

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

RESERVED ON : 16th MAY, 2014

DECIDED ON : 11th JULY, 2014

+ CRL.A.No.957/2011 & CRL.M.B.No.337/2014

CHANDER KUMAR TRIPATHI

..... Appellant

Through : Mr.D.M.Bhalla, Advocate with
Mr.Chaitali Jain, Advocate.

versus

STATE OF NCT OF DELHI

..... Respondent

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

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. The appellant – Chandan Kumar Tripathi impugns a judgment dated 11.07.2011 of learned Addl. Sessions Judge in Sessions Case No. 54/11 arising out of FIR No. 308/08 PS Dwarka by which he was convicted under Sections 392/394/397 IPC. By an order dated 13.07.2011, he was awarded RI for seven years with fine ₹ 5,000/- under

Section 392 IPC; RI for seven years with fine ₹ 5,000/- under Sections 394/397 IPC. The sentences were to operate concurrently.

2. Shorn of details, the prosecution case as set up in the charge-sheet was that on the night intervening 18/19.05.2008 at around 12.30 (night), at or near ITL School, Sector-9, Dwarka, New Delhi, the appellant robbed complainant – Ashok Kumar Sahni of his auto scooter at knife point and inflicted injuries to him. In a chase, soon after the crime by PCR officials, the appellant was apprehended at some distance. Statements of the witnesses conversant with the facts were recorded. Intimation of the crime was conveyed to the local police. SI Rajender Singh to whom the investigation was assigned lodged First Information Report after recording complainant – Ashok Kumar Sahni's statement (Ex.PW-1/A). After completion of investigation, a charge-sheet was submitted against the appellant; he was duly charged and brought to trial. The prosecution examined eight witnesses to substantiate the charges against the appellant. In 313 statement, he pleaded false implication and denied his complicity in the crime without examining any witness in defence. The trial resulted in his conviction as aforesaid.

3. Appellant's counsel urged that the Trial Court did not appreciate the evidence in its true and proper perspective. The prosecution

witnesses gave conflicting and inconsistent statements regarding the recovery of the knife; of the crime spot and the place where the TSR turtled. No bloodstains were found on the knife allegedly recovered at the spot. It was not sent to Forensic Science Laboratory for examination. No independent public witness was associated at any stage of the investigation. Learned Addl. Public Prosecutor urged that there are no sound reasons to disbelieve the complainant who had no prior animosity with the appellant.

4. The occurrence in which the TSR No.DL-1RK-1814 was robbed from the complainant occurred at 12.30 (night). PW-4 (Const.Ashok Mudgal) and PW-7 (HC Surender Kumar), PCR officials, at Zebra 80 vehicle No. DL-1CJ-3595 happened to be present near the spot. When the complainant – Ashok Kumar Sahni reported the incident, they in the performance of their duties, gave a chase to the TSR in which the appellant had fled after the crime to avoid his apprehension, the appellant accelerated the speed of TSR resulting in its turtle after striking against a divider. PCR officials succeeded to apprehend him at a short distance from the crime spot and a knife was recovered from the appellant's possession. Intimation was given to the local police and Daily Diary (DD)

No.3B (Ex.PW-8/A) came in existence at 00.52 hours at PS Dwarka. SI

Rajender Singh after entrustment of the investigation went to the spot and custody of the appellant along with crime weapon was handed over to him by PCR officials. Apparently, there was no delay in lodging the report. In the statement (Ex.PW-1/A) given to the police at the first instance, the complainant specifically implicated the appellant for robbing him of his TSR No.DL-1RK-1814 at knife point. He also disclosed that he was injured on his right hand by a knife. He attributed definite and positive role to the appellant and gave a detailed account as to how and under what circumstances, he had fled with the TSR after snatching it forcibly from him. In Court statement, the complainant proved the version given to the police without major deviations. He testified that on the night intervening 18/19.05.2008, he had taken the complainant as a passenger in his TSR from near Railway Station Paharganj at about 11.30 P.M. to go for Sector-9, Dwarka and the fare settled was ₹ 150/-. When they reached in front of ITL Public School, Sector-9, Dwarka, the accused asked him to stop the auto, and brought him out by holding his collar at around 12.30 a.m. He was threatened by a knife and on his resistance, he was assaulted on his right hand resulting in injuries. Due to fear, he ran for help to a PCR van. The accused took away his TSR. However, he was chased and at a distance of half a kilometre, when he accelerated its speed, it overturned

and enabled PCR officials to nab him. In the cross-examination, he admitted that the fare settled was in lump sum and not on the basis of meter reading. He admitted as correct the appellant's suggestion that he had asked him to stop the auto in front of ITL Public School, Sector-9, Dwarka. He expressed inability to state if the knife recovered had any blood stains. He was not sure as to from where the knife was recovered. Scrutinising the testimony of the witness, it reveals that no discrepancy could be extracted or brought out to disbelieve the version given by him. The appellant did not assign ulterior motive to the victim to falsely implicate him. Both, the victim and the appellant were strangers and had no prior acquaintance. The appellant in the absence of prior enmity was not believed to falsely rope in an innocent one.

In 313 statement, the appellant came up with the plea that a quarrel had taken place with the auto driver who was driving it without meter and had demanded ₹ 250/- as fare. He claimed that two police officials came, took both of them and falsely implicated him. This defence, was, however, not put to the complainant in the cross-examination. No suggestion was put to him if any quarrel had originated with the appellant over demand of ₹ 250/- as fare. The victim was

medically examined by MLC (Ex.PW-5/A) proved by PW-5

(Dr.Ravinder). The appellant did not offer any explanation as to how in the alleged altercation, the victim suffered injuries and who was its author.

5. PW-4 (Const. Ashok Mudgal) and PW-7 (HC Surender Kumar), both have corroborated the complainant's version in its entirety. They were present near the spot in the discharge of their public duties in the PCR van. After coming to know about the incident, they gave a chase to the TSR and succeeded to apprehend him at some distance. They informed the local police in promptitude. Certain suggestions put to PW-4 (Const. Ashok Mudgal) need to mention. *"It is incorrect to suggest that quarrel started between complainant and accused over not running vehicle on meter when accused was about to reach at residence and gave a look at meter to know the fare; it is incorrect to suggest that the complainant stopped auto at the gate of ITL School and started fighting on refusal of demand of ₹ 250/-; it is incorrect to suggest that two policemen came and directed to move towards PCR van standing near at the last gate of district police line; it is incorrect to suggest that after hearing both, the policemen threatened the accused to sent police station in the offence of fighting if ₹ 500/- is not given by each; it is incorrect to suggest that one police personnel of PCR abused and slapped on accused on refusal of giving money and mobile was also snatched and threw on*

the road when he was trying to contact the family member and it is incorrect to suggest that all the police personnel of PCR caught the accused and snatched ₹ 3,000/- from him.” No such suggestion was put to PW-7 (HC Surender Kumar). Such is not the defence taken in 313 statement. The appellant did not lodge any complaint against any PCR officials. Nothing has come on record to show as to where was the place of residence of the appellant, and who were the family members residing therein to whom he wanted to contact on phone. The appellant also did not give any reasonable explanation as to what was his specific purpose to hire the TSR at odd hours. He did not explain as to from which particular place he had arrived at dead hours of the night to hire the TSR to go to his residence at Sector-9, Dwarka. Obviously, the appellant had no plausible justification to hire the auto rickshaw. The complainant had no prior acquaintance with him and was not going to be benefited for implicating him in this case. The occurrence had taken place near ITL Public School and there was no occasion at that time for the complainant to demand ₹ 250/- as fare, as the alleged destination of the appellant had not arrived.

6. Minor contradictions, discrepancies and improvements highlighted by the appellant's counsel are not fatal to the prosecution. The incident as such is not in dispute as reflected in the suggestions referred

above and the defence taken in 313 statement. Merely because there are minor inconsistent statements as to the exact place of incident of robbery and the place where the appellant was apprehended or regarding presence of blood on the knife and the place from where it was recovered, the otherwise cogent and reliable testimonies of PW-1 (Ashok Kumar Sahni), PW-4 (Const. Ashok Mudgal) and PW-7 (HC Surender Kumar) cannot be discredited. Since the occurrence had taken place at night, possibility of the public witness to be associated during investigation was remote. Besides this, non-joining of independent public witness per se is not fatal to the prosecution case and does not cause dent in the prosecution case.

7. Turning to the alternative plea taken by the appellant's counsel to release the appellant for the period already undergone by him in custody, the sentence of seven years which is minimum prescribed one under Section 397 IPC cannot be altered or modified. Appellant's nominal roll dated 13.02.2012 reveals that he was aged about 20 or 21 years on the date of incident and had clean antecedents. He suffered incarceration for seven months and twenty seven days besides remission for three months and seven days as on 12.02.2012. Appellant's counsel states that the custody period has since increased to almost four years. Taking into consideration all the facts and circumstances, the sentence order is

modified to the extent that the appellant shall undergo RI for seven years with fine ₹ 1,000/- and failing to pay the fine, the default sentence would be SI for fifteen days under Section 392 read with Section 397 IPC.

No separate sentence needs to be awarded under Section 394 IPC.

8. Appeal stands disposed of in the above terms. Pending application also stands disposed of. Trial Court record be sent back immediately with the copy of the order. A copy of the order be sent to the Superintendent jail for information.

(S.P.GARG)
JUDGE

JULY 11, 2014 / tr