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

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Date of Judgment : 17.09.2015

+ CRL.A. 219/2013

SALIM @ AKRAM @ SANTOSH Appellant
Through Ms. Saahila Lamba, Advocate.

versus

STATE Respondent
Through Ms. Meenakshi Dahiya, APP for
the State.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 This appeal is directed against the impugned judgment and order on sentence dated 28.07.2012 and 01.08.2012 respectively wherein the appellant Salim @ Akram @ Santosh stands convicted under Sections 397/307/34 of the IPC. The maximum sentence which has been awarded to him is RI 7 years for his conviction both under Sections 397 as also 307 of the IPC. For his conviction under Section 25 of the Arms Act he has been sentenced to undergo RI for 3 years and for his conviction under Section 27 of the Arms Act he has been sentenced to further undergo RI for 3 years. All the sentences would run concurrently. Benefit under Section 428 Cr.P.C. has also been granted to the appellant.

2 The version of the prosecution was that on 02.05.2010 at about 5.50 pm an information regarding the firing of a bullet on a person had been received. The complainant Saurab Aggarwal examined as PW3 had got his complaint registered which was to the effect that after shopping when he was going on his motorcycle to Karol Bagh to drop his friend Vidhi Verma to her house, a motorcycle black in colour, on which two persons were sitting came in front of him. Pillion rider snatched the red coloured purse and tried to flee. PW3 chased them. The pillion rider showed him a pistol and asked him to return back but when PW3 continued to chase them, the pillion rider fired from his pistol. On reaching Shiv Murti Shamsan Ghat the motorcyclists stopped their motorcycle and changed their positions. Constable Azadveer who was on patrol duty examined as PW-5 was informed of the same. Out of the two assailants, Salim @ Akarm @ Santosh was caught but the other person managed to flee.

3 Prosecution in support of its case examined as many as 20 witnesses of whom the star witness was the complainant examined as PW3. PW-5 Constable Azadveer was the person who had offered help to the complainant; he had been shot on his left leg; PW-6 Constable Vijay Bahadur had removed the injured to the Hospital for his medical examination. The injuries suffered by PW-5 were opined to be grievous.

4 On the basis of the aforementioned evidence led by the prosecution the appellant was convicted and sentenced as aforementioned.

5 Learned counsel for the appellant has submitted that the appellant has undergone incarceration for about 5 years and 8 months. The offence under Section 397 of the IPC is not made out. It is pointed out that the version of PW3 clearly shows that “who was the offender” in terms of section 397 IPC was not known to the complainant; whether it was the present appellant Salim @ Akram @ Santosh or whether it was the accomplice who had managed to flee away. It has not been proved by the prosecution till the end. In the absence of this, in view of the judgment of the Apex Court in *Dilawar Singh Vs. State of Delhi, Crl. Appeal No. 491/2002 decided on 05.09.2007* the appellant is entitled to a benefit of doubt and his conviction under section 397 of the IPC be impounded.

6 Needless to state that these arguments have been refuted.

7 Record shows that PW3 has described the incident in detail though who used the weapon has not been answered but PW3 in the first part of his version has stated that the accused had at the point of the pistol snatched the purse containing Rs. 2500 but who was that person, whether it was the present appellant or whether it was the accomplice who tried to flee away has not been answered. In another part of his version he has also stated that the accused persons had changed their positions at Shamshan Ghat. The appellant who was caught, is the person who had used the pistol or not has not been fully answered by the prosecution. Accordingly, in view of the judgment of Dilawar (supra) the appellant is

entitled to a benefit on this count. The observations of the Apex Court in this context which are relevant are as under:

“ Offender” refers to only culprit who actually used deadly weapon. When only one has used the deadly weapon, others cannot be awarded the minimum punishment. It only envisages the individual liability and not any constructive liability. Section 397 IPC is attracted only against the particular accused who uses the deadly weapon or does any of the acts mentioned in the provision. But other accused are not vicariously liable under that Section for acts of co-accused”.

8 The conviction of the appellant under Section 397 of the IPC is accordingly modified to Section 392 of the IPC. This Court also notes that the injuries suffered by PW-5 were grievous in nature. This is clear from his MLC (EX.PW1/A). There was a bullet injury on his left leg . It was a single injury. It was admittedly caused in the heat of the moment. The period of incarceration suffered by the appellant as noted supra is 5 years and 8 months. The appellant is 37 years of age. This Court is of the view that the appellant has undergone a fair amount of the punishment for the offence for which he has been convicted. Accordingly, the sentence already suffered by the appellant be treated as the sentence imposed upon him for his conviction both under Sections 392 and 307 of the IPC. Sentence under Sections 25 and 27 of the Arms Act remains unaltered. Benefit under Section 428 Cr.P.C. has already

been granted to the appellant by the Trial Court. Appellant be released forthwith if not required in any other case.

Appeal is disposed of in the above terms.

INDERMEET KAUR, J

SEPTEMBER 17th, 2015
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