

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

RESERVED ON : March 19, 2014

DECIDED ON : March 20, 2014

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CRL.A. 310/2012

SHYAMBIR

..... Appellant

**Through : Mr.Pramod Kr.Dubey with Mr.Shiv
Pande, Advocates.**

Versus

STATE GOVT. OF NCT OF DELHI

..... Respondent

**Through : Mr.Lovkesh Sawhny, APP.
SI Manjeet Kumar, PS South Campus.**

CORAM:

MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Challenge in this appeal is to a judgment dated 05.10.2011 in Sessions Case No.95/11 arising out of FIR No.56/10 registered at Police Station Dhaula Kuan by which the appellant-Shyambir was held guilty for committing offence under Section 392 read with Section 397 IPC. By an order on sentence dated 10.10.2011, he was awarded RI for five years with fine 5,000/- under Section 392 IPC and RI for seven years under Section 397 IPC. Both the substantive sentences were to operate concurrently.

2. Allegations against the appellant were that on 27.03.2010 at about 11.30 a.m. at or near Arjun Vihar Bus Stand, Dhaula Kaun, he and his associates Jaswant and Sanjay @ Ajay in furtherance of common intention committed robbery and deprived Nirmla Devi of her gold chain and gold ear-tops while she was travelling in a private bus. The appellant was apprehended at some distance after chase and crime weapon i.e. knife was recovered from his possession. His associates Jaswant and Sanjay @ Ajay succeeded to flee the spot. Subsequently, they were arrested and some recoveries were effected. Statements of witnesses conversant with the facts were recorded. After completion of investigation, a charge-sheet was submitted in the court against all of them; they were duly charged; and brought to trial. It is relevant to note that Sanjay @ Ajay expired during trial and proceedings against him were dropped as 'abated'. In 313 statements, the contesting accused persons denied their complicity in the crime and pleaded false implication. The trial court by the impugned judgment convicted Shyambir for the offences mentioned previously while Jaswant was acquitted of all the charges. It is apt to note that the State did not challenge his acquittal. Being aggrieved by the impugned judgment, the appellant has preferred the appeal.

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 appreciate the evidence in its proper and true perspective. The appellant was convicted with the aid of Section 397 IPC only. However, acquittal of co-accused Jaswant shows that he did not share common intention with him. No recovery of the stolen articles was effected from his possession. The investigating officer did not move any application for holding Test Identification Proceedings. The military-man who had apprehended the appellant was not examined and produced. Learned APP for the State urged that the complainant, her husband and nephew identified the appellant as one of the assailants who committed robbery and there are no sound reasons to interfere in the impugned judgment which is based upon fair appraisal of the evidence.

4. The police machinery came into motion when information was conveyed and recorded by Daily Dairy (DD) No.15A (Ex.PW-2/C) at police station Dhaula Kuan about the apprehension of a snatcher. The investigation was assigned to ASI Ramesh Chand (PW-8) who went to the spot and lodged First Information Report after recording complainant-Nirmla Devi's statement (Ex.PW-1/A). In her complainant, Nirmla Devi gave detailed account of the incident as to how and under what

circumstances she was robbed of her golden chain and ear-rings by the assailants in the bus while using a knife. She also disclosed that two of the assailants were successful to flee on a motor-cycle and the appellant was apprehended by a military-man. She also disclosed about the recovery of knife from his possession. While appearing in the court, she proved the version given to the police at the first instance without any deviation. She identified Shyambir as one of the assailants and attributed specific role to him. She deposed that accused Sanjay touched her gold chain which she was wearing and snatched it. When she tried to raise alarm, Shyambir (the appellant) took out a knife and threatened her not to raise voice. Sanjay while running away removed her golden ear-tops. Thereafter, Sanjay and Shyambir got down from the bus from the back gate and the third assailant asked the driver to continue to drive the bus. She further deposed that Shyambir was apprehend near the spot along with a knife. Her statement (Ex.PW-1/A) was recorded by the police on arrival. She identified knife (Ex.P1) as crime weapon. She was cross-examined by the accused. However, no material discrepancies could be extracted to disbelieve her statement. All material facts deposed by the witness remained unchallenged and uncontroverted. She suffered injuries and was medically examined by Dr.Mukesh Nandan (CW-1) by MLC

(Ex.CW1/A), where the nature of injuries was opined as 'simple'. The accused did not deny his apprehension at the spot with a knife and the role attributed to him.

5. PW-3 (Jagdish Prasad-her husband) and PW-6 (Vinay Kumar Tiwari) who were travelling in the said bus, fully corroborated her version without any deviation. They also identified Shyambir as one of the assailants who used knife to extend threats while his associates robbed the complainant of her valuable articles. They also proved his apprehension with a knife soon after the occurrence at the spot. Again, their cross-examination did not yield any fruitful result to benefit the appellant. No ulterior motive was assigned to any of these witnesses, who had no prior acquaintance with the appellant, to falsely implicate and identify him. Non-examination of military-man, who was instrumental in apprehending the appellant, is of no consequence as he has been identified without any hesitation by the material witnesses who had direct confrontation with him inside the bus. Acquittal of co-accused Jaswant due to lack of evidence and lapses on the part of investigation is inconsequential to give benefit of doubt to the appellant who has been recognized as one of the assailants and who had facilitated the commission of robbery by co-accused. Knife (Ex.P1) recovered from the accused was a buttandar knife; a prohibited

weapon under the Arms Act. Its sketch (Ex.PW-3/A) reveals its size and dimension. Apparently, it was a 'deadly' weapon used while committing robbery. The accused did not give plausible explanation to the incriminating circumstances appearing against him. He did not give reasonable explanation about his presence with a knife inside the bus at the relevant time. Since the appellant was arrested soon after the incident at the spot, there was no necessity to conduct Test Identification Proceedings. The testimony of the prosecution witnesses is consistent and they have corroborated each other on all material facts. There is nothing to disbelieve and discard their clinching evidence in the absence of any prior animosity or ill-will. The conviction of the appellant under Section 392 with the aid of Section 397 IPC cannot be faulted and is affirmed. The sentence order cannot be modified as minimum sentence prescribed under Section 397 IPC is seven years. However, default sentence awarded by the trial court for non-payment of fine can be modified to some extent considering the poor economic condition of the appellant.

6. In the light of the above discussion, while maintaining the conviction under Section 392 read with Section 397 IPC, the sentence order is modified to the extent that default sentence for non-payment of

fine of ₹5,000/- will be fifteen days instead of three months. Other terms and conditions of the sentence order are left undisturbed.

7. 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

March 20, 2014
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