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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.A. 723/2011**

Decided on 30th April, 2015

CHATTAR PAL

Appellant

Through: Mr. Imran Khan, Adv.

versus

STATE NCT OF DELHI

..... Respondent

Through: Mr. Yogesh Verma, APP for State with
ASI Devender Kumar, P.S. Uttam
Nagar.

CORAM:
HON'BLE MR. JUSTICE A.K. PATHAK

A.K. PATHAK, J. (ORAL)

1. Appellant has been convicted under Sections 392/394/397/34 IPC by the trial court and sentenced to undergo rigorous imprisonment for a period of 7 years with fine of ₹5,000/- and in default of payment of fine to undergo simple imprisonment for a period of six months under Section 394/34 IPC read with Section 397 IPC. Benefit of Section 428 Cr.P.C. has been given to the appellant.

2. Aggrieved by his conviction and also the sentence awarded to him, appellant has preferred this appeal.

3. During the course of hearing, learned counsel for the appellant has given up challenge to the conviction under Sections 392/394 IPC. However, he has challenged the conviction of appellant under Section 397 IPC. It is contended that prosecution has failed to prove that appellant had used any 'deadly weapon' while committing the robbery, inasmuch as, alleged iron rod was not recovered from him, thus, ingredients of offence under Section 397 IPC are not attracted in this case.

4. Prosecution case, in brief, is that on 8th January, 2005 at about 03:00 am, appellant along with his accomplices entered in the house of complainant-Satender Kumar Rai (PW8) situated at B-61, Vikas Nagar, Hastal Vihar, Uttam Nagar, Delhi and robbed four suitcases, three mobile phones, two Titan wrist watches, three gold chains, ear tops and ₹35,000/- after assaulting his mother Smt. Rajwati Devi (PW4) and brother-Nagender Kumar Rai (PW7) by iron rods. Appellant and his accomplices had removed the jewellery from the person of wife of Nagender Kumar Rai, namely, Smt. Sangeeta Devi (PW5) and Smt. Rajwati Devi. Nagender Kumar Rai and Smt. Rajwati Devi were medically examined in DDU Hospital by Dr. Anju Jain (PW6) vide MLCs Ex. PW-1/B and Ex. PW-1/A respectively and their injuries were opined grievous in nature.

5. Material witnesses in this case are PW4-Smt. Rajwati Devi, PW5-Smt. Sangeeta Devi, PW7-Nagendr Kumar Rai and PW8 Satender Kumar Rai. All other witnesses are formal in nature being police officials, who had joined the investigation conducted by Investigation Officer SI Basti Ram (PW16) at one stage or the other.

6. It may be noted that appellant was arrested on 31st January, 2005 in another FIR 20/05 under Sections 399/402 IPC by the Special Cell of Delhi Police wherein he allegedly made a statement about his involvement in the present case, consequently, he was arrested in the present case as well. He was not arrested immediately after the incident. He was put to TIP wherein he was identified by the PW7 and PW8. They have also correctly identified the appellant in Court. Trial court has concluded that appellant along with his co-convict had committed robbery in the house of PW4-Rajwati Devi, PW5-Smt. Sangeeta Devi, PW7-Nagender Kumar Rai and PW8-Satender Kumar Rai on the fateful day of 8th January, 2005 at about 03:00 am. As regards injuries sustained by PW4 and PW7 are concerned, the same have been proved by PW6 Dr. Anju Jain. Accordingly, offences under Sections 392/394 IPC have been duly established from the statements of the aforesaid witnesses.

7. Section 394 IPC stipulates that if any person, in committing or in attempting to commit robbery, voluntarily causes hurt, such person, and any

other person jointly concerned in committing or attempting to commit such robbery, shall be punished with imprisonment of life or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine. Section 394 IPC does not stipulate use of any 'deadly weapon' and it simply provides that if any person voluntarily causes hurt not only the person who actually causes hurt but other persons, involved in the commission of robbery, would be equally liable to be punished with the imprisonment as envisaged under Section 394 IPC. Accordingly, offence under Sections 394/34 IPC is duly established against the appellant, inasmuch as, challenge to the conviction of appellant under this provision has been given up.

8. The moot question which arises for consideration is whether ingredients of Section 397 IPC are attracted in this case. Section 397 IPC envisages that if, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years. This provision envisages minimum sentence which has to be awarded to an offender who at the time of committing robbery or dacoity uses 'deadly weapon' or caused grievous hurt to any person or attempt to cause death or grievous hurt to any person. It is only such person who uses 'deadly weapon' or causes grievous hurt or attempt to

cause death would be liable for the punishment as envisaged under Section 397 IPC. Other persons accompanying such person cannot be held vicariously liable under this provision. The word 'offender' used in Section 397 IPC refers to only culprit who actually used 'deadly weapon' or causes grievous hurt.

9. In this case, prosecution has failed to prove that appellant had used any 'deadly weapon' at the time of commission of robbery or had caused 'grievous hurt'. Role of causing grievous hurt has also not been singularly assigned to the appellant. Statement of witnesses are that appellant along with accomplices had entered in the house and committed robbery and while committing robbery, grievous hurt was caused on the persons of Rajwati Devi and Nagendr Kumar Rai by iron rods. No specific role has been assigned to the appellant either of using a 'deadly weapon' or causing grievous hurt, inasmuch as, who caused grievous hurt is also not clear as only a general statement has been made in this regard. Accordingly, though ingredients of offence under Section 394 IPC are attracted since while committing robbery, grievous hurt was caused to the above named two victims, however, ingredients of offence under Section 397 IPC are not attracted since no evidence has come on record that the appellant had caused grievous hurt or used deadly weapon, inasmuch as weapon of offence was not recovered from him. Accordingly, conviction of appellant under Section 397 IPC is set aside.

10 Appellant is a married person and has a family comprising of his wife and three minor children. Appellant belongs to poor strata of society. Post this offence appellant has not indulged himself in any other offence while he was on bail. Keeping in mind totality of the circumstances, sentence of the appellant under Sections 392/394 is reduced to 5 years from 7 years, as awarded by the trial court. Sentence of fine of ₹5,000/- is maintained. Appellant will be entitled to benefit of Section 428 Cr.P.C.

11. Appeal is disposed of in the above terms.

12. Copy of the order be sent to the Superintendent Jail for serving it on the appellant and also for compliance.

A.K. PATHAK, J.

APRIL 30, 2015

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