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

% *Date of Judgment: 01.10.2015*

+ CRL.A. 1337/2012
MD. ARIF

..... Appellant
Through Mr. Neeraj Bhardwaj, Adv.

versus

STATE

..... Respondent
Through Ms. Meenakshi Dahiya, APP

+ CRL.A. 386/2012
MOHD. NOOR

..... Appellant
Through Mr. Pawan Kumar Bahl, Adv.

versus

STATE

..... Respondent
Through Ms. Meenakshi Dahiya, APP

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 These are two appeals filed by Mohd. Arif and Mohd. Noor. Mohd. Arif is a convict under Section 397 of the IPC. He has been sentenced to undergo RI for a period of 7 years and to pay a fine of Rs.2,000/- and in default of payment of fine to undergo SI for 15 days. His nominal roll has been requisitioned. It reflects that as on date, he has

undergone incarceration of about 5 years and 6 months including remission. His jail conduct is satisfactory. The second appellant namely Mohd. Noor is a convict under Section 392 of the IPC. He has been sentenced to undergo RI for a period of 3 years and to pay a fine of Rs.2,000/- and in default of payment of fine to undergo SI for 15 days. His nominal roll reflects that as on date, he has undergone incarceration of 2 years and almost 3 months including remission. His jail conduct is also satisfactory.

2 The version of the prosecution was unfolded in the testimony of the complainant (Dinesh). He was examined as PW-4. He has deposed that on the fateful day i.e. on 01.06.2011 at about 08:30 to 08:45 PM when he was returning from his work and alighted at Punjabi Bagh power house, he took lift in auto No. 8231 in which two persons were already there as also the driver of the auto. When they reached near Britannia bridge, one of the person namely Mohd. Arif put a knife on his neck and snatched his Samsung mobile; accused Azim took Rs.480/-. He was thrown out of the auto. He informed the police who were nearby. Accused persons were apprehended after chasing the TSR. This witness was subject to a lengthy cross-examination. He admitted that the

knife which was taken out by Mohd. Arif was in the pocket of the pant worn by him. It was not a buttondar knife; it was a simple knife. When he had sat in the TSR, it was moving slowly. The mobile had been purchased by him 8 months ago and this had been recovered from the accused Mohd. Arif. He had also been robbed of Rs.480/- which had subsequently been recovered from the third accused Mohd. Azim. This Court has been informed that Mohd. Azim has undergone incarceration imposed upon him. As such he has not filed any appeal. PW-4 was categorical on the identification. Submission being that he had identified the accused persons at the spot itself as the TSR had been apprehended by the police party who had chased the TSR and caught them near the Britannia bridge.

3 The knife was seized vide memo Ex.PW-3/B and its sketch (Ex.PW-3/A) was prepared. The Investigating Officer SI Radhey Shyam was examined as PW-7. He had been accompanied by HC Ram Rattan (PW-3) and constable Tej Pal (PW-6). PW-3 and PW-6 had also signed Ex.PW-3/A and Ex.PW-3/B.

4 On the basis of the aforementioned evidence which had been collected by the prosecution, the accused persons were convicted and sentenced as

Crl. Appeal Nos.1337/2012 & 386/2012

aforenoted.

5 The foremost submission of the learned counsel for appellant Mohd. Arif is that the sketch of the knife clearly shows that it is a long knife, it was a simple knife and not being buttondar, it was not foldable; this long knife could not have been put in the pocket of the accused Mohd. Arif as is the version of the PW-4. There is a clear doubt on the recovery of the weapon which was allegedly used and that which has been produced in the Court as presuming that the version of PW-4 is correct and a knife had been used and had been recovered from the pant pocket of Mohd. Arif, the knife which had been produced in Court and the sketch of which had been prepared (Ex.PW-3/A and Ex.PW-3/B) clearly shows that such a long knife which measures 27 cms in length and not being foldable could not have been placed in the pant pocket. It is impossible to believe that a person having such a long knife could keep it in his pant pocket and that too while sitting in the TSR as is the further version of PW-4.

6 This submission of the learned counsel for appellant Mohd. Arif appears to be largely correct. The seizure memo and the sketch of the knife disclose that it was a long knife; blade measures 16.5 cms and

CrI. Appeal Nos.1337/2012 & 386/2012 Page 4 of 7

handle was 10.5 cms; the total length of the knife is 27 cms. Such a long knife which is not foldable at the cost of repetition cannot be put in a pant pocket; even presuming that the pocket is very long, even then such a knife if put in a pant pocket would definitely not permit the holder to sit. Thus the version of the complainant (PW-4) on this count that the knife was recovered from the pant pocket of Mohd. Arif who was sitting in the TSR and he had taken it out from his pant pocket but considering the length of the knife which is 27cms does not corroborate this version as it would be wholly impossible to believe that such a long knife could be put in a pant pocket and that too when the person was sitting. The recovery of the weapon clearly becomes doubtful.

7 A conviction under Section 397 of the IPC can be sustained only if it is established by the prosecution beyond all reasonable doubt that the offender had used the 'deadly weapon' at the time of committing robbery or dacoity. This Court is of the view that the alleged recovery of the deadly weapon has become doubtful in view of the size of the knife and the testimony of PW-4 which has been discussed supra.

8 This Court is accordingly inclined to modify the conviction of appellant Mohd. Arif from Section 397 of the IPC to one under Section

392 of the IPC. The ingredients of Section 392 of the IPC stand satisfied as admittedly a robbery had been committed on the complainant by the accused person; they had been apprehended at the spot and from Mohd. Arif apart from the aforementioned knife, the Samsung mobile of the complainant was also recovered and the fact that this mobile was purchased by the complainant was further established from the proof of purchase of the mobile which has been proved as Ex.PW-3/H1. From accused Mohd. Azim, a sum of Rs.480/- was recovered. From the third accused Mohd. Noor, no recovery was effected but the fact that he was a co-accomplice and was a part of this crime stands established by the fact that all of them were admittedly together at the time when this offence of robbery was committed upon the victim; they had also been apprehended at the spot just minutes after the incident.

9 Accordingly, while maintaining the conviction of both the appellants under Section 392 of the IPC and noting the period of incarceration already suffered by each of them; Mohd. Arif having suffered incarceration of 5 years and 6 months and Mohd. Noor also having suffered incarceration of 2 years and 3 months (out of total period of 3 years which has been imposed upon him, the sentence

already suffered by them be treated as the sentence imposed upon each of them. Fine amount remains unaltered. Subject to deposit of fine, they be released forthwith, if not required in any other case.

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

INDERMEET KAUR, J

OCTOBER 01, 2015

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