

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

RESERVED ON : 31st AUGUST, 2015

DECIDED ON : 14th SEPTEMBER, 2015

+ CRL.A. 1692/2014

SATISH

..... Appellant

Through : None.

versus

STATE NCT OF DELHI

..... Respondent

Through : Mr.Amit Gupta, APP for the State.

CORAM:

MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. The appellant – Satish along with his associates Lala Ram @ Vishal @ Kaley, Prakash @ Om Prakash and Sunil @ Suraj was arrested in case FIR No.433/2008 registered at Police Station Model Town and sent for trial for committing offences under Sections 392/397/411 IPC and 27/54/59 Arms Act on the allegations that on 23.12.2008 at around 01.45 P.M. they robbed Ashwani Kumar Rattan of ₹33,500/- when he was travelling in bus bearing Registration No.DL-1P-7720. The assailants were armed with knives and used them to commit robbery. They were apprehended from inside the bus after Sushil Kumar (PW-2), driver, stopped it near a PCR vehicle. The investigation was taken over by PW-5

(SI Richhpal Singh). Statements of witnesses conversant with the facts were recorded. The assailants were arrested. Cash and knives were recovered from their possession and seized vide seizure memos Ex.PW1/F to Ex.PW1/I and Ex.PW1/H. After completion of the investigation, a charge-sheet was filed against all of them in the court. They were duly charged and brought to trial. The prosecution examined nine witnesses. In their 313 statement the accused persons pleaded false implication and took the defence that they were lifted from their respective houses. On appreciating the evidence and after considering the rival submissions of the parties, the Trial Court by the impugned judgment dated 01.12.2010 in Sessions Case No.1009/2009 convicted all of them under Section 392 read with Section 397 IPC and 25 Arms Act. By an order dated 09.12.2010, they were sentenced to undergo Rigorous Imprisonment for eight years with total fine ₹4,000/- each. Being aggrieved, the appellant has challenged the conviction and has preferred the appeal.

2. It is pertinent to mention that Lala Ram @ Vishal @ Kaley; Prakash @ Om Prakash and Sunil @ Suraj had preferred Crl.A.Nos.1144/2011, 796/2011 & 1108/2011 which were disposed of by this Court on 12.08.2013. Their appeals were dismissed and the sentence order was modified to the extent that substantive sentence of RI for eight

years would be RI for seven years. Seemingly, they have not challenged it further.

3. The incident whereby the complainant-Ashwani Kumar Rattan was robbed on the point of knives in a private bus bearing Registration No.DL-1P-7720 cannot be suspected. He had no ulterior motive to fake the incident and to falsely implicate the assailants with whom he had no prior acquaintance. PW-2 (Sushil Kumar) and PW-3 (Monu) driver and conductor though did not support the prosecution on material facts nevertheless deposed that the incident of robbery whereby pocket of one of the passengers was picked inside the bus on 23.12.2008, took place. They further deposed that on hearing the noise of the victim, they stopped the bus near a gypsy which was standing near Telephone Exchange. PW-2 further stated that one of the passengers was crying that his money had been robbed. The police arrived and apprehended the accused persons. DD No.47B (Ex.PW7/A) was recorded at 02.00 P.M. on 23.12.2008 at police station Model Town. There is specific mention that in bus No.DL-1P-7720 Ashwani's pocket was picked and the bus was standing at Nanak Piyao. There is mention about recovery of two knives from the assailants' possession. The investigation was assigned to ASI Richhpal Singh who went to the spot. The custody of the four assailants

with four knives and robbed cash was handed over to him by PCR officials.

4. First Information Report was lodged by ASI Richhpal Singh after recording the complainant-Ashwani Kumar Rattan's statement. He disclosed to the police that when he was travelling in the bus, he was surrounded by four assailants who had knives in their hands. They robbed ₹33,500/- at the point of knives. When the bus reached near telephone exchange, he raised alarm and asked the driver to stop the bus near a PCR vehicle. The four assailants whose names were ascertained Lala Ram @ Vishal @ Kaley, Prakash @ Om Prakash, Sunil @ Suraj and Satish were apprehended inside the bus with the assistance of driver, conductor and other public persons. The knives were also recovered from their possession with cash ₹33,500/-. The occurrence took place at about 01.45 P.M. The information about the incident was recorded at Police Station Model Town at 02.00 P.M. vide DD No.47B. The investigating officer after recording the statement of the complainant prepared rukka (Ex.PW-4/B) and lodged the First Information Report at about 04.35 P.M. It reveals that there was no delay in lodging the report with the police. There was least possibility to falsely rope in the assailants in this short duration. The complainant was not having acquaintance with them to

falsely implicate them by name in his statement (Ex.PW-1/A). Being a victim he was not expected to allow the real culprits to go scot free. While appearing as PW-1 he proved the version given to the police at the first instance without major variation. He gave graphic detail as to how and under what circumstances he was robbed by the assailants in the bus. He was certain that the assailants were apprehended from inside the bus by PCR officials. He was specific that after alighting from the bus, he told the PCR officials that the robbers were still inside the bus and had pointed at the accused persons to the officials of Police Station Model Town and their names were ascertained as Satish, Prakash, Lal Chand and one other whose name he did not know. In his examination-in-chief recorded on 24.09.2009, he recollected the name of the fourth accused as Sunil@Suraj. After seeing the accused in the court he deposed that they appeared 'similar' to the individuals who committed robbery. Counsel emphasized that the witness was not sure about the identity of the actual culprits. It is true that in his court statement the complainant did not identify the assailants with 'certainty'. It is, however, to be noted that his statement was recorded after a considerable lapse of time on 04.06.2009 and 24.09.2009. At the same time, he did not give clean chit to the accused persons and was fair enough to testify that their appearance was

similar/akin to the assailants who robbed him. PW-6 (Head Constable Majid Khan), Incharge PCR van was categorical in his statement to identify the appellants who were apprehended from inside the bus and cash of ₹33,500/- was recovered from one of them. They were also found in possession of open knives which were seized from their possession. He deposed that all the accused persons in the court were apprehended by them. The robbed cash and knife was also recovered from Prakash @ Om Prakash. Names of the other assailants were revealed as Lala Ram @ Vishal @ Kaley, Sunil @ Suraj and Satish. After apprehension of the accused persons their arrest memos and personal search memos were prepared. The accused persons have not denied their signatures on these memos. It stands established beyond doubt that the accused persons were apprehend at the spot at the time and place recorded in the memos. It falsifies their plea that they were lifted from their respective houses and implicated in this case. They did not examine any witness in defence including their family members to substantiate their plea.

5. Robbed cash of ₹33,500/- was recovered immediately after the incident from one of the assailants Prakash @ Om Prakash. The police officials are not expected to plant such a huge amount from their pocket to falsely rope in the accused persons. Under Section 114 Illustration (a)

Evidence Act presumption can be raised that it were the accused persons, who committed robbery as they were found in possession of the robbed articles soon after its occurrence when they were present inside the bus. This presumption has remained un-explained. PW-9 (HC Udmi Ram) who was posted in the PCR van as gun man has corroborated PW-6 on all material facts and no material infirmity has been emerged in his cross-examination.

6. The Trial Court has discussed minutely all the relevant facts and contentions of the accused persons and cogent reasons have been recorded to return findings on conviction. I find no illegality or material irregularity in the impugned judgment to interfere with. The conviction is based upon fair appraisal of the evidence and is affirmed.

7. The appellant has been sentenced to undergo Rigorous Imprisonment for eight years with total fine ₹4,000/-. Nominal Roll dated 28.10.2014 reveals that he has already undergone five years, nine months and twelve days incarceration besides remission for one year, three months and twelve days as on 07.10.2014. Nominal Roll further reveals that he is not involved in any other criminal case and is not a previous convict; his overall jail conduct is satisfactory. Apparently, the appellant had served imprisonment for more than seven years before he was granted

suspension of sentence. The substantive sentence awarded to co-convicts was reduced to RI for seven years.

8. Taking into consideration the fact that lenient view was taken qua co-convicts in similar circumstances, Sentence Order is modified to the extent that eight years punishment under Section 397 IPC would be seven years which is minimum one prescribed under it. Other terms and conditions of the Sentence Order are left undisturbed.

9. The appeal stands disposed of in the above terms. Trial Court record be sent back forthwith with the copy of the order. Intimation be sent to the Superintendent Jail for information.

(S.P.GARG)
JUDGE

SEPTEMBER 14, 2015 / tr