

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

**RESERVED ON : 19th August , 2013
DECIDED ON : 9th September, 2013**

+ CRL.A.143/2011 & CrI.M.B.No.405/2013

DHARMENDER Appellant

Through : Mr.R.K.Saxena, Advocate.

versus

STATE Respondent

Through : Mr.M.N.Dudeja, APP for the State.

CORAM:

MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Dharmender (the appellant) has preferred the appeal to impugn conviction by a judgment dated 20.10.2010 of learned Additional Sessions Judge in Sessions Case No.97/2009 arising out of FIR No.209/2003 registered at Police Station Keshav Puram by which he was held guilty for committing offence under Section 394 read with 397 IPC. By an order dated 23.10.2010, he was directed to undergo RI for seven years and four months with total fine ₹5,000/-.

2. Allegations against the appellant were that on 20.06.2003 at about 09.45 P.M. at Road No.37, near Bus Stand, Tri Nagar, he, Praveen @ Chilli, Sanjay and Deepak robbed Mukesh Aggarwal of a gold chain
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weighing about two and a half tolas, purse containing ₹1,000/-, driving license, an ATM and visiting cards. The assailants were armed with sharp weapons and caused injuries to Mukesh Aggarwal. Daily Dairy (DD No.24-B) was recorded and assigned to SI Naresh Bhatia who went to the spot. Mukesh Aggarwal was taken to BJRM hospital and was medically examined. The Investigating Officer lodged First Information Report after recording his statement (Ex.PW-1/A). Attempts were made to find out the two assailants but in vain. On 27.06.2003, Praveen @ Chilli was apprehended, arrested and was found in possession of a knife for which a case FIR No.215/2003 was registered at Police Station Keshav Puram. During the course of investigation, Sanjay and Deepak were apprehended and their disclosure statements were recorded. Dharmender could not be apprehended and was declared Proclaimed Offender. Later on, he was arrested in FIR No.150/2004 under Section 25 Arms Act registered at Police Station Keshav Puram on 21.03.2004. The Investigating Officer recorded the statements of witnesses conversant with facts at different stage of investigation and after completion of investigation a charge-sheet was submitted against all of them in the court. They were duly charged and brought to trial. The prosecution examined 15 witnesses to establish their guilt. In their 313 statements, the accused persons pleaded false

implication. After considering the rival contentions of the parties and appreciating the evidence, the Trial Court, by the impugned judgment convicted Dharmender and Praveen and acquitted Deepak and Sanjay of all charges. It appears that Praveen has not challenged the conviction as he had already completed the sentence period at the time of delivery of the impugned judgment.

3. Appellant's counsel urged that the Trial Court did not appreciate the evidence in its true and proper perspective. On the similar set of evidence, co-accused Deepak and Sanjay were acquitted of the charges. PW-1 (Mukesh Aggarwal) is an unreliable witness and his testimony cannot be taken as gospel truth to base conviction of the appellant. Vital discrepancies and contradictions in his deposition were ignored without valid reasons. No independent public witness was associated at any stage of the proceedings. The police was not able to recover weapon of offence and robbed article from the appellant's possession. Per contra, learned Additional Public Prosecutor urged that there are no sound reasons to discard the testimony of PW-1 who was injured at the time of commission of robbery.

4. I have considered the submissions of the parties and have examined the record. The occurrence took place at around 09.45 P.M. on ***CRLA.143/2011***

20.06.2003. The police machinery was set into motion and DD No.24B was recorded at Police Post, Shanti Nagar and assigned to PW-13 (SI Naresh Bhatia). The injured was taken to BJRM hospital and was medically examined. MLC (Ex.PW-6/A) records time of arrival of the patient as 11.35 P.M. After recording the complainant's statement (Ex.PW-1/A), the Investigating Officer sent rukka for lodging First Information Report at 02.30 A.M. It reveals that there was no inordinate delay in lodging the report. FIR in a criminal case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and parts played by them, the weapons, if any, used as also the names of the witnesses, if any. Mukesh Aggarwal narrated detailed account of the incident as to how and under what circumstances he was caught hold by four boys who were armed with sharp objects. They robbed him of various articles in his possession and also caused injuries to him. He did not name any of the assailants in the FIR as he was not acquainted with them. The victim had no ulterior motive to fake the incident of robbery in which he sustained injuries which were not self-inflicted or accidental. MLC (Ex.PW-6/A)

reveals that he sustained four penetrated wounds of various dimensions on different body organs. The nature of injuries was 'simple' caused by sharp weapon. While appearing as PW-1 in Court statement he proved the version given to the police without major variation. He identified Dharmender as one of the assailants who robbed him and caused injuries. In the cross-examination, he denied identification on seeing photo. He elaborated that Dharmender was identified by him in Test Identification Proceedings as he had his dim picture in his mind and had put his hand on him at the time of identification. It is apt to note that the Investigating Officer had moved applications for conducting Test Identification Proceedings during investigation. Sanjay declined to participate in the TIP proceedings. The complainant could not identify and recognize Deepak but Praveen was identified. PW-14 (Archana Sinha) conducted Test Identification Proceedings pertaining to the appellant (Dharmender) and he participated in it. The complainant was able to recognize and identify him in the TIP proceedings. Appellant's contention is not acceptable that his photo was shown to the complainant prior to holding of TIP. Had it been so, the appellant was at liberty to decline to participate in the TIP proceedings. After participating voluntarily in TIP proceedings, he cannot be permitted to challenge its authenticity. The

victim, who had no acquaintance and previous animosity, was not expected to falsely recognize and identify him on the mere asking of the police. He had direct confrontation with the assailants and got ample opportunity and time to see and observe their features. Minor contradictions and discrepancies highlighted by the Counsel are not material to discard the otherwise cogent and reliable testimony of the victim which is in consonance with medical evidence. Mere acquittal of Sanjay and Deepak for the reasons detailed in the judgment is not enough to extend the benefit of doubt to the present appellant also. The Supreme Court in the case of *'Ram Udgar Singh vs.State of Bihar'* (2004) 10 SCC 443 held as under :

“That even if a major portion of evidence of a witness is found to be deficient, in case the residual is sufficient to prove the guilt of an accused, notwithstanding acquittal of a number of other co-accused persons, conviction can be maintained. It is a duty of the Court to separate grain from chaff and appreciate in each case, as to what extent, the evidence is worthy of acceptance.”

5. The Trial Court judgment is based upon fair appreciation of the evidence and needs no interference. The conviction of the appellant is affirmed. The appellant was sentenced to undergo RI for seven years and four months with total fine ₹5,000/-. Considering the facts and circumstances of the case and the fact that the appellant is in custody for

the last about five years, the sentence order is modified to the extent that he shall undergo RI for seven years with fine of ₹500/- and failing to pay the fine to undergo SI for fifteen days under Section 397 IPC. He shall also undergo RI for seven years with fine ₹200/- and in default of payment of fine to further undergo SI for 10 days under Section 394/34 IPC. The substantive sentences shall run concurrently and benefit under Section 428 Cr.P.C. will be given.

6. The appeal and Crl.M.B.No.405/2013 stand disposed of. Trial Court record be sent back forthwith.

(S.P.GARG)
JUDGE

September 09, 2013
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