

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

RESERVED ON : 5th SEPTEMBER, 2013

DECIDED ON : 6th SEPTEMBER, 2013

+ CRL.A. 750/2011 & CrI.M.B.No.1033/2011

SAGAR Appellant

Through : Ms.Anita Abraham, Advocate.

Versus

THE STATE (N.C.T. OF DELHI) Respondent

Through : Mr.M.N.Dudeja, APP.

**CORAM:
HON'BLE MR. JUSTICE S.P.GARG**

S.P.GARG, J.

1. The present appeal has been filed by the appellant – Sagar to impugn a judgment dated 22.07.2010 of learned Additional Sessions Judge in Sessions Case No. 20/2010 arising out of FIR No. 316/2009 PS Khajuri Khas by which he was held guilty for committing offence punishable under Section 392 IPC read with Section 397 IPC. By an order dated 23.07.2010, he was directed to undergo RI for seven years.

2. Allegations against the appellant were that on 10.11.2009 at 04.45 A.M. at Chand Bagh Puliya, Karawal Nagar Road, Delhi, he with

his associate robbed Gyanesh Singh of ₹ 700/- at the point of knife and also caused injuries to him. The police machinery was set into motion when Daily Diary (DD) No. 40A was lodged at Police Station Khajuri Khas and the investigation assigned to ASI Om Pal Singh who with Const. Nanak went to the spot. It was revealed that the victim had already been taken to GTB Hospital by PCR officials. ASI Om Pal Singh went to GTB Hospital and collected the MLC of injured Gyanesh Singh. He lodged First Information Report after recording his statement (Ex.PW-1/A). On 11.12.2009 on the basis of secret information, Sagar and Allauddin were apprehended and arrested. Their involvement surfaced after their disclosure statements were recorded. The Investigating Officer moved the Court to hold Test Identification Proceedings. The complainant was able to identify Sagar alone. Allauddin was discharged. After recording statements of the witnesses conversant with the facts and after completion of investigation, a charge-sheet was submitted against the appellant in the Court. He was duly charged and brought to Trial. The prosecution examined seven witnesses to prove his guilt. In his 313 statement, the appellant pleaded false implication. After appreciating the evidence and considering the rival contentions of the parties, the Trial

Court, by the impugned judgment, held the appellant perpetrator of the crime.

3. Appellant's counsel urged that the Trial Court did not appreciate the evidence in its true and proper perspective. Material discrepancy as to on which body part the victim sustained injuries was not considered for valid reasons. The appellant was arrested after a month of the incident on the basis of secret information. It was highly improbable for the complainant to identify him after a long gap. Crime weapon was not recovered from the possession of the appellant or at his instance. The prosecution was not sure if the weapon used was a 'deadly' one. Learned Addl. Public Prosecutor urged that minor discrepancy as to the body part where the injuries were inflicted is not material to discard the otherwise reliable testimony of the injured witness.

4. I have considered the submissions of the parties and have examined the record. The incident of robbery occurred at 04.45 A.M. Gyanesh Singh made telephone call at No. 100 and PCR officials took him to GTB Hospital. MLC (Ex.PW-6/A) reveals that he was brought at GTB Hospital at 05.45 A.M. Soon after the Daily Diary (DD) No. 40A was recorded, ASI Om Pal Singh rushed to the spot. He recorded complainant's statement (Ex.PW-1/A) in the hospital and lodged First

Information Report at 07.00 A.M. There was no delay in lodging the report with the police. 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 the parts played by them, the weapons, if any, used, as also the names of the eyewitnesses, if any. In the instant case, in the complaint, Gyanesh Singh gave vivid details of the incident as to how and under what circumstances, he was robbed by two assailants who were armed with country made pistol and a knife and was deprived of ₹ 700/-. He also disclosed that he was stabbed with knife and on his raising alarms the assailants fled away. He claimed to identify them if shown. Since the FIR was lodged soon after the occurrence, there was no possibility of fabrication of a false story. The complainant had no acquaintance with the assailants and had not named them. When Sagar and Allauddin were apprehended and put to Test Identification Proceedings, Gyanesh Singh was able to identify the appellant as one of the assailants. He was not sure about the identity of the other assailant and was fair enough not to recognise Allauddin. While appearing as PW-1, in his Court statement, the complainant proved the

version given to the police at first instance without major variation. He categorically identified the appellant as one of the assailants and attributed specific role to him. He deposed that the appellant was armed with a knife and inflicted injuries on his body. He was taken to GTB Hospital and was medically examined. He hand over his blood stained pant to the police which was seized vide seizure memo Ex.PW-1/C. In the cross-examination, he explained that there was complete day-light at about 04.45 A.M., two – four persons were visible near the place of occurrence. He further deposed that on his raising alarm an individual had attempted to intervene but was threatened by the assailant who had katta in his hand. Material facts deposed by the witness remain unchallenged in the cross-examination. No ulterior motive was assigned to him to falsely implicate the appellant. In the absence of prior animosity or ill-will, the victim who had no acquaintance with the appellant and had not named him in the FIR was not expected to identify him on the mere asking of the police officials. The appellant had participated in the TIP proceedings voluntarily.

5. Non-recovery of the weapon of offence is not fatal. Ocular testimony of the complainant is in consonance with medical evidence. PW-6 (Dr. Irfan) who medically examined Gyanesh Singh proved the

MLC (Ex.PW-6/A). The injuries were simple in nature caused by sharp object. Minor discrepancy whether the injuries were inflicted on the left or right thigh is insignificant. The complainant was examined on 20.04.2010 after a gap of about five months and the possibility of his describing the injuries on the right thigh cannot be taken as material contradiction. The fact remains that PW-1 (Gyanesh Singh) sustained injuries on his body. There is no substance in the appellant's plea that the complainant was not able to identify the appellant after a long gap of one month. The complainant has claimed that it was complete day-light at the time of occurrence. He had direct confrontation with the assailants and had an opportunity to observe / notice their features from close range. Identification of the appellant in TIP proceedings and in the Court cannot be faulted. The fact that the complainant did not identify Allauddin makes his testimony more reliable. I find no merit in the appellant's plea that Section 397 IPC is not attracted as the crime weapon was not recovered and it was not ascertained if it was a 'deadly' weapon. The complainant disclosed to the police that one of the assailants was armed with a country made pistol and the other had a knife. He was injured/ stabbed with the knife on his various body parts. MLC (Ex.PW-6/A) reveals that there was stab wound on inner aspect of left upper thigh of 3 x 2 cm. size. There

were other incised wounds of 2 x 2 cm. on back and 2 x 2 cm. on lower spine. The injuries were opined as 'simple' caused by sharp object. The nature of injuries caused to the complainant with the weapon is enough to infer that it was a 'deadly' one. During examination of witnesses, they were not confronted about the size and dimension of the knife used in the incident. No such plea was taken during trial.

6. In the light of above discussion, I find no merit in the appeal. The judgment is based upon fair appreciation of the evidence and needs no interference. The appeal is dismissed. Pending application also stands disposed of. Trial Court record be sent back.

(S.P.GARG)
JUDGE

SEPTEMBER 06, 2013

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