

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

**RESERVED ON : 16th APRIL, 2014
DECIDED ON : 24th APRIL, 2014**

+ CRL.A. 974/2011

CHANDAN @ BABAR Appellant
Through : Mr.Adit S.Pujari, Advocate for
Mr.Siddharth Aggarwal, Advocate.

versus

THE STATE (NCT OF DELHI) Respondent
Through : Mr.Lovkesh Sawhney, APP.

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

S.P.GARG, J.

1. Chandan @ Babar impugns conviction in Sessions Case No.39/2008 arising out of FIR No.64/2008 registered at Police Station Bara Hindu Rao by which he was held guilty for committing offences punishable under Section 120-B/392/397 IPC and sentenced to undergo RI for seven years.

2. Briefly stated, the prosecution case as projected in the charge-sheet was that on 13.06.2008 at about 05.00 A.M. opposite shop No.T-736, Tyre Market, Azad Market, DCM Road in pursuance of

criminal conspiracy, Chandan @ Babar and his associates - Mukesh @ Mukka, Karan Singh @ Deva and Mohd. Wasim robbed ₹ 2,500/-, visiting cards and mobile phone no.9212421161 from the complainant - Manoj Kumar. They also robbed ₹ 3,500/-, railway tickets from Deepak Sharma (PW-1). They were armed with knives at the time of committing robbery and used deadly weapons to deprive the complainant - Manoj Kumar and Deepak of their valuable articles. During the course of investigation, statements of witnesses conversant with facts were recorded. The accused persons were arrested. The Investigating Officer moved applications for conducting Test Identification Parade. The accused declined to participate in the TIP. Robbed articles were recovered at the instance of the accused. After completion of investigation a charge-sheet was submitted against them in the Court. They were duly charged and brought to trial. The prosecution examined 26 witnesses. In their statement under Section 313 Cr.P.C. the accused pleaded false implication. On appreciating the evidence and considering the rival submissions of the parties, the Trial court, by the impugned judgment convicted the appellant – Chandan @ Babar and his associates Mukesh @ Mukka and Karan Singh @ Deva. Mohd. Wasim was acquitted of all the charges. Being aggrieved, the appellant has preferred the appeal.

3. Learned counsel for the appellant urged that the Trial Court did not appreciate the evidence in its true and proper perspective. The accused were shown to the prosecution witnesses. In the police station, their sketches were prepared and photographs were shown to witnesses. The accused were justified to decline participation in Test Identification Parade. The witnesses gave inconsistent version as to which of the accused used knife to rob them. The TSR was found abandoned. PW-12 (Mukesh Chand Sharma) turned hostile and did not support the prosecution. The robbed articles were not recovered in the presence of the complainant and Deepak. There was no specific mark of identification on the recovered currency notes. Allegations against the appellant were that he sat with the driver of the TSR in which the victims were travelling. He did not attempt to rob the victims. He was arrested in some other case and was falsely implicated in the instant case. Learned APP for the State urged that the accused was identified by the complainant and PW-1 (Deepak Sharma) in the court. They had no animosity to implicate the accused falsely in the case.

4. I have considered the submissions of the parties and have examined the record. It is pertinent to note that co-convict Karan Singh @ Deva had preferred Crl.A.No. 411/2011 which was disposed of vide order

dated 07.03.2013 by this Court. Conviction of the appellant – Karan Singh @ Deva under Sections 392/120-B IPC was sustained. Sentence order was modified and substantive sentence was reduced to five years. Other sentences were left undisturbed. The appellant's case stands on similar footings. The reasons for conviction in the said appeal are equally and fully applicable in the present appeal. At the outset, it may be mentioned that the learned counsel for the appellant did not challenge the incident of robbery. His only plea is that appellant was not one of the perpetrators of the crime. PW-1 (Deepak Sharma) and PW-4 (Manoj Kumar) had no animosity to implicate the accused in the incident of robbery in which they were deprived of valuable articles including cash when they were travelling in TSR No.DL 1 RE 9747 from Old Delhi Railway Station to Anand Parbat. Police machinery came to motion when DD No.8/B (Ex.PW15/A) was recorded at Police Station Bara Hindu Rao at 05.27 hours on getting information that three boys travelling in TSR No.DL 1RF 1454 committed robbery of cash and valuable articles. In his statement (Ex.PW-4/A) the complainant - Manoj Kumar gave vivid description of the occurrence. He also disclosed broad features of the assailants. The complainant had no acquaintance with the assailants to falsely rope them in the incident. First Information Report was lodged at 06.30 A.M. vide

rukka (Ex.PW23/A). There was no delay in lodging the First Information Report and it ruled out the possibility of any false fabrication.

5. During investigation, Chandan @ Babar was arrested in case FIR No.239/2008 registered at Police Station Mandavali and was lodged in Tihar Jail No.8. The Investigating Officer moved an application for issuance of production warrants. He was interrogated and his disclosure statement (Ex.PW9/B) was recorded. The application was moved for conducting TIP. PW-26 (Ashish Aggarwal, Metropolitan Magistrate) conducted Test Identification Proceedings on 17.07.2008 in which the accused declined to participate. An adverse inference is to be drawn against the accused for not participating in the TIP proceedings. PW-4 (Manoj Kumar) in his deposition before the court recognized and identified Chandan @ Babar without hesitation to be amongst the assailants. He was categorical in his identification and stated that the appellant was the assailant who sat with a knife on their TSR driver's seat. In the cross-examination, he further stated that after the accused refused to participate in TIP proceedings, he identified him in the police station Bara Hindu Rao. PW-1 (Deepak Sharma) was also certain that the accused – Chandan @ Babar present in the court was one of the assailants. These independent public witnesses had no prior ill-will against the accused to

falsely implicate him and to let the real culprits go scot free. The police witnesses also testified that some robbed articles were recovered at the instance of the accused and were identified by PW-1 and PW-4 in their deposition in the court. Acquittal of co-accused Wasim is of no benefit to the appellant. Co-accused Wasim was TSR driver and did not come down from the TSR. Consequently, PW-1 and PW-4 had no direct confrontation with him. Wasim was given benefit of doubt as PW-1 and PW-4 were unable to recognize and identify him as one of the assailants. The photographs of the culprits were shown to the prosecution witnesses in the Police Station to ascertain and find out real the assailants. The accused was not in picture at that time. It is not on record that any photograph of the accused was shown to PW-1 and PW-4 before moving application for TIP. The complainant had given the description of the assailants and had claimed to identify them. Identification of the accused in the court by PW-1 and PW-4 is crucial and cannot be discarded. Merely because PW-12 (Mukesh Chand Sharma) did not identify the assailants in the court, otherwise cogent and reliable deposition of independent witnesses PW-1 and PW-4 cannot be discredited. The accused did not give plausible explanation to the incriminating circumstances proved against them. The findings of the Trial Court that the accused was one of

the assailants in committing the robbery are based upon fair appraisal of the evidence and need no interference.

6. The accused was convicted with the aid of Section 397 IPC whereby he allegedly used 'deadly' weapon at the time of committing robbery. The evidence of the prosecution on this aspect is deficient. PW-1 and PW-4 were not certain if knife was used by the appellant at the time of committing robbery. No knife was recovered from the accused or at his instance in the presence of the witnesses. In their deposition before the court, the knife allegedly recovered in other case was not shown to them to ascertain that it was the same knife used by the accused for committing robbery. The prosecution witnesses did not give any detail particulars i.e. size, dimension etc. of the knife to establish that it was a 'deadly' weapon. No injuries were inflicted with any weapon to the victims. Conviction of the appellant with the aid of Section 397 cannot be sustained and he deserves benefit of doubt on that score.

7. In the light of the above discussion, conviction of the appellant under Section 392/120-B IPC is maintained. Order on sentence is modified and the substantive sentence awarded to the appellant to undergo RI for seven years under Section 392 read with Section 397 IPC

is reduced to Rigorous Imprisonment for five years. Other sentences are left undisturbed.

8. The appeal stands disposed of in the above terms. A copy of the order be sent to the appellant through Superintendent, Tihar Jail.

9. Trial Court record be sent back forthwith.

(S.P.GARG)
JUDGE

APRIL 24, 2014 / tr