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

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Judgment Reserved on: May 12, 2016

Judgment Delivered on: May 26, 2016

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CRL.A. No.407/2015

RAKESH @ GOGA

..... Appellant

Through : Mr.Habibur Rahman, Advocate

Versus

STATE

..... Respondent

Through : Ms.Kusum Dhalla, APP for the State
with SI Kali Charan PS Ashok Vihar

PRATIBHA RANI, J.

1. This appeal is being preferred by the appellant feeling aggrieved by the judgment dated 8th December, 2014 whereby the appellant has been convicted for committing the offence punishable under Sections 392/394/34 IPC and under Section 397 IPC and the order on sentence dated 16th December, 2014 whereby he has been sentenced as under:

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|------|---------------------|---|---|
| (i) | U/S 392 r/w 397 IPC | - | to undergo RI for seven years with fine of ₹5000/- and in default of payment of fine, to undergo SI for three months. |
| (ii) | U/S 392 r/w 394 IPC | - | to undergo RI for seven years with fine of ₹5000/- and in default of payment of fine, to undergo SI for three months. |

Both the sentences were ordered to be run concurrently and benefit of Section 428 was also given.

2. FIR No.210/2011 under Sections 394/397/411/201/34 IPC, PS Ashok Vihar has been registered on the statement made by Ramesh Chand Sharma. In the statement Ex.PW-1/A which formed basis of registration of FIR, Ramesh Chand Sharma has stated that he had been working as helper on Truck No.HR 38 J 1570. His cousin Raju was driver of the said truck. On 17th August, 2011 after getting the container loaded from Iceland Container Deport, Tughlakabad, Delhi, they reached factory No.A-126, Wazirpur Industrial Area at about 3.00 a.m. The truck was parked outside the factory. While Raju, the driver of the truck went to sleep on the upper seat of the cabin, he slept on the lower seat of the cabin in the truck. At about 5.00/5.15 a.m. he felt that somebody was taking search of his pant and shirt. He woke up and saw three boys in the age group of 20-22 years present in the cabin and two of them were having knives in their hand and third one was having scissor. One of them took out his Tata mobile phone No. 9210802990 and purse containing ₹ 2,000/-, his identity card and photographs from his pant. He managed to apprehend two boys and raised alarm to make driver Raju wake up. All the three boys caused injuries to him and left thereafter. They did not allow Raju to get down from the upper seat. Raju informed PCR. He was removed to Babu Jagjivan Ram Memorial Hospital by PCR where local police also arrived. Due to pain, he could not make any statement and left for home with Raju and reported on 19th August, 2011 for taking legal action against the offenders.

3. The FIR in this case has been recorded on 19th August, 2011 at about 1.00 p.m. The MLC exhibit PW-10/A of the complainant shows that he was

brought to Babu Jagjivan Ram Memorial Hospital on 18th August, 2011 at 6.30 a.m. with alleged history of physical assault as told by the patient and his attendant. On the MLC the nature of the injuries have been opined to be simple. The complainant has mentioned on the MLC itself that he did not want any police action in the matter. Exhibit PW-13/A is the copy of DD entry informing the control room about the incident. As per DD No.8-A dated 18th August, 2011 at 5.30 a.m. information was received about a quarrel in front of A-Block Company No.126, Wazirpur Industrial Area. The report was marked to SI Neeraj Kumar who was informed telephonically about the incident.

4. I have heard the appellant, through his counsel, as well as learned APP for the State and perused the trial court record.

5. The appellant, who has been produced from J/C, through his counsel has submitted that in this case no robbery was committed and it was a case of quarrel wherein the complainant PW-1, Ramesh Chand Sharma allegedly received simple injuries. Thus, at the most he could be convicted under Section 324/34 IPC.

6. Learned APP for the State has submitted that in this case the appellant has been apprehended in the presence of the complainant and recovery of mobile phone and vegetable cutting knife had been recovered from him. She further submitted that since the complainant was not even known to the appellant he had no reason to falsely implicate him in this case. Hence, the appeal may be dismissed.

7. In the instant case Raju, driver of the truck who was sleeping in the same cabin on upper birth has not been examined by the prosecution. Raju - the driver who was present at the spot, informed the Police Control Room

and at that time, the nature of incident reported by him was not of committing robbery on knife point but about quarrel. Even when PCR removed injured Ramesh Chand Sharma (PW-1) to Babu Jagjivan Ram Memorial Hospital, he was fully conscious and oriented having received simple injuries. At that time also he did not inform about any robbery being committed by taking away his mobile phones and purse. It may be relevant to mention here that in his complaint exhibit PW-1/A, he has given his address to be Rudrapur, Uttarakhand and no address of Delhi. He has given two mobile Nos. 9267117169, 9711691236 but in his statement Ex.PW1/A he has reported the robbery in respect of his Tata Mobile No.9210802990. The complainant, who was helper of the truck, has nowhere mentioned that he was carrying three mobile phones. No investigation was conducted about the location of three mobile phones especially which was allegedly robbed. There is no mention in the statement of PW-1 before the police or during the trial when he was examined as PW-1 as to what happened to the goods loaded in the truck or when it was got unloaded at the factory No.A-126, Wazirpur Industrial Area in front of which this truck was parked.

8. The history recoded on the MLC of the complainant Ex.PW10/A is as under:

B/by PCR for medical treatment.

Alleged H/o Physical assault (by knife as told by pt. and pt. attendant)

Pt. is conscious oriented time place.

BP – 120/80

Pulse – 70/m

RR – 18/m

Temp – afebrile.

Abrasion on right shoulder.

CLW injury on left forearm 2 cm X 1 cm.

CLW injury on right high 2 cm X 1 cm.

Laceration on right wrist joint 2 cm X 1 cm
Laceration on abdomen
Laceration on right lower lip.'

9. The complainant has been examined in Babu Jagjivan Ram Memorial Hospital at 6.30 a.m. and the complainant has stated that immediately thereafter he went home along with driver Raju. The loaded container could not have been left by the driver unattended. The place where the truck was parked is a public place and it being an industrial area where the factories are duly guarded, the incident of robbery could not have gone unnoticed by the persons present out/inside the Factory No.A-126, Wazirpur Industrial Area and adjoining factories.

10. The complainant in this case has received just simple injuries. Another eye witness Driver Raju who was present in the same cabin of truck, called PCR and informed about quarrel only. The first version coming from the complainant himself as recorded on the MLC was that of physical assault. Neither to the PCR nor to the local police any report about robbery being committed by using the deadly weapon i.e. knife was made. The FIR being registered after inordinate delay and that too after writing on the MLC that he did not want any police action, raises serious doubts in the truthfulness of prosecution version.

11. The prosecution case can at the best be that the appellant had a quarrel with the complainant and in that process caused simple injuries to him with some sharp object. It is prosecution's case that the knife used in this case is vegetable cutting knife. After examination of the facts and circumstances of the case, I am of the opinion that prosecution had miserably failed to prove its case against the appellant for commission of the offences punishable

under Sections 392/394/34/397 IPC. Learned Trial Court failed to take note of all the material documentary evidence i.e. exhibit PW-13/A (DD No.8-A), the first information given to the police and the MLC exhibit PW-10/A as well various loopholes in the story of the complainant who allegedly reached the police station next day afternoon.

12. After considering the inconsistencies and contradictions in the testimony of the complainant before the Court as well in his initial statement exhibit PW-1/A and his version on MLC exhibit PW-10/A, I am of the opinion that prosecution has failed to prove its case against the appellant for commission of the offence punishable under Sections 392/394/34/397 IPC. Hence, the judgment dated 8th December, 2014 convicting him for the offence punishable under Sections 392/394/34/397 IPC and order on sentence dated 16th December, 2014 are set aside.

13. The complainant PW-1, Ramesh Chand Sharma has identified the Rakesh @ Goga who caused injuries to him. In a case of assault of causing of simple injuries by using a vegetable cutting knife can make the appellant liable to be punished for commission of the offence punishable under Section 324/34 IPC only.

14. Accordingly, the appellant is convicted for committing the offence punishable under Section 324/34 IPC and sentenced to undergo RI for three years.

15. As per the nominal roll of the appellant available on record as on 1st March, 2016, he has undergone sentence of three years, eleven months and four days in this case.

16. Appeal stands disposed of in above terms.

17. The appellant be released forthwith if not wanted in any other case.

18. TCR be sent back alongwith copy of this order.
19. A copy of this order be sent to the concerned Jail Superintendent for information and necessary compliance.

PRATIBHA RANI, J.

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