

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

+ **Appeal No. 113/2001 & Crl. M.B. No. 305/2011**

% Reserved on: 9th February, 2012

Decided on: 20th March, 2012

AMARPAL & ANR

..... Petitioners

Through: Mr. Ashok Jain, Advocate for
Appellant No.1.
Mr. Mohit Mathur, amicus curiae for
Appellant No. 2.

versus

STATE & ORS

..... Respondents

Through: Mr. Mukesh Gupta, APP for the State
with SI Shashi Kant, PS Nand Nagari.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. The present appeal is directed against the judgment dated 12th December, 2000 and order on sentence dated 14th December, 2000 passed by the learned Addl. Sessions Judge convicting Appellant No.1 under Section 392/34 IPC and Appellant No.2 for offences punishable under Section 392/397/34 IPC and sentencing them to undergo Rigorous Imprisonment for five years and a fine of Rs.3000 each under Section 392 of IPC. In default of payment of fine to further undergo Rigorous Imprisonment for six months. Appellant No.2 Sanjeev was also awarded Rigorous Imprisonment for seven year for offences punishable under Section 397 IPC.

2. Briefly, the facts of the case are that on 5th March, 1999 on receipt of DD No. 2A, ASI Rajbir Singh along with Const. Om Vir reached 100 ft. Road, Primary School, E- Block, Nand Nagri where he met the in-charge of

PCR Van R-75, ASI Rajinder Singh with staff and complainant Dinesh, a juvenile and Sanjeev Appellant No.2 herein. PCR Van in-charge ASI Rajinder Singh handed over to him accused Sanjeev and Complainant Dinesh with Rs.300 and one dagger stating all the facts of the case and that money and chura were recovered from the accused which were taken from the Complainant Dinesh. ASI Rajbir Singh recorded the statement of the Complainant, who stated that he was going with his rickshaw rehri to buy vegetables and at about 6:30 A.M. when he reached at the spot, the chain of the rickshaw rehri had fallen so he was putting the chain back. In the meantime, one TSR No. DL 1-RA-5099 passed by and stopped at some distance. From that TSR four boys came out including one juvenile. Appellant No.2 Sanjeev asked him as to where was he going, another boy caught hold of him and one other boy gave him slap and fist blows. When the complainant asked the reason, Appellant No.2 took out a dagger and ordered him to stand keeping his hands up. Thereafter the juvenile started taking his search and removed Rs.300/- from the pocket of his pant and handed over the same to Appellant No.2. In the meantime, the Complainant saw PCR Van and raised alarm. By seeing the police vehicle, two boys ran away in the TSR, however two boys were apprehended. The local police was called and the Investigating Officer arrested them. At the instance of the Complainant, Appellant No.2, the juvenile and other two accused persons Amarpal and Amar were also arrested. On the basis of the statement, FIR No. 147/1999 was recorded. After completion of investigation, chargesheet was filed. The juvenile was produced before the Juvenile Justice Board. After recording the statement of prosecution witnesses and the statement of

the accused persons under Section 313 Cr.P.C., the Learned Trial Court convicted and sentenced the Appellants as mentioned above.

3. Learned counsel for the Appellants state that the impugned judgment convicting the Appellants is based on conjectures and surmises. The judgment is bad in law and on facts. Learned Trial Court has failed to appreciate that there are contradictions in the testimony of PW3, ASI Rajinder the eye-witness. PW3 has stated that Rs.300 were recovered from the left pocket of the shirt of Appellant No.2 which is contradictory to the testimony of PW5 HC Surinder Kumar who has stated that the looted money was recovered from the pocket of the pant of Appellant No.2. There is also discrepancy in the statements of the witnesses regarding recovery of knife. PW5 has deposed that the chura/knife recovered from Sanjeev was without button whereas PW2 on the other hand has deposed that the recovered knife was a buttoned knife.

4. Learned counsel for Appellant No.1 Amarpal further contends that no role has been assigned to Appellant No.1 and there is no evidence against him. PW 3 in his testimony has deposed that two/four boys were involved in the incident. However, he does not specifically talk about the presence of Appellant No.1. There is no incriminating evidence against Appellant No.1 and his conviction is based upon uncorroborated evidence. There is no specific role assigned to Appellant No.1 and there is no evidence to sustain the conviction of Appellant No.1. Thus, the appeal be allowed.

5. Per contra learned APP contends that the impugned order suffers from no illegality. The learned Addl. Sessions Judge has considered all the relevant facts of the case and after appreciating the evidence placed on

record has correctly convicted the Appellants. It is further stated that the testimony of the victim/complainant PW2 is clear and he has fully supported the prosecution case. This testimony of PW2 is further corroborated by the testimony of PW3, PW6 and PW7. The discrepancies as pointed out by the learned counsels for the Appellants are not material discrepancies which go to the root of the prosecution case. PW2 has clearly given the facts of the case and despite a lengthy cross examination nothing could be elicited from his statement. Thus, the present appeal has no merit and is liable to be dismissed.

6. I have heard learned counsels for the parties and perused the record.

7. PW2 Dinesh Kumar in his testimony has deposed that on 5th March, 1999 at about 5 to 6 A.M. he was going to Subzi Mandi, Shahadra on his rickshaw rehri to purchase vegetables. At about 6:00 a.m. he reached 100 ft road near Primary School, Nand Nagri and there the chain of his rickshaw fell down and he was putting on the chain. When he started to move his rickshaw, one TSR No. DL1R 5099 came there in which 4-5 boys were sitting. The TSR stopped, four boys got down. They came to him and asked where he was going and also asked him to give beedi. Out of them one caught him by his collar and also pointed out knife on him. Two out of them caught hold of him and the youngest boy removed the cash of Rs.300 from the left pocket of his pant. The youngest boy after removing the said amount handed over the same to Appellant Sanjeev. After looting Rs.300 all the four accused went away from the spot and he(PW2) started returning towards his house. The four boys again came and showed him knife and told him to go to Subzi Mandi and not to the house. He saw a PCR vehicle and raised

alarm. The PCR officials came to him. Appellant No.2 Sanjeev and the juvenile were overpowered by the PCR officials while the other two succeeded in escaping. On the personal search of the Appellant Sanjeev one knife and cash of Rs.300 were recovered. The other two accused persons were arrested by the police later on from their house but not in his presence. This witness in his cross examination by the learned APP has stated that the accused Amarpal and Amar had run away when Appellant Sanjeev and juvenile were arrested. He has further stated that the accused Amarpal and Amar were arrested by the police from 'O' Block Chowk, while they were sitting in the said TSR whose wheel was punctured at that time. The TSR was taken in possession from the place where Amarpal and Amar were arrested. This witness in his cross examination by the learned counsel for the accused persons has stated that he was beaten by the Amarpal and Amar by slaps and fists and the knife shown to him by accused Sanjeev was a 'chura' and not buttondar. The knife was put at his throat by accused Sanjeev. He further stated that the accused had threatened him that if he raised voice they will kill him. He did not raise voice first of all. After looting he started to return to his house. Just after walking 3-4 furlong a PCR vehicle met him. He then gave the information about the incident. Thereafter PCR officials immediately turned, ran after accused persons and overpowered them.

8. PW3 ASI Rajinder had stated that on the intervening night of 4-5 March, 1999 he was posted at PCR north east zone on Van R 75 and his duty was from 8:00P.M. to 8:00A.M. On that vehicle he was coming about 6:00 to 6:30 A.M. from the side of GTB Hospital and at 100 ft. road, Nand Nagari when they reached near Primary School, E-Block, Nand Nagri they heard the

voice of someone shouting 'chor chor'. He saw two/four boys running towards a TSR which was standing at the road side, the PCR vehicle was made to stop and he alongwith his another associate chased them. They could overpower two boys out of them and other two boys escaped by TSR. The person who shouted 'chor chor' also came and told them that these boys had snatched his money. On personal search Rs.300/- were recovered from the taller boy, from whom the knife was also recovered.

9. PW5 Surinder Kumar who was the duty driver on PCR vehicle Romeo 75 has also deposed on similar lines. PW6 HC Dharampal has deposed that on the relevant date he was deployed on R 75 PCR Van as gunman and at about 6:40 a.m. when they reached 100 foot road near Primary School left side of the road, they heard someone shouting 'chor chor'. They saw four boys running towards a TSR. Two of them were apprehended by them and two managed to escape by TSR. On the personal search and enquiry from Appellant No.2 Sanjeev, Rs.300/- were recovered from left pocket of the pant and from other pocket a chura was recovered.

10. PW7 ASI Rajbir Singh in his testimony has deposed that on 5th March, 1999 he was posted at PS Nand Nagri. On receipt of DD No. 2A he along with Constable Ombir reached the spot and found the in-charge of the PCR Van R 75 ASI Rajinder Singh with his staff. He also found Complainant Dinesh, Appellant No.2 Sanjeev and the juvenile. All the prosecution witnesses have consistently deposed that the accused Amarpal and Amar escaped and were arrested from the TSR later on.

11. The use of deadly weapon i.e. the knife/churra by Appellant No.2 is proved by the testimony of all the prosecution witnesses. Thus the

ingredients of Section 397 IPC are clearly attracted and Appellant No.2 has been rightly convicted for the said offence. The minor discrepancies pointed out by learned counsels for the Appellants do not go to the root of the prosecution case and does not discredit the otherwise convincing testimonies.

12. As regards Appellant No.1, the contention of the learned counsel that there is no evidence against him is misconceived. Appellant No.1 along with the other accused in furtherance of the common intention participated in the offence of robbery by catching hold of the complainant PW-2 when Appellant No.2 showed the knife.

13. Keeping in view the facts and circumstances of the case, I find no merit in the present appeal. Appeal and application are accordingly dismissed.

(MUKTA GUPTA)
JUDGE

MARCH 20, 2012
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