

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

+ **CRL.A. 124/2011 & CrI.M.A No.3030/2014**

% Reserved on: 13.07.2015
Date of Decision: 23.07.2015

AJAY @ RAJESH Appellant
Through: Ms.Aishwarya Rao, Advocate.

versus

STATE Respondent
Through: Mr.Yogesh Verma, APP.
ASI Jaipal, P.S.Adarsh Nagar.

CRL.A. 1623/2013 & CrI.M.A No.18864/2013

DEVI PRAKASH YADAV Appellant
Through: Mr.Rajender Chhabra, Advocate.

versus

STATE Respondent
Through: Mr.Yogesh Verma, APP.
ASI Jaipal, P.S.Adarsh Nagar.

CORAM:
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR, J:

1. Both the appeals have been heard together and are disposed of by this common judgment.

2. Both the appellants viz. Ajay @ Rajesh (Crl.A.124/2011) and Devi Prakash Yadav (Crl.A.1623/2013) have impugned the judgment and order of conviction and sentence dated 9.3.2010 and 23.3.2010 respectively whereby the learned ASJ, Rohini Courts, Delhi in Sessions Case No.1071/2009 (P.S. Adarsh Nagar) convicted the appellants under Sections 392/394 of the IPC and Sections 25/54/59 of the Arms Act and sentenced them to undergo rigorous imprisonment for 10 years, fine of Rs.25,000/- (in default of which SI for one month) for offences under Section 392/34 of the IPC read with Section 394 and RI for two years, fine of Rs.1000 (in default of which SI for 5 days) for offence under Sections 25/54/59 of the Arms Act).

3. The appellants and one Bhim @ Sagar have been charged for committing robbery with an attempt to cause death of Subhash Juneja (PW.1) on 3.9.2008 at Subzi Mandi Azad Pur.

4. Subhash Juneja (PW.1), the injured (complainant) alleged that he had gone to Azadpur Subzi Mandi for collecting the money from his customers. Thereafter while on way on his scooter, in front of a shop three miscreants came in front and forced him to stop. Two of the accused persons struck him on his head by dandas from behind. One of the accused fired at him with a country made pistol which hit him in his shoulder. His brief case, which contained Rs.1.5 lakhs in cash, driving license, cheque book, mobile phone etc was snatched. The miscreants left the scene of the occurrence.

5. Subhash Juneja (PW.1) in his supplementary statement provided the IMEI number of his mobile phone which also had been snatched away by the miscreants. The aforesaid number was put on surveillance.
6. The aforesaid IMEI number was found to be running in the name of Smt. Shiela Devi wife of Satinder Singh (PW.5). When Satinder Singh (PW.5) was interrogated he disclosed that the mobile phone was purchased from one Rajesh on 4.9.2008. A sim card of IDEA was obtained by PW.5 in the name of his wife. The aforesaid mobile phone was seized vide memo Ex.PW.5/A.
7. The appellant Ajay @ Rajesh was arrested on 17.9.2008 along with co-accused Bhim @ Sagar, on the prompting of a secret informer. The search of the appellant led to the recovery of one katta and one live cartridge.
8. On the disclosure statement made by appellant Ajay @ Rajesh and Bhim @ Sagar the location and the identity of the third accused namely Appellant Devi Prakash was ascertained. Appellant Devi Prakash was stated to be behind the bars in Azamgarh jail. He also made disclosure statement accepting his guilt.
9. During trial, Subhash Juneja (PW.1) identified the appellants as the offenders who had stopped his scooter and had snatched his bag containing valuables. PW.1 has gone on to state that Bhim @ Sagar, another co-accused, had fired upon him whereas the appellants assaulted him with danda on his head from behind.

10. Similarly Ram Lal Prajapati (PW.2) who runs a pan shop in Azadpur Subzi Mandi, claiming himself to be an eye witness, has corroborated the testimony of PW.1. He has stated that when PW.1 reached near his shop on the scooter, he heard the sound of gunshot. Three persons had surrounded PW.1. The brief case of PW.1 was snatched away and the miscreants thereafter left the scene of occurrence. PW.2 aforesaid has identified the appellants in the Court.

11. The identification of the appellants as the participants in the occurrence, therefore, stands established.

12. It has been contended on behalf of the appellants that PW.2 does not specify the exact role played by the appellants in his deposition before the Court. Such a contention is being noted only to be rejected. PW.1 has referred to the specific roles played by the appellants and absence of attributing such roles to the appellants by PW.2 does not assume any significance especially when he has rightly identified the appellants in the Court.

13. Dr.Satish Tyagi (PW.7) examined PW.1 and opined the nature of injuries on his person as dangerous. He has proved his report which is Exhibit PW.7/A. PW.7, on an application made by the IO for the supply of the bullet, made an endorsement (Ex.PW.7/B) stating that the bullet was found embedded in the body of PW.1 and it was not feasible to take it out without endangering the life of PW.1.

14. Dr.Ranjan Kumar (PW.8) who examined the X-ray plates of PW.1 has proved PW.8/A, which is his report. PW.8 has found evidence of

laceration and hemorrhagic consolidation near chest and some oval sized metallic density suggestive of the bullet being inside the body.

15. Dr.R.S.Misra (PW.9) had examined PW.1 at BJRM hospital and had found the following injuries:-

- 1. 2 CM CLW just above the left eye brow.*
- 2. 2 CM CLW on the left side of forehead.*
- 3. 3 CM CLW on the right zygomatic area of face.*
- 4. Forearm wound on entry on the right side of the anterior chest wall.*
- 5. Swelling on the right parietal area of the skull*

PW.9 had referred Subhash Juneja (PW.1) to the surgery department for further management. He has also proved the MLC prepared by him (Ex.PW.9/A).

16. Such medical evidence do lend assurance to the prosecution version that Subhash Juneja (PW.1) was injured in the robbery and was also divested of his belongings.

17. The allegation of firing at him has been attributed to co-accused Bhim @ Sagar. So far as the appellants are concerned they are said to have assaulted PW.1 by means of dandas from behind.

18. Learned counsel for the appellants have submitted that the dandas used by the appellants have not been recovered. They have also doubted the prosecution version of identification of the appellants, especially when they are alleged to have assaulted PW.1 from behind.

19. Times without number, this Court as well as the Supreme Court has held that mere non recovery of a weapon of assault would not lead to any definite conclusion that the offence was not committed in the manner suggested by the prosecution. The appellants are also alleged to have snatched away the brief case containing the valuables, from the possession of PW.1. It is very natural then, for a victim to identify the miscreants. The contentions raised on behalf of the appellants do not have any merit.

20. Amrinder Singh (PW.3) though identified appellants in the Court as his tenants but has not supported the factum of recovery of the brief case.

21. Pawan Singh (PW.4), Nodal Officer, IDEA Cellular Ltd has testified to the effect that mobile bearing no.9718138656 bearing IMEI Number 353664013057200, which was the IMEI number of the snatched mobile phone was running in the name of the wife of PW.5.

22. Satinder Singh (PW.5) is, as has been stated earlier identified appellant Ajay @ Rajesh as the person from whom he had purchased an old mobile phone for a sum of Rs.2000/-.

23. Thus, it stands proved that the appellants participated in the robbery.

24. The recovery of country made pistol and one live cartridge from the possession of appellant Ajay @ Rajesh stands proved by Inspector Mahavir Kaushik (PW.10, IO). Aforesaid PW.10 has also proved the production warrant of appellant Devi Prakash Yadav @ Lallu. He has

further deposed that even though both the appellants had been produced by covering their faces, they refused to participate in the Test Identification Parade.

25. No evidence has been led on behalf of the appellants and even in their statement recorded under Section 313 of the Code of Criminal Procedure, there is only a simple denial of the occurrence.

26. On the basis of the aforementioned discussion, this Court finds no fault with the conviction of the appellants under Section 392/394/34 of the IPC and Sections 25/54/59 of the Arms Act.

27. Learned counsel appearing for the appellants, alternatively prayed for modification of the sentence as it was, in their estimation, rather harsh. It was also submitted that the appellants do not have any criminal background. Their conduct in the jail has been very satisfactory. This, it has been argued, is an instance of remorse and repentance on the part of the appellants.

28. Learned APP, on the other hand submitted that considering the gravity of the offence committed by the appellants, there is no reason for reduction of sentence and has urged for dismissal of the appeal.

29. Sentencing an accused in a criminal case is an important judicial exercise. The quantum of sentence has to be commensurate with the guilt of the accused, gravity of the offence and the circumstances under which the offence was committed. Times without number it has been reiterated that the purpose of punishment in a criminal case is two pronged namely punitive and reformatory. The reformatory aspect of sentencing requires

that sufficient opportunity should be given to the convict for re-moulding himself so as to make him acceptable in the society as one of its important constituents. The punitive aspect would only deal with the deterrence impact of the sentence.

30. In determining the question of the quantum of sentence, the Courts of law ought to weigh the degree of the culpability of the accused, its effect on others and the impact on the society. It is also of utmost importance that unnecessary leniency may not be shown while sentencing an accused as it might have a cascading effect on the society as a whole. While sentencing, both sides of the fulcrum have to be maintained at straight line and a balance has to be struck between the interest of the individual and the well being of the society.

31. A harsh punishment may serve as a deterrent but would not benefit the convict in reforming himself, and thereby divesting the society of one of its constituents.

32. The appellants in the present case are persons of young age. The nominal roll received from the jail reveals that appellant Ajay @ Rajesh has remained in custody till date and has served more than 6½ years of imprisonment. His behavior as a jail inmate has been good and nothing adverse has been reported against him. Appellant Devi Prakash Yadav has remained in custody for more than five years and during the pendency of his appeal, his sentence was suspended and he was released on bail. His conduct also has been satisfactory in the jail. Both the appellants do not bear any criminal antecedent.

33. Considering the fact that this incident was their first brush with law, this Court is inclined to modify the sentence of the appellants.

34. On the above premised reasons, while maintaining the conviction of the appellants under Section 392/394/34 of the IPC and Sections 25/54/59 of the Arms Act and also maintaining the sentence awarded under Sections 25/54/59 of the Arms Act, the substantive sentence awarded to the appellants for the offences under Sections 392/394 of the IPC is reduced from 10 years RI to the period which the appellants have already undergone in custody. The sentence for the offence under Sections 25/54/59 of the Arms Act, is maintained. Both the sentences would run concurrently and the appellants would get the benefit of Section 428 Cr.P.C.

35. Considering the period of custody of the appellants, the sentence of fine on both the counts is waived. Appellant Ajay @ Rajesh (CRL.A. 124/2011) would be released from jail forthwith, if not wanted in any other case.

36. Appellant Devi Prakash Yadav (CRL.A. 1623/2013) is on bail. The liabilities of bail bonds and the surety bond are discharged.

37. The appeal is partly allowed but with the modification in the order of sentence.

38. Trial Court records to be returned.

39. A copy of this order be sent to the concerned Jail Superintendent for information and necessary compliance.

Crl.M.A No.16748/2014

1. The appeal being partly allowed with the modification in sentence, renders the above numbered application infructuous.
2. This application is disposed of accordingly.

July 23, 2015
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ASHUTOSH KUMAR, J