

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

% *Date of Judgment on : 10.9.2015*

+ CRL.A. 972/2013

AMIT Appellant

Through Ms.Aishwarya Rai, Advocate

versus

STATE (GOVT.OF NCT) OF DELHI Respondent

Through Mr.Akshai Malik, APP along
with SI Ram Phal singh.

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 14.3.2013 and 21.3.2013 respectively wherein the appellant had been convicted under Sections 392 read with Section 397 of the IPC and sentenced to undergo RI for a period of 7 years and to pay a fine of Rs.1000/- and in default of payment of fine to undergo SI for 2 days.

2 Nominal roll of the appellant reflects that as on date he has undergone incarceration of about 3 ½ years which included remissions

awarded to him.

3 Version of the prosecution is that on 04.11.2012 the accused had committed robbery of Rs.250/- from the possession of Dukhan Shah (PW-5). The accused had used a sharp edged blade to commit this robbery. Arun Shah (PW-6) was also present. The accused was apprehended and arrested. The prosecution in support of its case had examined eight witnesses. In his statement under Section 313 Cr.P.C. accused had pleaded innocence stating that he had been falsely implicated in this case. His defense was that Arun Shah (PW-6) was earlier working as a labourer in his house and there was a dispute regarding the work done by him and he was demanding more money. This had led to enmity. He along with Dukhan Shah (PW-5) had falsely implicated him in this case to extort money from him. No evidence was, however, led in defense.

4 On behalf of the appellant learned Amicus Curiae submits that this is a clear case of false implication. Attention has been drawn to DD No.18A wherein the first information of this incident was recorded. This information was given by Arun Shah (PW-6) wherein he had stated that one boy had attacked him with Chaaku (knife). He knows that boy.

Attention has thereafter been drawn to the complaint of PW-5 wherein he had stated that the accused had been armed with the half blade. Submission being that this knife had suddenly become a blade; this was for the reason that the prosecution was not clear about its stand. Argument being propounded that the appellant had been falsely roped in for the reason that PW-6 had worked in his house as a labourer and there was the money dispute which had now been converted to this false complaint. Additional submission being that it is the defense of the appellant right from inception and same suggestion has been given to the witnesses of the prosecution and thereafter the same stand had been taken by the appellant in his statement recorded under Section 313 Cr.P.C. A sufficient dent has been created in the version of the prosecution. Appellant is entitled to benefit of doubt and a consequent acquittal. In the alternate submission being that case under Section 397 of the IPC is not made out as a half edge blade even presuming was the weapon of offence but it would not amount to a deadly weapon within Section 397 of the IPC and the appellant is accordingly entitled to a modification of his sentence from Section 397 to Section 392 of the IPC.

The period of incarceration already suffered by him be treated as the

sentence imposed upon him.

5 Needless to state that these arguments have been refuted.

6 PW-5 was the complainant. He had on oath deposed that he was working as a mason/Raj Mistry. On 04.11.2012 at about 6.00 p.m. when he along with his nephew were coming towards his house and on reaching at K-Block, J.J.Colony, Wazirpur, Delhi they saw a young person who came in front of them caught hold of PW-5 by his clothes. He had a blade in his right hand and threatened them to cause injury to them if they would not hand over the money which they had and he took out Rs.250/- from right pocket of the pant of PW-5. This amount comprised of two currency notes in the denomination of Rs.100/-, five currency notes in the denomination of Rs.10/-. The appellant then ran away towards a gali. One policeman Bhoom Pal reached there and they along with the policeman ran after the assailant and apprehended him after some distance. A call at 100 number was made by PW-6. Police team reached. Statement of PW-5 (Ex.PW-5/A) was recorded. In his cross-examination he had admitted that he is a resident of the said block and he was not aware that the accused is resident of the same block. He did not know him from before. He volunteered that the accused may be

staying in the same block but he was not aware of the same. The accused showed him a half blade and threatened to slash him and then removed the money from the pocket of his pant. He had never seen the appellant previously in the area. PW-5 stated that he used to leave for work at 9.00 a.m. and returned by 6.00 p.m. He is residing in the locality since last 10 years along with PW-6. He denied the suggestion that he has falsely implicated the accused.

7 PW-6 was the person who had made the first call at 100 number. He had deposed that he was also doing the work of labour along with his uncle (PW-5). On 04.11.2012 when he along with his uncle were coming from towards their house the appellant came in front of them and caught hold of PW-5 and demanded money from him. The appellant had a blade and he threatened PW-5 and PW-6 that he would cause injury to them if they would not handover the money to him and he took out Rs.250/- from the right pocket of the pant of his uncle (PW-5). The appellant managed to flee. Policeman Bhoom Pal reached the spot. They along with policeman Bhoom Pal chased the appellant and apprehended him after some distance. PW-6 had made a call to 100 number about the incident. In the cross-examination PW-6 had stated

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that he had become very scared and perplexed due to the incident of robbery and in a hurry he had mentioned chakoo whereas it was a blade which was shown to them. He admitted that he knew the appellant as he had earlier worked in the house where the parents of the appellant were residing. PW-6 admitted that he is a labourer by profession and he had worked in the house where the parents of the appellant were staying and the accused was also staying there. He could not say whether PW-5 (his uncle) knew the accused prior thereto or not. Police party reached the spot. Public persons were not joined. He left the spot at 6.30 to 6.45 p.m. He denied the suggestion that due to previous enmity with the accused he had falsely implicated the appellant.

8 Constable Bhoom Pal (PW-4) had deposed that on the fateful day he was on patrolling duty at K-Block, Wazirpur, J.J. Colony. On that day at about 6.00 p.m. he saw two persons in a perplexed state and one person was running towards J-Block, and shouting *pakro-pakro* and stating that the running person had taken their money. On enquiry, PW-5 told him that he was robbed of Rs.250/- by the running person. He along with PW-5 and PW-6 managed to apprehend the accused whose name was revealed as Amit Kumar. Police party was informed.

A half piece of blade was recovered from right pant pocket of the appellant. In his cross-examination he admitted that he departed from the police station at 5.00 p.m. but he did not recollect the DD number with which he departed from the police station. He admitted that DD was recorded by the duty officer. He admitted that the place of incident was a thick populated area and a thick residential area and public persons were roaming around there. He admitted that the appellant was living in the same block where PW-5 and PW-6 were living i.e. K-Block. He deposed that he cannot say whether the complainant and the appellant were known to each other. He denied the suggestion that the PW-6 called 100number on his instructions. He admitted that the blade was easily available in the market. He admitted that the blade does not have any special mark of identification. The Investigating Officer to whom the investigation had been marked was SI Vijay Kumar examined as PW-8 who along with Constable Kuldeep Singh (PW-7) had reached in from of K-Block on DD no.18A having been marked to them. He admitted that he reached the spot. The appellant was already in the custody of PW-4 and the accused was pleading that he was falsely implicated. He could not say that the accused was B.C. of the area. He

denied the suggestion that the accused has been falsely implicated and no recovery was made from him. He admitted that initial information was regarding use of a knife but later on it was revealed that it was a half blade which was used by the appellant.

9 The scrutiny of the testimony of the aforementioned witnesses supports the submission of the appellant that this does appear to be a case where there are dents created in the version of the injured and the eye witnesses (the complainant and the eye-witness). The complainant was PW-5. He was the uncle of PW-6. As per his version he was residing in the same locality i.e. K- Block since last 10 years along with PW-6. The appellant was living in the same neighbourhood and this has clearly come in the version of PW-4 as also PW-6. Since PW-5 was living in the same vicinity for the last 10 years and admittedly PW-6 had worked as a labourer in the house of the appellant it would be difficult to believe that he had neither seen the appellant in the neighbourhood and nor did he know him. In fact on a specific query put to PW-5 on this count he has given evasive answers.

10 Version of PW-6 is clear. He had admitted that the accused was known to him. He has also admitted that he had worked in the house of

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the parents of the appellant where the appellant was also living. He had further denied the suggestion that because of a money dispute he along with his uncle had got the accused falsely implicated.

11 Pw-6 had also admitted that initially when he had made a call to 100 number he had stated that the appellant who was known to him was armed with a knife. However, what eventually followed was that the appellant was armed with a half blade and not a knife. This was also the complaint given almost at the same time by the complainant (Ex.PW-5/A) wherein he had stated that the accused had threatened him at a point of a blade. There is a clear difference in appearance of a knife and a blade; neither can a knife look like as a blade nor a blade can look like a knife. The distinction is stark. The version of PW-6 that the accused was armed with a knife which later on was not found to be a knife but a blade cast doubt on the version of the prosecution. PW-6 had admitted that he was working as a labourer in the house of the parents of the appellant. He has also admitted that he used to do work of a labourer with his uncle (PW-5) who was a Raj Mistry. They were PW-5 and PW-6 who were residing in this locality i.e. in K-Block since last 10 years. Appellant was also residing in the same locality. PW-6

had admitted that he knew the accused. PW-5 was giving evasive answers. In fact he had at that point of time denied knowing the appellant but in cross-examination he gave evasive answer. Since both PW-5 and PW-6 were in the same profession and in fact PW-5 being a Raj Mystry and PW-6 working under him it is difficult to believe that PW-6 who had worked in the house of the parent of the accused and was knowing him but PW-5 did not know him.

12 This circumstance as discussed supra by itself may not be sufficient circumstance to discredit the version of PW-5 and PW-6 but the cumulative circumstances which includes the initial complaint made by PW-6 wherein he had reported that the accused was armed with a knife but actually later on it was turned out to be a blade and the further fact that the incident had occurred at 6.00 p.m. on 04.11.2012 in a busy residential block (as admitted by PW-4) but no public persons either witnessed the incident or had been asked to join the raid, further the admission of PW-8 (Investigating Officer) that at the time when he reached the spot he saw that the appellant was pleading that he has been falsely implicated are all circumstances which are noted. It is also relevant to note that the defence of the appellant right from the inception

has been that he has been falsely implicated because of money dispute. PW-6 had worked as a labourer in the house of the appellant and this money dispute had led to his false implication. The fact that PW-6 had worked in the house of the appellant has also been admitted. The defense of the accused right from the cross-examination of the witnesses of the prosecution and thereafter in his statement recorded under Section 313 Cr.P.C. has been consistent. His defense that he has been falsely implicated was even noted by the Investigating Officer (PW-8) who on reaching the spot had noted this utterance of the appellant.

13 These cumulative circumstances have created a clear dent in the version of the prosecution who has failed to prove its case to the hilt. Appellant is entitled to a benefit of doubt and consequential acquittal. He be released forthwith, if not, required in any other case.

14 Appeal is disposed of in the above terms.

15 A copy of this order be sent to Jail Superintendant for compliance.

INDERMEET KAUR, J

SEPTEMBER 10, 2015
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