

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

RESERVED ON : 29th August, 2013

DECIDED ON : 11th September, 2013

+ CRL.A. 1298/2012

SHEIKH MUNNA @ MUNNA SHEIKH Appellant

Through : Ms.Anita Abraham, Advocate.

VERSUS

STATE

..... Respondent

Through : Mr.Feroz Khan Ghazi, APP.

CORAM:

MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Sheikh Munna @ Munna Sheikh (the appellant) impugns a judgment dated 07.07.2012 of learned Additional Sessions Judge in Sessions Case No.57/2011 arising out of FIR No.64/2011 registered at Police Station N.D.R.S. by which he was convicted under Section 394 read with Section 397 IPC. By an order dated 09.07.2012, he was directed to undergo Rigorous Imprisonment for eight years with fine ₹50,000/- under Section 394 IPC and Rigorous Imprisonment for seven years with fine ₹10,000/- under Section 397 IPC.

2. Allegations against the appellant were that on 12.03.2011 at about 04.00 P.M. under a pucca flyover in front of platform No.8/9 of
Crl.A.No.1298/2012

New Delhi Railway Station, he with his associates Saddam and Bhura (not arrested) in furtherance of common intention robbed Smt.Asha Rani of her gold chain and caused injuries to her husband B.Udayraj with surgical blade. Daily Diary (DD) No.19A (Ex.PW-1/A) was recorded at Police Station N.D.R.S. at 05.28 P.M. on getting information that an army man has been stabbed with knife. The investigation was assigned to ASI Ashok Kumar who with Ct.Bheem Singh went to LNJP hospital and collected the MLC of B.Udayraj. Asha Rani (PW-2) recorded her statement (Ex.PW-2/A). The Investigating Officer made endorsement (Ex.PW-6/A) and lodged First Information Report. Attempts were made to find out the culprits but in vain. On 17.10.2011 Sheikh Munna @ Munna Sheikh was arrested in case FIR No.252/2011 under Section 307/34 IPC and his involvement surfaced in the disclosure statement (Ex.PW-5/C). He declined to participate in Test Identification Proceedings. The Investigating Officer recorded the statements of witnesses conversant with the facts and after completion of investigation filed a charge-sheet in the court. The appellant was duly charged and brought to trial. The prosecution examined ten witnesses to prove the charges. In his 313 statement, the appellant pleaded false implication due to refusal to do cleaning work in the police station. On appreciating the

evidence and after considering the rival contentions of the parties, the Trial Court, by the impugned judgment held the appellant guilty for the offences mentioned previously and sentenced him. Being aggrieved, he has filed the present appeal.

3. Appellant's counsel urged that the Trial Court did not appreciate the evidence in its true and proper perspective. The appellant did not join TIP as his photo was shown to the complainant. Appellant's identification by PWs-2 and 3 after a gap of about seven months is highly doubtful. No weapon of offence and robbed article was recovered from the appellant's possession or at his instance. The Trial Court did not pay attention to the discrepancies emerging in the evidence about the exact number of assailants. PWs have given divergent versions and have made improvements. It is also not certain whether the weapon used was a razor or knife. Identification by photograph is not valid. Learned Additional Public Prosecutor urged that there are no sound reasons to discard the testimony of victim and her husband who was injured at the time of committing robbery. Minor discrepancies highlighted by the appellant's counsel are not fatal.

4. I have considered the submissions of the parties and have examined the record. Occurrence took place at around 04.00 P.M. DD

No.19/A (Ex.PW-4/A) was recorded at 05.28 P.M. at Police Station N.D.R.S. PW-1 (HC Davis B.J.) Duty Officer, disclosed in the cross-examination that on the basis of PCR call received at about 05.28 P.M. he recorded DD No.19/A. The injured was taken to JPN hospital and MLC (Ex.PW-8/A) records the time of arrival of the patient at 05.09 P.M. PW-6 (ASI Ashok Kumar) recorded Asha Rani's statement (Ex.PW-2/A) and sent the rukka for lodging First Information Report at 07.15 P.M. It reveals that there was no delay in lodging the FIR. 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. Earliest reporting of the occurrence by the informant with all its minute details gives assurance regarding truth of its version. In the instant case, the FIR was lodged on the complaint of Smt.Asha Rani in which she gave detail account as to how and under what circumstances she was robbed of her golden chain and when her husband B.Udayraj intervened, he was inflicted injuries with knife/razor. While appearing as PW-2 in her Court statement, she proved the version given to

the police at the earliest without any major variations/improvements. She deposed that on 12.03.2011 when they reached near bridge located at Hanuman Temple, an individual came near to her and attempted to snatch her gold chain. She raised alarm to call her husband who was going 15 mts. ahead of her. On that, the said individual fled the spot. In the meantime, another assailant came and attempted to snatch her gold chain. However, he was caught hold by her husband. When her husband had a scuffle with the snatcher, someone picked up their baby and they rushed towards her. Her husband was thereafter assaulted with some sharp object i.e knife/razor. There were two assailants; one had run away and the other assaulted her husband with sharp object. She identified Sheikh Munna @ Munna Sheikh as the assailant who assaulted her husband. She proved statement (Ex.PW-2/A) lodged by her. In the cross-examination, she denied that after the first snatcher fled away, two more assailants reached the spot. She clarified how in her statement (Ex.PW-2/A) she had referred to two assailants i.e. one the snatcher who had fled and other the appellant who assaulted her husband. She admitted that after the incident, she had no occasion to see the appellant. It transpires that material facts deposed by the witness remained unchallenged and uncontroverted in the cross-examination. The accused did not deny his presence at the spot. No

ulterior motive was assigned to the witness for falsely implicating him in the incident. PW-3 (B.Uday Raj) corroborated PW-2's testimony on all relevant facts and deposed that there were two assailants; one was able to flee after making attempt to snatch golden chain from her wife and the other (the appellant present before the court) attempted to snatch the 'mangal sutra' of his wife. When he caught hold of him, he took out a knife and assaulted him. He sustained injuries on his left arm and face. He was forced to release the appellant due to multiple injuries sustained by him on his face. The accused succeeded in taking away half part/portion of the mangal sutra. He further deposed that he was called by the police to identify the appellant in Tihar Jail. However, the appellant refused to participate in the TIP proceedings. On 29.11.2011, when he visited the police station to make inquiries about the case, he saw the photograph of the accused and identified him. In the cross-examination, he denied the suggestion that he was assaulted by three individuals or that on 17.10.2011 the police had shown him the photograph of the accused in the police station. Again the witness was not confronted on core issues whereby the appellant inflicted injuries on his body when he intervened in the incident.

5. PWs-2 and 3 had no prior acquaintance with the appellant to falsely implicate him in the case. In the absence of prior animosity or ill-will both these independent witnesses were not expected to falsely rope in the accused for the injuries caused to the victim. Their ocular testimony has been fully corroborated by medical evidence. PW-8 (Dr.Vijay Kumar) medically examined the victim at 05.09 P.M. and prepared MLC (Ex.PW8/A). He found multiple injuries on his body as under:-

- (i) 8 cm incised wound on anterior aspect of left elbow.
- (ii) 3 cm incised wound on medial aspect of left hand writs.
- (iii) 7 cm incised wound on left side chin.
- (iv) 2 cm incised wound on nose.
- (v) 4 cm incised wound on lower aspect of nose.

PW-9 (Dr.Sanjay) after examining and re-examining the patient along with the documents was of the opinion (Ex.PW-9/A) that the injuries were 'grievous' in nature and there was facial disfigurement also. He proved his opinion as Ex.PW-9/A.

6. Both PWs 2 and 3 had direct confrontation with the assailants for long and had ample opportunity to observe and note their features. They identified the present appellant as one of the assailants in the court and attributed specific role to him whereby in an attempt to snatch the

golden chain, he assaulted PW-3 (B.Udayraj) with knife/razor and inflicted injuries to him. The Investigating Officer moved application for holding TIP after appellant's arrest in case FIR No.252/2011 under Section 307/34 IPC but he declined to participate in the TIP proceedings. Adverse inference is to be drawn against him for not participating in the TIP proceedings. When PW-3 visited the police station on 29.11.2011 and was shown the photograph, he immediately identified him. The appellant had declined to participate in the TIP proceedings prior to that. It is settled legal preposition that Identification Parade is a tool of investigation and is used primarily to strengthen the case of the prosecution on the one hand and to make doubly sure that accused in the case are actual culprits. It is trite to say that substantive evidence is the evidence of identification in court. In *Prem Singh Vs.State of Haryana* 2011 (10) SCALE 102 the Supreme Court held as under:-

“The two eye-witnesses PW-11 and PW-12 have given a graphic description of the incident and have stood the test of scrutiny of cross-examination and had also stated that they could identify the assailants, but the accused had declined to participate in the test identification parade on the ground that he had been shown to the eye-witnesses in advance. In my considered view, it was not open to the accused to refuse to participate in the T.I. parade nor it was a correct legal approach for the prosecution to accept refusal of the accused to participate in the test identification parade. If the accused-Appellant had reason to do so, specially on the

plea that he had been shown to the eye-witnesses in advance, the value and admissibility of the evidence of T.I. Parade could have been assailed by the defence at the stage of trial in order to demolish the value of test identification parade. But merely on account of the objection of the accused, he could not have been permitted to decline from participating in the test identification parade from which adverse inference can surely be drawn against him at least in order to corroborate the prosecution case.”

7. In *Shyam Babu Vs.State of Haryana* AIR 2009 SC 577 the accused persons had refused to participate in the TIP parade. It was held that it would speak volumes, about the participation in the commission of the crime. In *Rabinder Kumar Pal @ Dara Singh Vs.Republic of India* (2011) SCC 490 the Supreme Court held that “photo identification and TIP are only an aides in the investigation and do not form substantive evidence. The substantive evidence is the evidence in the court on oath. The logic behind TIP, which will include photo identification lies in the fact that it is only an aid to investigation, where an accused is not known to the witnesses, the IO conducts a TIP to ensure that he has got the right person as an accused. The practice is not borne out of procedure, but out of prudence. At best it can be brought under Section 8 of the Evidence Act, as evidence of conduct of a witness in photo identifying the accused in the presence of an IO or the Magistrate, during the course of an investigation.”

8. There are no good reasons to discard the statement of PW-3 who was badly injured in the incident. It is settled legal proposition that normally an injured witness would enjoy greater credibility because he is the sufferer himself and thus there will be no occasion for such a person to state incorrect version of the occurrence or to involve anybody falsely in the bargain to protect the real culprit.

9. Minor discrepancies and contradictions referred to above by appellant's counsel are not enough to discard the testimony of PWs 2 and 3 in its entirety. It makes no difference if the assailants were two or three in number, the fact remains that the appellant was one of the assailants who attempted to snatch the mangal sutra and when PW-3 intervened, he was assaulted repeatedly on his body. Non-recovery of the stolen property is insignificant as the appellant was arrested after a long gap of seven months. It is inconsequential if weapon used was knife or razor. PW-8 observed five incised wounds on the body of the victim and the nature of injuries was 'grievous' in nature to attract Section 397 IPC.

10. In the light of the above discussion, I am of the view that there are no valid reasons to interfere with the impugned judgment which was delivered after proper appreciation of the evidence on record. The sentence order is modified to the extent that default sentence for non-

payment of fine of ₹50,000/- under Section 394 IPC shall be three months and for non-payment of ₹10,000/- under Section 397 it shall be one month. Other terms and conditions of the sentence order are left undisturbed.

11. The appeal stands disposed of. Trial Court record be sent back forthwith.

(S.P.GARG)
JUDGE

September 11, 2013
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