

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRIMINAL APPEAL No. 223 of 2007

% **Reserved on : 8th April, 2010.**
Date of Decision : 29th April , 2010.

LIYAKAT KHAN

.... Appellant.
Through Mr.Sumeet Verma, Advocate.

VERSUS

STATE (NCT OF DELHI)

....Respondent.
Through Mr.Arvind Kr.Gupta, APP.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

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

SANJIV KHANNA, J.:

The present Appeal by Mr. Liyakat Khan is directed against his conviction under Section 392 r/w Section 397 of the Indian Penal Code, 1860 vide judgment dated 18th May, 2005 and Order of sentence convicting him to undergo rigorous imprisonment for seven years and pay fine of Rs.100/- and in default to undergo rigorous imprisonment for one month.

2. Learned Trial Court has held that the appellant on 5th March, 2004 at 9.15 p.m. along with two others had committed robbery at knife point and had stolen a three wheeler scooter and injured its driver-Mr.Shiv Swaroop Tiwari.

3. To prove and establish commission of the offence by the appellant, the prosecution had examined Mr.Shiv Swaroop Tiwari (Pw-2). Mr. Shiv Swaroop Tiwari in his statement has recapitulated the entire incident. He has stated that he was driving three wheeler scooter bearing registration no. DL 1 RE 9626 (hereinafter referred to as TSR, for short) and at about 8.15 p.m. had reached Sidhipura Chowk near Filmistan when three boys hired his TSR for going to Mayapuri Chowk. When he reached Rama Road near Karol Bagh, he was asked by one of the accused that he should be dropped at his father's shop at Kirti Nagar. Accordingly he turned the TSR in the said direction. At about 9.15 p.m. when he reached Rama Road near Kirti Nagar he was asked to stop the TSR in front of house no. C-70, Kirti Nagar, between blocks C-D. All the three passengers alighted and went at the back of the TSR and started talking. The victim (PW-2) also alighted from the TSR and stood on the left side. After a short while the appellant came from behind and gagged his mouth and placed a knife at his back. His companions caught him from the front and removed a small diary containing Rs.200/- from his shirt's pocket. He was threatened and warned that in case he raised any alarm, he would be stabbed in the abdomen. Thereafter, the appellant occupied the driver's seat and his two companions occupied the rear seat and drove away the TSR through Tagore Market, Najafgarh Road. The victim Shiv Swaroop Tiwari (PW-2) raised alarm, ran after the TSR towards a round about. There he met two

policemen, Head Constable Darshan Kumar and Constable Mewa Ram who were coming from the opposite direction on a scooter and narrated the incident to them. They chased the TSR. The TSR was stopped at a police picket of Tagore Market by Constable Jai Prakash and the appellant was over-powered and captured. However, the two companions sitting in the rear seat of the TSR managed to escape. Shiv Swaroop Tiwari (PW-2) was taken to the police station from where he was taken to the hospital. In the cross-examination, PW-2 has stated that he had stayed in the hospital for one hour. From the appellant, a knife (Ex. P-4), diary (Ex. P-2) and Rs.200/- (Ex. P-3/i & ii) were recovered. The TSR (Ex.P-1) used at the time of the incident was released on *superdari*. The clothes (Ex.PW-2/E) worn by Mr.Shiv Swaroop Tiwari (PW-2) were also sealed and produced before the Trial Court. In the cross-examination, a suggestion was given that there was no proper light, etc. but as far as arrest of the appellant including recoveries made from him are concerned, the same went unrebutted.

4. The aforesaid facts/statements of Mr.Shiv Swaroop Tiwari (PW-2) is confirmed by ASI Jai Prakash (PW-4) who stated that he was posted at police picket, Tagore Market on 5th March, 2004 when he saw a TSR being chased by Head Const. Darshan Kumar and Const. Mewa Ram who were shouting '*pakro pakro*'. He stood in front of the TSR and forced it to stop. The appellant-Mr.Liyakat Khan pulled out a knife and threatened that if anybody would advance towards him, he would kill him. The two other persons sitting in the back side of the TSR ran away. The appellant was over-powered and a knife, a diary and Rs.200/- were recovered. Statement of ASI Jai Prakash

(PW-4) could not be dented in the cross-examination. Head Const. Darshan Kumar (PW-6) has stated that on 5th March, 2004 he was posted at P.S. Kirti Nagar and was on duty at *Gol Chakkar* with Const. Mewa Ram. At about 9.15 p.m. he saw a TSR bearing registration no. DL-1R-E9626 being driven at a very high speed. They chased the TSR on his two wheeler. ASI Jai Prakash (PW-4) who was on police duty at police picket at Tagore market came in front of the TSR and forced it to stop. Two persons sitting on the pillion seat took advantage of the darkness and ran away but the appellant who was driving the TSR took out a dagger. He was over-powered and arrested. The driver Mr.Shiv Swaroop Tiwari (PW-2) who bore injuries on the neck informed him that he was robbed of Rs.200/- and a diary and these were recovered from the appellant. In his cross-examination, this statement of Head Const. Darshan Kumar (PW-6) was again not dented.

5. The prosecution also examined Mr.J.C.Vashisht, Record Keeper of DDU Hospital (PW-7) who has proved MLC (Ex.PW-8/A) of Mr.Shiv Swaroop Tiwari. As per the said MLC, Mr.Shiv Swaroop Tiwari (PW-2) had suffered two small scar marks on the forehead and had a cut mark on the back side with small multiple abrasions. The injuries were opined to be simple but caused by a sharp weapon. The MLC also records that the patient had complained of alleged history of assault. The prosecution had examined Ms.Archana Sinha, Metropolitan Magistrate (PW-8), Tihar Jail who confirmed the identification of the appellant in the test identification parade by Mr.Shiv Swaroop Tiwari (PW-2) in the Tihar Jail.

6. The appellant in his statement under Section 313 of the Code has stated that he was innocent and had been falsely implicated by the police, who had picked/arrested him from his house. He has stated that Mr.Shiv Swaroop Tiwari (Pw-2) had falsely identified him and he had been implicated in several false cases since 1992 and in most of them he had been acquitted.

7. Learned counsel for the appellant had submitted that since the other two accused, namely, Mr.Rakesh @ paina and Mr.Latif @ Maharaj who had escaped in the cover of darkness have been acquitted, the appellant should also be given the same benefit as his case is no different. As noticed above, the two other persons sitting on the passenger seat had managed to escape in the cover of darkness and were not arrested on the spot. These two persons were identified in the test identification parade by Mr.Shiv Swaroop Tiwari (PW-2) but the Trial Court has acquitted them for the reasons set out in para 6 of the judgment. It has been observed that Mr.Shiv Swaroop Tiwari (PW-2) could not have known the names of the two robbers who had managed to escape and that he did not have sufficient time for interaction to be able to identify them Further, as per ASI Jai Prakash (PW-4), Mr.Rakesh @ paina and Mr.Latif @ Maharaj were arrested in connection with some other case on 6th March, 2004 when they made a disclosure statement about the present incident. Mr.Rakesh @ paina and Mr.Latif @ Maharaj were therefore given benefit of doubt keeping in view the evidence placed on record. However, as far as the appellant is concerned, he was caught/nabbed at the spot after a chase and then arrested. The statements of Mr. Shiv Swaroop Tiwari (PW-2), ASI Jai Prakash (PW-4) and Head Const. Darshan Kumar (PW-6) have been clear and

categorical and in their statements they have been able to establish appellant's guilt beyond doubt. Small discrepancies pointed out by the learned counsel for the appellant have been noticed by the Trial Court in para 7 of the judgment and it has been rightly held that when and at what stage the knife was shown, when the TSR was stopped by (PW-6) Head Constable Darshan Kumar and what words were uttered, whether the knife had blood stains or not, etc, are inconsequential and do not materially effect the evidence.

8. The sentence imposed on the appellant is the minimum sentence prescribed under Section 397 of the Indian Penal Code. In view of the aforesaid, I do not find any merit in the present Appeal and the same is dismissed.

(SANJIV KHANNA)
JUDGE

APRIL 29, 2010.
P/j