

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

RESERVED ON : March 20, 2014

DECIDED ON : April 03, 2014

+ CRL.A. 166/2012

VIPIN Appellant

Through : Mr.Anwesh Madhukar, Advocate.

versus

STATE (NCT OF DELHI) Respondent

Through : Mr.Lovkesh Sawhney, APP.

**CORAM:
MR. JUSTICE S.P.GARG**

S.P.GARG, J.

1. Vipin (the appellant) questions the legality and correctness of a judgment dated 13.05.2011 of learned Additional Sessions Judge in Sessions Case No.21/10 arising out of FIR No.03/10 registered at Police Station Rani Bagh by which he was convicted under Section 394/397 IPC; 27 Arms Act and sentenced to undergo RI for seven years with fine ₹5,000/- each under Sections 394/397; and RI for three years with fine ₹3,000/- under Section 27 Arms Act. All the sentences were to operate concurrently.

2. The prosecution case, as revealed in the charge-sheet, was that on 06.01.10 at about 09.00 a.m. in a running bus on route No.901 at Madhuban Chowk, Pitam Pura, the appellant-Vipin along with his associates in furtherance of common intention inflicted injuries by a knife to the complainant-Abhinav Kumar and robbed a purse containing ₹350/-, I card, voter card and some papers. Information regarding the occurrence was conveyed to PCR at 100 which led to the registration of Daily Dairy (DD) No.10A (Ex.PW-5/A) at 09.30 a.m. at Police Station Rani Bagh. It records about apprehension of a pick-pocket at Madhuban Chowk, Bus stand. The investigation was assigned to SI Ved Prakash who with Ct.Dolas went to the spot. The victim had already been taken to Bhagwan Mahavir hospital by ASI Rohtash of PCR. The Investigating Officer lodged First Information Report after recording complainant's statement (Ex.PW-2/A) by sending rukka (Ex.PW-7/A). Statements of witnesses conversant with the facts were recorded. The accused was apprehended and was medically examined. After completion of investigation, a charge-sheet was filed against the accused; he was duly charged; and brought to trial. The prosecution examined seven witnesses to establish his guilt. In 313 statement, the accused pleaded false implication. He examined Guddo (DW-1) in defence. 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 mentioned previously. Aggrieved and dissatisfied, the appeal has been preferred questioning the validity of conviction.

3. I have heard the learned counsel for the parties and have examined the file. Appellant's counsel urged that the trial court did not evaluate the evidence in its true and proper perspective and fell into grave error in relying upon wavering testimony of the complainant. The witnesses have given inconsistent and conflicting version about the recovery of the purse and knife. No independent public witness including the driver and conductor of the bus were associated at any stage of the investigation. Ingredients of Section 394/397 IPC are not attracted and proved. The victim did not sustain any injury by the knife. Learned Additional Public Prosecution urged that the judgment is based upon fair appraisal of the evidence and there are no sound reasons to discard the credible testimony of the complainant.

4. The occurrence took place at around 09.00 a.m and information to PCR was conveyed soon thereafter. PW-4 (ASI Rohtash) of PCR on receipt of call at about 09.30 a.m. rushed to the spot within three minutes with PCR vehicle. He found both the victim and the

appellant in injured condition at the spot and admitted them at Bhagwan Mahavir hospital. Daily Dairy (DD) No.10A (Ex.PW-5/A) was recorded at 09.30 a.m. MLC (Ex.PW-1/A) records the arrival time of the patient Abhinav Kumar at the hospital as 09.55 a.m. PW-1 (Dr.Manideepa) medically examined the patient Abhinav Kumar and prepared MLC (Ex.PW-1/A). Nature of injuries was opined as 'simple'. In the complaint (Ex.PW-2/A), the complainant gave detailed account of the incident and disclosed as to how and under what circumstances, he was robbed by the appellant along with his two or three associates at knife point and was also given beatings. He further disclosed that the appellant's associates succeeded to flee the spot. He was able to catch hold of the appellant with the assistance of the public who also thrashed him. While appearing as PW-2, Abhinav identified Vipin as one of the assailants who had robbed him of his purse at knife point. He assigned a specific and definite role to the appellant who was armed with a knife and was the first individual to assault him; he also criminally intimidated passengers in the bus. In the cross-examination, he was confronted with the statement (Ex.PW-2//A) where some facts narrated by him in the court were not mentioned earlier. Despite lengthy and searching cross-examination, no material discrepancy could be elicited to disbelieve or discredit the statement of the

complainant who had no prior animosity or ill-will with the appellant. Minor discrepancies highlighted by the appellant's counsel are inconsequential as they do not affect the basic structure of the prosecution case. He specifically deposed that he was robbed at the knife point and was physically assaulted by the appellant and his associates as a result of which he sustained injuries on his body. The medical evidence is in consonance with the ocular testimony of the complainant. PW-4 (ASI Rohtash) also corroborated his testimony on all material aspects without major deviation. When he went to the spot pursuant to the receipt of call at 100, he found many public persons present at the spot. He deposed that the complainant had caught hold of Vipin and the public had given beatings to him. The complainant produced a 'buttandar' knife snatched from the appellant and it was handed over later on by him to the Investigating Officer who seized it vide seizure memo (Ex.PW-2/C). The complainant identified the purse collectively exhibited (Ex.P-1) snatched by the appellant and which he was able to get it back. He also identified knife (Ex.P-2) used to extend threats. The accused did not give plausible explanation to the incriminating circumstances. In 313 statement, the accused claimed that he was lifted from his house and brought at the spot. The accused failed to explain as to how and under what circumstances, he

sustained injuries on his body. It confirms his presence at the spot. Non-examination of independent public witnesses is not fatal to the prosecution case as the prosecution was able to produce the cogent and reliable testimony of the victim who had no ulterior motive to falsely implicate him. The impugned judgment is based upon fair appreciation of the evidence and warrants no interference. Since minimum sentence prescribed under Section 397 IPC is seven years, the substantive sentence awarded to the appellant cannot be altered or modified. Nominal roll dated 13.01.2014 reveals that the unexpired portion of sentence was two years, one month and seventeen days on that date. The appellant is not involved in any criminal case and is a first offender. Considering these circumstances, the sentence order is modified to the extent that the sentence under Section 394 IPC will be five years with fine ₹1,000/- and failing to pay the fine, to undergo SI for fifteen days. Since Section 397 IPC does not regulate imposition of fine, ₹5,000/- imposed as fine is set aside and substantive sentence would be RI for seven years; under Section 27 Arms Act, the sentence will be three years with fine ₹500/- and default sentence would be ten days for non-payment of fine. All the substantive sentences shall run concurrently.

5. The appeal stands disposed of in the above terms. Trial Court record along with a copy of this order be sent back forthwith.

(S.P.GARG)
JUDGE

April 03, 2014
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