

to undergo Rigorous Imprisonment for five years and a fine of ₹5000/- under Section 392 and 7 years and a fine of ₹2000/- under Section 394/397 IPC.

2. Briefly, the prosecution case registered on the complaint on PW4 Brij Pal is that on 21st August, 1998 at about 11:15 p.m. at night when he reached near public school on 66 feet Road, Jafrabad on his bicycle, three boys came on foot and stopped him by showing the knife and gave him beatings. One of the boys tried to snatch ₹3750/- which he had kept in his front inside pocket of his pant and when he resisted, the other person gave knife blow on his left hand wrist and the first one snatched the amount and all of them ran away. He made a phone call to the police on 100 number on which the PCR van came and removed him to GTB Hospital. He stated that he could identify the accused if produced. As per the MLC, the doctor opined that the nature of injury was simple and caused by sharp weapon. The Appellant was arrested in FIR No. 361/1998 by the Crime Branch where he disclosed his involvement in the present case. The disclosure statement was handed over to the investigating officer of this case who arrested him in the present case. Similarly, co-accused Mohd. Anwar was arrested in another case and he also made a disclosure of his involvement in the present case. The Appellant and the co-convict Mohd. Anwar refused the Test Identification Parade (T.I.P.) on the ground that they had been shown to the witnesses. After examination of

the prosecution witnesses and the accused under Section 313 Cr.P.C., the Appellant was convicted as above. Co-convict Mohd. Anwar was convicted for offence under Section 392/394/34 IPC and awarded a sentence of Rigorous Imprisonment for 7 years for offence punishable under Section 394/34 IPC. He had filed Crl. Appeal No. 588/2000 which has been disposed by this Court vide order dated 19th November, 2005 wherein his sentence was modified to period already undergone as he had undergone more than 6 years and 5 months imprisonment.

3. The contentions of the learned counsel for the Appellant are that the Appellant has been falsely implicated in this case. The disclosure made in the other case is not admissible in this case as there is no recovery pursuant to the disclosure. No knife or cash has been recovered. Moreover, the case of the prosecution was that there were three boys however only two have been arrested and convicted. The T.I.P. was refused because the Appellant was shown to the witnesses thus no adverse inference can be drawn against the Appellant on that count.

4. It is further contended that PW 7 and PW 9 have stated that the Appellant was arrested on 29th August, 1998 in another case where he made a disclosure and recoveries were effected at his instance. It is not mentioned that the Appellant was caught muffled face. Thus conducting of the TIP was a

meaningless exercise. Contradiction in the statement of PW4 is writ large as in the Court he has not attributed any role to the third accused who has not been arrested. Thus, he prays that the Appellant be acquitted of the charges. In the alternative it is prayed that the Appellant is in custody for more than 5 years and 6 months and thus he be released on the period of imprisonment already undergone.

5. Learned APP for the State on the other hand contends that the Appellant has been identified by PW4 Brij Pal before the Court. In his testimony, he has clearly identified the Appellant as the person who gave injury to him by the knife at the time when the money was snatched from him by the co-accused. The evidence of PW4 is corroborated by the MLC Ex. PW 10/A. He further states that on pointing out of the Appellant, the knife was recovered. Thus there is no merit in the appeal and the same be dismissed.

6. I have heard learned counsels for the parties and perused the record. A perusal of the testimony of PW 4 Brij Pal shows that he has identified the Appellant as the person who gave him knife blow when the other accused was removing cash from his pocket. Since the Complainant resisted, the Appellant inflicted injury on his left wrist. The T.I.P. has been refused by the Appellant on the ground that he has been shown to the witnesses however no such suggestion has been given to PW4 by the counsel for the Appellant when he

came in the witness box. When the Appellant was arrested, he was found in possession of knife though there is no evidence to connect the knife with the injury caused as neither the Complainant PW4 has identified the knife to be the same by which he was hit at the time of committing the offence, nor any opinion of the doctor has been sought that the injury on the person of the complainant is possible with the said knife. However, the version of PW 4 is corroborated by the MLC which has been recorded soon after the incident. As per the MLC, Ex.PW10/A the injury received by the Complainant was caused by a sharp weapon. The Complainant has duly identified the Appellant in Court to be the same person who inflicted knife blow on him. The defence taken by the Appellant that he has been falsely implicated is not borne out from the record and the cross examination of the witnesses. Thus I find no infirmity in the impugned judgment convicting the Appellant for an offence punishable under Section 397 IPC.

7. As regards the prayer to reduce the sentence, since the Appellant has been convicted for offence punishable under Section 397 IPC and the minimum sentence prescribed therein is seven years rigorous imprisonment, the sentence of the Appellant cannot be reduced to the period undergone.

8. I find no merit in the present appeal and the application. The same are dismissed. Copy of this judgment be communicated to the Appellant through the Superintendent, Tihar Jail.

(MUKTA GUPTA)
JUDGE

JULY 05, 2011/dk