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IN THE HIGH COURT OF DELHI AT NEW DELHI

RESERVED ON : 10th February, 2016

DECIDED ON : 16th March, 2016

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CRL.A. 417/2014

STATE OF NCT OF DELHI

..... Appellant

Through Mr. Vinod Diwakar, APP

VERSUS

HARISHANKAR & ANR

..... Respondents

Through Ms. Pallavi Sharma, Advocate for R-1

Mr. V P Katiyar, Advocate for R-2

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

Crl. M.A.5297/2014 (Delay)

1. For the reasons mentioned in the application, the delay in filing the appeal is condoned.

2. Application is allowed and disposed of.

Crl.A.417/2014

3. The instant appeal has been preferred by the State to challenge the legality and correctness of a judgment dated 03.10.2013 of learned Additional Sessions Judge in Sessions Case No.26/12 arising out of FIR No.177/2011 registered at Police Station Lahori Gate whereby

sentence of less than seven years as mandated under Section 397 IPC was awarded to the respondents.

4. Briefly stated, the prosecution case as reflected in the charge-sheet was that on 21.12.2011 at around 12.30 p.m.at House No.1219, Baradari, behind Novelty Cinema, the respondents along with their associates Raju @ Muzzamil and Gopalji Srivastava (since not arrested) in an attempt to commit robbery, voluntarily inflicted injuries to the complainant Sadiya. The assailants were armed with knives at the time of attempt to commit robbery. Both the respondents were apprehended at the spot and the crime weapons were recovered from their possession. The Investigating Officer after recording victim's statement (Ex.PW-2/A) lodged First Information Report. She was medically examined. Statements of witnesses conversant with the facts were recorded. Upon completion of investigation, a charge-sheet was filed against the respondents in the court. In order to establish its case, the prosecution examined five witnesses. Subsequently, the respondents made a joint statement confessing the guilt voluntarily. They offered to deposit ₹50,000/- as a gesture of remorse and sought leniency in the award of sentence. After hearing the learned Additional Public Prosecutor for the State and the defence counsel, by the impugned judgment dated

03.10.2013, both the respondents were held guilty for committing offences under Sections 393/394/397/34 IPC and sentenced to undergo the sentence already suffered by them in this case. They were further directed to pay fine of ₹50,000/- jointly.

5. Learned Additional Public Prosecutor for the State urged that considering the gravity of the offence whereby the respondents used deadly weapons at the time of attempt to commit robbery, the Trial Court was not justified to grant sentence less than seven years which is the minimum sentence prescribed under Section 397 IPC. No adequate and special reasons have been given by the Trial Court to take lenient view. Learned counsel for the respondents urged that ingredients of Section 397 are not attracted in this case. PW-5 (Akif Amani) examined by the prosecution did not identify the respondents to be the assailants. The respondents had pleaded guilty with the hope that lenient view would be taken and had offered to pay ₹50,000/- as fine.

6. On perusal of the Trial Court record, it reveals that the prosecution produced and examined PW-2 (Sadia), the complainant and victim; PW-3 (Madiha) and PW-4 (Hadia) her daughters to establish the respondents' guilt. They all in their statements implicated the respondents in the crime and identified them. They also spoke about the recovery of

the knives from their possession and held them responsible for inflicting injuries on their person. PW-5 (Akif Amani) though deposed about the apprehension of some individuals at the spot but expressed inability to identify the respondents to be the assailants. Thereafter, in a joint statement dated 03.10.2013, the respondents confessed the guilt and prayed for leniency. The Trial Court by the impugned judgment dated 03.10.2013 convicted both the respondents primarily on their plea of guilt for the offence punishable under Section 393/394/397/34 IPC.

7. In the impugned judgment on conviction, the Trial Court has not dealt specifically as to under what particular sections of law, the offence has been committed/proved by each of the respondents. It has been merely recorded that the respondents were guilty for commission of offences under Sections 393/394/397/34 IPC. Section 393 IPC is a specific section for punishing attempt to commit robbery. Under Section 394 IPC, if any person, in committing or in attempting to commit robbery, voluntarily causes hurt, he can be held liable for that. Section 397 IPC does not create any new substantive offence but merely regulates punishment in offences of robbery and decoity and the use of deadly weapons at the time of committing the said offences. Section 398 IPC deals with the cases where at the time of attempting to commit robbery or

decoity, the offender is armed with any deadly weapons. The Trial Court has not given categorical and specific findings as to on the basis of material on record including confession of the accused, they were liable for committing specific offences. On the face of it, Section 397 IPC is not attracted in this case as charge against the respondents was only for an 'attempt to commit robbery'. Section 398 IPC seems to be appropriate Section to award sentence as at the time of attempting to commit robbery the offenders were armed with 'deadly' weapons.

8. Since the Trial Court has not given any definite findings as to what exact offence has been committed by the respondents, their conviction under Sections 393/394/397/34 IPC being vague in nature cannot be sustained. Sentence order also does not reflect as to under what offence what particular sentence has been awarded to the respondents. Sentence order records that the respondents were to undergo imprisonment for the period already undergone by them with fine of ₹50,000/- for the offences under Sections 393/394/397/34 IPC.

9. In the light of above discussion, the appeal is allowed. The matter is remanded to the learned Trial Court to give specific findings on the basis of evidence and confessional record as to what offence exactly has been proved against the respondents to hold them guilty. The

respondents if found guilty shall be heard on the point of sentence and a specific sentence order under the offence proved would be passed.

10. The parties are directed to appear before the Trial Court on 23.03.2016. Trial Court record be sent back forthwith along with the copy of the order.

(S.P.GARG)
JUDGE

March 16, 2016
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