot and handed over copy of FIR and original tehrir to IO/SI Ravinder. Thereafter, IO lifted the said bullet lead and prepared its sketch on a white paper, same is Ex.PW6/A. Thereafter, the said bullet lead was kept in a plastic container and its lid was tied with white adhesive doctor tape and was sealed with the seal of RKK and was seized vide seizure memo Ex.PW6/B. Seal after use was handed over to him. Thereafter, he reached PS Begumpur. Witness identified bullet lead Ex P1 which was recovered from the spot.

13. PW-9 SI Uday Singh deposed that on 14.03.2016, he was posted at PS Bawana, Delhi as SI. On that day, he was on night emergency duty from 8.00pm to 8.00am next day. One Ct. Jitender had informed duty officer PS Bawana regarding the apprehension of accused Neetu in a robbed make Mahindra XUV 500 Car, regarding the robbery of which from the jurisdiction of PS Begumpur, a wireless message was flashed. The DD regarding said call, of which the number he did not remember was marked to him and as such, he along with Ct. Vikram reached Auchandi Border, there, accused Neetu was in the custody of Ct. Jitender and Ct. Ankit, of PCR was also found present there and PCR vehicle was also there. One Mahindra XUV car bearing registration No. DL4C NB 5337 or 3557. Again said, the complete number was DL4C NB 7553 make Mahindra XUV 500 was also found parked there. Ct. Ankit produced one pistol which was stated to have been recovered from the possession of accused Neetu and there were five live cartridges ie four in the magazine and one in the chamber of said pistol. On checking the said XUV car, one magazine containing four live cartridges was found on the front left seat of said car and another four live cartridges were found on the foot mat of front left seat of said car. He further proved the seizure memos of car Ex.PW9/A, live cartridge EX.PW9/B, pistol and cartridge EX.PW9/C and cartridge and magazine Ex.PW9/D. The witness also identified the car Ex.P12/1.

14. PW-10/Inspector Lokender deposed that on 10.04.2016, he was posted at Central Range, crime Branch, as SI. On that day, one secret informer came to our office and he informed Inspector Subhash that three persons namely Deepak, Pradeep and Arun, in a black Santro Car would come from the side of Cremation Ground via Golden Jubilee park, under pass and would go towards Shanti Van with intent to commit an offence. Thereafter a raiding party was constituted consisting of himself, HC Kallu Singh, HC Sanjay Tyagi, HC Dinesh, HC Pawan, HC Pramod, Ct. Neeraj, Ct. Ankit and Ct. Ghanshyam and

they took position below under pass near Golden Jubilee park and at about 5.15pm, one black color Santro car came from Shamshan Ghat side and on the pointing out of informer, said car was stopped and accused Deepak was found sitting on driver seat and accused Pardeep was sitting on the front left seat and accused Arun was on rear seat. On being searched, accused Pradeep and Deepak were found in possession of one pistol each. The said pistol recovered from accused Pradeep was seized by him vide seizure memo Mark PW10/A and case FIR No. 48/16, PS Crime Branch was registered in this regard. Further investigation of the said case was conducted by ASI Vinod Kumar.

15. PW-11 Ct. Ran Singh deposed that on 14.06.2016, he was posted as constable at PS Begumpur and on that day, as per the instructions of IO, he collected one transparent plastic box pulanda in sealed condition along with road certificate and forwarding letter from MHC(M) and deposited the same at FSL Rohini, Delhi. After depositing the said pullanda, he returned one copy of RC and acknowledgement of FSL to MHC(M).

16. PW-12 Ct. Jitender deposed that the exact date of the incident, he did not remember. It may be month of May. At that time, he was posted at PS Bawana as constable and his duty was at the picket at Auchandi Border. On that night, at about 10.50pm, he received a wireless message on the wireless set that two persons had robbed one white color Mahindra XUV 500 car bearing registration No. DL4C NB 7553 from Begumpur after firing and had rushed towards Karala. The PCR was also having its base at the picket and the Incharge PCR Van also informed him regarding the said message and thereafter, the said PCR van was parked on the road and he immediately, closed the said road from both the sides with barricades and took position. There, at about 11.00pm, he saw one car coming at a very high speed from Mungeshpur side and the said car was being chased by a PCR van. About 100

meters prior to the picket, the driver of said car stopped it and two persons alighted from the said Mahindra XUV 500 car and started running. He with the help of Ct. Ankit of PCR who was in the PCR Van which was chasing the Mahindra XUV car apprehended one out of said two persons and his name on interrogation, revealed to be Neetu @ Seeta. Witness further deposed that accused Pradeep @ Golu had managed his escape from the spot, after alighting from the said car and running towards the fields. On conducting general search of accused Neetu, one pistol was recovered from the dub of his pants. Four live cartridges were found in the magazine of said pistol and one cartridge was found in the chamber of said pistol. Local police headed by SI Uday Singh reached there and they handed over accused Neetu @ Seeta along with pistol and cartridges to him. Other recoveries were also effected from the said XUV car regarding which proceedings were conducted by SI Uday Singh.

17. PW12 identified the case property ie Mahindra XUV 500 car bearing registration No. DL4C NB 7553 Ex P12/1 in which accused Neetu @ Seeta along with co-accused Pardeep @Golu, was coming and was apprehended.

18. PW-13 Ct. Ankit deposed that on 14.03.2016, he was posted at PCR, Outer Zone, Delhi and his duty was on PCR van Libra 91 as Incharge along with driver /HC Rishipal, from 8.00pm to 8.00am. When at about 10.45pm, he alongwith the said PCR van was present at Qutubgarh, there, he received a wireless message on the set that after robbing one white Mahindra XUV 500 car bearing no. DL4C NB 7553 from Begumpur, after firing, the robbers had rushed towards Karala alongwith the said car. After receiving this message, he took position at Main Kanjhawala road, near Ladrawan Road by parking his said PCR Van on the road. There, at about 10.56pm, the said Mahindra XUV 500 car came from Jatkhori Village side at a very high speed. After seeing the said car, he alighted from his PCR van and made an indication by hand to

driver of Mahindra XUV 500 car to stop the same. The driver of said Mahindra XUV 500 car did not stop the same and hit the car against our PCR Van and rushed towards Auchandi Border. They chased the said Mahindra XUV 500 car with their PCR van. After seeing the police picket at Auchandi border, the driver of said Mahindra XUV 500 car stopped the car prior to the picket and two persons alighted from the said car and started running. He with the help of Ct. Jitender who was at the police picket there, apprehended one person who had alighted from the driver side and the person who had alighted from the conductor side managed his escape towards the fields. The name of person who was apprehended by them revealed to be accused Neetu @ Seeta and accused Pradeep @ Golu who had alighted from conductor side managed his escape. On conducting general search of accused Neetu, one pistol was recovered from the left dub of his pants. Four live cartridges were found in the magazine of said pistol and one cartridge was found in the chamber of said pistol. Local police headed by SI Uday Singh reached there and they handed over accused Neetu @ Seeta along with pistol and cartridges to him. Other recoveries were also effected from the said XUV car regarding which proceedings were conducted by SI Uday Singh. His statement was also recorded by SI Uday Singh and FIR No. 152/16, PS Bawana was registered on his statement.

- 19.** PW-14/ASI Vinod Kumar deposed that on 10.04.2016, he was posted at Central Range, Crime Branch, Delhi as ASI. On that day, after registration of FIR No. 48/16, PS Crime Branch, Delhi U/s 25 Arms Act, further investigation of the said case was entrusted to him and Ct. Ajay had handed over the copy of FIR and original tehrir to him. Thereafter, he reached at the spot i.e Service Road under Over Bridge, Mahatma Gandhi Road near Golden Jubli Park, Delhi. There, SI Lokender alongwith staff met him and he handed over the custody of accused Pradeep @ Golu and one more accused of that case namely Deepak to him alongwith the documents prepared by him in

connection with FIR No. 48/16 and pullandas in sealed condition. He arrested accused Pradeep @ Golu vide arrest memo Ex.PW14/A and conducted his personal search vide memo Ex.PW14/B and recorded his disclosure statement Ex.PW14/C which he had disclosed regarding robbery of one Mahendra XUV Car at Begumpur Chowk alongwith his other associate. On 11.04.2016, he passed this information to PS Begumpur and on 13.04.2016, IO of the present case SI Ravinder arrived at his office and he handed over the photocopies of the documents pertaining to FIR No. 48/16, PS Crime Branch, Delhi to him and he recorded his statement.

- 20.** PW-15/ ASI Kallu Singh deposed that on 10.04.2016 he was posted at Central Range, Crime Branch as HC. On that day, a secret information was received by Ct. Ankit and Ct. Anil that some bad characters would come in black colour Santro car and would go via Golden Jubilee Park underpass to with intent to commit an offence. Secret information was brought to the knowledge of Insp. Subhash Vats and he informed the senior officers. A raiding party was organised under the supervision of SI Lokender consisting of himself and other police staff. Raiding party left the office in three vehicle and reached below underpass near golden jubilee park and took the position there. On the way, public persons were requested at red light and at the spot to join the raiding party, but all of them refused and went away without telling their name and address. At about 5.15 am one black colour Santro car bearing registration no. DL 9CH 3148 was seeing coming from *smashanghat* side and was pointed out by secret informer. Thereafter secret informer left. The car was stopped. The car was being driven by one Deepak and accused Pradeep was sitting beside him and one Arun was sitting on the rear seat. He conducted the formal search of accused Pradeep and recovered one pistol from the left side dub of the wearing jeans pant of accused Pradeep. On checking four live cartridges were found in the magazine and IO/SI Lokender prepared the sketch of the pistol, magazine and four cartridges which is

Ex.PW15/A. The pistol alongwith four live cartridges and magazine were sealed in the pullanda after keeping the same in a plastic box with the seal of LC. The seizure memo of the same is marked as PW10/A. After the registration of the FIR no. 48/16, PS Crime Branch, investigation was handed over to ASI Vinod Kumar. ASI Vinod Kumar arrested the accused vide arrest memo Ex.PW14/A and conducted his personal search vide memo Ex.PW14/B and recorded his disclosure statement vide memo Ex.PW14/C.

21. PW16/ASI Jaibir Singh deposed that on 15.03.2016 he was posted at PS Begum Pur and was working as MHC(M). On that day, SI Ravinder had deposited one sealed pullanda duly sealed with the seal of RKK. He deposited the same in the malkhana and made an entry in register no. 19 at Sr. no. 171/16. Same are sent to FSL Rohini on 14.06.2016 vide RC no. 82/21/16. On 06.05.2016 SI Ravinder deposited one sealed pullanda i.e the looted bag with the seal of RKK. He deposited the same in malkahana and made entry in register no. 19 at Sr. no.259/16. At that time, SI Ravinder also deposited one car Mahindra 500 XUV bearing registration no. DL 4CNB 7553 and he made an entry in register no. 19 in this regard at Sr. no. 259A/16. The above said car was released on superdari on 26.10.2016. The entries in register no. 19 are Ex.PW16/A, Ex.PW16/B & EX.PW16/C respectively. The road certificate is Ex.PW16/D.

22. PW17/ SI Ravinder Kumar deposed that on 14/3/2016 he was posted at PS Begum Pur and he was on emergency duty. On that day at about 10.45pm he received DD No. 38A and thereafter he along with Const. Mandeep went to the spot of incident i.e. Begumpur Chowk. After reaching there, they met complainant Manoj Aggarwal. He recorded his statement Ex. PW7/A. He inspected the spot of incident as complainant has alleged that shot was fired on him. Near the gate of Shankar property, he found one lead of bullet. He called the crime team at the spot. Crime team inspected the spot of

the incident and photographer took the photographs of spot of incident. He prepared rukka Ex. PW17/A. He handed over the rukka to Const. Mandeep for registration of the FIR. Thereafter, he prepared site plan Ex. PW17/B. DD No. 38A is Ex. PW-17/C which bears signature of SHO at point A and ACP at point B. He has worked with SHO and ACP and he had seen them signing and writing in due course of his duties and therefore he was acquainted with their handwriting and signature. Const. Mandeep returned to the spot and handed over original rukka and copy of FIR. Thereafter, he prepared the sketch of lead Ex. PW6/A. Thereafter, he seized the same vide seizure memo Ex. PW6/B. After seizure, the seal was handed over to Const. Mandeep. The complainant was sent to the PS as it was late night. He searched for independent eye-witnesses but in vain. Thereafter, they returned to the PS. He deposited the case property in malkhana. He recorded statement of Const. Mandeep and supplementary statement of complainant. In the morning he went to office of crime team and recorded statement of crime team officials. SI Uday of PS Bawana informed him that alleged car Mahindra XUV 500 had been recovered and one accused had been arrested. Thereafter he applied for permission of interrogation of accused from the court. On 18.3.2016 he went to Tihar Jail where he formally arrested accused Neetu @ Seeta vide arrest memo Ex. PW17/D. He recorded disclosure statement of accused Neetu @ Seeta which is Ex. PW-17/E. He instructed him to remain in muffled face for the purpose of TIP. He applied for the TIP of accused vide application Ex. PW17/F. The Ld. MM fixed the date of TIP on 23.3.2016 at Tihar Jail. The Ld. MM conducted TIP of accused Neetu @ Seetta and complainant correctly identified the accused. On 28.3.2016 he obtained two days PC remand of accused Neetu @ Seetta. Accused led him to the spot of incident and he prepared pointing out memo at his instance Ex. PW-17/G. He searched for co-accused Pradeep @ Golu but in vain. Later on accused Pradeep @ Golu was arrested by crime branch who had made disclosure about his involvement in the present case. He obtained permission from the Hon'ble Court for interrogation of accused Pradeep @ Golu. He went to Rohini Jail. He

interrogated accused Pradeep. Thereafter, he formally arrested him vide arrest memo Ex. PW17/H. He recorded his disclosure statement which is Ex. PW17/J. He instructed him to remain in muffled face for the purpose of TIP. He applied for TIP of accused Pradeep vide his application Ex. PW17/K. Ld. MM fixed the date of TIP on 5.5.2016. TIP of accused was conducted and complainant correctly identified him. He obtained one day PC remand of accused Pradeep. Accused led him and Const. Sandeep to the spot of the incident and he prepared pointing out memo at his instance Ex. PW4/A. Thereafter accused led them to the spot where he had kept the robbed bag near Katewra village chowk. From the spot the accused produced one bag which was kept in polythene and some clothes. He seized the bag vide seizure memo Ex. PW4/B. He prepared the recovery site plan Ex. PW-17/L. Thereafter they returned to the PS. Case property was deposited in malkhana. He recorded the statement of witnesses. He prepared the charge sheet and filed the same in the court. He had also seized the car i.e. Mahindra XUV bearing registration number DL4CNB7553 as same was produced by the complainant vide seizure memo Ex. PW-17/M. Witness identified the bag Ex. P-1. Witness also identified one lead Ex. P-2.

OFFICIAL WITNESSES

- 23.** PW2/Apoorv Sarvaria, Metropolitan Magistrate, deposed that on 21.03.2016 he was working as Metropolitan Magistrate at Rohini Courts. On that day an application moved by SI Ravinder Kumar for the TIP of accused Neetu @ Seeta was marked to him by his Ld. Link ACMM, Sh. Devender Nain. Accused was produced before him in muffled face and he fixed the TIP proceedings for 23.03.2016. On 23.03.2016 he reached central Jail no. 8/9 and accused Neetu @Seeta was produced and identified by Assistant Superintendent Sh. Deepak Saroha. Thereafter he had conducted the TIP proceedings and the said proceeding running in two pages, including the statutory certificate Ex.PW2/A.

24. PW3/Jagmohan Singh, Metropolitan Magistrate deposed that on 02.05.2016 he was working as Metropolitan Magistrate at Rohini Courts. On that day an application moved by SI Ravinder Kumar for the TIP of accused Pradeep @ Golu was marked to him by his Ld. Link ACMM, Sh. Devender Nain. Accused was produced before him in muffled face and he fixed the TIP proceedings for 05.05.2016. On 5.05.2016 he reached District Jail Rohini and accused Pardeep @ Golu was produced and identified by Assistant Superintendent Sh. Jai Pal Singh thereafter he had conducted the TIP proceedings and the said proceedings running in two pages, including the statutory certificate Ex.PW3/A.

FORENSIC WITNESSES

25. PW8/Puneet Puri, Assistant Director (Ballistic), Forensic Science Laboratory deposed that on 14.06.2016 one sealed parcel with the seal of 'RKK' of the present case was received in FSL through Ct. Ram Singh and the same was marked to him for examination. The seals on the parcel were intact and as per the specimen seal provided with the FSL form. On opening the parcel, one deformed bullet was taken out and marked as EX. EB-1. On examination, he found that the bullet marked EX.EB-1 was corresponding the bullet of 7.65mm cartridge. The individual characteristic of striations present on deformed bullet mark EX. EB-1 and on test fired bullet market TB-1, TB-2, test fired through the improvised pistol 7.65mm bore marked Ex.F-1 and test fired bullet marked TB-3, TB-4, test fired through the improvised pistol 7.65mm bore marked Ex. F-2 in FSL case number 2016/F2945, FIR no. 48/16 PS Crime Branch were examined and compared under the comparison Microscope and were found insufficient for opinion, whether it has been discharged through either of the improvised pistol marked EX. F-1 and F-2 in case number 2016/F2945, FIR no. 48/16, PS Crime Branch or not. The deformed bullet marked EX.EB-1 was an ammunition as defined in Arms Act,

1959. The exhibit was then resealed with the seal of 'PP-FSL-DELHI'. His detailed report in this regard is EX.PW8/A.

- 26.** Before coming to the testimonies of individual witnesses, the details of the witnesses examined by the prosecution and the documents proved by them are hereby put in a tabulated form as under:-

Sr. No.	PW No.	Name of the witnesses	Details of witnesses
1.	PW1	HC Laxman Das	Police Witness
2.	PW2	Apoorv Sarvaria	Official Witnesses
3.	PW3	Jagmohan Singh	Official Witnesses
4.	PW4	Ct. Sandeep	Police Witness
5.	PW5	ASI Ramesh Chander	Police Witness
6.	PW6	Ct. Mandeep Kumar	Police Witness
7.	PW7	Manoj Aggarwal	Complainant
8.	PW8	Puneet Puri	Forensic Witness
9.	PW9	SI Uday Singh	Police Witness
10.	PW10	Insp. Lokender	Police Witness
11.	PW11	Ct. Ran Singh	Police witness
12.	PW 12	Ct. Jitender	Police Witness
13.	PW13	Ct. Ankit	Police witness
14.	PW14	ASI Vinod Kumar	Police Witness
15.	PW15	ASI Kallu Singh	Police witness
16.	PW16	ASI Jaibir Singh	Police Witness
17.	PW17	SI Ravinder	Police witness/IO

List of documents.

Sl. No.	Exhibit No.	Details of documents	Name of witness
1	EX.PW1/A	Endorsement on rukka	HC Laxman Das
2	Ex.PW1/B	Copy of FIR	
3	Ex.PW2/A	Certificate for TIP proceedings of accused Neetu	Apoorv Sarvaria
4	Ex.PW3/A	Certificate regarding TIP proceedings of accused Pradeep @ Golu	Jagmohan Singh
5	Ex.PW4/A	Pointing out memo of accused Pradeep @ Golu	Ct. Sandeep
6	EX.PW4/B	Seizure memo of Bag	
7	Ex.P1	Black Bag	
8	Ex.PW5/A	Copy of FIR no. 152/16	ASI Ramesh Chander
9.	Ex.PW5/B	Copy of DD no 26A	
10.	Ex.PW6/A	Sketch of bullet	Ct. Manoj
11	Ex.PW6/B	Seizure memo of bullet	
12	Ex.P2	Bullet lead (in the testimony of PW6 bullet has been wrongly mentioned as P1)	
13.	EX.PW7/A	Complaint	Manoj Aggarwal
14	Ex.EB-1	Deformed bullet	Puneet Puri
15	Ex.F2	Pistol 7.65mm bore	
16	Ex.F1	Improvised pistol 7..65 mm bore	
17	Ex.PW8/A	Detailed report	

18	Ex.PW9/A	Seizure memo of car	SI Uday
19	Ex.PW9/B	Seizure memo of live cartridge	
20	Ex.PW9/C	Seizure memo of pistol and cartridge	
21	EX.PW9/D	Seizure memo of cartridge and magazine	
22	Ex.P12/1	Mahindra car	Ct. Jitender
23	EX.PW14/A	Arrest memo of accused Pradeep @ Golu	ASI Vinod Kumar
24	Ex.PW14/B	Personal search of accused Pradeep @ Golu	
25	EX.PW14/C	Disclosure statement of accused Pradeep @Golu	
26	Ex.PW16/A to Ex.PW16/C	Entries in register no. 19	ASI Jaibir Singh
27	Ex.PW16/D	Road certificate	
28	Ex.PW17/A	rukka	
29	Ex.PW17/B	Site plan	
30	Ex.PW17/C	DD no. 38A	
31	Ex.PW17/D	Arrest memo of accused Neetu @ Seetta	
32	Ex.PW17/E	Disclosure of accused	
33	Ex.PW17/F	Application for conducting TIP of accused.	
34	Ex.PW17/G	Pointing out memo	
35	Ex.PW17/H	Arrest memo of accused Pardeep @ Golu	
36	Ex.PW17/J	Disclosure statement of	

		accused Pardeep @ Golu	ASI Ravinder
37	Ex.PW17/K	Application of TIP	
38	Ex.PW17/L	Site plan of recovery	
39	Ex.PW17/M	Seizure memo of car	

27. After completion of the prosecution evidence, statement of accused Pardeep under Section 313 Cr.P.C has been recorded, wherein he stated that he had been falsely implicated in the present case. His photographs were taken by the police in the PS and the same were shown to Manoj Aggrwal and he identified him at the instance of IO. He was not involved in the present offence. The case property has been falsely planted upon him by the IO. IO took his signatures forcibly on some blank papers and printed proforma and converted them into incriminating documents against him. Witness had identified him at the instance of IO.

28. I have heard the arguments of Sh. Virender Kharta, Ld.Addl. PP for the State and Sh.Sudhir Shokeen, Ld. defence counsel for the accused Pradeep and have gone through the record carefully.

29. Ld. Addl. PP for State has mainly argued that the prosecution has proved its case beyond all shadow of reasonable doubts by leading cogent and convincing evidence. Though, the PW7 has fully corroborated the case of the prosecution, but he has failed to identify the accused persons by stating that assailants had muffled their faces below eyes. The witness was duly confronted with his complaint Ex.PW7/A wherein the same has not been found mentioned. In fact, it has been specifically stated by PW7 that he could identify the accused persons. It seems that the witness was won over by the accused. It is argued that both accused persons had been identified by PW7 in TIP. Apart from TIP, there are other incriminating evidence against the

accused persons which connect them with the present offence. The prosecution has been able to prove that accused persons committed robbery of Mahindra XUV car which was recovered from accused Neetu @ Seeta within half an hour of the commission of offence. It has also been proved on record that accused Pradeep @ Golu managed his escape from the spot while accused Neetu was apprehended by PW12 and PW13. It has also been proved on record that accused Pradeep used pistol during the commission of robbery and had also fired towards PW7 with intention to kill him. It has been argued that the testimonies of PWs are reliable, cogent and convincing and there is no material discrepancy or inconsistency in their deposition and hence the accused are liable to be convicted for commission of offences with which they have been charged with. Ld. Addl PP has placed reliance on judgment titled Hemudan Nanbha Gadhvi Vs State of Gujarat, Crl. Appeal no. 913/2016, DoD 28.09.2018.

- 30.** Per contra, Ld. Counsel for accused Pardeep argued that in the present case no incriminating corroborative evidence is brought on record by the prosecution. The whole case of the prosecution is based on the testimony of PW7/complainant who turned hostile and has not identified the accused persons. It has been specifically stated by PW7 that photographs of the accused persons had been shown to him prior to the TIP of accused persons. Even otherwise the accused can not be convicted only on the basis of TIP which is otherwise very doubtful. It has been argued that there are material contradictions in the testimonies of other prosecution witnesses. Accused Pardeep has been falsely implicated in the present case. He is not involved in the alleged offence. Nothing incriminating has been recovered from the possession or at the instance of accused. The case property has been planted upon accused persons. The accused has not made any disclosure statement regarding his involvement in the present case. Further the Ld. Defence counsel has prayed that the accused may be acquitted.

31. In order to prove its case, the prosecution has examined complainant as PW7 who is the sole witness to the incident. He has deposed that on 14.03.2016, he was coming from his factory to go to his home via Kanjhawala road in his Mahindra XUV car bearing registration number DL-4C-AB-7553 and at about 10:30 PM, when he reached at Begumpur chowk, he stopped his said car to purchase fruits. When he alighted from his car, suddenly two boys came from his backside. One out of them caught hold of him and other tried to snatch the key of his car from him and one out of them was trying to fire towards him with a weapon which he was having in his hand but the weapon did not work. They gave beatings to him. They snatched the key of his car. There was a black colour bag in his said car in which Rs. One lakh cash, his licensee revolver loaded with six cartridges and seven or eight live cartridges were kept by him. Thereafter, accused persons started his vehicle and took it away towards Kanjhawala after taking U-turn from Begumpur Chowk.

32. PW7 has given graphic details of the incident and supported the case of the prosecution, though he has failed to identify the accused persons by stating that assailants had muffled their faces below eyes. He was declared hostile and was cross examined by Ld. Addl. PP. During his cross examination by Ld. Addl. PP, he deposed that he had not stated to the police in his complaint Ex.PW7/A that the assailants were covering their faces below eyes. He had not stated to the Ld MM while conducting TIP of accused Neetu @ Seeta on 23.03.2016 that his photographs had already been shown to him in the police station. PW7 was confronted with his complaint Ex.PW7/A wherein it was stated by PW7 that he could identify both the assailants. A perusal of Ex.PW7/A shows that it was not found mentioned in Ex.PW7/A that assailants were in muffled face at the time of incident, in fact physique and complexion of assailants were found mentioned therein. He admitted that he had correctly identified both accused persons during TIP. He has also admitted his signature

on TIP proceedings Ex. PW2/A & Ex.PW3/A.

33. It has been proved on record that TIP of accused Neetu @ Seetta was conducted by PW2/ Sh. Apoorv Sarvaria, Ld. MM Traffic, Rohini and the accused was identified by PW7. The TIP report Ex.PW2/A bears the signature of complainant/PW7. It has also been proved on record that TIP of accused Pardeep @ Golu was conducted by PW3/Sh. Jag Mohan Singh, Ld. MM Rohini court and Accused Neetu was also identified by PW7. The TIP report Ex.PW3/A bears signatures of PW7. PW7 deposed that photographs of both the accused persons were shown to him by the IO prior to their TIP. But it has nowhere been stated by PW7 that IO had compelled him to identify only those persons whose photographs had been shown to him. He has failed to furnish any explanation as to why he had identified accused persons in TIP when they were not involved in the present incident. It is pertinent to note herein that PW2 and PW3 were not cross-examined by Ld. Defence counsel. It is settled law that the cross-examination is a matter of substance and not of procedure and parties are required to put their version to the witness. The effect of non cross-examination of a witness is that the statement of witness has not been disputed and same has been accepted. In view of above, the evidence of PW7 is acceptable regarding the time, place and manner of the incident as well as the identity of the assailants.

34. The testimony of PW7 qua the robbery of Mahindra XUV car is also corroborated by PW12 and PW13 who recovered the said car just after half an hour of the commission of offence of robbery. PW12 has proved on record that after receiving wireless message about robbery of one Mahindra XUV, he immediately closed the road from both the sides with barricades and took position. There, at about 11.00pm, he saw robbed Mahindra XUV car coming at a very high speed from Mungeshpur side and the said car was being chased by a PCR van. The driver of said car stopped it and accused persons alighted

from the said Mahindra XUV 500 car and started running. He with the help of PW13 had apprehended accused Neetu @ Seetta and accused Pardeep @ Golu had managed his escape from the spot, after alighting from the said car. PW13 has also deposed on the lines of PW12.

35. It has been argued by Ld. Defence counsel that accused persons can not be convicted solely on the identity of the accused by PW7/complainant in test identification Parade.

36. Before proceedings further relevant case law needs to be perused. In **Hemudan Nanbha Gadhvi Vs State of Gujarat (Supra)**, Hon'ble Supreme court has referred to its own judgment titled **Iqbal Vs State of UP 2015 (6) SCC 623** wherein it was observed as follows :-

“15. Evidence of identification of the miscreants in the test identification parade is not a substantive evidence. Conviction cannot be based solely on the identity of the dacoits by the witnesses in the test identification parade. The prosecution has to adduce substantive evidence by establishing incriminating evidence connecting the accused with the crime, like recovery of articles which are the subject matter of dacoity and the alleged weapons used in the commission of the offence”

37. Hon'ble Supreme court has also referred to its judgment titled **Prakash Vs state of Karnataka, (2014) 12 SCC 133** wherein it was observed as follows:-

*“7. Even so, the failure of a victim or a witness to identify a suspect is not always fatal to the case of the prosecution. In Visveswaran Vs State it was held :-
The identification of the accused either in a test identification parade or in court is not a sine qua non in every case if from the circumstances the guilt is otherwise established. Many a time, crimes are committed under the cover of darkness when none is able to identify the accused. The commission of a crime can be proved also by circumstantial evidence”.*

38. It has been observed by Hon'ble Supreme Court in para 9 of the judgment that :-

“a criminal trial is but a quest for truth. The nature of inquiry and evidence required will depend on the facts of each case. The presumption of innocence will have to be balanced with the rights of the victim and above all the societal interest for preservation of the rule of law. Neither the accused nor the victim can be permitted to subvert a criminal trial by stating falsehood and resort to contrivances, so as to make it the theatre of the absurd. Dispensation of justice in a criminal trial is a serious matter and cannot be allowed to become a mockery by simply allowing prime prosecution witnesses to turn hostile as a ground for acquittal, as observed in Zahira Habibullah Sheikh Vs State of Gujarat, (2006) 3 SCC 374 and Mahila Vinod Kumari Vs State of Madhya Pradesh, (2008) 8 SCC 34. If the medical evidence had not confirmed sexual assault on the prosecutrix, the TIP and identification therein were doubtful, corroborative evidence was not available, entirely different consideration may have arisen”.

39. In the light of above cited judgment, when evidence on record is perused meticulously, it is revealed that apart from the TIP reports, there is other incriminating evidence which connect the accused persons with the present offence, like recovery of robbed Mahinder XUV car from the possession of the accused Neetu @ Seeta within half an hour of the commission of offence, arrest of accused Neetu while fleeing after having alighted from the robbed car and recovery of pistol from dub of pants of accused Neetu. Another clinching evidence proved on record through the testimony of PW12 and PW13 is that accused Pardeep is the same person who managed his escape from the spot after alighting from the said Mahindra car and ran towards the fields.

40. A perusal of testimonies of PW7, PW12, PW13 and close analysis of the facts and circumstances of this case prove that accused Pardeep @ Golu was the assailant who along-with his associate committed robbery of Mahindra car Ex.P12/1 and gave beatings to complainant/PW7. Accused Pradeep @ Golu had also used pistol during the commission of robbery and further fired towards PW7.

41. From the evidence and material placed on record, it has been established that accused Pradeep @ Golu had fired towards PW-7 Manoj

Aggarwal. So, having held that it was the accused Pradeep @ Golu who had fired at complainant/PW7, it is now to be seen whether the offence u/s 307 IPC is made out or not against the accused.

42. Section 307 IPC relates to attempt to murder which reads as under :

“Whoever does any act with such intention or knowledge and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is herein before mentioned.”

43. Before the court can hold that the act committed by the accused amounts to attempt to murder or attempt to commit culpable homicide, it should be satisfied that the act was committed with such intention or knowledge under such circumstances that if it had caused death, it would have amounted, in one case, to murder and in another case, to culpable homicide not amounting to murder.

44. The question of intention to kill or the knowledge of the death in terms of section 307 IPC is a question of fact and not of law and it would depend on the facts of the given case. As such, the intention and knowledge are the matters of inference from totality of facts and circumstances of a case. The nature of the weapon used, the manner in which it is used, motive behind the crime, severity of the blow, the part of the body where the injury is inflicted are all taken into consideration to determine the intention.

45. It is settled law that an intention coupled with some overt act is sufficient to justify a conviction under Section 307 IPC. The court has to see whether the act irrespective of its result was done with the intention or knowledge and under circumstances mentioned in the section.

46. The nature of weapon used in the commission of offence and the

manner in which it was used is indicative of the intent of the accused to ensure the end of the complainant. The said act of the accused was so imminently dangerous that in all probabilities it could cause death. Hence, I hold that the prosecution has been able to prove the requisite intent and knowledge of the accused Pradeep @ Golu and proved charge u/s 307 IPC.

47. The manner and circumstances under which robbery is shown to have been committed, it appears that accused Pardeep @ Golu was sharing common intention with his associate to commit the present offences. Hence accused Pardeep @ Golu is held guilty of the offence punishable u/s 392 IPC read with section 34 IPC. Accused Pradeep @ Golu is also held guilty for the offences punishable u/s 307 IPC read with 34 IPC and also u/s 394/397 IPC.

48. Since accused Neetu @ Seeta is PO, the present judgment is being passed with respect to accused Pradeep @ Golu only.

Conclusion

49. In view of the above discussion, accused Pardeep @ Golu is convicted for the offences punishable under Sections 392/307/34/394/397 IPC.

50. Let the convict be heard on the quantum of sentence.

**Announced in the open court
on 4th July 2019**

**(Raj Rani)
Addl. Sessions Judge-04(North-West)
Rohini Courts, Delhi.**