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

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Date of Decision: May 19, 2016

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CRL.A. 79/2015

SUNNY @ SACHIN

..... Appellant

Represented by: Mr.Jivesh Tiwari, Advocate

versus

STATE

..... Respondent

Represented by: Mr.Varun Goswami, APP
SI Sachin Mann, PS SP Badli

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

PRADEEP NANDRAJOG, J. (Oral)

1. DD No.38A, Ex.PW-5/A was recorded at PS S.P.Badli at 10:47 PM on January 23, 2012 that one person was stabbed near Chowk Noor Anjal Hotel near SBI ATM and the assailant had been apprehended at the spot. Investigation was entrusted to HC Chander Singh PW-9. He proceeded to the spot accompanied by Ct.Munim PW-6, and on reaching the spot saw a crowd apprehending appellant whose custody was handed over by the crowd to HC Chander Singh. The injured named Lal Dev had already gone to Bharat Hospital. Therefore HC Chander Singh proceeded to Bharat Hospital where he met Lal Dev PW-1 who had already been examined by Dr.Vikrant Yadav PW-11 and had recorded on Lal Dev's MLC Ex.PW-11/A that there was bleeding resulting from facial simple laceration and from the nose. The length of the laceration was from the outer canthus of the right eye through

the base of the right nostril. Collecting the MLC, HC Chander Singh recorded Lal Singh's statement Ex.PW-1/A at 4:40 AM and making an endorsement beneath the same got the FIR, Ex.PW-7/A, registered at 5:05 AM as recorded in DD No.7A, Ex.PW-7/C being its reflection on the endorsement beneath the statement Ex.PW-1/A.

2. Thereafter the formality of formally arresting the appellant, whose custody till now was with Ct.Munim was recorded as per arrest memo Ex.PW-1/C. Personal search resulted in recovery of a Samsung mobile phone Ex.P-2 and therefore reflected in the recovery memo Ex.PW-1/B that a Samsung make phone having IMEI No.359271039413442 was recovered as also currency notes totalling ₹480/- Ex.P-1 collectively. A button actuated knife Ex.P-3 was also recovered as recorded in the recovery memo Ex.PW-1/B. Its sketch Ex.PW-6/A was drawn.

3. In his statement Ex.PW-1/A Lal Dev disclosed that apart from the appellant there was another person, whose name was disclosed by the appellant in his disclosure statement Ex.PW-12/A as Rocky, who was also apprehended and named as a co-accused in the charge sheet filed, but was discharged by the learned Trial Judge for the reason during TIP proceedings he was not identified.

4. In his statement Ex.PW-1/A Lal Dev stated that whereas appellant robbed his son Kamlesh of the mobile phone which Kamlesh was carrying as also ₹480/- which his son Kamlesh was carrying in his wallet, the co-robber robbed him i.e. Lal Dev of his mobile phone and ₹6,000/- and ran away. I note that similar is the version of Kamlesh in his statement recorded under Section 161 Cr.P.C.

5. The case of the prosecution would thus rest on the testimony of the

victim and his son Kamlesh PW-2, HC Chander Singh and Ct.Munim.

6. In his testimony as PW-1, the victim Lal Dev deposed facts in sync with his statement EX.PW-1/A, and has been duly corroborated by his son Kamlesh who appeared as PW-2. HC Chander Singh and Ct.Munim have deposed in sync with each other and have corroborated the father and son regarding recovery of ₹480/-, a mobile phone and a knife from the appellant. The cash recovered has been exhibited as Ex.P-1, the mobile phone as Ex.P-2 and the knife as Ex.P-3

7. I note that the learned Trial Judge has somewhat mis-read the evidence; as if the father and son mixed up the facts as to whose mobile phone was robbed by the run away co-robber and whose mobile phone was recovered from the appellant, as if the two had contradicted each other. But I do not find any such confusion created by the father and the son in their testimony. But I would simply observe that even if there was a slight confusion if the father said that co-robber robbed him of his phone and the appellant robbed his son of his son's phone and the son said that the appellant robbed the phone of his father and the co-robber robbed him of his phone, it would still have been a blemish because a human mind is not a compact disk and while recollecting events of the past it is perfectly normal for one person to assign a particular act to a co-accused which is wrong.

8. It is in this context I need to highlight that in DD No.38A the informant has informed that the assailant has been apprehended at the spot. That a button actuated knife Ex.P-3 was recovered from the appellant at the spot itself and Lal Dev was injured with a sharp edged weapon also is a piece of incriminating evidence, albeit with a low weightage against the appellant, but adds to the weight on the scale of justice in the total weight of

the incriminating evidence.

9. Nothing more needs to be noted or recorded, save and except to concur with the view taken by the learned Trial Judge that the appellant has committed the offence of robbery and while doing so has used a dangerous weapon to cause a lacerated wound on the face of Lal Dev, meaning thereby the offences punishable under Section 397 IPC. But the learned Trial Judge has wrongly convicted the appellant for an offence punishable under Section 25/27 of the Arms Act 1959 for the reason I find that though a photocopy of a notification issued under Section 4 of the Arms Act, 1959 has been filed along with the charge sheet, but the same has not been proved. The notification, if proved, further linked to the blade of the knife Ex.P-3 would alone have established the offence punishable under Section 25/27 of the Arms Act. Thus, the appellant is acquitted of said charge.

10. But it hardly matters because the sentence for having committed an offence under the Arms Acts 1959 to undergo imprisonment for 5 years and for the offence punishable under Section 397 IPC to undergo rigorous imprisonment for 7 years, the sentences are to run concurrently. I clarify that the sentence for the offence punishable under Section 397 IPC is maintained and the sentence for the offence punishable under Section 25/27 Arms Act, 1959 is set aside.

11. TCR be returned.

12. Copy of this order be supplied to the Superintendent Central Jail Tihar for compliance.

(PRADEEP NANDRAJOG)
JUDGE

MAY 19, 2016/mamta