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

+ **CRL.A. 1235/2011**

Decided on 2nd February, 2015

RAHUL SINGH CHOUDHARY Appellant

Through: Mr. Ayyub Ahmad, Adv.

Versus

STATE GOVT. OF NCT OF DELHI

..... Respondent

Through: Mr. Yogesh Verma, APP for State
with SI Yad Ram, P.S. Tuglaq Road.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

A.K. PATHAK, J.(ORAL)

1. By the judgment and order on sentence, impugned in this appeal, trial court has convicted the appellant and his co-convicts, namely, Sibbu Vibhor and Ricky Kumar under Sections 392/34 of the Indian Penal Code, 1860 (for short, IPC) and sentenced them to undergo rigorous imprisonment for five years with fine of ₹2,000/- each and in default of payment of fine to further undergo simple imprisonment for three months. Appellant has also been convicted under Section 397 IPC and Section 25 of the Arms Act, 1959 ('the Act' for short) and sentenced to undergo rigorous imprisonment for seven years with fine of ₹3,000/- and in default of payment of fine to undergo

simple imprisonment for five months under Section 397 IPC; rigorous imprisonment for one year with fine of ₹500/- and in default of payment of fine to undergo simple imprisonment for one month under Section 25 of the Act.

2. Aggrieved by his conviction as well as sentences handed down to him, appellant has preferred this appeal.

3. Co-convict Sibbu Vibhor and Ricky Kumar had preferred Criminal Appeal 641/2011 and Criminal Appeal 753/2011 respectively and both these appeals have been disposed of vide order dated 2nd September, 2013; whereby their sentences were reduced to the period already undergone by them, after they gave up challenge to their conviction under Sections 392/34 IPC.

4. Prosecution story, as unfolded, is that Mohd. Islam (PW4) was passing through the roundabout near Claridges Hotel, New Delhi on 19th July, 2006 at about 1:30 am, when appellants whose names were disclosed after their apprehension signalled the auto to stop. PW4 stopped his auto rickshaw and both appellant along with his co-convicts boarded the auto rickshaw. They asked him to move the auto rickshaw towards back lane. In

the meantime, appellant took out a knife and pointed towards the PW4 and asked him to hand over all the articles in his possession; Co-convict Ricky Kumar snatched his purse containing ₹300/- and photocopy of driving license. Thereafter, all of them ran away. PW4 Mohd. Islam brought his auto rickshaw on the main road where he saw two police officials (PW2 Constable Vinod Kumar and PW3 Constable Naveen) coming from opposite direction. He narrated the incident to them. The said police officials thereafter, accompanied the PW4 to the said lane, where appellant and his accomplices were seen running. They were chased and apprehended by PW2 Constable Vinod Kumar and PW3 Constable Naveen. PW2 Constable Vinod Kumar sent an information about the incident at 1:35 am to the police station, pursuant whereof, DD No. 31-A (Ex.PW1/C) was recorded and handed over to PW 6 SI C.L. Meena, who along with PW5 Head Constable Pooran Chand reached the spot. From the possession of appellant, one button activated knife (Ex. P-2) was recovered. Sketch (Ex.PW2/A) of knife was prepared and thereafter it was seized vide seizure memo (Ex. PW2/B). Blade of knife was found 11 cm whereas handle of the knife was found 13.7 cm. Accordingly, total size of knife was 24.7 cm. Purse (Ex. P-1),

containing ₹300/- and photocopy of driving license was recovered from Ricky Kumar which was also seized vide seizure memo (Ex. PW2/C).

5. Statement (Ex.PW4/A) of PW4 was recorded by the Investigating Officer wherein PW-4 described the incident in the manner it has been detailed in the preceding paras hereinabove. PW6 C.L. Meena prepared rukka Ex. PW6/A pursuant whereof FIR No.143/2006 under Sections 392/411/34 IPC read with Section 25 of the Act was registered at Police Station Tughlak Road. Appellant and his co-convicts were arrested. On completion of investigation, appellant along with co-convicts was sent up to face trial by filing a charge-sheet in the court of Metropolitan Magistrate, Delhi. Later on, case was committed to the Sessions Court since offence under Section 397 IPC is exclusively triable by the Sessions Court.

6. On 30th April, 2009 charge under Sections 392/34 IPC was framed against the appellant and his co-convicts to which they pleaded not guilty and claimed trial. On the same day separate charges under Section 397 IPC and Section 25 of the Act were framed against the appellant to which he pleaded not guilty and claimed trial. Prosecution examined six witnesses in all. PW1 ASI Chhazuram Mahla had recorded the FIR on the basis of rukka sent by PW6 C.L. Meena and has deposed in this regard. He has also

proved the copy of FIR as PW1/A. PW4 Mohd. Islam is the victim and has fully supported the prosecution version. While deposing in court he has narrated the incident in the same manner as described by him in his statement (Ex. PW4/A). He identified the appellant and his accomplices in the court as the same persons, who had robbed him. He has categorically deposed that appellant had taken out a knife and pointed towards him. He has also identified Ricky Kumar who had taken out his purse containing ₹300/- and copy of driving license. He has further deposed that immediately after the incident, he came out on the main road where PW2 Constable Vinod Kumar and PW3 Constable Naveen were seen by him on the motorcycle and he informed them that he was robbed by three boys at which all of them went to the spot where appellant and his co-convicts were seen running. Appellant and his co-convicts were apprehended by PW2 Constable Vinod Kumar and PW3 Constable Naveen. He has further deposed that knife was recovered from the appellant and purse containing ₹300 and photocopy of driving licence were recovered from Ricky Kumar. He has identified the knife recovered from the appellant and purse in the court. His statement has remained un-shattered in his cross-examination. PW2 Constable Vinod Kumar and PW3 Constable Naveen have fully

corroborated PW4 Mohd. Islam and have also deposed about the apprehension of appellant and co-convicts by them. PW4 has given time of incident as 1:30 am. Hardly after five minutes of incident, PW2 and PW3 had arrived near the spot and gave chase to the appellant and co-convicts and apprehended them and recovered knife as well as purse from their possession. PW2 and PW3 have also identified the appellant and co-convicts as the same persons who were apprehended by them near the spot. Their statements have also remained un-shattered in their cross-examination. PW2 and PW3 have fully corroborated PW4 with regard to apprehension of appellant and recoveries effected from them. Trial court, in my view, has rightly accepted their testimony so as to conclude that appellant along with co-convicts had robbed PW4 Mohd. Islam of his purse containing ₹300/- and photocopy of driving license.

7. At the time of incident appellant was armed with a button activated knife which, keeping in mind its dimensions and shape, will fall within the ambit and scope of 'deadly weapon' as envisaged under Section 397 IPC. PW4 has categorically deposed that appellant had taken out the knife (Ex.P-2) from his pocket and had pointed towards him while commanding him to part with the articles which he was having in his possession and he was

scared of knife, that is, 'deadly weapon'. It is, thus, clear that appellant had used the deadly weapon at the time of committing robbery. Accordingly, in my view, ingredients of offence under Section 397 IPC are fulfilled. 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.

8. Appellant was armed with a 'deadly weapon' and had used the same while committing robbery, thus, he has rightly been awarded sentence of seven years as envisaged under Section 397 IPC.

9. Learned counsel for the appellant has vehemently contended that incident took place at about 1:30 am and it was dark at that time. Appellant was not apprehended while committing robbery. He was apprehended after the robbery. Appellant was stranger to PW-4, thus, TIP was required, which was not got conducted, accordingly, identification of appellant by the PW4 in Court, for the first time, cannot be relied upon. I do not find any force in this contention. Appellant was apprehended immediately after the incident near the spot while he was trying to escape and that too in the presence of

appellant. Accordingly, TIP was not required. If an accused is apprehended in the presence of victim and on his identification, no TIP is required to be conducted; as it would be a futile exercise.

10. Learned counsel for the appellant has next contended that no independent witness was joined in the investigation, thus, appellant could not have been convicted on the sole testimony of an interested witness, that is, PW4. This argument has no force. There is no law that testimony of victim cannot be accepted without corroboration from an independent public witness. Testimony of victim has to be treated at par with the testimony of any other independent witness. The only care and caution is to be taken is that testimony of such a witness has to be closely and minutely scrutinized. In this case, a close scrutiny of statement of PW4 clearly shows that he is trustworthy and reliable witness and there is no reason to discard his testimony. First of all, at 1:30 am in the night, presence of independent witnesses at the spot was highly improbable. It has not come on record that crowd had gathered at the spot. Above all, apathy of public persons to join the investigation is not uncommon in the metropolitan cities like Delhi. Judicial notice of the fact can be easily taken that public persons are normally reluctant to join the investigation in order to avoid their harassment

by the accused and also their subsequent appearances in court. Accordingly, this argument of the learned counsel is rejected.

11. For the foregoing reasons, I am of the view that appellant has rightly been convicted under Section 397 IPC and Section 25 of the Act. Minimum sentence of seven years, as envisaged under Section 397IPC, has been awarded to the appellant which requires no interference.

12. Appeal is dismissed.

A.K. PATHAK, J.

FEBRUARY 02, 2015

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