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

% *Judgment reserved on : 30.11.2015*

Judgment delivered on : 03.12.2015

+ CRL.A. 386/2013

VICKY @ LADDU

..... Appellant

Through Mr. S.S. Ahluwalia, Advocate

Versus

STATE (GOVT. OF NCT OF DELHI) Respondent

Through Mr. Kewal Singh Ahuja, APP for
the State

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 This appeal is directed against the impugned judgment and order on sentence dated 15.12.2012 and 22.12.2012 respectively wherein the appellant stands convicted under Section 397 read with Section 392 of the IPC. He has been sentenced to undergo RI for a period of 7 years and to pay a fine of Rs.1,000/- and in default of payment of fine, to undergo RI for 3 months.

2 Nominal roll of the appellant has been requisitioned. It reflects that as on date, the appellant has undergone incarceration of 3 years and 3 months which includes the remissions earned by him. His jail conduct

has been noted to be dis-satisfactory.

3 The version of the prosecution is that on the fateful night of 11.11.2011 at around 08:20 p.m. on the GT Road, near Hanuman Mandir, the appellant Vicky @ Ladoo had committed robbery upon the person of Shiv Kumar Tomar (PW-1). He had robbed him of a polythene bag containing Rs.1,260/- and some documents including his Driving License. This was on the point of a deadly weapon i.e. the knife. FIR had been registered on the statement of the complainant. The appellant was apprehended from the spot. The stolen polythene bag containing Rs.1,260/-, his Driving License and his visiting cards was recovered. The sketch of the knife was prepared and it was taken into possession vide memo Ex.PW-1/D.

4 The prosecution in support of its case had examined 8 witnesses of whom besides the complainant (examined as PW-1), his friend Anil Kumar (PW-5) who had also tried to apprehend the appellant was also examined. The members of the patrolling team who were present at the spot included constable Neeraj (PW-3) and constable Vinod (PW-4). SI Sandeep (PW-8) and constable Sanjeev (PW-6) were also on patrolling duty and they had also reached the spot.

5 In the statement of the accused recorded under Section 313 of the Cr.PC, he had pleaded innocence. However, it was only at the defence evidence i.e. at the time of examination of DW-1 that the defence had emanated which was to the effect that he was attending a hearing at Karkardooma Court and he was falsely implicated and picked up by the police.

6 In view of the said evidence, the appellant was convicted and sentenced as aforenoted.

7 On behalf of the appellant, it has vehemently been argued that the testimony of PW-1 is full of inherent contradictions and his testimony does not match the version of PW-3 and PW-5 qua the location where the incident had occurred. Whereas PW-3 had admitted that the accused was apprehended about 100 feet away from Hanuman Mandir towards Shyamlal College which is not on the way towards Tikona park, the version of PW-1 is that the police officials were coming from the side of Tikona park. Attention has also been drawn to that part of the version of PW-1 where he has not been able to identify the accused. Submission being that the defence of the appellant has also been ignored and the testimony of DW-1 has not been considered. Learned counsel for the

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appellant has placed reliance upon a judgment of the Apex Court reported as AIR 1992 SC 2100 State of Maharashtra Vs. Sukhdeo Singh & Another to support his submission that where the TIP proceedings had not been held and identification of the appellant for the first time in Court would be a useless identification. Thus the identification of the appellant by the other witnesses of the prosecution had no sanctity in the eyes of law. On all counts, the appellant is entitled to a benefit of doubt and a consequent acquittal.

8 Needless to state that these arguments have been refuted.

9 The star witness of the prosecution was PW-1 who was the complainant. He has on oath deposed that on the fateful day i.e. on 11.11.2011 at about 08:15 pm, when he was standing near Hanuman Mandir, G.T. Road, a young person arrived and at the point of knife which was pointed against his stomach, he was robbed of a polythene pouch which contained Rs.1,260/-, his Driving License and other personal papers. The appellant tried to run away. PW-1 raised hue and cry. Public persons gathered there. He was apprehended. PW-1 further stated that he was not sure whether the accused person was the same who committed robbery because of the lapse of time. In his cross-Crl. Appeal No. 386/2013

examination, PW-1 stated that the appellant may be the culprit. He denied the suggestion that out of fear, he is not identifying him. He identified his stolen property as also the knife which had been used to terrorize him.

10 Apart from PW-1, the friend of PW-1 who was also at the spot and had seen the attack on PW-1 and assailant running from there had been examined as PW-5. He also related the incident and corroborated the version of PW-1. He admitted that the appellant after attacking PW-1 was attempting to flee when he captured him. The stolen articles were recovered from him as also the knife was taken into possession and the seizure memo (Ex.PW-1/C) and Ex.PW-1/E were signed by him; he identified his signatures on the same. In his cross-examination, he admitted that it was thickly populated area where the incident had occurred. He heard PW-1 shouting saying 'chor chor' and the appellant was apprehended.

11 Apart from PW-1 and PW-5, the recovery witnesses i.e. the persons who had got the stolen property and knife recovered from the appellant were the two police personnel who were on patrolling duty at the relevant time; constable Neeraj (PW-3) and constable Vinod (PW-4).

They have also corroborated the version of one another and the manner in which the incident had taken place. PW-3 had deposed that from the possession of the appellant, a polythene bag containing Rs.1,260/- and some documents belonging to PW-1 were recovered. The knife was also recovered. The sketch of the knife (Ex.PW-1/B) was prepared. Recovery memos were prepared in his presence and signed by him.

12 The version of PW-4 is also on the same lines. He has also signed the recovery memos and identified his signatures on the same. Constable Sanjeev (PW-6) and SI Sandeep (PW-8) were also on patrolling duty and they had reached the spot after PW-3 and PW-4 had apprehended the appellant. Their versions are also fully corroborated with the version of PW-3 and PW-4 as also PW-1 and PW-5. The witnesses were subjected to a lengthy cross-examination but they stuck to their stand. The fact that the appellant was apprehended and arrested from the spot thus stands fully proved. In this background, even if, PW-1 was not able to identify the appellant due to lapse of time the connection of the appellant with the present offence is not uprooted as apart from the version of PW-1, PW-5 the other independent witness was also present at the spot at the time when the appellant was apprehended. PW-3 and

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PW-4 had apprehended him and he was taken into custody at the spot itself. Identification of the appellant stands fully proved. The recovery of the stolen articles from the person of the appellant which belonged to PW-1 also connect the appellant with the crime.

13 The judgment relied upon by the learned counsel for the appellant on the aspect of identity is thus not applicable.

14 The site plan (Ex.PW-1/F) has depicted the site of the occurrence at point A i.e. near the Hanuman Mandir. The submission of the learned counsel for the appellant that the location is not proved is negated.

15 The submission of the learned counsel for the appellant that the offence under Section 397 of the IPC is not made out as the weapon which was the knife was not a “deadly weapon” is negated by the sketch of the knife (Ex.PW-1/B) which was prepared by PW-8 and perusal of the same shows that the total length of the knife is 37 cms of which the blade was 23 cms and the handle was 14 cms. The length and breadth of the knife endorses the submission of the prosecution that this indeed was a “deadly weapon” within the meaning of Section 397 of the IPC. The ‘use’ of this deadly weapon stands established as is clear from the aforementioned prosecution witnesses. Whether injury has been

suffered by the victim is not relevant for a conviction under Section 397 of the IPC.

16 The defence of the appellant that he had been picked from Karkardooma Courts had emanated for the first time only at the time of examination of the defence witness which was at the fag end of the trial. Had it been an honest defence, this would have come in the cross-examination of the prosecution witnesses or at the time when the statement of the appellant under Section 313 of the Cr.PC was recorded. It was not forthcoming at that point of time. It was obviously an afterthought.

17 The conviction of the appellant calls for no interference.

18 The sentence which has been imposed upon the appellant is the minimum as a conviction under Section 397 of the IPC pre-supposes a minimum sentence of 7 years. Accordingly, the sentence and conviction of the appellant calls for no interference. Appeal is without any merit. Dismissed.

INDERMEET KAUR, J

DECEMBER 03, 2015/A