

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

+ **CRL.REV.P.208/2015 & CRL.M.B.3247/2015**

Reserved on: 02.07.2015

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Date of Decision:07.07.2015

NARESH @ TINKOO

..... Revisionist

Through: Mr. Imran Khan, Adv.

Versus

THE STATE (GOVT. OF NCT), DELHI

..... Respondent

Through: Ms. Isha Khanna, APP.

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR, J:

1. The petitioner has impugned the judgment and order of conviction and sentence dated 12.8.2013 and 19.8.2013 passed by the learned Trial Court in connection with FIR No.9/2013 (P.S.J.P.Kalan) whereby he has been convicted under Section 392 of the Indian Penal Code and has been sentenced to undergo R.I for three years.

2. He further assails the Appellate Court's judgment dated 7.11.2014 passed in Crl.Appeal No.8/2004 by the learned Special Judge, P.C.Act, CBI-Dwarka Courts, New Delhi whereby the trial Court judgment has been upheld and affirmed.

3. Avdesh, PW.2 was stopped by the petitioner while he was passing through the liquor vend on his motorcycle on 26.1.2013. The petitioner wanted a lift which was permitted by Avdesh (PW.2). After going to

some distance, on the point of knife, PW.2 was made to stop the motorcycle. Petitioner is said to have demanded money from PW.2. The motorcycle of PW.2 bearing registration No.DL4S BH 5682 was taken away by the petitioner.

4. The petitioner was apprehended by the police on 28.1.2013 while he was driving the same motorcycle which he had snatched from PW.2. Because no valid paper was furnished regarding the possession of the motorcycle, he was arrested and the motorcycle was seized.

5. A case under Section 392/411 was registered against him, which on investigation, was found to be true. The petitioner was put on trial.

6. During trial, Avdesh (PW.2) supported the prosecution version and identified the petitioner as the person who had taken lift from him and had, later, robbed him of his motorcycle.

7. SI Satish Kumar (PW.6) is a witness to the recovery of stolen motorcycle. He deposed before the Court that the petitioner was apprehended by him with the stolen motorcycle while he was on duty for checking the vehicle at Dhandsa Border picket.

8. The petitioner in his statement under Section 313 of the Code of Criminal Procedure denied the allegation and submitted that the recovery of the motorcycle from him is a paper work and a sham.

9. The Trial Court, believing the testimonies of the witnesses, convicted the appellant under Section 392 of the IPC and after taking all the extenuating circumstances, sentenced him to undergo RI for three

years by judgment and order of conviction and sentence referred to above.

10. The petitioner appealed against the aforesaid judgment, seeking its annulment on grounds viz. that the knife used by the petitioner was not seized and that the motorcycle was not identified by PW.2 in the Court. The other grounds which were canvassed at the trial stage were about serious lapses on the part of the prosecution and divergence in the deposition of witnesses inter-se.

11. The Appellate Court did not accede to such grounds for interfering with the Trial Court's judgment and order. Consequently, the Trial Court's judgment and order has been upheld and affirmed.

12. On perusal of both the judgments, this Court is of the opinion that no illegality or irregularity was committed while appreciating the evidence against the petitioner. Cogent and legally tenable grounds have been given by the Trial Court and the Appellate Court in convicting and upholding the conviction of the petitioner under Section 392 of the IPC.

13. It is well settled that mere non recovery of a weapon used in the crime would not justify the throwing of the case over board. Similarly, minor contradictions which do not affect the nature/substratum of the prosecution version, cannot upset the findings of the Trial Court. The counsel for the petitioner submitted that he has remained in jail for approximately 2½ years.

14. This Court is of the opinion that the sentence imposed on the petitioner requires to be modified, in the interest of justice. The sentence

of the petitioner is modified to the extent of the period undergone by him without disturbing the concurrent findings of guilt. The concurrent judgments of the Court below are upheld and affirmed.

15. The petitioner be released from jail, if not wanted in any other case.

16. Criminal Revision Petition is disposed of accordingly.

17. No order need be passed in Crl.M.B No.3247/2015 as it is rendered infructuous in view of the modification of the sentence.

18. A copy of this order be sent to the Jail Superintendent, Tihar for information and compliance.

ASHUTOSH KUMAR, J

July 07, 2015

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