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

% *Judgment reserved on : 24.09.2014*

Judgment delivered on : 30.09.2014

+ CRL.A. 387/2006

ROBIN SINGH

..... Appellant

Through Mr.Padam Kant Saxena, Amicus
Curiae.

versus

STATE

..... Respondent

Through Mr.Ravi Nayak, APP.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 This appeal is directed against the impugned judgment and order of sentence dated 15.05.2006 and 17.05.2006 respectively wherein the appellant stood convicted under Section 392 read with Section 397 of the Indian Penal Code, 1860 (hereinafter referred to as the "IPC") as also for the offence under Section 365 of the IPC. He had been sentenced to undergo RI for a period of seven years for the offence under Section 397/392 of the IPC has also to pay a fine of Rs.200/- and in default of payment of fine to undergo SI for one month. For the offence under Section 365 of the IPC, he had been sentenced to undergo RI for a period of one year and to pay a fine of Rs.100/- and in default of

payment of fine to undergo SI for 15 days. Nominal roll of the appellant reflects that as on date when he had been granted bail, he has suffered incarceration of 3- ½ months.

2 Record shows that on 23.08.2003 at about 01:45 pm, the complainant Jalaj Narang (PW-1) studying in 12th class, Ludlow Castle School was waiting for his bus outside his school, when one boy came from the side of the trauma center and took him to the other side and threatened to stab him with a knife if he did not follow. Then he called a motor-cycle rider who was standing at a distance. The accused put a knife on the neck of PW-1 and asked the motor-cycle rider to take PW-1 and the accused to another location to the side of Nehru Ridge. At first, PW-1 refused to sit on the motor-cycle; he was threatened with a knife and sat on the motor-cycle along with the rider of the motor-cycle as also the appellant. They moved ahead. Upon reaching near the park, the motor-cycle rider at the instance of the accused was asked to stop the motorcycle and wait, while he took the complainant to the bushes on one side of the park. PW-1 along with the motor-cycle rider were compelled to go inside the park. This was on the point of a knife. The motor-cycle rider was coerced by the accused to remove the purse of

PW-1. PW-1 had Rs.400/- and his Identity card in his purse. The accused thereafter coerced the motor-cycle rider to drop PW-1 from the same place from where he had picked him up and threatened him that in case he did not do so, his motor-cycle would get impounded. PW-1 sat on the motor-cycle and went for 4-6 steps when he saw one policeman on a motor-cycle. He stopped him and told the incident. That police person H.C. Suraj Mal (PW-5) accompanied PW-1 to search the accused who was located at a distance of half kilometer. He was identified by PW-1, apprehended and arrested. Purse containing Rs.400/- was recovered from him as also a knife which was also taken into possession vide separate memos.

3 It was on this complaint of PW-1 that the rukka (Ex.PW-1/B) was dispatched and the FIR was registered.

4 PW-1 was the star witness of the prosecution. He had deposed on the same lines as the details mentioned in the rukka. He however refused to identify the accused present in Court stating that he was not the person who had attacked him. In another part of his cross-examination (by the learned public prosecutor), he had stated that the accused was not the person who had been arrested on his identification. He denied

the suggestion that he is trying to save the accused. In another part of his cross-examination, he exhibited the purse (Ex.P-3) which had been brought by him in Court. This witness was not cross-examined as he was hostile with respect to the identity of the accused.

5 H.C. Suraj Mal (PW-5) was the person to whom PW-1 had narrated his story and who had then apprehended the accused. In his version on oath in Court, he has deposed that he was near the Kamla Nehru ridge at about 02:00 pm on the fateful day. He was asked by a school boy to stop and on inquiry, the incident was narrated to him. PW-5 has deposed that on this narration, he along with PW-1 came to Kamla Nehru picket where they collected constable Dalip (PW-6) and went in search of the accused towards Rajpur Road and found the accused was going towards the boundary of Kamla Nehru ridge. He was identified by the accused, apprehended and arrested. From his personal search, purse containing Rs.400/-, a school I-card was taken into possession. In his cross-examination, PW-5 admitted that the accused was not known to PW-1 but PW-1 had given his description. Perusal of the rukka shows that the only description of PW-1 about the accused was that he was in the age bracket of 20-22 years.

6 The version of PW-5 that he had picked up PW-6 and then accompanied PW-1 to apprehend the accused is missing in the version of PW-1. Moreover, PW-1 has nowhere given any description of the accused even in the FIR. The only description is that the accused was about 20-22 years. The incident as described by PW-1 shows that the incident probably lasted between 7-10 minutes. It was at the point of a knife. Obviously, the mindset of the person who was facing trauma of such a nature would not allow him to observe the situation to its fullest. The accused being a stranger to PW-1, PW-1 would not be able to recollect him completely. That apart this Court notes that on oath in Court, PW-1 has not identified the accused. Even in his cross-examination by the learned public prosecutor, he has categorically stated that the accused in fact was not the same person who was got arrested by him on his identification.

7 Constable Dalip (PW-6) has endorsed the version of PW-5. He has deposed that he had accompanied PW-5 and PW-1 to apprehend the accused who was found on the main Rajpur Road. In his cross-examination, he has stated that this incident was disclosed to him by PW-5. He denied the suggestion that PW-1 had not come to the picket in

his presence and they did not go in search of the accused.

8 The version of PW-5 and PW-6 are consistent but PW-1 neither in the FIR and nor in his version on oath in Court has attributed any role to PW-6. This is a vital contradiction between the version of PW-1 on the one side and those of PW-5 and PW-6 on the other. The version of PW-1 is that he and PW-5 were the only persons at the time of apprehension of the accused. This is in contrast to the versions of PW-5 and PW-6 who both stated that they had apprehended the accused in the presence of PW-1. PW-1 has stated that the accused was arrested within a half kilometer from Ludlow Castle School whereas PW-5 and PW-6 have stated that the accused was arrested at the Kamla Nehru ridge area. The distance between the two places is large. It would be at least a difference of 1-½ kilometers. That apart, PW-1 has refused to identify the appellant as the accused. This becomes relevant in view of the fact that the accused and the victim were not known to each other and the victim having been robbed of his purse at the point of knife was suffering a psychological trauma at the time when the incident had occurred. He may not have been able to grapple the situation. He also did not give any description of the accused besides accused being in the

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age group of 20-22 years.

9 The rule of criminal jurisprudence is that the prosecution must prove its case to the hilt. In this case a doubt is created about the identity of the appellant; benefit of which must go to the appellant. The appellant is entitled to an acquittal on this ground alone. There is also a discrepancy about the search items from the appellant. Apart from the fact that the knife which had been allegedly recovered from the accused was not identified by PW-1; the version of the prosecution is (evident from Ex.PW-1/C which is the recovery memo) that there was also a purse containing Rs.400/- which was seized, sealed and became the part of the case property. However on oath in Court, the purse had been produced by PW-1 himself and he had exhibited it categorically stating that he had brought the purse which was lying with him. This also creates a dent in the version of the prosecution.

10 Accordingly, giving benefit of doubt, the appellant is acquitted. Appeal is allowed. Bail bonds cancelled. Surety discharged.

INDERMEET KAUR, J

SEPTEMBER 30, 2014

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