

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

RESERVED ON : 10th JULY, 2013

DECIDED ON : 16th JULY, 2013

+ CRL.A. 1581/2011

ASHUDDIN Appellant

Through : Ms.Jyoti Gupta, Advocate.

versus

STATE Respondent

Through : Mr.M.N.Dudeja, APP.
SI Bhanu Kanwaria, PS Mayur Vihar.

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

S.P.GARG, J.

1. Ashuddin and Sher Khan @ Shahid Ali Mulla @ Arif were sent for trial in case FIR No. 64/2011 PS Mayur Vihar with allegations that on 02.03.2011 at about 06.45 P.M. at road near 25 Block, Trilok Puri, Bus Stand, they and their associates boarded a DTC bus bearing No. DL 1PB-3177 on route No. 360 and robbed bag containing tickets and cash ₹280/- from Nitu-Conductor in the bus at the point of knife. The assailants got down the bus to flee and were chased. Ashuddin was caught hold at some distance and the bag robbed was recovered from his possession. The Investigating Officer lodged First Information Report after recording

complainant's/Nitu's statement. During investigation, he recorded statements of the witnesses conversant with the facts. On completion of the investigation, a charge-sheet was submitted. Ashuddin was charged under Section 392/34 read with Section 397 IPC. The prosecution examined six witnesses. On appreciating the evidence and after considering the rival contentions of the parties, the Trial Court, by the impugned judgment, held Ashuddin guilty of committing offence under Section 392 IPC. Sher Khan @ Shahid Ali Mulla @ Arif was acquitted of all the charges. It is significant to note that the State did not challenge the acquittal.

2. The appellant's counsel urged that the appellant's identity as assailant has not been established beyond reasonable doubt. PW-4 (Rajesh Kumar), driver could not recognise him in the Court. PW-1 (Nitu)'s identification is shaky. He is not sure if he was the person who snatched the bag from him. No independent public witnesses including passengers were associated at any stage of the investigation. The story projected by the State is highly improbable. Learned APP urged that there are no reasons to discredit victim's deposition and that of PW-2 (Const.Mohd.Irfan), who apprehended the appellant after chase.

3. The appellant's apprehension at the spot is not in dispute. He sustained injuries due to the beatings at the hands of public and was medically examined vide MLC (Ex.PW-6/B) at Lal Bahadur Shastri Hospital, Khichripur, Delhi at 11.55 P.M. that day. The alleged history records that he was 'assaulted and beaten by public'. It confirms his presence at the spot. In his 313 statement he admitted his presence in the bus but stated that he had got down the bus and was apprehended while moving away. PW-1 (Nitu) in his statement (Ex.PW-1/A) given to the police at first instance narrated graphic account as to how bag containing tickets and cash was snatched by assailants who were four in number in the bus. He further disclosed that the assailants were chased and one of them i.e. Ashuddin was apprehended with the assistance of Const.Mohd.Irfan and the bag was recovered from his possession. In Court statement as PW-1, he proved the version given to the police without any variation. He identified Ashuddin who was apprehended at the spot after chase by him with the assistance of Const.Mohd.Irfan. Arrest memo (Ex.PW-1/B) and personal search memo (Ex.PW-1/C) bear his signatures. He was unable to identify Sher Khan. PW-1 (Nitu) further identified the robbed articles i.e. bag (Ex.P2), tickets (Ex.P3) and cash (Ex.P4). PW-2 (Const.Mohd.Irfan) corroborated PW-1's version and

identified Ashuddin to be the assailant who was chased and apprehended at the spot. He further proved recovery of the tickets and bag from his possession. Both these witnesses were tested in cross-examination but no material discrepancies emerged to disbelieve them. PW-1 (Nitu) is not expected to fake the incident. The appellant was not acquainted with them to be falsely implicated in the case. He did not attribute any mala fide to discredit their version. Minor discrepancies and contradictions pointed out by the appellant's counsel in the testimony of the witnesses do not go to the root of the case to throw away the prosecution case in its entirety. Non identification by PW-4 (Rajesh Kumar) is not fatal. No adverse inference can be drawn for non-joining of independent public witnesses. PW-1 and PW-4 cannot be termed partisan witnesses. The public was not expected to beat an innocent. Medical evidence is in consonance with ocular version. The findings on conviction under Section 392 IPC are based upon fair appreciation and evaluation of reliable evidence and are affirmed.

4. The appellant was sentenced to undergo RI for five years with fine ₹ 1,000/-. Nominal roll dated 09.04.2013 reveals that he has already undergone two years, one month and ten days incarceration as on 13.04.2013. He also earned remissions for five months and twenty two

days. He is not a previous convict and not involved in any other criminal case. His overall jail conduct is satisfactory. On the date of incident, he was a young boy of 21 years. He is the sole earning member of the family and is to look after his wife and son. Sher Khan has been acquitted for want of cogent evidence. The assailants who used 'deadly' weapons in committing robbery are absconding and could not be arrested. Considering these mitigating circumstances, order on sentence is modified and the appellant is sentenced to undergo RI for three years with fine ₹ 1,000/- and failing to pay the fine to undergo SI for 15 days.

5. The appeal is decided in the above terms.

6. Copy of the order be sent to the Jail Superintendent. Trial Court record be sent back forthwith.

(S.P.GARG)
JUDGE

JULY 16, 2013

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