

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

Delivered on: February 05, 2016

+ CRL.APPEAL No.55/2003

PARMOD KUMAR

..... Appellant

Represented by: Mr. Pramod Kr. Dubey,
Ms. Megha and Mr. Siddharth Johar, Advs.

Versus

STATE N.C.T. OF DELHI

..... Respondent

Represented by: Mr. Mukesh Kumar, APP for
State with SI Kuldeep Yadav, PS-Con. Place.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. By way of the present appeal filed under Section 374 Cr.P.C. appellant has challenged the judgment dated 16.01.2002, whereby he was held guilty for the offences punishable under Sections 397 and 392 read with Section 34 IPC.

2. Further challenged the order on sentence dated 02.02.2002, whereby he was sentenced to undergo RI for a period of three years with fine of Rs.700/- for the offences punishable under Sections 392/34 IPC and in default of payment, he was further directed to undergo SI for 1½ months. Petitioner was also sentenced to undergo RI for a period of seven years for the offence punishable under Section 397 IPC. Both the sentences were directed to run concurrently and benefit

of Section 428 Cr.P.C. was also given to the appellant.

3. Facts in brief are that on 04.12.1999, SI Bani Singh and SI Raj Kumar were on their patrolling duty in their official Gypsy and when they reached the outer circle, Punchkuian Road at about 12.20 am, they heard "*Chor Chor Pakro Pakro*". At that time two constables namely Satpal and Sat Prakash, who were on their patrolling duty came there. SI Bani Singh and Raj Kumar saw that one person was running after two boys, who were on their scooter and the constables named above chased them on a motor cycle and apprehended them. The people standing on the bus stand started beating the two boys. However, they were saved by the constables named above and on their personal search, one purse of black colour containing one visiting card, Rs.600/- and one screw driver were recovered from them and were taken into police possession. By that time, complainant Shyam Lal also came there and his statement was recorded, wherein he stated that in the intervening night of 3/4.12.1999 at about 12.15 he was standing at the Outer Circle of the Connaught Place to catch a bus for ISBT as he had to go to Himachal Pradesh. At that time, two boys namely Pramod Kumar (appellant herein) and Bakshish Singh came there on a Scooter no. DL-5SK6820 and accused Bakshish Singh told him that Superintendent of Police, who is standing near the Madras Hotel Red Light is enquiring about his name and address. Thereafter, they started asking for their fee. When he refused, appellant took out a screw driver in his right hand and kept it on his 'Nabhi' and threatened him that he should handover everything he is having, otherwise, they will

kill him and accused Bakshish Singh took out the black purse from the pocket of the complainant, which contained Rs.600/-, i.e., six currency notes of Rs.100/- denomination each, one visiting card of Hind Motors and one inland letter. They also threatened to kill him, if he raised an alarm. Thereafter, they left the place and ran towards the Cinema Hall on their Scooter. On this, complainant raised an alarm and on hearing this, constables named above who were on the patrolling duty of the area chased them along with the complainant. However, both of them were apprehended and the articles mentioned above were recovered from their possession.

4. Accordingly, FIR NO. 820/99 was registered at PS-Connaught Place, site plan prepared and the accused were got medically examined. After completion of the investigation police filed the chargesheet and the case was committed to the Sessions. Thereafter, charges were framed against the accused, to which they pleaded not guilty and claimed trial.

5. In order to prove its case, prosecution has examined six witnesses. Thereafter statement under Section 313 Cr.P.C. of the accused were also recorded in which the appellant had denied the entire prosecution case.

6. Ld. Counsel appearing on behalf of the appellant submitted that the present case is a concocted one because as per the prosecution case, the occurrence has taken place at 12.15 am and the accused persons were apprehended on the spot but the FIR was lodged at 1.40 am and

there is no explanation of delay in lodging the FIR. He further submitted that there is no FIR on the arrest memo but from the perusal of the arrest memo, it is clear that FIR number is mentioned. Moreover, the accused persons were shown to be arrested at 3.50 am and 3.55 am, though the FIR was lodged at 1.40 am. Thereafter they were taken to hospital for medical examination at 6.30 am which shows that entire memos were prepared in the police station.

7. Ld. Counsel further submitted that the trial court failed to appreciate that complainant (PW2) in his deposition has not identified the appellant in Court and even deposed that he does not remember the face of the appellant. Moreover, he did not identify the Scooter used in the offence and was unable to give the registration number of the said scooter before the Trial Court. Further the Id. Trial Court ignored the fact that complainant denied the recovery of screw driver from the appellant in his presence and did not even identify the screw driver which was produced in the Court by the Police. In his cross-examination, complainant (PW2) deposed that the appellant was not apprehended in his presence in front of Plaza Cinema at Plaza, however, the trial court have not considered the statement of the complainant and wrongly relied upon the statement of the police witnesses. Further the Trial Court has ignored the cross-examination of PW2, whereby he stated that he did not know whether police officers chased thieves or not. The complainant further denied the suggestion that accused was given beatings by the police or his purse containing Rs.600/-, one visiting card, one inland letter was recovered from the

accused persons.

8. It is also urged that learned Trial Court has also failed to consider the deposition made by the complainant in his cross-examination, wherein he stated that approximately 2-3 minutes took in occurrence, after that he immediately went to Police Station. However, no police official met him while going towards the police station from the place of occurrence and he stayed in police station for 10-12 minutes. He further deposed that while he stayed in police station, he narrated the incident and he had signed 5 to 6 blank papers during 10 minutes. Since, no action was taken immediately, he was allowed by the police official on his request to leave the police station as he had to see his ailing maternal aunt.

9. Ld. Counsel further submitted that there are material contradictions in the deposition of PW2, complainant as in the statement recorded under Section 161 Cr.P.C. he deposed that on 04.12.1999, appellant and co-accused were chased and apprehended by the police. They were beaten up by the public standing at the DTC Bus Stop Plaza Cinema and one purse containing Rs.600/-, visiting card were recovered from the left pocket of co-accused Bakshish Singh.

10. Ld. Counsel submitted that in his examination-in-chief PW2 deposed that he does not remember the faces of those persons as it is a matter of one year and cannot say whether the persons present in the Court are those or not . Whereas in his cross-examination this witness deposed that he does not know whether police officers chased the

thieves or not and that public present at the bus stop started beating the accused persons and in the meantime other police officers also reached there and apprehended them in his presence in front of Plaza Cinema at Plaza Bus Stop. He denied that after apprehending co-accused Bakshish Singh, his purse containing Rs.600/-, visiting card and one inland letter was recovered. He further denied that police recovered the scooter and screw driver from the appellant in his presence and he signed at Point B of seizure memo Ex.PW2/C and he did not identify the Scooter.

11. He denied that any police officer met him while going to Police station from place of occurrence and he took around 4-5 minutes to reach police station from the place of occurrence. He stated that he stayed in Police Station from 10-12 minutes and narrated the incident. Since immediately no action was taken by the police, he requested the police official to let him go as he had to see his ailing Mami (maternal aunt), which request was acceded to. He admitted that he had signed 5-6 blank papers Ex.P2/1 at Point A, B and C and Ex.PW2/B to F in the intervening night of 3/4.12.1999.

12. He further denied that whenever he had come to attend this case as witness, the Investigating Officer Bani Singh met him outside the Court and made him read his statement and told him that these are the boys who committed the offence.

13. Ld. Counsel for the appellant submitted that the prosecution has failed to prove the use of the deadly weapon, i.e., Screw Driver. He

submitted that the Learned Trial Court failed to appreciate the discrepancies in the statement of the Complainant, i.e., Shyamlal who had not only changed his stand during the cross-examination but also failed to identify the appellant as an accused person who had committed robbery. He admitted the fact that the recovery of purse, the currency notes and the inland letter card was not effected in his presence. Since the prosecution has failed to prove that the robbery was committed by the appellant and used deadly weapon, or grievous hurt inflicted to the complainant, the appellant is liable to be acquitted under section 392 and 397 of IPC.

14. Per contra, Id. APP appearing on behalf of the State submitted though it is true that the complainant (PW2) did not support the case of the prosecution in examination-in-chief, however, in his cross-examination by the Id. Prosecutor for the State he admitted that his statement was recorded on 04.12.1999 by the Police. He admitted to have stated about the occurrence but has deposed that he had not told about the scooter number. He further admitted that two persons on enquiry disclosed their names as Parmod and Bakshish Singh and Scooter No. was DL-5SK6820 and that they parked their Scooter and Bakshish Singh told him that he was officer and SP is standing near the red light of Madras Hotel and also enquired about his name and address and demanded their fees but he refused to pay them. Thereafter, they kept on screw driver on the '*nabhi*' of his stomach and told him that whatever he had, should be handed over to them otherwise, they will kill him. He also admitted that Bakshish Singh

took out his purse from right side back pocket of his pant in which there were Rs.600/- along with one visiting card and one inland letter. He has also admitted that he stated to the police that Bakshish Singh took his purse forcibly and threatened that in case he will raise alarm, he will be killed. He also admitted that both persons left the spot threatening him towards Plaza Cinema and thereafter, he raised alarm and two police persons came therewith on their Motorcycle and thereafter, he went to Police Station. He admitted his signatures on the seizure memo. He admitted that the purse containing the currency notes, visiting card and inland letter belonged to him and identified the purse as Ex.P1, Currency notes collectively as Ex.P2, visiting card as Ex.P3 and inland letter as Ex.P4. He also admitted his signature on the sketch of the screw driver Ex.PW2/ D and personal search memo of appellant and co-accused Bakshish Singh vide Ex.PW2/E and F.

15. I heard ld. Counsel for the parties.

16. In order to prove offence under Section 397 IPC, the Prosecution has to prove that at the time of committing dacoity or robbery any deadly weapon had been used or grievous hurt has been caused to any person or attempt to cause grievous hurt. In the present case, though the complainant Shyam Lal has not specifically identified the accused persons, but he has deposed that since it is a matter of one year, he does not remember their faces, but he admitted that two police officers had chased them and PW1 Const. Satpal has very specifically deposed about this fact that while he was on motorcycle no. DL-1SL-5086 on

patrolling duty at about 12 a.m. and reached near Punchkuian Road, they heard noise '*Chor Chor Pakro Pakro*' and he saw two persons on two wheeler scooter NO. DL-5SK-6020 and one person was chasing them. They followed that two wheeler scooter and stopped it near Plaza Bus Stand and apprehended two boys who were sitting on the scooter. At that time public gathered and they gave them beatings and in the mean time the complainant also reached there. SI Bani Singh also reached there and recorded the statement of complainant Shyam Lal and on inquiry those two persons disclosed their names as Pramod and Bakshish Singh and from the search of the accused Baksish Singh one purse containing Rs.600/- was recovered and the investigation was conducted by SI Bani Singh. His statement has been corroborated by PW4 SI Raj Kumar, PW5 ASI Bani Singh and Const. Satya Prakash, who accompanied him at the time they had apprehended the accused. Though, PW2 has not identified these two accused but he admitted the incident. He also admitted that police officials reached there and apprehended the accused though, he has deposed that his signatures were obtained on some blank papers but this fact has not been reported by him to higher police officers and he has not given reason for signing 5-6 blank papers and what was the need to sign them. The accused persons were apprehended on the spot and recovery had been effected from Bakshish Singh. Moreover, the complainant identified the purse, Rs.600/-, visiting card and inland letter belonging to him and the police officials PW1, Const. Satpal, PW3, HC Mahinder Singh and PW4, SI Raj Kumar Atri have very specifically proved the recovery from

Bakshish Singh and apprehended both accused on the scooter. There is no motive for false implication. Offence of snatching of purse from the pocket of Shyam Lal has been proved. Putting a screw driver on the 'Nabhi' of the complainant by appellant has also been proved. Purse of the complainant which contained Rs.600/-, visiting card and inland letter were recovered from the appellant.

17. In view of the above discussion, I am of the considered opinion that the prosecution has proved its case beyond reasonable doubt and find no discrepancy or illegality in the judgment dated 16.01.2002 and order on sentence dated 02.02.2002.

18. Accordingly, the appeal is dismissed with no order as to costs.

19. Vide order dated 18.02.2003 sentence of the appellant was suspended and he was released on bail. Therefore, the appellant is directed to surrender forthwith before learned Trial Court/Successor Court or Jail Superintendent and serve the remaining sentence imposed on him.

20. A copy of this judgement be sent to the concerned Jail Authorities for information and compliance.

21. TCR be remitted back to the trial court.

SURESH KAIT, J

FEBRUARY 05, 2016

JG