

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

**RESERVED ON : 20<sup>th</sup> MARCH, 2014**

**DECIDED ON : 23<sup>rd</sup> APRIL, 2014**

**+ CRL.A. 39/2014 & CRL.M.B.No. 70/2014**

**MOHD. YUSUF @ CHUMMA**

**..... Appellant**

**Through : Mr.Rajender Chhabra, Advocate.**

**versus**

**STATE (GNCT 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 is directed to challenge the legality and correctness of a judgment dated 05.09.2013 of learned Addl. Sessions Judge in Sessions Case No. 104/2013 arising out of FIR No. 238/2012 PS Jahangirpuri by which he was convicted under Section 392 read with 394 IPC. By an order dated 12.09.2013, he was sentenced to undergo RI for seven years with fine ₹ 2,000/-.

2. Briefly stated, the prosecution case as reflected in the charge-sheet was that on 17.09.2012 at about 06.30 A.M. at Gali No.2, B-Block Park, Jahangirpuri, the appellant and his associates (not arrested) assaulted and robbed complainant – Raj Dulari, aged 60 years of her purse containing ₹ 30/- and ear-rings when she had gone alone to fetch milk. When she raised alarm ‘pakro - pakro’, the appellant was apprehended by public and given beatings. The robbed articles were recovered from his possession. Police arrived at the spot. The Investigating Officer lodged First Information Report after recording complainant – Raj Dulari’s statement (Ex.PW-4/A). She was medically examined. Statements of the witnesses conversant with the facts were recorded. After completion of the investigation, a charge-sheet was filed under Sections 394/397/411/34 IPC. By an order dated 21.01.2013, the appellant was charged under Sections 392/397/34 IPC and was duly brought to trial. The prosecution examined eight witnesses to establish his guilt. In 313 statement, he denied complicity in the crime and pleaded false implication. He did not examine any witness in defence. The trial resulted in his conviction as aforesaid. Being aggrieved and dissatisfied, the appellant has preferred the appeal.

3. I have heard the learned counsel for the parties and have examined the record. Appellant's counsel urged that the Trial Court did not appreciate the evidence in its true and proper perspective. No independent public witness was associated at any stage of the investigation. The appellant and the victim lived in the same area. Offence under Section 394 IPC by which the appellant was ultimately convicted was triable by the Court of Magistrate. It was highly improbable for the complainant to see the face of the assailant who had snatched the ear-rings from behind. It is a case of mistaken identity. There are no allegations in the complaint about causing of injuries on the arms. Learned Addl. Public Prosecutor urged that the evidence of the complainant who has no prior acquaintance with the accused inspires confidence and there are no sound reasons to disbelieve her.

4. The occurrence took place at around 06.30 A.M. when the complainant – Raj Dulari, aged 60 years, had gone to fetch milk. When she did not return, her daughter-in-law PW-5 (Seema) went in her search. She found that Raj Dulari was bleeding from her ear and forehead. Her right hand was in broken condition. She came to know that the accused who had robbed her was apprehended at the spot and was given beatings. In her complaint (Ex.PW-4/A) given to the police soon after the incident,

the complainant disclosed that when she was present in Gali No.2, B-Block, at around 06.30 A.M. after bringing milk, she was caught hold from behind by two or three boys. One of them snatched her ear-rings and purse containing ₹ 30/-. She started bleeding from her ears due to snatching of the ear-rings. When she raised alarm, the accused was apprehended at the spot. She was also given beatings by him. While appearing as PW-4 (Raj Dulari), the complainant, proved the version given to the police without major variation. She identified the appellant as the assailant who had physically assaulted her and snatched her ear-rings from the ear causing injuries. She proved the recovery of the robbed articles from the appellant's possession. In the cross-examination, she reasserted that the appellant – Mohd. Yusuf snatched ear-rings from her ears. Two associates of the appellant could not be apprehended and fled the spot. She denied the suggestion that she was unable to see the face of the assailant or that Mohd. Yusuf was apprehended due to mistaken identity. Scanning the testimony of this witness reveals that despite cross-examination, nothing material could be elicited to disbelieve her version. The accused did not deny his presence at the spot. He failed to explain as to how, under what circumstances and for what purpose, he had arrived at the spot at morning time. He also did not offer any explanation as to how

and why he was thrashed by the public. The recovery of the robbed articles from his possession remained un-challenged in the cross-examination. In the absence of prior animosity or ill-will, this elderly woman who had suffered injuries was not expected to falsely implicate the accused. Her statement is in consonance with medical evidence. Soon after the occurrence, she was taken to Babu Jagjiwan Ram Memorial Hospital. MLC (Ex.PW-8/A) records the arrival time of the patient at 08.10 A.M. PW-8 (Dr.Sandeep Swami) proved the MLC (Ex.PW-8/A) prepared by Dr.Vishwanath. MLC records that the victim was brought by her daughter-in-law – Seema to the hospital with the alleged history of physical assault. CLW over left ear-lobe; abrasion over left upper eye brow; swelling and tenderness on right forearm and wrist were found on her body. She was referred to Ortho Department. The examining doctor found a fracture of distal radius and distal ulna right side. On examination of X-ray report on 11.10.2012, nature of injuries was opined as ‘grievous’. The expert witness was not cross-examined and the opinion given by him remained unchallenged. PW-5 (Seema) corroborated her version in material aspects. In 313 statement, the accused did not give plausible explanation to the incriminating circumstances. He did not disclose as to when and where he was arrested. Contradictory and conflicting plea was

taken in defence denying presence at the spot. However, he did not reveal as to where else he was present at the time of occurrence. The inconsistency defence taken by the appellant needs outright rejection. The impugned judgment is based upon fair appraisal of the evidence and needs no interference. It is true that earlier charge under Section 392 read with Section 397 IPC was framed by an order dated 21.01.2013. The appellant did not challenge the said order. When the case was fixed for final disposal, the Trial Court noticed that the charge under Section 397 IPC was perhaps due to inadvertence / typographical error. It was accordingly amended to Section 394 IPC. Since the entire proceedings / trial had been conducted when the accused was facing proceedings under Section 392 read with Section 397 IPC, his final conviction under Section 394 IPC cannot be faulted. All the elements under Section 394 IPC are included under Section 397 IPC. Both of them contemplate of robberies with hurt.

5. The appellant was sentenced to undergo RI for seven years with fine ₹ 2,000/-. Nominal roll dated 11.03.2014 reveals that he was aged about 21 years on the day of incident. Though he was involved in FIR No. 229/2011 under Sections 454/380/411 IPC, no conviction was recorded therein. Apparently, he is not a previous convict. His overall jail conduct is satisfactory. Sentence order records that he has a family

comprised of aged widow mother, two younger brothers and four elder sisters. He is a IVth class pass and is a labourer by profession. Indisputably, the victim in the occurrence was a senior citizen to whom injuries were inflicted while snatching her ear-rings. The appellant took advantage of loneliness of the helpless woman and robbed her. Considering the aggravating and mitigating circumstances, the sentence order is modified and the substantive sentence of the appellant is reduced / modified to RI for five years instead of seven years. Other terms and conditions of the sentence order are left undisturbed.

6. The appeal stands disposed of in the above terms. Pending application also stands disposed of. Trial Court record be sent back immediately with the copy of the order. A copy of the order be sent to the Superintendent Jail for information.

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

**APRIL 23, 2014 / tr**