

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

% *Date of Decision: September 09, 2013*

+ **CRL.APPEAL NO:183/2004**

SOMPAL @ SONU @ SAGAR Petitioner
Represented by: Ms.Saahila Lamba, Advocate/Amicus
Curiae.

versus

STATE Respondent
Represented by: Mr.Pawan Sharma, Standing Counsel
(Crl.)

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

PRADEEP NANDRAJOG, J. (Oral)

1. Since none appears for the appellant Ms.Saahila Lamba, Advocate on the panel of Delhi High Court Legal Services Committee has been requested to assist the Court on behalf of the appellant.
2. Fee of learned Amicus Curiae Ms.Saahila Lamba, Advocate shall be paid by the Delhi High Court Legal Services Committee.
3. Judgment dated January 03, 2004, passed by the learned Sessions Judge convicting appellant Sompal and co-accused Alam for having committed offence punishable under Section 392 and 397 IPC is under challenge. Vide order on sentence dated January 14, 2004, appellant and co-accused Alam have been sentenced to undergo imprisonment for 7 years pertaining to offence punishable under Section 397 IPC and for 3 years and additionally to pay fine of ₹500/- for the offence punishable under Section 392 IPC. Both sentences have been directed to run concurrently. Benefit of Section 428 Cr.P.C. has been given to the accused.

4. Briefly stated, the case of the prosecution against the appellant and co-accused Alam was that on June 08, 2002, the time being 8.20 P.M., accompanied by his cousin Jahid Kamal, Anisur Rehman was proceeding towards Shastri Park when two boys came and accosted them. They were joined by two more boys who were armed with knives. Appellant Sompal robbed ₹260/- and a wrist watch from Anisur Rehman. Co-accused Alam robbed ₹140/- and a wrist watch from Jahid Kamal. The two other boys stood brandishing a knife each. The four boys fled after committing the robbery. Anisur Rehman and Jahid Kamal raised an alarm. ASI Mansab Ali, HC Rakesh and SI Naresh who happened to be in the vicinity responded to the alarm raised by Anisur Rehman and Jahid Kamal. Appellant, co-accused Alam, the two other boys whose names were Saleem Bhaiyya and Vinesh Kumar @ Bhura were apprehended at the spot. On personal search being conducted the robbed money i.e. ₹260/- and ₹140/- as also the two wrist watches were recovered from the personal possession of appellant and co-accused Alam respectively. A knife each was recovered from Saleem and Vinesh Kumar. Being juvenile Saleem and Vinesh Kumar were sent for trial before the Juvenile Justice Board.

5. For record I need to note that the juvenile co-accused were acquitted by the Juvenile Justice Board due to lack of evidence.

6. At the trial of accused Sompal and co-accused Alam, ASI Mansab Ali, HC Rakesh and SI Naresh were examined as PW-4, PW-5 and PW-7 respectively. The two victims Anisur Rehman and Jahid Kamal were examined as PW-2 and PW-3.

7. The two victims, Anisur Rehman and Jahid Kamal, examined as PW-2 and PW-3 deposed facts in line with the case set up by the prosecution. PW-2 identified in the docket, his wrist watch Ex.P-8 and the currency notes

totaling ₹260/- being Ex.P-9 to Ex.P-12 of which he was robbed. Likewise PW-3 identified his wrist watch, Ex.P-1 and the currency notes totaling ₹140/- being Ex.P-2 and Ex.P-7 of which he was robbed. PW-2 identified the two knives Ex.P-13 and Ex.P-14 which were recovered from the juvenile co-accused.

8. ASI Mansab Ali, HC Rakesh and SI Naresh supported the case of the prosecution and proved not only the recoveries but even the memo pertaining to the recoveries which were drawn up.

9. In view of the fact that during cross-examination none of the prosecution witnesses could be discredited, learned Trial Judge has held that the charge against the appellant stood established.

10. Since knives Ex.P-13 and P-14 were used during commission of the crime, the appellant as also the co-accused, Alam, have been convicted for the offence punishable under Section 397 IPC.

11. Section 397 IPC reads as under:-

“If, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years.”
(Emphasis Supplied)

12. In the decision reported as AIR 1975 SC 905 Phool Kumar vs. Delhi Administration the Supreme Court held that ‘offender’ in Section 397 IPC is confined only to the offender who used the deadly weapon. The use of a deadly weapon by one offender while committing robbery cannot fasten liability on co-accused offender who does not use any deadly weapon. The same view was reiterated by the Supreme Court in another decision reported as 2007 (12) SCC 641 Dilawar Singh vs. State of Delhi.

13. From the testimony of Anisur Rehman PW-2 and Jahid Kamal PW-3 which has been read out to me in Court today by Ms.Saahila Lamba, learned Amicus Curiae appointed, it clearly emerges that the juvenile co-accused Saleem and Vinesh Kumar @ Bhura used the knives by threatening the victim with the same. It is of important to note that even as per the case of the prosecution the knives Ex.P-13 and P-14 were recovered from the personal search of the said juvenile co-accused.

14. In that view of the matter, keeping in view the law declared by the Supreme Court in the decisions in Phool Kumar's case and Dilawar Singh's case (supra) it has to be held that neither appellant nor co-accused Alam could be convicted for the offence punishable under Section 397 IPC. However, in view of the evidence led, the two have to be convicted for the offence punishable under Section 392 IPC.

15. For record, I need to note that I have checked from the Registry whether co-accused Alam had filed an appeal. The Registry has reported that he has not filed any appeal.

16. The Nominal Roll of Alam which has been handed over to me in Court today would reveal that Alam was released from jail on March 11, 2008. He had deposited the fine in sum of ₹500/-. He had served a sentence of 5 years 7 months and 29 days. He had earned remission for a period of 1 year 4 months and 1 day. In other words, Alam suffered imprisonment for 7 years.

17. Thus, I need to dispose of the instant appeal with respect to the appellant Sompal.

18. The appeal stands disposed of modifying the impugned judgment dated January 03, 2002. Appellant Sompal is acquitted of the charge of

having committed an offence punishable under Section 397 IPC. His conviction for the offence punishable under Section 392 IPC is sustained.

19. The order on sentence dated January 14, 2004, sentencing him to undergo imprisonment for 7 years for the offence punishable under Section 397 IPC is set aside. The sentence to undergo imprisonment for 3 years and pay fine in sum of ₹500/- for the offence punishable under Section 392 IPC is modified, in that, the fine imposed is waived for the reason the Nominal Roll of appellant Sompal would reveal that by the time he was admitted to bail by this Court he had already undergone sentence of 4 years 4 months and 29 days. For the offence punishable under Section 392 IPC I sentence Sompal to undergo the sentence which he has already undergone.

20. In view of the sentence imposed upon the appellant, the bail bond and surety bond furnished by the appellant pursuant to the order dated March 31 2008 are discharged.

21. TCR be returned.

(PRADEEP NANDRAJOG)
JUDGE

SEPTEMBER 09, 2013

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