

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

% **CRL. A. NO.699/2000**

+ **Date of Decision: 29th April, 2013**

SURESH **..... Appellant**

! Through: Mr. A.J. Bhambhani, Advocate with
Ms. Lakshita Sethi & Ms. Bhavita
Modi, Advocates

versus

\$ **THE STATE (NCT OF DELHI)** **..... Respondent**

Through: Mr. M.N. Dudeja, APP

CORAM:

* **HON'BLE MR. JUSTICE P.K.BHASIN**

JUDGMENT

P.K.BHASIN, J:

The appellant had been convicted for the commission of the offences punishable under Sections 452 and 397 of the Indian Penal Code('IPC' for short) and Section 27 of the Arms Act by the learned Additional Sessions Judge vide judgment dated 13th May, 2000 and vide order dated 27th May, 2000 he had been sentenced to undergo rigorous imprisonment for seven years u/s 397 IPC; rigorous imprisonment for two years and also to pay fine of ₹ 500/-, in default to undergo simple imprisonment of one month u/s 452 IPC and

rigorous imprisonment for two years and fine of ₹ 500/- and in default to undergo simple imprisonment of one month u/s 27 of the Arms Act. All the substantive sentences of imprisonment were ordered to run concurrently. Feeling aggrieved, the present appeal had been filed.

2. The relevant facts leading to the conviction of the appellant are that on 23.11.98 a telephonic information was received from someone at police post Nehru Place that at the main gate of MTNL one boy had been apprehended by the public with a knife and quarrel was going on. That information, Ex. PW1/A, was entered in the Daily Diary maintained at the police station as DD No.24 and the matter was entrusted to Sub-Inspector Lokesh Kumar(PW-6) and he then went to the spot where he found that accused appellant Suresh had been apprehended by the public and he had been beaten by the public on account of which he had sustained injuries also on his person. At that time the accused appellant was holding one purse in one hand and a buttondaar knife in other hand. PW-1 Smt. Nirmala gave her statement, Ex-PW1/A to the following effect:-

“ I am hereby a homely women. I live at the aforesaid address. Today on 23.11.98 at about 9.00 P.M. in my jhuggi I was sitting along with my brother Dilip S/o Late sh. Sahinder Rai, R/o Jhuggi No. G-154, Dr. Ambedkar Camp, Nehru Place, New Delhi and as talking with him, Suresh S/o Ramchander who was living in the Jhuggi's R/o F-464, Dr. Ambedkar Camp, Nehru Place, New Delhi

whom I knew earlier suddenly came inside my Jhuggi. He had open knife in his right hand. He said to me whatever is in the house bring out. No will make noise else knife will cross over the abdomen. On this I and my brother got perturbed and in order to save my life I gave Suresh my black colour purse which I was containing a sum of Rs.195/-. After taking the purse Suresh went out of the Jhuggi and ran along with the purse. Then I and my brother made noise loudly. Hearing the noise number of public persons apprehended Suresh in front of the gate of MTNL and started beating him on account of which Suresh received at many places injuries on her body. I and my brother Dalip also reached behind the accused. I had produced before you the accused with knife in his right hand and a black colour purse containing Rs.195/- in his left hand which was robbed by Suresh after showing knife at my Jhuggi.”

3. Since the accused appellant was apprehended immediately after the incident there was nothing much for the police to investigate and so after completing usual investigation formalities challan was filed in the Court of the area Magistrate in January, 1999. Since Section 397 IPC had been invoked by the police the case was committed to the Court of Sessions and then it came to be assigned to the Court of Additional Sessions Judge. Charges under Sections 452/392/397 IPC and Section 27 of the Arms Act were framed against the accused appellant and during trial six witnesses were examined by the prosecution. The material witnesses were the complainant(PW-1) and her brother(PW-2) being the eye witnesses, and the police official(PW-6) to whom the custody of the accused appellant was handed over by the public when he had reached the place where he

had been apprehended. The trial Court accepted the evidence of these three witnesses and convicted the accused appellant for the commission of offences punishable under Sections 452 and 397 IPC and also under Section 27 of the Arms Act.

4. Though the accused appellant had, in the grounds of appeal, challenged his conviction in respect of all the three offences but at the time of hearing of the appeal his learned counsel Mr. A.J.Bhambani had given up the challenge to the conviction under Sections 452 and 392 IPC and had confined his submissions to persuade this Court that Section 397 IPC, which provides for minimum sentence of seven years imprisonment in the event of any accused being held guilty of using a deadly weapon while committing robbery, was not attracted. Mr. Bhambani very fairly submitted that on the basis of the evidence of PWs 1 and 2 there was little scope for interference in this appeal as far as the offences under Sections 452 and 392 IPC are concerned.

5. On the other hand, Mr. M.N.Dudeja, learned Additional Public Prosecutor fully supported the trial Court's judgment of conviction and the order on sentence and submitted that the prosecution had been successful in establishing its case on all the charges for which the accused appellant was tried and so this appeal deserved to be dismissed.

6. After examining the evidence of PWs 1 and 2, both of whom are the eye witnesses of the incident of robbery, I am also in agreement with the trial Court's conclusion that the accused appellant had committed the offence of robbery after entering the jhuggi of PWs 1 and 2. Both of them had deposed about the incident as per the first information report contents of which have already been noticed. They could not be discredited in cross-examination.

7. However, as far the prosecution case that the accused appellant had used a deadly weapon also while committing robbery is concerned, it cannot be said to have been established beyond reasonable doubt. The prosecution case is that after taking the purse containing some money from PW-1 Nirmala after entering her jhuggi by showing her a knife the accused appellant had left the jhuggi and then she and her brother(PW-2) had come out of the jhuggi and shouted and at that time some public persons had apprehended him near the MTNL gate, which as per the plan Ex.PW-6/D was at quite some distance from the jhuggi of PWs 1 and 2, and gave him beatings also. The accused appellant had sustained injuries due to the beating given to him by the public persons. In the meanwhile, someone had informed the police about the apprehension of the accused appellant with a knife and PW-6 SI Lokesh Kumar had then reached that place. He found the accused appellant in the custody of public persons and

at that time he was holding a knife in one hand and one purse in the other hand which he allegedly took into police possession. The prosecution has, however, not examined anyone of the public persons who had apprehended the accused appellant with knife in his hand to substantiate this part of its case and there is no explanation offered by the prosecution in that regard. The trial Judge, however, did not attach any significance to the non-examination of any of the public persons who had apprehended and beaten the accused appellant and brushed aside that infirmity by observing in the impugned judgment that “ *A person who had done wrong by beating the accused will not come forward to depose that he had beaten the accused.*”. However, in my view, this is not a sound reasoning at all. If actually anyone from the public could gather the courage to apprehend the accused appellant who was holding a big buttondaar knife, as is the prosecution case, he would not have hesitated to come forward to make a statement to the police to that effect and also to depose against the accused in Court if summoned.

8. It was rightly submitted by the learned counsel for the accused appellant that even otherwise the prosecution story that the accused was holding a knife in his hand when the police reached the spot is highly improbable. If the public persons could dare to apprehend the accused appellant with the open buttondaar knife in his hand then the

first thing which the people apprehending him would have done was to snatch the knife from his hand to avoid it being used against anyone of them while he was being beaten. Therefore, the prosecution story in respect of the recovery of the deadly weapon i.e. knife Ex. P-3, from the accused appellant becomes doubtful and so the benefit has to go to him.

9. In view of the above conclusion in respect of the recovery of deadly weapon from the accused appellant immediately after the incident of robbery the conviction of the accused appellant under Section 397 IPC as well as Section 27 of the Arms cannot be sustained.

10. This appeal is, therefore, disposed of by setting aside the conviction of the accused appellant under Sections 397 IPC and Section 27 of the Arms Act while maintaining his conviction under Section 452 IPC and the sentence awarded by the trial Court on this count and converting the conviction under Section 397 IPC into Section 392 IPC simpliciter. The sentence of imprisonment awarded to the accused appellant for the offence of robbery is reduced to the period of imprisonment already spent by him in jail. The sentence of imprisonment awarded to the accused appellant was at one stage suspended after he had remained in jail for about four years but during the pendency of this appeal he absconded and after arrest in

execution of non-bailable warrants he was again sent to jail and was denied bail thereafter. Now he is ordered to be released from jail, if not required to be detained there in connection with any other case.

P.K. BHASIN, J

April 29, 2013