

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

+ Crl. A. No. 1234/2011 & Crl.M.B. 1734/2011

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Reserved on: 3rd May, 2012

Decided on: 17th July, 2012

VIKRAM @ BABLOO

..... Appellant

Through: Mr. K. Singhal, Mr. Sidharth Mittal,
Advs.

versus

STATE

..... Respondents

Through: Mr. Mukesh Gupta, APP.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By this appeal the Appellant challenges the judgment dated 16th May, 2011 convicting him for offences punishable under Sections 458/307/397/34 IPC and the order on sentence dated 19th May, 2011 whereby he has been directed to undergo Rigorous Imprisonment for a period of 7 years for offence punishable under Section 397 IPC, Rigorous Imprisonment for 10 years and fine of Rs. 3000/- and in default of payment of fine simple imprisonment for three months for offence punishable under Section 307 IPC, and Rigorous Imprisonment for 7 years and fine of Rs. 2000/- and in default of payment of fine to undergo simple imprisonment for four months for offence under Section 458 IPC.

2. Learned counsel for the Appellant contends that the co-accused from whom recovery of pistol and the looted articles was made has been acquitted, however, the Appellant has been convicted though there was no evidence against him. There is no recovery at the instance of the Appellant. It is alleged that the Appellant had shown a pistol, however the injuries

inflicted on the injured are by sharp edged weapon and thus, the same cannot be at the instance of the Appellant. For an offence punishable under Section 307 IPC mensrea is an essential requirement. However, there is no evidence that the Appellant had the intention to commit the said offence. The impugned judgment is bereft of any discussion as to how the prosecution has proved its case beyond reasonable doubt. In the absence of theft or extortion being proved, the Appellant could not have been convicted for offence under Section 397 IPC. The Appellant himself expressed his desire for getting the TIP conducted and even as per the Learned Metropolitan Magistrate a long date was given at the request of the Investigating Officer, however, in the meantime, the Appellant was shown to the witnesses in Tis-Hazari. The recovery of the allegedly looted property has not been proved. There is no evidence that the Appellant used the deadly weapon. Thus the charge of offence under Section 397 IPC is not proved against the Appellant. Reliance is placed on *Krishna Kumar vs. State of Delhi 2009 (157) DLT 121*. There is an inordinate delay in examining the witnesses. Further, the incriminating evidence has not been put to the Appellant under Section 313 Cr.P.C.

3. Learned APP on the other hand contends that PW-7 has made specific allegations against the Appellant. The TIP of the accused was conducted at Tihar Jail where they were identified. PW-9 Dr. Rajan Madan has proved the injuries caused as dangerous. Thus, there is no merit in the present appeal and the application, and the same be dismissed.

4. I have heard learned counsel for the parties. FIR No. 5/2000 under Sections 397/307/452/411/120B IPC was registered at PS Karol Bagh on the statement of Smt. Ravi Mangi, wife of Jitender Pal Mangi wherein she stated that her husband was running jewellery shop in the name of Mangi Jewellers

on rent in Beadon Pura, Karol Bagh. At around 10.30 PM at night she was waiting for her husband to come back and called up at the shop. Nobody picked up the phone. At around 11.00 PM she received a phone call from the neighbour of the shop stating that Mr. Mangi was lying in the shop and there are injuries on him. When she reached the shop she found her husband injured and his clothes blood-stained. Further, articles of the shop were lying scattered, the safe, rack, etc., were open and the gate of the shop was broken. After the injured Jitender Pal Mangi was declared fit for statement, his statement was recorded. She stated that her husband had informed her that at about 9.30/10.00 PM, three-four boys aged about 20-25 years entered his shop, caused him injuries and committed robbery of various jewellery articles lying in the shop. During investigation, the injured Jitender Mangi identified the Appellant and the co-accused. The co-accused Vijay @ Nikku and Trilok Singh were arrested at Rohtak and their transit remand was sought. Vijay @ Nikku the co-accused refused to take part in Test Identification Parade and disclosed about the involvement of two more accused namely Vikram @ Babloo and Hemant @ Sonu. He further disclosed that Hemant and Trilok Singh had got the jewellery melted from a jeweller at Rohtak and at his instance certain slabs of gold and silver were recovered from the jeweller. Appellant Vikram @ Babloo was arrested by the Crime Branch in another case whereafter he was arrested in this case. On a TIP proceeding being conducted the Appellant was duly identified by the injured Jitender Pal Singh Mangi. The case property was also got identified and a charge-sheet was submitted thereafter. Out of the 4 accused, accused Hemant @ Sonu was declared a proclaimed offender and Vijay @ Nikku died during the pendency of trial. Thus the trial proceeded against the

Appellant and Trilok Singh. On conclusion of the trial Trilok Singh was acquitted, however the Appellant was sentenced as above.

5. PW-7 Jitender Pal Mangi in his statement before the Court has stated that on 4th January, 2000 at about 8.30/8.45 PM he was present at his jewellery shop and was about to close the same, when three boys entered into his shop and one boy remained standing outside. The three boys firstly disconnected his phone by removing telephone cables, thereafter threatened him not to raise alarm and forced him to hand over all the jewellery and cash and stated that if he would raise alarm they would shoot him. When PW-7 tried to escape, the three boys taped his mouth and tied him. However, PW-7 continued making efforts to save himself and his property. All the three boys again threatened him and asked him to deliver all the cash and jewellery. Then the third boy took out a sharp edged knife and caused knife blow on his arm and stomach. PW-7 tried to stand up but the three boys caught hold of him and tried to kill him by strangulation. PW-7 was again pushed by one of the accused and he fell down and they opened the remaining two almirahs. When he regained consciousness, he found the shutter of the shop closed and the almirahs and the doors lying open. The articles were also lying in scattered condition. On recovery, PW-7 gave list of looted articles from his shop.

6. Learned counsel for the Appellant has strenuously contended that there is no recovery made from the Appellant and further PW-7 has received injury by sharp edged weapon, whereas it is alleged that the Appellant was carrying a pistol. PW-7 in this regard has stated that the Appellant was having a country made pistol which he used against him for committing the robbery. The Appellant gave a butt blow on PW-7 and thereafter took knife

from his associates and gave knife blow also on his stomach and hands due to which he sustained injuries. The statement of PW-7 in this regard is corroborated by his MLC Ex.PW9/B as per which the Appellant has received incised wounds at the umbilical region and over the right upper arm. The injuries were opined to be dangerous in nature by PW-9 Dr. Rajan Madan, Senior Consultant Surgeon, Bali Nursing Home, DBG Road, Karol Bagh. According to him he had operated PW-7 in early hours of 5th January, 2000 by performing a life saving operation. Further, PW-7 has correctly identified the country made pistol used by the Appellant as Ex.P-1. The witness had identified the country made pistol used by the Appellant even in the TIP proceedings exhibited as Ex.PW-7/D.

7. I also do not find any merit in the contention of the learned counsel for the Appellant that the Appellant was identified after he was shown to the witnesses and the Investigating Officer deliberately took a long date. PW-7 in his testimony has stated that he identified the Appellant as one of the accused involved in the crime and he had also correctly identified him in Tihar Jail during TIP proceedings. The Investigating Officer moved the application for TIP on 19th January, 2000 when the Appellant was produced in muffled face before the learned Metropolitan Magistrate. At that stage no objection was raised by the Appellant that he had already been shown to the witness. Subsequently, the TIP was fixed for 29th January, 2000 and the Appellant was sent to judicial custody. On 29th January, 2000 the Appellant was produced from judicial custody in muffled face before the learned Metropolitan Magistrate. The witness correctly identified the Appellant as the person who had committed the crime. At this stage also no objection was raised by the Appellant nor did he refuse to participate in the TIP

proceedings on the pretext that he was shown to the witness prior to the TIP proceedings. Despite lengthy cross-examination PW-7 has stood the ground and has stated that the Appellant was one of the persons who committed robbery at his place and he had identified him at Tihar Jail before he identified at Tis-Hazari Courts.

8. This witness has also correctly identified the stolen jewellery articles in the TIP proceedings conducted and before the Learned Trial Court. The contention of the learned counsel for the Appellant that no recovery was made at the instance of the Appellant also holds no ground as the recovery of the stolen goods is one of the chain in the circumstances. The Appellant has been duly identified as participant in the offence with specific role assigned to him. Absence of recovery will not discredit the otherwise credible testimony of PW7.

9. Further, while committing robbery, the Appellant showed the pistol to PW-7 and caused threat to him. Therefore, the ingredients of an offence punishable under Section 397 IPC are duly attracted against the Appellant and have been proved beyond reasonable doubt besides the offences under Sections 307 and 458 IPC. I find no merit in the appeal.

10. Appeal and application are dismissed.

(MUKTA GUPTA)
JUDGE

JULY 17, 2012
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