

\$~R-28/29

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

+ CRL.A. 261/2011

Decided on 20th March, 2015

ASGAR

..... Appellant

Through : Mr. Rashid Hashmi, Adv.

Versus

STATE

..... Respondent

Through :Mr. Amit Ahlawat, APP with SI
Mahendra Pratap, P.S. Narela, Outer
Distt. Delhi

AND

+ CRL.A. 262/2011

SHAMSHER ALI

..... Appellant

Through : Mr. Rashid Hashmi, Adv.
versus

STATE

..... Respondent

Through :Mr. Amit Ahlawat, APP with SI
Mahendra Pratap, P.S. Narela, Outer
Distt. Delhi

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

A.K. PATHAK, J.(ORAL)

1. Appellants have been convicted by the trial court under Sections

392/34 of the Indian Penal Code, 1860 (IPC) and sentenced to undergo rigorous imprisonment for four years with fine of ₹2,000/- each and in default of payment of fine, simple imprisonment for two months each. Benefit of period already undergone by them during the trial under Section 428 Cr.P.C. has also been extended to them. Aggrieved by their conviction as also the sentences, appellants have preferred the above noted appeals.

2. Prosecution story as unfolded is that on 15th June, 2005 at about 5 PM appellants boarded an auto rickshaw bearing registration no. DL1-RH-0743, driven by the complainant Vipin Kumar Sharma and asked him to take them to old Delhi Railway Station. On the way, they asked the complainant to stop auto rickshaw and robbed ₹230/- from him at the point of knife and thereafter, ran away. Appellants were apprehended on 16th June, 2005. TIP was not got conducted. Knife was also not recovered from them.

3. Appellants were sent up to face trial by filing a charge-sheet in the Court of Metropolitan Magistrate under Sections 392/397/342/411/34 IPC. Case was committed to the Sessions Court since offence under Section 397 IPC is exclusively triable by the Sessions Court. On 26th November, 2005 trial court framed charges under Sections 392/342/34 IPC against the appellant Shamsher Ali and charges under Sections 392/397/342/34 against

the appellant Asgar. Appellants pleaded not guilty to the charges framed against them and claimed trial.

4. Complainant Vipin Kumar Sharma was examined as PW3. Investigating Officer, namely, Sub Inspector R.C. Dahiya was examined as PW6. All other witnesses examined, are the police officials, having joined the investigations at one or the other stage of the investigation. PW1 HC Rajpal is the Duty Officer and had recorded FIR Ex. PW1/A on the rukka sent by PW6 SI R.C. Dahiya. After prosecution concluded the evidence, statement under Section 313 Cr.P.C. of the appellants were recorded, wherein entire incriminating evidence, which had come on record, was put to them. Appellants denied the allegations against them and claimed themselves to be innocent. They claimed that they were falsely implicated in this case.

5. Trial court has found the testimony of PW3 to be trustworthy and reliable. PW3 narrated the incident in the manner as has been described in the FIR, inasmuch as identified the appellants to be the same persons, who had robbed him of ₹230/-. Trial court has concluded that testimony of PW3 was reliable to prove the ingredients of offence under Sections 392/34 IPC beyond shadow of reasonable doubt. Trial court has concluded that

appellants had robbed PW3 Vipin Kumar Sharma. As regards use of knife is concerned, same has not been accepted since weapon, allegedly used in the robbery, was not recovered inspite the fact that appellants were arrested on the very next day. Resultantly, appellants have been convicted under Sections 392/34 IPC.

6. During the course of hearing, learned counsel for the appellants has given up challenge to the conviction under Sections 392/34 IPC on merits. I have also perused the trial court record, more particularly, the statement of PW3 and am of the view that his testimony to the effect that appellants had robbed ₹230/- from him has remained unshattered in his cross-examination and has rightly been accepted by the trial court. PW3 was a stranger for the appellants. There is no reason as to why complainant would have implicated the appellants, had they not robbed him on the fateful day. Be that as it may, since conviction of the appellants has not been challenged, conviction of the appellants under Sections 392/34 IPC is confirmed.

7. Learned counsel for the appellants has contended that appellants have no previous criminal record. During the trial as well as during the pendency of appeals, appellants have remained on bail for a considerable long time and they have not indulged themselves in other crime. Appellant Asgar has

remained in jail for about 2½ years. He has a family, which is solely dependent upon him. Appellant Shamsher Ali has remained in incarceration for more than 1½ years. He also has a family, which is wholly dependent upon him. Appellants have reformed themselves as they have not indulged in any crime after their involvement in the present case.

8. Learned APP submits that sentences awarded by the trial court are proportionate to the offence committed by them and is not on a higher side and need not to be interfered with.

9. I have considered the rival contentions of both the parties and am of the view that sentences of the appellants can be reduced to the period already undergone by them, more particularly in view of the fact that appellants have no previous criminal record, inasmuch as they have not indulged in any other crime, after their involvement in this case, though they have remained on bail for quite a long time. The purpose of awarding substantive sentence of imprisonment is two fold. It is punitive as well as reformatory. Appellants have remained in incarceration for about two years. Their jail conduct had been satisfactory. They have not involved themselves in any other crime except their involvement in this case. This reflects that they have reformed themselves. Accordingly, sentences of

appellants are reduced to the period already undergone by them. Personal bonds and surety bonds are discharged.

10. Appeals are disposed of in the above terms.

A.K. PATHAK, J.

MARCH 20, 2015

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