

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

% *Judgment Reserved on: 03rd November, 2009*
Judgment Delivered on: 06th November, 2009

+ **CRL.REV.P.794/2003**

BIJENDER Petitioner
Through: Mr.Rajesh Mahajan, Adv.

versus

STATE Respondent
Through: Mr.Manoj Ohri, APP

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J.

1. On 1.12.2001, a complaint had been lodged by Uday Singh PW-2. He had boarded a bus at Shivaji Stadium at 12.15 PM; his pocket was picked in the bus at the point of knife by a gang of 8-10 persons. Rs.3500/- was robbed; he was given beatings and his pocket was forcibly torn at the point of knife. One out of the said persons was apprehended; the others succeeded in escaping. Complaint Ex.PW-2/A was lodged.

2. On the aforesaid complaint FIR no.402/2001 was registered under Section 394/34 of the IPC at P.S.Mandir Marg.

Nand Kishore PW-1 had corroborated the version of PW-2. He has stated that on 1.12.2001 when he was going to Gole Market from Shivaji Stadium by bus route no.157, while standing near the stand of the bus he heard a noise that the pocket of someone had been picked and Rs.3500/- had been stolen. PW-1 asked the bus driver to stop the vehicle in the meanwhile 2-3 boys dragged PW-1 inside the bus and beat him; no one came forward to save him. On getting down from the bus PW-1 saw three boys snatching money from another person by giving him a knife blow; Rs.3500/- had been snatched; one of those three boys was apprehended at the spot.

3. PW-3 Chander Pal was the conductor of the fateful bus; as per his version on oath he had not seen the face of the apprehended person. Daya Ram PW-7 was the driver of the bus; he had also not seen apprehended person; both the driver and the conductor of the bus had been permitted to be cross-examined by the learned prosecutor; they stuck to their stand and did not identify the accused.

4. Const.Jasbir Singh PW9 had apprehended the accused. ASI Kishan Chand PW-4 has reached the spot and taken custody of the apprehended person i.e. the accused Bijender who had been arrested.

5. The injured persons i.e. PW-1 and PW-2 had been removed to the hospital by Const.Kalim Beg PW-10 where they were examined vide MLCs Ex.PW-11/A and Ex.PW-11/B prepared by Dr.Veena

Mahajan PW-11. Injuries sustained by the victim PW-2 who had been examined vide MLC Ex.PW-11/A are simple injuries with a sharp weapon. MLC Ex.PW11/B of PW-1 had evidenced simple injuries with a blunt weapon. The piece of blade had been recovered and seized vide memo Ex.PW4/A.

6. Testimony of PW-1 and PW-2 had been relied upon; their versions were held to be consistent and corroborative; the medical evidence had substantiated their ocular testimony.

7. Vide judgment dated 13.3.2003, the accused Bijender had been convicted under Section 394/34 of the IPC and sentenced to undergo RI for three years and to pay a fine of Rs.5000/-; in default of payment of fine to undergo SI for six months.

8. In appeal vide impugned judgment dated 2.8.2003 the conviction of the petitioner under Section 394/34 of the IPC had been maintained; he already having suffered incarceration of 22 months and being a poor person a modification was made in the payment of fine and in default of payment of fine SI was reduced from six months to two months.

9. On 3.12.2003 petitioner had been granted bail: it had been recorded that he has already undergone two years RI out of the total three years RI which had been awarded to him.

10. What has been argued before this court is the quantum of sentence which had been awarded to the petitioner. It is submitted that this was a case of simple pick pocketing; PW-3 and

PW-7 the conductor and driver of the bus had failed to identify the accused; the offence dating back to the year 2001 i.e. eight years having since elapsed; leniency be awarded to the petitioner and his sentence be reduced to the sentence already undergone by him. It is further submitted that first appellate court had correctly appreciated the fact that the petitioner is a poor man and due to financial constraint the sentence of fine had been modified and in default of payment of fine the sentence of six months SI had been reduced to SI for two months. It is submitted that it may not be possible for the petitioner to pay the said amount also.

11. In Ladoo vs. The State 26 (1984) DLT 254 in a conviction under Section 394 of the IPC where the accused was a young man, not being a previous convict, and not having any other case against him sentence of five years RI was reduced to four years.

12. In the facts and circumstances of the present case, ends of justice would be well met if the sentence already suffered by the petitioner i.e. incarceration for the period of two years is the sentence awarded to him. Fine imposed upon him also stands remitted. Petitioner is accordingly sentenced to undergo the imprisonment already undergone by him.

13. Petition disposed of in the above terms.

(INDERMEET KAUR)
JUDGE

06th November, 2009
rb