

\$~R-111A and R-111B

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

% *Judgment reserved on:10.12.2015*
Judgment delivered on:15.12.2015

+ CRL.A. 1172/2013
SUMIT

..... Appellant
Through Mr. Dinesh Malik, Adv.
versus

STATE

..... Respondent
Through Mr.Kewal Singh Ahuja, APP for
the State.

+ CRL.A. 692/2014
DEEP SINGH @ DEEPLA

..... Appellant
Through Mr. Dinesh Malik, Adv.
versus

STATE

..... Respondent
Through Mr.Kewal Singh Ahuja, APP for
the State.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 These appeals are directed against the impugned judgment and order on sentence dated 23.08.2013 & 26.08.2013 respectively wherein

the appellant Deep Singh stands convicted under Section 397 read with Sections 32/43 of the IPC. Maximum sentence awarded to him is RI 7years for his conviction under Section 397 of the IPC. For his second conviction, he has been sentenced to undergo RI for a period of 5 years and to pay a fine of Rs.10,000/- and in default of payment of fine, to undergo SI for 6 months. Nominal roll of the appellant reflects that as on date, he has undergone incarceration of 3 years and 10 months. The second convict Sumit has been convicted under Section 392/34 of the IPC. He has been sentenced to undergo RI for a period of 5 years and to pay a fine of Rs.10,000/- and in default of payment of fine, to undergo SI for 6 months. His nominal roll has been requisitioned. This reflects that as on date, he has undergone incarceration of 3 years.

2 The version of the prosecution was unfolded in the testimony of the complainant Rashik (PW-4). His version was to the effect that he is a resident of A Block, Sonia Vihar, Delhi. He was working as a barber in Apex Parlour, Kalyan Puri. On 16.12.2010 at about 10:15 pm while he was returning home and reached near park at Khichripur, three boys caught him from behind; one of them (later on identified as Deep Singh) showed him a knife and took out his purse and mobile phone of Tata

make. The accused started running after robbing the complainant. The complainant was able to apprehend one of the three persons whose person was revealed as the appellant Deep Singh. Further version of the complainant was that Deep Singh was the person who had branded the knife. PCR van came. His statement (Ex.PW-4/A) was recorded. Investigation was set into motion. In the course of investigation, the prosecution had examined 5 witnesses of whom the complainant (pW-4) was the star witness and his version as recorded in the complaint was reiterated on oath in Court.

3 He was subjected to a lengthy cross-examination but he did not deter from his stand. His version being reiterated to the effect that three persons had robbed him one of whom had branded the knife and that person was Deep Singh. Deep Singh was apprehended by the complainant and handed over to the police. However no knife was recovered from Deep Singh. The disclosure statement of Deep Singh was recorded by the Investigating Officer SI Rahul Kumar (PW-5). Pursuant to the disclosure statement of accused Deep Singh, the role of the second accused namely Sumit surfaced. Appellant Sumit inspite of search could not be arrested. He had surrendered on 03.01.2011 in the

Crl. Appeal Nos. 1172/2013 & 692/2014

Karkardooma Court. Accused Sumit was arrested. He made a disclosure statement but no recovery could be effected from him. He was subjected to TIP but he refused TIP and in the TIP proceedings (Ex.PW-3/B), the ground for refusal to join TIP was that his photograph had been shown in the police station Kalyan Puri between 09:00 to 10:00 pm by 2-3 police persons on 03.01.2011.

4 The Trial Judge had drawn adverse inference against accused Sumit for refusal to join TIP.

5 Testimony of PW-4 (the complainant) becomes relevant. He had on oath deposed that he had gone to the police station where he identified the accused Sumit. Thus the ground taken by appellant for refusal to join the TIP was a valid ground and he having given a justification for not joining TIP the Trial Judge had committed an illegality in drawing adverse inference against Sumit.

6 On this count, the version of the prosecution clearly shows that the offence had taken place at 10:15 pm at winter night i.e. on 17.12.2010. The only accused who was apprehended at the spot was the appellant Deep Singh. The other accused Sumit had escaped and he was arrested later on. No recovery has been effected from him. Against
Crl. Appeal Nos. 1172/2013 & 692/2014

Sumit, the Trial Judge had largely relied upon the fact that he had refused to join TIP. This Court is of the view that refusal to join TIP by Sumit was for a justifiable reason in view of the fact that PW-4 had admitted that he had seen the appellant Sumit in the police where he had identified him. Adverse inference for not joining TIP qua Sumit could not have been drawn. Apart from the disclosure statement of co-accused Deep Singh, there is no other evidence to connect the appellant Sumit with the crime. The disclosure statement of co-accused under Section 30 of the Evidence Act may be a relevant piece of evidence but taken by itself, it cannot form the basis of a conviction. Appellant Sumit is entitled to a benefit. Accordingly while giving him benefit of doubt, he is acquitted. He be released forthwith, if not required in any other case.

7 Qua the role of Deep Singh, the complainant had stated that Deep Singh was the person who had branded the knife upon him and the subsequent version of PW-4 that Deep Singh had been caught at the spot but no knife having been recovered from him also creates a doubt in the mind of the Court as to whether it was Deep Singh who had branded the knife upon the complainant or the other co-accused who had managed to escape. This is especially keeping in the view the fact that the incident

had occurred on the winter on a dark night. The incident had occurred at 10:15 pm when the complainant was returning from his job to the house and it was near the park where the incident had occurred. Even as per the site plan (Ex.PW-5/B) no light has been shown. No pole light has been depicted in this site plan. Thus the possibility of PW-4 having been confused as to who out of the 3 assailants had pointed the knife cannot be ruled out. The conviction of appellant Deep Singh under Section 397 of the IPC is set aside. His conviction under Section 392 of the IPC is maintained. His sentence of RI 5 years is reduced to RI 4 years. Fine of Rs.10,000/- remains unaltered but in default of payment of fine, the appellant shall undergo SI for two months.

8 With these directions, appeals are disposed of.

9 A copy of this order be sent to the Jail Superintendent for intimation to the appellants.

INDERMEET KAUR, J

15 DECEMBER , 2015

A