

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

% Reserved on: 09.07.2015
Date of Decision: 15.07.2015

+ **CRL.A. 259/2011**

PAPPU SINGH Appellant

Through: Mr.Chetan Lokur, Adv.

versus

THE STATE GOVT OF NCT OF DELHI Respondent

Through: Mr. Yogesh Verma, APP.
SI Kamal Kumar, PS Okhla
Industrial Area.

+ **CRL.A. 393/2011**

RAJESH @ RAMESH Appellant

Through: Mr.Mukesh Birla, Adv. with
appellant in person.

versus

STATE Respondent

Through: Mr. Yogesh Verma, APP.
SI Kamal Kumar, PS Okhla
Industrial Area.

CORAM:
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR, J:

1. Both the appeals have been heard and are being disposed of by this common judgment.

2. In Criminal Appeal No.259/2011 (Pappu Singh) by order dated 23.4.2015, Mr.Chetan Lokur was appointed as amicus curiae as the appellant had appeared pursuant to the bailable warrants issued and informed the Court about his poverty.
3. In Criminal Appeal No.393/2011 (Rajesh @ Ramesh) non bailable warrants were issued on 23.4.2015 but the execution report is awaited.
4. Heard Mr.Chetan Lokur, amicus curiae.
5. The appellants are aggrieved by the judgment and order of conviction and sentence dated 11.1.2011 and 13.1.2011 whereby Learned ASJ (Fast Track Courts, Patiala House Courts, New Delhi) in Sessions Case No.197/2005 (P.S.Okhla Industrial Area) convicted the appellant under Sections 394/411 and 34 of the IPC and sentenced them to undergo RI for five years, fine of Rs.1000/- (in default of which SI for two months) for offence under Section 394/34 IPC and SI for one year, fine of Rs.500/- (in default of which SI for one month for offence under Section 411/34 of IPC).
6. On 12.3.2005 when Head Constable Jasbir Singh (PW.7) and Constable Sunil Kumar (PW.1) were on patrolling duty, they visited a vegetable market where they met Constable Randhawa (PW.8) and Krishan Kumar (PW.6). All the four named above, on reaching near Tata Steel Factory, Okhla Industrial Area, Phase-I, heard a commotion. Four persons were found to be running away. Three out of them were apprehended by the police officials whereas one was caught by members of the public.

7. The aforesaid four persons were identified as the appellants and one Ajay @ Buglesh and Kamal.
8. Ajay @ Buglesh, being of tender age was sent to the Juvenile Court whereas Kamal Sharma died.
9. The aforesaid two appellants were put on trial.
10. From the possession of appellant Pappu (Appellant in Criminal Appeal No.259/2011) one watch with a gold colour strap was recovered and seized vide memo Exh.PW.1/B.
11. From Ramesh @ Rajesh (Appellant in Criminal Appeal No.393/2011) one HMT watch, one Nokia mobile phone and a sum of Rs.420/- was recovered and seized vide memo Exh.PW.1/C.
12. From the possession of the juvenile accused one knife was recovered.
13. The disclosure statements of the accused persons including the appellants were recovered (Exh.PW.1/G to G4).
14. Kaam Singh (PW.2) lodged a complaint (Ex.PW.2/A). He deposed before the Trial Court that on 12.3.2005 at about 8.30 P.M while he along with Nandan Singh (PW.3) were returning from work, they were surrounded by four boys and were asked to hand over all their belongings. He further deposed that he was assaulted by knife on his cheek by one of the miscreants whereas appellant Rajesh divested him of his purse from his back pocket which contained Rs.430/-. It was further stated by him that appellant Rakesh took his mobile phone along with his wrist watch. The other two boys, according to PW.2 caught hold of

Nandan Singh (PW.3) and divested him of his belongings including Rs.350/- and a wrist watch. On raising alarm by PW.2 and Nandan Singh (PW.3), police arrived and caught hold of the miscreants.

15. Similar statement has been made by Nandan Singh (PW.3) associate of Kaam Singh (PW.2) who supported the prosecution version that he and PW.2 were divested of their belongings by four accused persons, two being the appellants.

16. The identification of the appellants thus stands established by the deposition of PWs.2 and 3.

17. Kaam Singh (PW.2) was examined by one Dr.Amit and MLC was prepared (Ex.PW.4/B). At the trial, Dr.Aman (PW.4) proved the MLC prepared by Dr.Amit. The MLC of PW.2 discloses simple injury namely laceration on the right cheek of PW.2.

18. During trial Krishan Kumar (PW.6), Head Constable Jasbir Singh (PW.7), the first IO and ASI Satish Chand (PW.5) supported the prosecution version with respect to the appellants having been apprehended, their disclosure statements and the recovery of looted articles.

19. On behalf of the appellants, learned amicus curiae argued that there were material contradictions in the testimonies of PWs.2 and 3 with regard to the manner of commission of crime. Kaam Singh (PW.2) in his cross examination deposed that his statement was recorded by the IO in the police station whereas the consistent case of the prosecution is that

the FIR was recorded at the spot where his statement was taken by the IO.

20. It was further submitted that the recovery from one of the co-accused Buglesh is doubtful in as much as PW.2, in his cross examination did not state anything specific as to the recovery of the knife.

21. From the deposition of the witnesses, the identification of the aforesaid two appellants stand fully established. The recovery of the looted articles also testifies to the fact that the articles were not planted upon them.

22. From the perusal of the record it appears that initially charges were framed under Sections 394/397 and 411 of the IPC but the Trial Court on finding that Section 397 was not made out against the appellants as neither of them were armed with any weapon much less any deadly weapon, acquitted the appellants of the charges under Section 397 of the IPC.

23. Be it noted that the knife was recovered from Buglesh (Juvenile).

24. The Trial Court has rightly convicted the appellants under Sections 394/411 of the IPC. No interference is required with respect to the conviction of the appellants.

25. From the records it appears that the appellants have remained in jail for one year. Considering the fact that the appellants were of young age at the time of commission of the crime, the sentence imposed on the appellants appears to be harsh.

26. The sentences imposed on the appellants is, therefore, modified to the period which they have already undergone.

27. Considering the economic strata of the appellants, the payment of fine is also waived. In the interest of justice, the sentence of the appellants is modified accordingly.

28. The appeal is dismissed with the modification in sentence as aforesaid.

ASHUTOSH KUMAR, J

July 15, 2015

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