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HIGH COURT OF DELHI : NEW DELHI

Judgment reserved on: January 08, 2010
Judgment pronounced on: January 12, 2010

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Crl. Appeal No. 385 of 2007
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Crl. M.B. No. 547 of 2009

% Arjun Mandal ... Appellant
Through: Ms. Anu Narula, Advocate

versus

The State
(Govt. of NCT of Delhi) ... Respondent
Through: Mr. Amit Sharma, Additional Public
Prosecutor for the State

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

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

SUNIL GAUR, J.

1. In the night of 17th day of September, 2004, an armed robbery had taken place at House No.1-E, Northern Road, Civil Lines, Delhi. Smt. Anita Mukin, is the landlady of this house and the Appellant was the servant there and he had purportedly facilitated the armed robbery in this house by his co-accused Ravinder Kumar Thakur. FIR No. 267/04 under Sections

394/411/452/34 of the Indian Penal Code was registered at Police Station Civil Lines, Delhi, regarding this incident. Investigation had commenced and after its completion, charge sheet under Sections 394/411/452/34 of Indian Penal Code was filed before the concerned Court, who also took cognizance for the offence punishable under Section 397 of IPC. Appellant alongwith his co-accused was put to trial for the offences under Sections 392/34, 394/34 and under Sections 392/394/397/34 of Indian Penal Code.

2. Although the evidence of fourteen witnesses had been recorded at trial of this case, but the fate of this case primarily depends upon the evidence of the prime witness- Smt. Anita Mukim, (PW-1), whose testimony has been referred to in extenso by the learned counsel for the Appellant during the hearing in this appeal. It is worthwhile to note that the stand of the Appellant before the trial court was of bald denial and no evidence in defence was led by the Appellant before the trial court.

3. The trial of this case ended in conviction of the Appellant and his co-accused and sentence of five years with fine has been imposed upon the Appellant for the offence punishable under Section 392/34 of Indian Penal Code. Similarly, the

sentence imposed for the offence punishable under Section 394 of Indian Penal Code is also five years with fine. Conviction for the offence punishable under Section 397 of Indian Penal Code carries a minimum sentence of seven years, which has been imposed upon the Appellant, which is seriously under challenge in this appeal.

4. After having heard both the sides in this appeal and upon perusal of the evidence on record, I find that learned counsel for the Appellant candidly does not contest the conviction and sentence imposed upon the Appellant for the offences punishable under Section 392 and 394 read with section 34 of Indian Penal Code and rightly so, as the evidence on record clearly supports the conviction of the Appellant for these two offences.

5. What has been vehemently contested by learned counsel for the Appellant is the conviction for the offence punishable under Section 397 of Indian Penal Code. For this purpose, evidence on record has been extensively referred to by learned counsel for the Appellant and it has been specifically highlighted that there is no recovery of knife at the instance of the Appellant and the chance print does not tally with the specimen impressions of the Appellant and there is no

worthwhile evidence to sustain the conviction of the Appellant for this offence.

6. It is quite evident from the evidence of the star witness Anita Mukim, (PW-1) that Appellant had taken out the kitchen knife from his pocket and his co-accused had caught hold of the landlady (PW-1) and had tied her with the rope and thereafter, both the accused started beating her with some hard object.

7. To attract offence punishable under Section 397 of Indian Penal Code, use of knife is not a must and brandishing of knife while committing the offence of robbery by itself is sufficient. Attention of this Court was drawn by learned counsel for the Appellant to the testimony of Dr. Mridul Kaushik (PW-10) to show that she admits that injury on the finger of the patient could have been by a fall. Though, it is stated so, but its possibility ruled out by the fact that the injury sustained on the finger of the Complainant/first informant was a incised wound, which shows that there was use of knife in commission of this offence. What probablises the prosecution version is that the arrest of the appellant/accused is on the same day and he does not rule out his presence at the time and place of this incident.

8. In the last, much emphasis has been laid by learned counsel for the Appellant upon the aspect of lack of legal assistance to the appellant/accused during the trial of this case. What has been highlighted is that the Complainant/first informant (PW-1) as well as her husband (PW-2) and public witness (PW-4) have not been cross-examined on behalf of the appellant/accused. What is being emphasized is that the trial judges, in sessions trial, have to be sensitized to the need of ensuring that legal aid counsel ought to be provided to cross-examine the material witnesses and if cross-examination of material witnesses is done by the accused, then it should be specifically recorded that in the deposition of the material witnesses, that the opportunity to have legal assistance was provided to the accused, but he refused to avail of it.

9. I find substance in the aforesaid stand of the learned counsel for the Appellant. Every session Court is duty bound to provide fair trial and especially to the poor accused, who are unrepresented by a counsel. Special care needs to be taken to ensure that legal assistance, in cases like present one, is afforded to the poor accused. The stage of cross-examination is quite vital and it affords an opportunity to an accused to test the veracity of the witnesses and to confront/contradict the

witnesses and to put across what the accused has to say.

10. In any case, the trial of this case does not stand vitiated on this account because record of this case reveals that amicus curiae counsel was provided to the accused in this case. It is so reflected in the order sheet of 4th June, 2005 of the trial Court. On that very day, charges were framed against the appellant/accused. It is unfortunate that Mr. Surinder Singh, *Amicus Curiae* counsel did not take any interest and another *Amicus Curiae* counsel Ms. Sadhna Bhatia was appointed as is evident from the order sheet of 26th April, 2006. It is pertinent to note that the Complainant and first informant were present on that date but they were discharged to be examined on another date. At least, in this case the trial judge was vigilant about the pre-requisite of providing a fair trial.

11. Delhi Legal Services Authority or the authority concerned for providing legal aid counsels have to ensure that effective legal assistance is provided to the poor accused. For this, constant monitoring of the legal aid counsels by the authorities concerned has to be undertaken. In this matter, nothing further is required to be said, except that effective assistance has been rendered by Ms. Anu Malhotra, learned counsel for the

Appellant during the hearing of this appeal.

12. All said and done, there is no merit in this appeal. There is no illegality or infirmity in the impugned judgment. This appeal merits rejection and is accordingly rejected.

13. This appeal and the pending application are accordingly disposed of.

14. Appellant is in custody, he be informed of the fate of this appeal through the concerned Jail Superintendant.

Sunil Gaur, J.

January 12, 2010
Pkb/rs