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

+ CRL.A. 444/2015

Decided on 15th May, 2015

YOGESH

..... Appellant

Through: Mr. Swaran Kamal Singh, Adv.

Versus

STATE GNCT OF DELHI

..... Respondent

Through: Mr. Yogesh Verma, APP for State
with SI Uma Datt, P.S. Mangol Puri.

AND

CRL.A. 556/2015

MAHESH

..... Appellant

Through: Mr. Alpana Pandey, Adv.
versus

STATE

..... Respondent

Through: Mr. Amit Ahlawat, APP for State
with SI Uma Datt, P.S. Mangol Puri.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

A.K. PATHAK, J. (ORAL)

1. Both the above-noted appeals arise from the same judgment, therefore, are disposed of together.

12. Appellants have been convicted under Sections 392/411/34 IPC by the trial court. Appellant-Mahesh has been sentenced to undergo simple imprisonment for a period of four years with fine of ₹5,000/- and in default of payment of fine to undergo simple imprisonment for a period of 30 days for the offence under Sections 392/34 IPC. Both the appellants have been sentenced to undergo simple imprisonment for a period of one year for the offence under Section 411 IPC. Appellant-Yogesh has also been convicted under Section 397 IPC and sentenced to undergo simple imprisonment for a period of seven years with fine of ₹5,000/- and in default of payment of fine to undergo simple imprisonment for a period of 30 days. Appellant-Yogesh has further been convicted under Section 25 of the Arms Act and sentenced to undergo simple imprisonment for a period of one year with fine of ₹2,000/- and in default of payment of fine to undergo simple imprisonment for a period of 15 days. Benefit of Section 428 Cr.P.C. has been accorded to both the appellants.

3. FIR No. 18/12 under Sections 392/397/411/34 IPC and Section 25 of the Arms Act was registered at police station Mangol Puri on the complaint of Shiv Murat (PW1). Complainant alleged in the FIR that on 13th January, 2012, at about 09:00 pm, he was returning home from his work place and

when he reached near Peera Garhi flyover, appellants intercepted him. Yogesh caught hold of him from behind and kept a knife on his neck; while Mahesh took out mobile phone and purse from his pant's pocket. Yogesh threatened that in case complainant raised alarm, he would kill him. Complainant somehow saved himself and escaped. He saw a PCR vehicle parked at some distance and told the police officials present in the vehicle that he was robbed by two boys. Police officials accompanied him towards the spot, chased the appellants and caught hold of Yogesh; while Mahesh succeeded in escaping. Knife and purse were recovered from the possession of Yogesh. Appellants were not known to the complainant and their names were disclosed after the arrest of Yogesh.

4. Information was sent to police station Mangol Puri pursuant whereof DD No. 104B was recorded and handed over to SI Sachin (PW6) who along with Const. Udai Bhan (PW5) reached the spot. HC Ram Kishan (PW3) of PCR, who had apprehended Yogesh, handed over Yogesh to SI Sachin along with the knife and purse recovered from him. SI Sachin recorded the statement of complainant (PW1) and wrote rukka Ex.PW6/B and sent the same to police station Mangol Puri per hand Constable Udai Bhan, pursuant whereof FIR Ex. PW2/A was registered. Yogesh was arrested vide arrest

memo Ex. PW1/E after his personal search Ex. PW1/F was taken. Sketch of knife Ex. PW1/B was prepared and thereafter knife was sealed and seized vide seizure memo Ex. PW1/C. Purse was also seized vide a seizure memo Ex. PW1/D.

5. Yogesh disclosed that Mahesh was with him during the commission of crime. He also disclosed the address of Mahesh. SI Sachin along with Constble Manoj (PW4) went in the search of Mahesh and arrested him at about 11:50 am on 14th January, 2012 on the pointing of complainant, vide arrest memo Ex. PW1/H after his personal search was conducted vide search memo Ex. PW1/I. Mobile phone of PW1 was recovered from the pant's pocket of Mahesh and the same was seized vide seizure memo Ex. PW1/J.

6. On completion of investigations, charge-sheet was filed in the court of Metropolitan Magistrate who took cognizance of the offence and committed the case to Sessions Court, after complying the provisions of Section 207 Cr.P.C., since the offence under Section 397 IPC is exclusively triable by the Sessions Court.

7. Charge under Sections 392/34 was framed against the appellants on 8th August, 2012 to which they pleaded not guilty and claimed trial. Separate charges under Section 392 read with Section 397 IPC and Section

25 of the Arms Act were framed against Yogesh besides charge under Section 411 IPC on the same date was framed to which he pleaded not guilty and claimed trial. Separate charge under Section 411 IPC was also framed against Mahesh in respect of possession of stolen property, that is, mobile phone to which he pleaded not guilty and claimed trial.

8. Material witnesses in this case are PW1-Shiv Murat, PW3 H.C. Ram Kishan, PW4 Const. Manoj, PW5 Const. Udai Bhan and PW6 SI Sachin. As per the prosecution, PW1 is relevant to prove the incident, arrest of appellants as also recovery. PW3 is relevant regarding apprehension of Yogesh and recoveries from him. PW4 and PW6 are relevant for the arrest of Mahesh and recovery of mobile phone from him.

9. PW1 has supported the prosecution case as regards robbing of his purse and mobile phone by the appellants. PW1 deposed that Yogesh had used the knife while committing robbery. He has further deposed that appellants had snatched his purse containing 7 currency notes in the denomination of ₹10/- and one coin of ₹10/-. He has identified his purse as well as mobile phone produced by the prosecution in Court. He has identified the appellant correctly, inasmuch as, they were arrested on his pointing. He has categorically deposed that Yogesh was arrested at the

spot by PW3 H.C. Ram Kishan of PCR. PW3 Ram Kishan has corroborated this version of PW1 with regard to apprehension of Yogesh at the spot immediately after the incident of robbery. PW1 has further deposed that name of Mahesh was disclosed by Yogesh and he along with SI Sachin, Const. Manoj had gone at the address given by Yogesh to apprehend Mahesh. He has also deposed that Mahesh was apprehended by SI Sachin in his presence and on his pointing on 14th January, 2012. He has further deposed that from the search of Mahesh, mobile phone was recovered. Testimony of PW1 has remained unshattered on these points and has rightly been accepted by the trial court.

10. Learned counsels for the appellants have failed to point out any material discrepancy in the statements of PW1 Shiv Murat, PW3 HC Ram Kishan, PW4 Const. Manoj and PW6 SI Sachin on the above aspects. Accordingly, I am of the view that trial court has rightly convicted both the appellants under Section 392/34 IPC and appellant-Mahesh under Section 411 IPC.

11. As regards recovery of knife and purse from Yogesh at the spot after he was apprehended by HC Ram Kishan, the same is suspicious and doubtful. As per the prosecution, Yogesh was apprehended by PW3 HC

Ram Kishan immediately after the incident on the pointing of PW1 Shiv Murat and on his search by PW3, knife and purse were recovered. PW3 HC Ram Kishan sent information to the police station pursuant whereof DD entry was recorded and handed over to PW6 SI Sachin who along with PW5 Const. Udai Bhan reached the spot. PW 3 HC Ram Kishan handed over appellant Yogesh, the knife and purse to PW6 SI Sachin. Surprisingly, sketch of knife Ex. PW1/B, seizure memo of knife Ex. PW1/C and seizure memo of purse Ex. PW1/D do not contain his signatures as a witness even though arrest memo and personal search memo bears his signatures. Personal search and arrest memo have been signed by PW6 SI Sachin, PW3 HC Ram Kishan and PW5 Const. Udai Bhan as witnesses. However, sketch of knife, seizure memo of knife and seizure memo of purse have been signed by PW 1 Shiv Murat and PW 5 Constable Udai Bhan as witnesses. This creates a doubt that PW3 HC Ram Kishan had recovered the knife and purse after apprehending Yogesh. Accordingly, Yogesh is entitled to get benefit of doubt with regard to recovery of knife and purse from him.

12. 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 causes grievous hurt to any person or attempts 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.

13. In this case, prosecution has failed to prove that Yogesh had used any 'deadly weapon' at the time of commission of robbery. Admittedly, PW1 had not sustained any grievous injury. First of all, though PW1 has deposed that Yogesh had used the knife while committing robbery but no evidence had come on record to show that knife, allegedly used by Yogesh, was a 'deadly weapon', inasmuch as, recovery of knife itself has failed in this case. All kinds of knives are not per se deadly. It is the size, shape and manner of use which makes it deadly. As a fact, prosecution has to prove that 'deadly weapon' is used while committing robbery before Section 397 is applied

to award minimum sentence to such an accused. Accordingly, in my view, ingredients of offence under Section 397 IPC are not attracted against Yogesh and he is acquitted for the offence under Section 397 IPC.

14. Since recovery of robbed purse from Yogesh is doubtful, ingredients of offence under Section 411 IPC are also not attracted qua him and he is acquitted under the said offence as well. Similarly, since recovery of knife has been disbelieved, ingredients of offence under Section 25 of the Arms are also not attracted and he is acquitted under the said provision also.

15. For the foregoing reasons, conviction of appellants under Section 392/34 IPC is confirmed. As regards Mahesh, his conviction under Section 411 IPC is also confirmed. Appellants are in incarceration for more than three and a half years. Their sentences under Section 392/34 are reduced to the period already undergone by them. As regards sentence of Mahesh under Section 411 IPC is concerned, the same is also maintained. However, since same has been directed to run concurrently with the other sentences, sentence of Mahesh under Section 411 IPC stands completed. Appellants be released from the jail forthwith, if not wanted in any other case.

16. Both the appeals are disposed of in the above terms.

17. Copy of the judgment be sent to the Jail Superintendent for serving it on the appellants and for compliance.

A.K. PATHAK, J.

MAY 15, 2015
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