

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

RESERVED ON : April 28, 2014

DECIDED ON : May 06, 2014

+ CRL.A. 734/2012 & CRL.M.B.No. 509/2014

RAVI AZAD

..... Appellant

Through : Mr.H.K.Shekhar, Advocate.

versus

STATE

..... Respondent

**Through : Mr.M.N.Dudeja, APP.
SI Uma Datt, PS Mangolpuri.**

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

S.P.GARG, J.

1. The appellant-Ravi Azad challenges the conviction recorded by a judgment dated 03.05.2012 of learned Additional Sessions Judge/Special Judge (NDPS) in Sessions Case No.114/2011 arising out of FIR No.120/11 registered at Police Station Mangol Puri under Section 392/397 IPC and 25/27 Arms Act. By an order dated 03.05.2012, he was awarded various prison terms which were to operate concurrently.

2. Allegations against the appellant, as reflected in the charge-sheet, were that on 28.03.2011 at about 09.15 am near Mangol Puri Bus Stand, Opposite Police Line, Pitam Pura, in a running private bus on route
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number 901, he and his associate in furtherance of common intention robbed Saurabh Prajapati of ₹3,550/- at knife point and also inflicted injuries. The appellant was apprehended at the spot whereas his associate succeeded to flee. The police machinery came into motion when information about the incident was recorded in DD No.12/A (Ex.PW1/D) at 09.30 am. The victim was taken to Jaipur Golden hospital where he was medically examined by MLC (Ex.PW-5/A). The Investigating Officer lodged First Information Report after recording complainant's statement (Ex.PW-2/A). Statements of witnesses conversant with the facts were recorded. After completion of investigation a charge-sheet was filed against the appellant; he was duly charged and brought to trial. The prosecution examined nine witnesses to substantiate the charges. In 313 statement, the appellant denied his involvement in the crime and pleaded false implication without examining any witness in defence. The trial resulted in his conviction as aforesaid. Being aggrieved and dissatisfied, the appeal has been preferred.

3. I have heard the learned counsel for the parties and have examined the record. Appellant's contention is that the trial court did not appreciate the evidence in its true and proper perspective. Complainant's mother-Smt.Roshni Devi (PW-6) did not support the prosecution and

turned hostile. She had no reasons to favour the appellant with whom she had no prior acquaintance. The prosecution witnesses have given inconsistent version about the exact amount robbed from the complainant. It is also not clear as to at which specific place complainant's statement was recorded as his signatures were taken on blank papers. The complainant made vital improvements in his deposition before the court. Learned Additional Public Prosecutor urged that the appellant's conviction is based upon fair appraisal of the evidence and needs no interference.

4. The appellant was apprehended at the spot and was given beatings by the public. Identity of the appellant is not under challenge. A specific suggestion was put to the complainant-Saurabh Prajapati that the appellant was his school mate and was falsely implicated due to a quarrel which had taken place during school days. No such defence was taken in the statement recorded under Section 313 Cr.P.C. Nothing emerged on record if the complainant had any acquaintance with the appellant or had studied in a school with him. In 313 statement, the appellant admitted that on 28.03.2011, he was travelling in the bus on route No.901 from Dwarka to Mangol Puri. He also admitted that an individual had been stabbed and robbed. He claimed that when he started running to apprehend the

assailants, he was falsely implicated by the police and was given beatings. This defence inspires no confidence as no such suggestion was put to the prosecution witnesses in the cross-examination. A minor quarrel, if any, occurred during school days can not be a motive for the complainant to falsely implicate the appellant when he was travelling along with his mother in the bus without anticipating the appellant's presence therein. The complainant in his statement (Ex.PW-2/A) gave vivid description of the entire occurrence. The victim while appearing as PW-2 in his Court statement proved the version given at the earliest available opportunity without major variation and identified the appellant as one of the assailants who had robbed him of cash ₹3,550 at knife point. He also deposed that when the appellant was apprehended at some distance by PW-3 (Sat Prakash), he caused injuries to him with a knife. The statement of the complainant is in consonance with medical evidence. Soon after the incident, the victim was taken to Jaipur Golden hospital where he was medically examined by MLC (Ex.PW-5/A). The MLC records the arrival time of the patient as 09.40 am. It records the 'history of assault by stabbing while running after a pick-pocket. The complainant had no ulterior consideration to fabricate a false story in such a short interval. He is not expected to let the real culprit go scot free and to falsely

implicate an innocent one. PW-3 (Sat Prakash) has corroborated the complainant's version in its entirety. He succeeded to apprehend the appellant at the spot when he was being chased by the complainant after committing robbery. He also deposed about the recovery of a knife and cash ₹3,550 from the appellant. Despite lengthy cross-examination, no material discrepancy could be elicited in the cross-examination of PW-2 and PW-3 to disbelieve them. Minor contradictions, improvements and discrepancies highlighted by the appellant do not shake the basic structure of the prosecution case. It is true that PW-6 (Smt.Roshni Devi), complainant's mother, did not identify the complainant, however, it does not dilute the cogent and reliable testimonies of the PW-2 (Saurabh Prajapati-complainant) and PW-3 (Sat Prakash). She supported the prosecution on material aspects regarding the incident of robbery and causing injuries to her son. She, however, did not identify the appellant as one of the assailants, perhaps due to fear. Exclusion of her deposition won't affect the core of the prosecution case, on this aspect as the complainant has not denied his presence inside the bus and his apprehension by the police for the said incident.

5. All the relevant contentions of the appellant have been dealt with by the Trial Court in the impugned judgment which is based upon

fair appreciation of the evidence. There are no sound reasons to discard the testimony of the complainant supported by PW-3 (Sat Prakash), an independent public witness and which is in consonance with medical evidence. The appellant did not give plausible explanation to the incriminating circumstances appearing against him in 313 statement. He even did not examine any witness in defence to substantiate the plea that he was falsely implicated along with three others who were allowed to go from the police station. The recovery of the robbed articles from the possession of the appellant soon after the incident further connects him with the crime. The minimum sentence prescribed under Section 397 IPC is seven years which cannot be altered or modified.

6. In the light of the above discussion, the appeal is dismissed as unmerited. Trial Court record be sent back forthwith along with the copy of this order. Crl.M.B.No. 509/2014 also stands disposed of.

(S.P.GARG)
JUDGE

MAY 06, 2014
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