

**HIGH COURT OF DELHI : NEW DELHI**

**Judgment Reserved on: March 4, 2010**

**Judgment Pronounced on: March 15, 2010**

**+ Crl. Appeal No. 104 of 2004**

% Pritam Singh ... Appellant  
Through: Mr. Jitender Kumar, Advocate

versus

The State (Govt. of NCT of Delhi) ... Respondent  
Through: Mr. R.N. Vats, Additional Public  
Prosecutor for State.

**CORAM:  
HON'BLE MR. JUSTICE SUNIL GAUR**

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|------------------------------------------------------------------------------|---|----|
| 1. Whether the Reporters of local papers may be allowed to see the judgment? | } | No |
| 2. To be referred to Reporter or not?                                        |   |    |
| 3. Whether the judgment should be reported in the Digest?                    |   |    |

**SUNIL GAUR, J.**

1. The appellant has been tried and convicted in FIR No. 269 of 1999, under Sections 354/397/34 of the IPC, registered at Police Station Kotla Mubarak Pur, New Delhi, in respect of an occurrence in the night of 23<sup>rd</sup> May, 1999, which took place near Subhash Marg. Modesty of an Australian woman (PW-4)

(hereinafter referred to as the 'victim') was purportedly outraged in a car by the appellant while his co-accused was driving the car and thereafter, the victim (PW-4) was robbed of her valuables like wallet, gold bracelet and black handbag at the point of a sharp object.

2. Upon the complaint of the victim (PW-4), investigation in this case commenced, spot proceedings were conducted and co-accused of the appellant was arrested, whereas the appellant/accused had managed to flee away. However, he was arrested on the next day and at his instance, cash of Rupees five thousand six hundred and eighty, two Australian dollars in the denomination of Rupees hundred each, visiting and membership cards of the victim (PW-4), were recovered from a box in which wheat was kept in his room. From the co-accused of the appellant, knife and remaining cash was recovered and the co-accused had disclosed that the said knife and cash was handed over to him by the appellant/accused. Investigation of this case stood completed with the filing of the charge-sheet against the appellant and his co-accused in this case for the aforesaid offences. Trial had followed upon appellant and his co-accused preferring to face the charges framed against them for the offences under Sections 354/34 of

the IPC and under Section 397 of the IPC. The evidence recorded consists of deposition of victim (PW-4) and that of public witnesses (PW-2 and PW-3). The investigation in this case was conducted by SI Hemant Kumar (PW-6) and Sub-Inspector Raghunath (PW-9). The plea of appellant/ accused before the trial court was of denial of the prosecution case, though he had not led any evidence in his defence. The trial of this case came to an end with the conviction of the appellant/accused and the impugned order sentenced the appellant/accused to rigorous imprisonment for seven years for the offence under Section 397 of the IPC whereas for the offence under Section 354 of the IPC, he stands imprisoned for a period of two years.

3. The challenge herein is to the aforesaid conviction and sentence on the ground that the trial court has arrived at the conclusion that the offence committed by the appellant is of being in possession of stolen property but has illegally proceeded to convict the appellant for the offence under Section 397 of the IPC by drawing presumption under Section 114 of the Evidence Act. According to the learned Counsel for the appellant/accused, at best the appellant could have been convicted for the offence under Section 411 of the IPC. It has

been urged on behalf of the appellant/accused that the conviction of the appellant for the offence under Section 397 of the IPC is patently illegal and is liable to be set aside. Mr. R.N. Vats, learned Additional Public Prosecutor for respondent-State, asserts that the presumption under Section 114 of the Evidence Act can be drawn as the possession of the robbed articles is recent one. It is a matter of record that the incident is of 23<sup>rd</sup> May, 1999, whereas the recovery of the robbed articles has been made from the appellant/accused on 25<sup>th</sup> May, 1999.

4. It is reasonable to presume from the recovery of the robbed articles after about two days of the incident that the robbery was committed by the appellant/accused and none other. It is a matter of record that the victim (PW-4) has not identified the appellant/accused as the assailant. Even the depositions of the public witnesses (PW-2 & PW-3) do not incriminate the appellant/accused. In such a situation, by drawing presumption under Section 114 of the Evidence Act, the appellant/accused can be convicted for the offence of robbery.

5. It is so said upon scrutiny of the evidence on record. It does stand proved beyond any reasonable doubt that the appellant/accused was found in possession of the robbed articles and that too, just two days of this incident. The stand of the appellant/accused is of mere denial, which can hardly rebut the presumption raised against him under Section 114 of the Evidence Act. The recovery of stolen articles from the appellant/accused may not be soon after this incident, but is certainly recent one. Therefore, the trial court did not commit any illegality or infirmity in drawing adverse inference against the appellant/ accused.

6. So far as the offence of robbery simplicitor is concerned, it was legitimate to convict, by relying upon Illustration-A, under Section 114 of the Evidence Act. However, it is illegal to convict the appellant/accused for the offence of armed robbery, especially when the recovery of the weapon of the offence was from the co-accused. Evidence is lacking as regards who had yielded the knife for commission of offence of robbery. This Court is of the considered view that the appellant/accused can be certainly convicted for the offence under Section 392 of the IPC but his conviction for the offence under Section 397 of the IPC is clearly unsustainable and is

accordingly set aside. Offence under Section 392 of the IPC is a lesser offence of the same species as that of Section 397 of the IPC. Therefore, appellant can be convicted for the lesser offence though he has been charged for the graver offence. While maintaining the conviction of the appellant/accused under Section 354 of the IPC, his conviction for the offence under Section 397 of the IPC, is set aside and instead thereof, he stands convicted for the lesser offence under Section 392 of the IPC.

7. During the pendency of this appeal, the sentence imposed upon the appellant was suspended. Nominal Roll of the appellant/accused indicates that the appellant has remained behind bars in this case for a period of more than three years and three months. His conduct in the jail has been found to be satisfactory and his Nominal Roll shows that no other case is pending against him. The offence under Section 392 of the IPC does not carry any minimum sentence. Counsel for the appellant/accused had brought to the notice of this Court during the hearing of this appeal that appellant/accused is now settled in life and he is on bail since the year 2006. In the typical facts of this case, the period of detention already undergone by the appellant/accused would meet the ends of

justice. Resultantly, appellant/accused is sentenced to rigorous imprisonment for three years and three months, i.e. the period already undergone by him in this case. This appeal stands partly allowed in the aforesaid terms.

8. The appeal stands disposed of accordingly.

**Sunil Gaur, J.**

March 15, 2010

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