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

% *Judgment reserved on :15.12.2015.*
Judgment delivered on :22.12.2015

+ CRL.A. 948/2013
VIRENDER PRATAP SINGH

..... Petitioner

Through Mr. S.N.Pandey, Advocate

versus

STATE OF NCT OF DELHI

.....Respondent

Through Mr. Kewal Singh Ahuja, APP for
the State

+ CRL.A. 144/2014
RAJESH KUMAR

..... Petitioner

Through Mr. V.K.Tandon, Advocate

versus

STATE OF NCT OF DELHI

.....Respondent

Through Mr. Kewal Singh Ahuja, APP for
the State

CORAM:

HON'BLE MS. JUSTICEINDERMEET KAUR

INDERMEET KAUR, J.

1 The appeal filed by Virender Pratap Singh is directed against the

impugned judgment and order on sentence dated 13.03.2013 and 20.03.2013 respectively wherein the appellant Virender Pratap Singh stands convicted under Section 392 read with Sections 394 & 397 of the IPC. He has been sentenced to undergo RI for a period of 7 years and to pay a fine of Rs.10,000/- and in default of payment of fine, to undergo SI for one month.

2 The appeal filed by the co-convict Rajesh Kumar has impugned the judgment and order on sentence dated 10.12.2013 and 14.12.2013 respectively wherein the appellant Rajesh Kumar had also been convicted under Section 392 read with Section 394 of the IPC as also Sections 25/54/59 of the Arms Act. He has been sentenced to undergo RI for a period of 7 years and to pay a fine of Rs.10,000/- and in default of payment of fine to undergo SI for one month for his conviction under Section 392 of the IPC. For his conviction under Sections 25/54/59 of the Arms Act, he has been sentenced to undergo RI for a period of 2 years and to pay a fine of Rs.2,000/- and in default of payment of fine, to undergo SI for one week.

3 Benefit of Section 428 of the Cr.PC had been granted to both the convicts. The judgment of Rajesh Kumar had followed subsequent to Crl. Appeal Nos.948/2013 & 144/2014

the judgment already delivered qua Virender Pratap Singh and this was for the reason that Rajesh Kumar had been absconding; he had been re-arrested and thereafter a supplementary challan had been filed against him.

4 The version of the prosecution is that on 28.05.2012, a PCR call was received at police station Keshav Puram. This was regarding robbery and apprehension of one person. The person apprehended was Virender Pratap Singh. This DD was marked to SI Deepak Bhardwaj. He along with constable Bijrender Dhama reached the spot i.e. A-17, Lawrence Road Industrial Area. The complainant Manohar Lal (PW-10) and the injured Vinod Bohra (PW-13) were present there. Virender Pratap Singh had been apprehended by them. He had two country-made pistol with him. The statement of the complainant was recorded. Investigation was set into motion.

5 The version of the complainant being that on 28.05.2012, Monohar Lal working as a Cashier was present in his office when at about 12:00 pm two boys came to his cabin; they were accompanied by Vinod Bohra, who was the chowkidar working in the company. One of the two boys sat in front of him and other boy kept standing near the

door. The boy sitting in front took out a pistol and pointed towards the complainant and asked him to hand over the cash or else he would be killed. The complainant caught the barrel of the pistol but in the meanwhile the said boy pushed him as a result, he fell down. The complainant was hit by the butt of the pistol. The cash which was lying on the table was taken away. The boy carrying the bag fell down on the stairs. The other boy who was keeping watch at the door lifted the said bag and ran away but in this process, his pistol dropped at the spot. The first boy was apprehended. His name was later on revealed to be Virender Pratap Singh. The police was informed.

6 In the course of investigation, the prosecution had examined 17 witnesses. Accused Virender Pratap Singh was alone charge-sheeted as all efforts to apprehend the co-accused Rajesh failed. On 07.11.2012, he was declared a proclaimed offender. On 12.03.2013, pursuant to a secret information, Rajesh Kumar was arrested and the supplementary challan was accordingly filed against him.

7 In the statement of the accused recorded under Section 313 of the Cr.PC, both of them pleaded innocence. Accused Virender Pratap Singh stated that he has been falsely implicated in the present case. There is no

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evidence against him. The version of co-accused Rajesh Kumar was that he has no role to play; he had been arrested much after the incident.

8 DW-1 was examined on behalf of accused Rajesh.

9 On behalf of the appellants arguments have been addressed in detail. It is pointed out that there are inherent contradictions in the versions of PW-10 and PW-13 and these statements being inconsistent, the conviction of the appellants under the aforementioned provisions of law calls for an interference. Recovery is also liable to be dis-believed as no public person had joined. It is pointed out that appellant Rajesh Kumar was arrested much later; he was identified for the first time by the complainant in Court which is a bad identification. No recovery has also been effected from him. On all counts, both the appellants are entitled to a benefit of doubt and a consequent acquittal.

10 Needless to state that these arguments have been refuted by the learned APP for the State.

11 Arguments have been heard. Record has been perused.

12 The star witness of the prosecution was the complainant Manohar Lal examined as PW-10. He had deposed that he was working with Rahul Beverages, Lawrence Road Industrial Area as a cashier. His job

was to receive cash payment. On 28.05.2012 at about noon while he was working in his office, their chowkidar Vinod Bohra (PW-13) came to his office along with two boys. He left the boys in the office as they wanted to give some cash payment. PW-13 went away. One boy was sitting in front of him and the other boy was standing outside. The boy sitting in front of him had a netted cloth bag. He kept the bag on table. PW-10 asked for payment on which he took out a pistol and pointed the same on PW-10 threatening him that 'cash do verna goli mar doonga'. PW-10 got scared. He caught hold of barrel of the pistol which was held by the boy. PW-10 was pushed. He fell down. That boy hit PW-10 with the butt of his pistol and picked up the black coloured bag lying on the table which had cash of Rs.20,000 -22,000/- thousand and some documents of the company and started running away. PW-10 raised the alarm 'bachao mujhe loot liya, maar rahe hai'. The boy who had snatched the bag slipped while going downstairs. The other boy who was standing outside managed to flee. The boy who had fell down was caught with the help of PW-13. He hit PW-13 also with a butt of his pistol as a result PW-13 also sustained injuries. That boy had also suffered injuries when he had fallen down. Police was informed. Investigation was set into motion.

The boy who was arrested revealed his name as Virender Pratap Singh. The country-made pistol and its fire cartridge were also taken into possession. The observations of the Court in the deposition of PW-10 being noted to the effect that the kutta had a broken wooden butt at one side.

13 PW-10 was subjected to a lengthy cross-examination but he stuck to his stand. He reiterated that he was robbed by two boys out of whom one was standing outside and one was inside. It was afternoon time. PW-13 was the chowkidar. He did not have any fire arm with him. PW-10 was alone inside when he was attacked by the accused. He denied the suggestion that the accused has been falsely implicated in the present case. Relevant would it be to note that there was no reason put to PW-10 as to why he would have falsely implicated the accused.

14 The chowkidar of the company Vinod Bohra was examined as PW-13. He had reiterated the stand of PW-10 stating that on 28.05.2012 while he was in duty outside the gate, two persons came and stated that they wanted to deposit some cash in the factory. He had taken the boys to the cashier (PW-10). After 10-15 minutes he heard the voice of cashier saying 'bachao yeh cash le kar bhag rahe hai'. PW-13 ran

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towards the direction of the room of the cashier. He saw one of the two boys running but he managed to escape. The other boy who was holding pistol was climbing down. That boy hit PW-13 with the butt of his pistol on his face and chest. The owner of the factory Rahul Khanna (PW-15) also came out. That boy was apprehended and a kutta with a live cartridge was recovered from him.

15 PW-13 was also subjected to a lengthy cross-examination but nothing has been elicited in his version which could detract from his credibility; submission of the learned counsel for the appellants that the terminology used by PW-10 and PW-13 while raising alarm are different and contrary to one another is of little relevance as keeping in view the turmoil that each of them were facing when in the mid afternoon somebody with the pistol was trying to attack the cashier and the chowkidar who was on duty was running to save him; it is the gist of the alarm raised by PW-13 that has to be read and understood and the gist of the said communication was that he was being attacked and looted of cash. Relevant would it be to note that even the testimony of PW-13, there is no cross-examination as to why PW-13 would for any purpose rope in the accused persons falsely.

16 PW-10 was medically examined by Dr. Prem (PW-11) at the BJRM hospital at about 02:10 pm. His MLC was proved as Ex.PW-11/A evidencing abrasions on right thumb dorsal surface and abrasions on right forearm. PW-13 was also medically examined by him. His MLC was proved as Ex.PW-11/B which has evidenced abrasions on inner surface of upper lip. PW-12 Dr. Gagan had endorsed this medical record. This medical evidence also matches the ocular versions of PW-10 and PW-13 about the places where injuries have been suffered by both the two victims.

17 The owner of the factory Rahul Khanna was examined as PW-15. His version is also fully corroborative of the versions of PW-10 and PW-13. The kutta which had been seized from Virender Pratap Singh had been produced in Court and a broken butt had again been noted by the Court in its observations. The recovered kutta which was in possession of co-accused Rajesh was also seized and proved in Court.

18 The Investigating Officer qua the role of Virender Pratap Singh was SI Deepak Bhardwaj. He was examined as PW-16. He had seized the pistol vide seizure memo Ex.PW-9/C and prepared its sketch. The second country-made pistol and test live cartridge was also seized vide
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memo Ex.PW-9/B.

19 The same had also been sent to the CFSL for examination. Sh. Puneet Puri (PW-8), senior scientific officer had examined both the pistols and live cartridge and prepared his report evidencing the fact that both the country-made pistols were in a working order and test fire was conducted successfully. The cartridge marked Ex.F-1 was fired through country-made pistol Ex.A1 and the cartridge marked Ex. A-2 was test fired through the country-made pistol marked Ex. F-2.

20 Pursuant to the disclosure statement of Virender Pratap Singh, the role of other co-accused Rajesh Kumar had surfaced but he was arrested only subsequently i.e. on 12.03.2013 after the proceedings having declared him as proclaimed offender stood complete. Monohar Lal and Vinod Bohra had again come into the witness box after the supplementary challan had been filed against accused Rajesh and had been examined as PW-10 and PW-13. Both of them have reiterated the versions earlier given by them qua the role of Virender Pratap Singh. They had correctly identified the accused Rajesh as the accomplice of Virender Pratap Singh. Relevant would it be to note that the accused Rajesh had been put to judicial TIP on 19.03.2013 and both the

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witnesses i.e. Manohar Lal and Vinod Bohra had correctly identified Rajesh as the second assailant i.e. the person who had accompanied Virender Pratap Singh. The submission of the learned counsel for the appellant before this Court that Rajesh had not been put to TIP was an incorrect factual submission.

21 PW-10 and PW-13 having reiterated their versions and the role of co-accused Rajesh already having been spelt out and the identity of Rajesh not being in dispute, there was little left with the Trial Court leading with the supplementary challan.

22 Learned counsel for the accused Rajesh had cross-examined both PW-10 and PW-13 in detail but nothing had been elicited which could detract from their versions. The Investigating Officer qua Rajesh was examined as PW-23 namely ASI Rakesh. He denied the suggestion that the accused has been falsely implicated in the present case.

23 In defence, Rajesh had produced one witness namely his wife Sunita examined as DW-1. Her testimony was to the effect that she had gone to the hospital with her husband at the relevant date i.e. on 28.05.2012 and a medical certificate (Ex.DW-1/A) along with medical record (Ex.DW-1/B) had been placed on record. Ex.DW-1/A and Crl. Appeal Nos.948/2013 & 144/2014

Ex.DW-1/B are documents related to 21.05.2012 wherein Ex.DW-1/B is Haematology report of Master Arjit; Ex.DW-1/A is also his diagnostic and treatment chart. Master Arjit is stated to be the brother-in-law of accused Rajesh. Presence of Rajesh is nowhere depicted even presuming the documents are taken to be wholly correct. Defence is clearly sham.

24 The ocular testimony of PW-10 and PW-13 that the second pistol was in possession of co-accused Rajesh is established although both the weapons had been recovered from Virender Pratap Singh. The conviction of the appellants on no count calls for any interference. Sentence is also the minimum.

25 Appeals are without any merit. Dismissed.

INDERMEET KAUR, J

DECEMBER 22, 2015

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