

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

RESERVED ON : 29th MARCH, 2016

DECIDED ON : 6th APRIL, 2016

+ CRL.A.1003/2013

ARUN GUPTA @ MONU Appellant

Through : Ms.Suman Chauhan, Advocate.

VERSUS

STATE NCT OF DELHI Respondent

Through : Mr.Raghuvinder Varma, APP.

**CORAM:
HON'BLE MR. JUSTICE S.P.GARG**

S.P.GARG, J.

1. The appellant Arun Gupta @ Monu a impugns judgment dated 22.05.2013 of learned Addl. Sessions Judge in Sessions Case No.90/2013 arising out of FIR No. 06/2000 PS Lahori Gate by which he was held guilty for committing offences punishable under Sections 392/394/34 IPC read with Section 397 IPC. By an order dated 24.05.2013, he was awarded various prison terms with fine.

2. Briefly stated, the prosecution case as reflected in the charge-sheet was that on 06.01.2010 at around 04.30 p.m., the appellant along with his associates Keshav and Santosh @ Nepali @ Pahari committed robbery

upon Subhash Gupta at his shop / office No. 1240, Katra Mirza Hussain Baksh, Farash Khana and deprived him of ₹40,000/- / ₹45,000/-. The assailants were armed with deadly weapons and inflicted injuries to Subhash Gupta. Intimation about the occurrence was conveyed to the police; the victim was taken to hospital for medical examination. The Investigating Officer, after recording victim's statement (Ex.PW-8/A), lodged First Information Report. The exhibits lying at the spot were collected. On 11.01.2013, Santosh @ Nepali @ Pahari was arrested in FIR No.22/2000 PS Saraswati Vihar. On 16.01.2000, he recovered ₹1,100/- cash and ₹205/- in loose coins from his house No.1844, Lal Kuan. Keshav could not be arrested and was declared Proclaimed Offender. On 10.04.2000, the appellant who was earlier Proclaimed Offender was arrested in FIR No.256/2000 PS Lajpat Nagar. Application for conducting Test Identification Proceedings was moved but he declined to participate. On 26.04.2000, pursuant to disclosure statement, he recovered complainant's purse from his house. On 28.04.2000, Keshav surrendered in the Court. He also declined to join the TIP proceedings. On 29.04.2000, he recovered the cloth bag from his house. On conclusion of the investigation, charge-sheet / supplementary charge-sheet were filed. Vide order dated 05.09.2000, the appellant and his associates were charge-sheeted for committing offences punishable under Sections 392/394/397/34 IPC to which, they pleaded not guilty and claimed trial. In support of its case, the prosecution examined fifteen witnesses in all. In their 313 Cr.P.C. statements, the accused persons denied their involvement in the crime and pleaded false implication. Keshav examined DW-1 (Gopal Das) in defence.

3. It is relevant to note that the appellant absented himself and was finally declared Proclaimed Offender vide order dated 24.01.2005. By a comprehensive judgment dated 31.01.2005, Keshav and Santosh @ Nepali @ Pahari were convicted for committing offences under Sections 392/394/34 IPC. Santosh @ Nepali @ Pahari was further convicted under Section 397 IPC. It was concluded by the learned Presiding Officer that Keshav and Santosh @ Nepali @ Pahari along with their associate Arun Gupta (the appellant) (since Proclaimed Offender) in furtherance of common intention had robbed the victim Subhash Gupta. It is unclear if Keshav and Santosh @ Nepali @ Pahari have challenged their conviction.

4. The appellant was rearrested in this case. He declined to examine any witness in defence. Learned Addl. Sessions Judge by the impugned judgment dated 22.05.2013 held him guilty for committing the aforesaid offences. Being aggrieved and dissatisfied, he has preferred the present appeal.

5. I have heard the learned counsel for the parties and have examined the file. The appellant along with his associates Keshav and Santosh @ Nepali @ Pahari was held guilty vide judgment dated 07.02.2005. Since he was Proclaimed Offender that time, the file was consigned to record room under Section 299 Cr.P.C. PW-8 (Subhash Gupta), in his Court statement, categorically identified the appellant to be one of the assailants at the time of commission of robbery. Specific and definite role was assigned to him whereby he and his associates robbed ₹40,000/- / ₹45,000/- from his office while armed with weapons. He also disclosed that both the appellant and Santosh @ Nepali @ Pahari were armed with long knives. Injuries were inflicted to him on his various body

parts i.e. right shoulder, stomach and hands by a knife. The appellant tried to break the lock of the locker with the dagger but did not succeed. After the crime, the assailants including the appellant managed to flee the spot. A police constable arrived at the office after 10 / 15 minutes and took him to Hindu Rao Hospital where he was medically examined and treated. Statement (Ex.PW-8/A) was made by him. He also gave detailed account as to how and in what manner appellant's associates Santosh @ Nepali @ Pahari and Keshav had played active part in the commission of the robbery. In the cross-examination, no material infirmities or discrepancies could be extracted to disbelieve the version given by the victim. Santosh @ Nepali @ Pahari was already acquainted with the victim before the incident and was named in the FIR. The appellant was not familiar with the victim. However, after his arrest in FIR No.256/2000, his involvement emerged pursuant to the disclosure statement made by him there. The Investigating Officer moved application for conducting TIP proceedings and the appellant declined to participate in it contending that his photos were shown to the victim. Adverse inference is to be drawn against the appellant for not participating in the TIP proceedings. Nothing has come on record to show if any time the appellant or his photos were shown to the complainant. The complainant who had no prior animosity with the appellant was not expected to spare the real offender and to implicate an innocent one on the asking of the police. The complainant had direct confrontation with the appellant at the time of crime and had fair and reasonable opportunity to note his features. The appellant's post-event conduct is unreasonable as after the occurrence, he absconded and was declared Proclaimed Offender. Even during the pendency of the trial, when the case was fixed for recording

appellant's defence evidence, he absented and was declared Proclaimed Offender. He remained absconding for five years and was rearrested on 19.01.2013 by the police of PS Lahori Gate. Moreover, the appellant was identified and recognised by the victim in his Court statement without any hesitation. The material facts deposed and proved by him in examination-in-chief remained unchallenged and uncontroverted in the cross-examination. Medical evidence is in consonance with his ocular testimony. PW-1 (Dr.Rajiv Tiwari) medically examined the victim on 06.01.2000 vide MLC (Ex.PW-1/B). Number of injuries was found on his various body parts. PW-2 (Const. Seviya Rathore) deposed that he had taken the victim to the hospital for medical examination.

6. The Trial Court has discussed all the relevant aspects in the impugned judgment and accepted the appellant's contention to suspect recovery of purse at the appellant's instance from his house. The Trial Court was, however, of the view that the testimony of the victim was reliable and he had no oblique motive to make a false statement. This Court finds no valid reasons to deviate from the said findings. Impugned judgment is based upon fair appreciation of the evidence and warrants no intervention.

7. It is relevant to note that the appellant had filed an application CrI.M.A.No.16464/2015 for release as he had already undergone substantive sentence. Since the minimum sentence under Section 397 could not be altered or modified, the said application was dismissed vide order dated 19.02.2016.

8. Sentence order deserves no modification as the crime committed by the appellant and his associates is very serious and grave. The assailants were armed with deadly weapons and during day time robbed an

unsuspecting shopkeeper at his office / shop and inflicted injuries to him for no fault of his. Moreover, minimum sentence as mandated under Section 397 IPC cannot be modified / altered.

9. The appeal lacks merit and is dismissed. Trial Court record be sent back forthwith with the copy of the order. A copy of the order be sent to the Superintendent Jail for information.

(S.P.GARG)
JUDGE

APRIL 06, 2016 / *tr*

