

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

+ **Crl. A. No.571/2012**

Judgment reserved on : 10th February, 2014

% Judgment pronounced on : 13th March, 2014

LALIT KUMAR Appellant

Through Mr. D.K. Thakur and Mr. Lallan
Choudhary, Advs.

versus

STATE (NCT OF DELHI) Respondent

Through Mr. O.P. Saxena, APP for State along
with SI Sukhvinder Sandhu, P.S.
Gandhi Nagar.

CORAM:
HON'BLE MS. JUSTICE DEEPA SHARMA

JUDGMENT:

1. Vide present appeal the appellant has challenged the order and judgment dated 1st March, 2012 by which the appellant had been convicted and sentence to undergo RI for seven years and also fine of Rs.500/-, in default SI for 15 days for the offence under Section 392/34 IPC read with Section 397 IPC.

2. The prosecution case is that the complainant PW4 (Mr.Anil

Aggarwal) had boarded the auto rickshaw of the appellant from Old Delhi Railway Station to Ganesh Nagar, Pandav Nagar at about 4.30 a.m. on 4.3.2010. As soon as PW4 had sat down in the TSR three more boys who were standing nearby boarded the same TSR. One boy sat with the appellant at the driving seat and the two boys sat with the complainant. At about 5.15 am, when TSR reached near Gandhi Nagar pusta, one boy stopped the TSR to relieve himself. After answering the nature's call (urinating), the boy returned and took out a knife from black colour rexine bag kept in the TSR. The appellant also took out a knife from the same bag. The two boys who were sitting by the side of PW4 caught hold of him and they threaten to kill him. The mobile phone, the Titan wrist watch and wallet containing Rs.1000/-, driving license and other documents of PW4 were removed by those boys. Thereafter those boys pushed out PW4 from the TSR and fled away with the TSR. When PW4 was crying, one Alto car stopped near him and the occupants enquired about the reason of his crying and upon narration of the incident, all of them chased the TSR and after about half kilometre, the TSR was overtaken. PW4 also managed to note down the number of the TSR when he was pushed out of the TSR. As soon as the TSR was stopped at Shastri Park those boys ran away after alighting the TSR. The appellant was caught by the complainant and occupants of the

car. They made a call to No.100 and PCR reached there. They were taken to PS Seelampur and after finding that the incident had taken place within the area of the PS Gandhi Nagar, the TSR along with the appellant was handed over to PS Gandhi Nagar.

3. The appellant during his arguments in his defence has not disputed this part of the incident. His plea is that he himself is the victim. On the point of knife he was made to drive the TSR by those boys who ran away as soon as the TSR was stopped. His plea is that he is innocent. This argument of the appellant has no merit in it.

4. The conduct of the appellant immediately after the incident is an important fact. It is apparent from the narration which is duly proved by the complainant (PW4) and from several suggestions given in the cross examination of PW4 that the appellant made no effort to resist any act of violence of those boys. The complainant (PW4) has clearly stated that the appellant had also taken out a knife from the rexine bag which was lying there and pointed it out towards him. No suggestion had been given to the witness that any of those three boys had put any pressure upon the appellant to continue driving TSR. It is also the evidence on record that after the complainant (PW4) was robbed, he was pushed out of the TSR and the appellant continued driving the TSR. The offence of robbery was completed

as soon as the complainant was robbed and pushed out of the TSR. There was no occasion for those three boys to escape in the TSR driven by the appellant unless the whole act was the result of a common intention of all the assailants including the appellant. The fact that the appellant did not stop his TSR when chased till he was forced to stop shows that act has been done in discharge of the common intention of all and the appellant is not an innocent victim. It is not disputed by the appellant that at the time of offence it was he who was driving the TSR and that the complainant (PW4) had boarded his TSR.

5. It is argued that the story of the complainant that the TSR was chased holds no water because the owner of the Alto car has not supported the prosecution case on the point that he along with the complainant had chased the TSR. The failure on the part of the PW5, the driver of that Alto car does not create any dent in the prosecution story because it has been proved on record that while the offence of robbery had taken place within the area of PS Gandhi Nagar, the TSR was stopped and the appellant was apprehended within the area of Shastri Park and he was taken to PS Seelampur.

6. ASI Suresh Kumar (PW6) has categorically stated that on 4.3.2010 he was posted at PS Seelampur and on that day he was on emergency duty from 8 p.m. to 8 am. At about 5 am, PCR call was received regarding the

incident and at the same time PCR van reached at the PS along the complainant Anil Aggarwal and one TSR bearing no.DL 1RL 6410 along with its driver Lalit Kumar. No suggestion to the contrary has been given to this witness. This witness has categorically proved the fact that the appellant was apprehended within the area of Shastri Park and he was taken to PS Seelampur.

7. It is also a fact that the complainant PW4 did not have his vehicle and that is why he had boarded the TSR of the complainant after coming out of the railway station. After the incident, in order to chase the TSR he must have taken help of some vehicle. Therefore, in the light of these facts, the failure of PW5 to support prosecution case is of no consequence.

8. Even otherwise, the complainant has categorically stated that the appellant had taken out knife from the rexine bag which was kept in the TSR and placed it to him and threaten to kill him. No reason is shown for the complainant to make a false statement regarding role of the appellant.

9. The testimony of the complainant also gets corroborated by the subsequent recovery of the knife from his TSR which the appellant was driving. The appellant was also apprehended immediately after commission of offence after being chased for half a kilometre. The bag of the complainant was also recovered from the TSR which the appellant was

driving.

10. All these facts clearly prove beyond reasonable doubt that the appellant had in furtherance of common intention of his co-accused robbed PW4 of his valuables and at the time of committing the robbery had used a knife which is a deadly weapon. There is no evidence on record to show even by preponderance that appellant has been falsely implicated and that he himself is a victim.

11. The order of the trial court does not suffer from any infirmity. It is based on the evidence on record. The trial court has reached to the conclusion after discussing each and every evidence against the appellant. All the contentions of the appellant had also been taken into consideration. There is no infirmity in the order of conviction of the trial court.

12. Learned trial court has awarded the minimum sentence provided for the offence under Section 392/34 IPC read with Section 397 IPC and impose a fine of Rs.500/- only. The entire antecedents, age, responsibilities, social background and other relevant facts regarding the appellant have been taken into consideration while awarding the sentence. I find no infirmity in the order of sentence as well.

13. Appeal has no merit, it is therefore dismissed.

14. Trial court record be sent back along with copy of this order.

15. Registry is also directed to send a copy of the order to the Superintendent, Central Jail, Tihar for compliance and to supply the same to the appellant.

DEEPA SHARMA, J.

MARCH 13 , 2014
rb