

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

RESERVED ON : 27th JANUARY, 2014

DECIDED ON : 3rd FEBRUARY, 2014

+ CRL.A. 907/2013 & CRL.M.B. 1455/2013

ANAND @ JAT Appellant

Through : Ms. Saahila Lamba, Advocate.

VERSUS

STATE (GOVT. OF NCT) OF DELHI Respondent

Through : Mr.M.N.Dudeja, APP.

RESERVED ON : 23rd JANUARY, 2014

DECIDED ON : 3rd FEBRUARY, 2014

+ CRL.A. 1395/2012 & CRL.M.A.No. 53/2014

SATISH @ MADRASI Appellant

Through : Ms. Rakhi Dubey, Advocate.

VERSUS

STATE (GOVT. OF NCT) OF DELHI Respondent

Through : Mr.Lovkesh Sawhney, APP.

AND

RESERVED ON : 27th JANUARY, 2014

DECIDED ON : 3rd FEBRUARY, 2014

+ CRL.A. 703/2013 & CRL.M.B. 1097/2013

PARMOD MANDAL @ DHUKHO MANDAL Appellant

Through : Ms.Alpana Pandey, Advocate.

VERSUS

THE STATE (GNCT OF DELHI) Respondent

Through : Mr.M.N.Dudeja, APP.

**CORAM:
HON'BLE MR. JUSTICE S.P.GARG**

S.P.GARG, J.

1. Anand @ Jat (A-1), Satish @ Madrasi (A-2) and Parmod Mandal @ Dhukho Mandal (A-3) impugn their conviction by a judgment dated 23.04.2012 of learned Addl. Sessions Judge in Sessions Case No. 221/09 arising out of FIR No. 124/09 PS Adarsh Nagar. By an order on sentence dated 23.05.2012, A-1 was awarded RI for five years with fine ₹ 3,000/- under Sections 394/307/34 IPC; RI for seven years with fine ₹ 5,000/- under Section 397 IPC. A-2 and A-3 were awarded RI for five years with fine ₹ 3,000/-, each, under Sections 394/307/34 IPC. The substantive sentences were to operate concurrently.

2. Allegations against the appellants were that on 12.06.2009 at about 06.30 A.M. in front of Phad no. A-264, New Subzi Mandi, Azadpur, they in furtherance of common intention with their associate – Bablu (not arrested) committed robbery and deprived Prem Chand of mobile phone and cash ₹ 3,000/- at the point of knife. In the process of committing robbery, injuries were inflicted to Prem Chand and Raju. The police machinery came into motion when information was conveyed by PCR regarding a stabbing-cum-robbery incident and Daily Diary (DD)

No. 12A was recorded at 07.05 A.M. at PS Adarsh Nagar. The investigation was assigned to ASI Attar Singh who with Const. Suresh went to the spot. After coming to know that the injured had already been shifted to hospital, he went to Babu Jagjivan Ram Memorial Hospital and collected Prem Chand's MLC. He was declared unfit for statement. The Investigating Officer lodged First Information Report after recording Raju's statement (Ex.PW-1/A). Further investigation was taken over by SI Madan Mohan. On 15.06.2009, on the basis of secret information, A-1 and A-2 were apprehended and pursuant to the disclosure statements, crime weapon was recovered. They also led the police team to the residence of A-3 for his arrest. During investigation, statements of the witnesses conversant with the facts were recorded. After completion of investigation, a charge-sheet was filed against the appellants; they were duly charged and brought to trial. The prosecution examined 19 witnesses to substantiate the charges. In 313 statements, the accused persons pleaded false implication. They, however, did not examine any witness in defence. The trial resulted in their conviction as aforesaid.

3. I have heard the learned counsel for the parties and have examined the record minutely. Appellants' counsel urged that the Trial Court did not appreciate the evidence in its true and proper perspective

and ignored vital discrepancies emerging in the statements of prosecution witnesses without cogent reasons. Ingredient of Sections 307 and 397 IPC were not attracted and proved. The prosecution was unable to establish that the assailants were armed with 'deadly' weapons. Non-recovery of the crime weapon is fatal to the prosecution case as both PW-1 (Raju) and PW-2 (Prem Chand) did not identify the knife (Ex.P1) to have been used in the occurrence. In the alternative, prayer was made to modify the sentence order as the appellants have already remained in custody for substantial period. Learned Addl. Public Prosecutors urged that the impugned judgment is based upon fair appraisal of the evidence of PW-1 (Raju) and PW-2 (Prem Chand) and needs no interference.

4. The occurrence took place on 12.06.2009 at around 06.30 A.M. when PW-1 (Raju) and PW-2 (Prem Chand) had arrived near Phad no. A-264, New Subzi Mandi, Azadpur in truck No. RJ 32G-2187 from District Sikar, Rajasthan to sell onions. After parking the truck there, when they were going out, four assailants committed robbery and inflicted injuries to them. Soon after the occurrence Daily Diary (DD) No. 12A was recorded at 07.05 A.M. at PS Adarsh Nagar. It records that an individual was stabbed and the articles were robbed. The police swung into action and First Information Report was lodged without inordinate delay after

recording Raju's statement (Ex.PW-1/A) by sending rukka (Ex.PW-8/A) at 10.00 A.M. Both, Raju and Prem Chand were taken by PCR to Babu Jagjivan Ram Memorial Hospital. MLC of Prem Chand (Ex.PW-16/B) and MLC of Raju (Ex.PW-16/A) record their arrival time at 07.25 A.M. and 07.40 A.M., respectively. In the statement (Ex.PW-1/A), Raju gave detailed account of the occurrence as to how and under what circumstances they were robbed by the assailants. Both PW-1 and PW-2 had travelled from Rajasthan for a specific work to sell their onions in New Azadpur Market and had no ulterior reasons to fake the incident of robbery. They did not nurture any grievance against the assailants as none of them was known to them. The complainant did not implicate any of the assailants by name in the complaint (Ex.PW-1/A). Both, PW-1 (Raju) and PW-2 (Prem Chand) had sustained injuries in the occurrence. Suggestion was put in the cross-examination to PW-2 (Prem Chand) that he had got injuries due to a quarrel with the driver of other truck and the appellants were falsely implicated in this case. There were no cogent reasons for the complainant to name the assailants for any such quarrel with any other truck driver as alleged.

5. While appearing as PW-1, (Raju) proved the version given to the police on material facts. He identified A-1 to be the assailant who had

a knife at the time of occurrence. He deposed that at about 06.30 A.M., four boys came, one of them caught hold Prem Chand from his neck, the second started beating them and the third one brought out a knife and told them to give him whatever they had. When they opposed, the boy having the knife inflicted a blow on the left foot of Prem Chand. The fourth boy took out mobile phone and ₹ 3,500/- from the pocket of Prem Chand and thereafter, they all fled the spot. He assigned specific role to A-1 who inflicted injuries to Prem Chand by a knife. A-2 was identified to the assailant who had caught hold of Prem Chand by his neck. A-3 had given beating to him (PW-1). PW-2 (Prem Chand) also corroborated the testimony of the complainant on vital facts and implicated the appellants and assigned similar role to them. The fourth boy, who was unable to be arrested was described an individual aged about 10 / 11 years. Despite searching cross-examination, no material discrepancies could be elicited or extracted to disbelieve or discard the version narrated by them in the Court. The accused persons did not assign any extraneous motive to them to falsely rope them in the occurrence. Both, PW-1 (Raju) and PW-2 (Prem Chand) had sustained injuries and were not expected to spare the real culprits and to implicate innocent ones, particularly when they had no prior acquaintance with any of the assailants and none of them was named

in the FIR. In the absence of prior animosity or ill-will, the victims who were not even resident of Delhi and had come in the course of their routine business were not imagined to falsely depose and identify the appellants. Minor contradictions, discrepancies and improvements highlighted by the appellants' counsel do not affect the core of the prosecution case to give clean chit to the accused persons.

6. During investigation, after apprehension of the appellants, application for conducting Test Identification Parade was moved by the Investigating Officer. PW-11 (Ms.Shunali Gupta, MM) conducted Test Identification Proceedings on 27.06.2009 in which the appellants declined to participate in the TIP proceedings alleging that they were shown to the witnesses at the police station. PW-1 (Raju), in the examination-in-chief, admitted that after 2 – 3 days of the occurrence, he was called at Police Station Adarsh Nagar to identify the accused persons. Apparently, his identification of the accused persons in the Court for the first time cannot be taken at its face value as he had not given broad features / description of the assailants at the time of lodging the complaint. However, identification by PW-2 (Prem Chand) of the assailants / appellants in the Court inspires confidence. He not only identified the assailants in the Court but also assigned definite role to each of them in the occurrence. He

was fair enough not to identify the knife (Ex.P1) and the currency notes as it had no specific mark of identification. In the cross-examination, no suggestion was put to him if any time, any of the assailants was shown to him by the police. It has come on record that from the inception, this injured witness remained admitted in the hospital. Ex.PW-17/A (discharge report) reveals that he was admitted on 12.06.2009 and was discharged on 15.07.2009 in Ram Manohar Lohia Hospital. Since PW-2 (Prem Chand) was confined to Ram Manohar Lohia Hospital, throughout, there was no occasion for him to identify the assailants in the police station after their apprehension.

7. Statements of PW-1 (Raju) and PW-2 (Prem Chand) are not in conflict with medical evidence and there is no major variance between the two. PW-16 (Dr.J.P.Palyia) proved Raju's MLC (Ex.PW-16/A) and nature of injuries suffered by him was 'simple' caused by blunt object. He also examined Prem Chand's MLC (Ex.PW-16/B) prepared by Dr.Vijay. PW-17 (Dr.Suresh Minz) proved that in his opinion (Ex.PW-17/A), injuries were 'grievous' in nature. Findings recorded by the Trial Court that the appellants were perpetrators of the crime cannot be faulted and are affirmed.

8. I find no substance in the appellants' plea that Section 397 IPC is not attracted or proved as the prosecution was unable to establish beyond reasonable doubt that the 'knife' used in the crime was a 'deadly' one. Both, PW-1 (Raju) and PW-2 (Prem Chand) have categorically deposed that on their refusal to part with the cash, A-1 who was armed with a 'knife' inflicted a blow to Prem Chand. The injuries have been opined 'grievous' in nature. It has further come in evidence that due to the said injuries the victim remained admitted in the hospital for about one month and three days and his leg had to be amputated. Elaborating it, PW-2 (Prem Chand) stated that the main vein which supplied blood was cut with the knife and could not be repaired by operation. Declining to identify Ex.P1 (knife) to be the weapon used, he was categorical to assert that he was inflicted injury by a 'big' knife whereas Ex.P1 was a 'small' one. The extent of injuries and damaged caused by it are enough to infer that the crime weapon used in the occurrence was a 'deadly' one to attract Section 397 IPC. Moreover, infliction of grievous hurt was enough for conviction with the aid of Section 397 IPC irrespective of the nature of weapon used. The provision of Section 397 IPC do not create any new substantive offence as such but merely serve as complementary to Section 392 IPC and 395 IPC by regulating the punishment already provided

therein. The minimum term of imprisonment prescribed under Section 397 IPC is only seven years. Apparently, it does not regulate sentence of fine. In the instant case, once the Trial Court had imposed fine under Section 392 IPC, imposition of additional fine of ₹ 5,000/- under Section 397 IPC was not permissible and sustainable. Accordingly, fine imposed under Section 397 IPC is set aside.

9. Appellants' plea that ingredient of Section 307 IPC are missing has substance. The victim was inflicted single blow on thigh which was not a vital organ. No repeated life threatening blows were caused to the victim. PW-1 (Raju) was not caused any physical harm. The nature of injuries was 'grievous'. Apparently, A-1 had no enmity with the complainant and his only intention was to rob him. It cannot be inferred that injuries to the victim were inflicted with the avowed object or intention to cause death. The determinative question is intention or knowledge as the case may be, and not nature of injury. A-2 and A-3 were not armed with any weapons. The conviction under Section 307 IPC is altered to Section 326 IPC. The substantive sentence to the appellants for five years under Section 307 IPC is reduced to RI for three years under Section 326 IPC.

10. A-1 was armed with a 'deadly' weapon and caused 'grievous' hurt to the victim while committing robbery. The minimum sentence prescribed under Section 397 IPC is seven years which cannot be modified or altered. Fine ₹ 5,000/- imposed under Section 397 IPC is set aside. The default sentence for non-payment of ₹ 3,000/- under Sections 394/326/34 IPC is reduced to fifteen days. Other terms and conditions of the sentence order are left undisturbed.

11. A-2 was awarded RI for five years with ₹ 3,000/- under Sections 394/307/34 IPC. Nominal roll 01.02.2013 reveals that he has undergone 2 years, 11 months and 26 days incarceration besides earning remission for 2 months and 24 days as on 29.01.2013. It further reveals that he is not involved in any other criminal case and has clean antecedents. His overall jail conduct is satisfactory. The sentence period has increased to more than four years. Being the first offender and considering his role in the incident, the period already undergone by him (A-2) in this case is taken as substantive sentence. He be released forthwith if not required to be detained in other case.

12. A-3's nominal roll dated 03.08.2013 reveals that he has undergone 2 years, 2 months and 24 days incarceration besides earning remission for 4 months and 3 days as on 02.08.2013. He is not involved in

any other criminal case and has clean antecedents. His overall jail conduct is satisfactory. He is also the first offender. Considering the mitigating circumstances, the substantive sentence of five years is reduced to four years under Section 394 IPC and three years under Section 326 IPC. The default sentence for non-payment of fine amount will be in all fifteen days.

13. In the light of above discussion, appeals filed by the appellants stand disposed of in the above terms. Pending applications also stand disposed of. Trial Court record be sent back immediately. A copy of the judgment be sent to the Superintendent Jail for information.

(S.P.GARG)
JUDGE

FEBRUARY 03, 2014/*tr*