

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

**RESERVED ON : 4<sup>th</sup> APRIL, 2013**

**DECIDED ON : 3<sup>rd</sup> JULY, 2013**

**+ CRL.A. 575/2007 & CRL.M.A.1229/2011**

**KESHAV @ BICHU** .....Appellant

Through : Ms.Saahila Lambha, Advocate.

versus

**THE STATE (GOVT. OF NCT) DELHI** .....Respondent

Through : Ms.Fizani Husain, APP.

**CORAM:**

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

**S.P.GARG, J.**

1. The appellant- Keshav @ Bichu impugns judgment dated 12.05.2007 in Sessions Case No. 50/2006 arising out of FIR No. 121/2006 PS Moti Nagar by which he was convicted for committing offences punishable under Sections 392/394 read with Section 397 IPC. By an order dated 14.05.2007, he was sentenced to undergo RI for seven years with total fine ₹ 4,000/-.

2. Allegations against the appellant- Keshav @ Bichu were that on 19.03.2006 at about 05.15 A.M. at Zakhira Flyover, he along with his associates Irfan and Salam (not arrested) in furtherance of common intention committed robbery and deprived Dilbagh Singh of cash ₹ 1600/-

and mobile phone. It is also alleged that in the process of committing robbery Dilbagh Singh was injured with deadly weapon i.e. knife. Daily Diary (DD) No.46A was recorded at 05.26 A.M. at PS Moti Nagar on 19.03.2006 to the effect that the assailant had fled the spot after stabbing an individual. The investigation was assigned to ASI Suresh Chand who with Const. Raj Kumar went to the spot. Dilbagh Singh had already been taken to DDU Hospital and admitted there. ASI Suresh Chand recorded his statement (Ex.PW-2/A) and lodged First Information Report. In the course of investigation, the Investigating Officer recorded statements of the witnesses conversant with the facts. On 16.04.2006, the appellant was arrested in FIR No.130/2006 under Section 25 Arms Act, PS Anand Parbat. Pursuant to the disclosure statement about his involvement in this case, he was arrested. He declined to participate in the Test Identification Proceedings. After completion of investigation, a charge-sheet was submitted against the appellant for committing the aforesaid offences. He was duly charged and brought to Trial. The prosecution examined thirteen witnesses. In his 313 statement, the appellant pleaded false implication. On appreciating the evidence and after considering the rival contentions of the parties, the Trial Court, by the impugned judgment, held the appellant

perpetrator of the offences mentioned previously. Being aggrieved, the appellant has preferred the present appeal.

3. Learned counsel for the appellant urged that the Trial Court did not appreciate the evidence in its true and proper perspective. The appellant was arrested after about one month of the incident and nothing incriminating was recovered from his possession. PW-2 (Dilbagh Singh) and PW-5 (Shri Krishan) have given inconsistent version about the incident. PW-2 (Dilbagh Singh) did not reveal that he was taken to hospital by PW-5 (Shri Krishan). PW-5 narrated a contradictory version that the injured was first taken to the office and from there he was taken to DDU Hospital. It was dark at the time of occurrence, and it was not possible for the victim to identify the assailants. PW-2 (Dilbagh Singh) was not sure about the number of assailants. She pointed out that Section 397 IPC is not attracted as the knife allegedly used in the incident was never recovered. Learned APP urged that the appellant was identified by the victim in the Court and had no ulterior motive to falsely implicate him.

4. The police machinery came into motion at 05.26 A.M. when DD No.46 A (Ex.PW-11/A) was recorded about the stabbing incident at PS Moti Nagar. MLC (Ex.PW-1/A) reveals that Dilbagh Singh was taken to DDU Hospital by PW-ASI Dhanpat Singh of PCR and admitted at

06.25 A.M. Dilbagh Singh had sustained three incised wounds on his body. PW-11 (ASI Suresh Chand) recorded his statement (Ex.PW-2/A) and lodged First Information Report at 08.00 A.M. by making endorsement (Ex.PW-11/B) without any delay. The complainant gave graphic detail as to how and under what circumstances he was robbed by the assailants. He gave description of the assailants and claimed to identify them. The appellant was arrested in case FIR No.130/2006 PS Anand Parbat and the disclosure statement (Ex.PW-11/E) was recorded in which his involvement in the incident surfaced. Application was moved by the Investigating Officer for conducting Test Identification Proceedings. However, the appellant did not participate in it. Adverse inference is to be drawn against the appellant for not participating in the Test Identification Proceedings. The explanation given by him for refusal is not justified. In the statement made to the learned Metropolitan Magistrate (PW-13 Sameer Bajpai), he stated that his photographs were taken by SI Suresh Chand. Const. Harphool Singh also took his photographs on mobile and these must have been shown to the witnesses. However, in the cross-examination of material witnesses, no such suggestion was put. It was rather pleaded that the appellant was shown to the witnesses in the police station. It was not revealed as to when and by

whom the appellant was shown to the prosecution witnesses. PW-2 (Dilbagh Singh) identified the appellant as one of the assailants in his Court statement. He had no prior animosity with the appellant and had even not named him in his first version to the police. He was not acquainted with the appellant to falsely implicate him in the incident. The witnesses had confrontation with the assailants for sufficient time and had sustained serious injuries with sharp object on his body. He was not expected to fake the incident. He had sufficient opportunity to recognise and identify the culprits. He specifically deposed that it was dawn at that time. He had no ulterior motive to falsely recognise him in the Court. Despite lengthy cross-examination, nothing material emerged to disbelieve him regarding identification of the appellant.

5. PW-5 (Shri Krishan) who went to the spot on hearing commotion identified the appellant as one of the assailants. There are some discrepancies about his presence at the spot. Even if his testimony is excluded, it would not dilute the prosecution's case. Testimony of PW-2 (Dilbagh Singh) who was injured in the incident inspires confidence. Normally, an injured witness would enjoy greater credibility because he is sufferer himself and thus, there will be no occasion for him to state an incorrect version of the occurrence or to involve anybody falsely and in

the bargain, protect the real culprit. It is relevant to note that the prosecution had arrested suspect Deepak @ Ganja. He had consented to participate in the TIP proceedings. Dilbagh Singh did not identify Deepak @ Ganja and it led to his discharge in the case. It lends credence to the testimony of PW-2 (Dilbagh Singh) as he did not identify the person who was not involved in the incident. PW-2 (Dilbagh Singh)'s ocular testimony has been corroborated by medical evidence. PW-1 (Dr.Rishi) examined him on 19.03.2006 and prepared MLC (Ex.PW-1/A). He deposed that three injuries mentioned in the MLC were found on the victim's body and these were caused by sharp object. I find no merit in the plea that Section 397 IPC is not attracted due to non-recovery of knife. PW-2 (Dilbagh Singh) in his Court statement categorically deposed that injuries were inflicted by the appellant with knife on his person. The nature of injuries was opined as simple in nature by Dr.Gautam as testified by PW-1 (Dr.Rishi). No suggestion was put to PW-1 in the cross-examination that the knife used in the incident was not a 'deadly' weapon or it was an ordinary vegetable knife. Moreover, at 05.30 A.M. at odd hours, the appellant was not expected to retain a knife in his possession without any apparent purpose.

6. Non-recovery of robbed articles is not fatal to the prosecution case as the appellant was arrested after about one month of the incident and his associates could not be arrested. The discrepancies and contradictions highlighted by counsel are not material to throw away the prosecution case in its entirety. The impugned judgment is based upon fair appraisal of the evidence and needs no interference. Record reveals that the appellant was earlier convicted for similar offence in case FIR No.44/2003 under Sections 392/397/411/34 IPC PS Sarai Rohilla and sentenced to undergo RI for seven years with fine ₹ 3,000/- on 29.03.2007. He completed the substantive sentence on 24.11.2010. He was admonished by this Court in Crl.A.No. 384/2007 for default sentence of payment of fine.

7. In the light of above discussion, the appeal filed by the appellant lacks merits and is dismissed. The conviction and sentence of the appellant are maintained.

8. Pending application also stands disposed of. The Trial Court record be sent back forthwith.

**(S.P.GARG)**  
**JUDGE**

**JULY 03, 2013**

*tr*

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