

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

RESERVED ON : MAY 07, 2014

DECIDED ON : MAY 21, 2014

+ CRL.A. 711/2013

RAJ KUMAR @ NAVVYA Appellant

Through : Ms.Suman Chauhan, Advocate.

versus

STATE (G.N.C.T. OF DELHI) Respondent

**Through : Mr.Lovkesh Sawhney, APP.
SI Sandeep Kumar, PS Ashok
Vihar.**

AND

+ CRL.A. 685/2012

BHAGWAN DASS Appellant

Through : Mr.R.K.Singh, Advocate.

versus

STATE Respondent

**Through : Mr.Lovkesh Sawhney, APP.
SI Sandeep Kumar, PS Ashok Vihar.**

CORAM:

MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Raj Kumar @ Navvya (A-1) and Bhagwan Dass (A-2)
challenge their conviction by a judgment dated 12.03.2012 in Sessions

Case No.33/11 arising out of FIR No.27/11 under Section 392 read with

Crl.A.Nos.711/2013 & 685/2012

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Section 397 IPC registered at Police Station Ashok Vihar. By an order dated 20.03.2012, they were sentenced to undergo RI for seven years with fine ₹5,000/- each.

2. Briefly stated, the prosecution case as reflected in the charge-sheet was that on 29.01.2011 at about 9.00 pm near Kulanchi Hansraj Model School, in front ATM, Punjab National Bank, A Block, Phase-I, Ashok Vihar, the appellants and their associate Roshan (since released) sharing common intention robbed complainant-Jai Karan Chauhan of cash ₹8,000/ to ₹8,500/-, mobile phone and gold chain at knife/katta point. On the basis of information conveyed to PCR at 100 by the complainant, Daily Dairy (DD) No.31A (Ex.PW3/A) was recorded at police station Ashok Vihar at 09.30 pm. ASI Ved Prakash, the Investigating Officer, lodged First Information Report after recording complainant- Jai Karan Chauhan's statement (Ex.PW-9/A). Statements of witnesses conversant with the facts were recorded. Efforts were made to find out the culprits but in vain. On 12.04.2011 A-2 was arrested in FIR No.87/11 registered at Police Station Mahendra Park under Section 33 Delhi Excise Act and 25 Arms Act. On 14.04.2011, A-1 was apprehended in FIR No.136/11 registered at Police Station Shahbad Dairy. Pursuant to disclosure statements, their involvement in this case emerged. Necessary

information was given to the concerned Investigating Officer and both A-1 and A-2 were arrested. Applications were moved for Identification Proceedings in which both A-1 and A-2 were identified by the complainant. After completion of investigation, a charge-sheet was submitted; the appellants were duly charged and brought to trial. The prosecution examined 18 witnesses to prove their guilt. In their 313 statement, they denied their complicity in the crime and pleaded false implication without examining any witness in defence. The trial resulted in their conviction as aforesaid. It is relevant to note that Roshan could not be identified by the complainant in Test Identification Proceedings and was released on 30.03.2011.

3. I have heard the learned counsel for the parties and have examined the file. Appellants' counsel urged that the trial court did not appreciate the evidence in its true and proper perspective and ignored the vital improvements/inconsistencies emerging in their statements. The prosecution was unable to establish the ingredients of Section 397 IPC. No weapon used in the crime was recovered from any of the appellants. Learned Additional Public Prosecutor urged that there are not sound reasons to disbelieve the complainant who was physically assaulted and injured in the incident.

4. The appellants have not challenged the incident of robbery in which the complainant was deprived of cash, gold chain and mobile. Their only plea is that they were not the author of the crime and it was the handiwork of someone else. The complainant having no ulterior motive to fake the incident of robbery had set the police machinery in motion soon after the occurrence. The incident was recorded in PCR Form (Ex.PW-4/A) at 09.25 pm. The complainant disclosed robbery of ₹8,000/- and gold chain by the assailants who had arrived in Car No. DL-1C M-1020. Daily Diary (DD) No.31A (Ex.PW3/A) was recorded at 09.30 pm at police station Ashok Vihar. In the statement (Ex.PW-9/A) given to the police soon after the incident, the complainant gave detailed account as to how he was deprived of his valuable articles by use of weapons by the three assailants. He also disclosed the number of vehicle in which the assailants had arrived. This vehicle was found to have been stolen in case FIR No.35/11 under Section 392/34 IPC registered at Police Station Burari, which was found abandoned within the jurisdiction of Police Station Kashmiri Gate after the occurrence. The complainant described features of the assailants and claimed to identify them. The appellants were arrested in other cases and their involvement in the present case emerged in the disclosure statement recorded in the said proceedings. The

Investigating officer of this case moved applications for conducting Test Identification Proceedings. Both the appellants participated voluntarily in it and were correctly identified by the complainant. At that stage, they had no grievance if they or their photographs were ever shown to the complainant in the police station. While appearing in the court, PW-9 proved the version given to the police without major variation and identifies both the appellants to be the assailants without hesitation. He attributed specific role to each of them. In the cross-examination, no material discrepancy could be extracted or elicited to shatter his testimony. The complainant who had no previous acquaintance or animosity with any of the appellants is not expected to falsely implicate them. His statement is in consonance with the medical evidence. He was taken to Babu Jagjivan Ram Memorial hospital by HC Bhaksi Lal of PCR. The MLC (Ex.PW-9/B) records the arrival time of the patient at 10.35 pm. Lacerated wounds were found on his body. PW-10 (Dr.Sanjay Kumar) proved the MLC (Ex.PW-9/B) prepared by Dr.Seema and Dr.Ajit Tripathi. There is no variance between the ocular and medical evidence. The prosecution also examined PW-6 (Jai Bhagwan) who corroborated the complainant's version about the withdrawal of money from PNB ATM on 29.01.2011. The accused persons did not give plausible

explanation to the incriminating circumstances appearing against them in 313 statements. All the relevant contentions of the appellants have been considered with reasons in the impugned judgment and no deviation is called for.

5. Conviction with the aid of Section 397 IPC, however, cannot be sustained as the prosecution was unable to establish beyond reasonable doubt that the complainant was robbed of his valuable articles by the use of 'deadly' weapons. Admittedly, no crime weapon was recovered from the possession of any of the appellants. In the PCR Form (Ex.PW-4/A), there is no information if the complainant was robbed by the use of knife or pistol. PCR Form (Ex.PW-4/A) records that the caller was injured by a 'blade'. Injuries found on the body of the complainant during stiff resistance were lacerated wounds. There is no specific mention if these injuries were caused by a sharp weapon. The complainant did not give the specific particulars i.e. size or dimension of the knife allegedly used in the incident. No injuries with knife and pistol were caused to the complainant. Under these circumstances aid of Section 397 cannot be taken to base conviction under Section 397 IPC. The conviction and sentence of the appellants is accordingly sustained under Section 392/34 IPC.

Accordingly, sentence order is modified and both the appellants are

sentenced to undergo RI for five years with fine ₹5,000/-each under Section 392/34 IPC and in default of payment of fine, they shall undergo SI for one month each.

6. The appeals stand disposed of in the above terms. A-1 shall surrender before the Trial Court on 28.05.2014 to serve the remaining period of sentence. Copy of the order be sent to Superintendent Jail for information. The Registry shall transmit the Trial Court records forthwith along with the copy of this order.

(S.P.GARG)
JUDGE

MAY 21, 2014
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