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

RESERVED ON : MAY 16, 2016

DECIDED ON : MAY 20, 2016

+ **CRL.A.1496/2013**

VICKY @ VIKAS

..... Appellant

Through : Mr.Dinesh Malik, Mr.Manish Malik
and Mr.Akash Saini, Advocates.

versus

STATE

..... Respondents

Through : Mr.Amit Gupta, APP.

+ **CRL.A.811/2015 & CrI.M.A.10016/2015**

YAMIN @ SOHAIL

..... Appellant

Through : Mr.Ashwani Kumar Sharma,
Advocate.

Versus

THE STATE (GOVT.OF NCT OF DELHI)

..... Respondent

Through : Mr.Amit Gupta, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Aggrieved by a judgment dated 19.07.2012 of learned Additional Sessions Judge in Sessions Case No.58/2011 arising out of FIR No.67/2011 registered at Police Station Swaroop Nagar by which the appellants Vicky @ Vikas (A-1) and Yamin @ Sohail (A-2) were held guilty for committing offences punishable under Section 392 read with Section 394 IPC and A-2 was further convicted with the aid of Section 397 IPC, they

have filed the instant appeals. By an order dated 28.07.2012, A-1 was sentenced to undergo Rigorous Imprisonment for seven years with fine ₹10,000/- and A-2 was sentenced to undergo Rigorous Imprisonment for ten years with fine ₹10,000/-.

2. Briefly stated, the prosecution case, as reflected in the charge-sheet, was that on 28.04.2011 at about 10.25 p.m. near Swaroop Nagar underpass, service road (adjoining Nala), the appellants committed robbery upon Israr and deprived him of ₹2,700/- and mobile by inflicting injuries by a knife on his body. The incident was reported vide DD No.34A (Ex.PW-23/A) at 11.27 p.m. on 28.04.2011 at Police Station Swaroop Nagar. The investigation was assigned to SI Jagdeep Singh who with Ct.Sukhbir went to the spot. After recording victim's statement (Ex.PW-3/A), the Investigating Officer lodged First Information Report. The victim was taken for medical examination. Statements of witnesses conversant with the facts were recorded. The accused persons were subsequently arrested and certain recoveries were effected. Upon completion of investigation, a charge-sheet was filed against the appellants in the Court. To establish its case, the prosecution examined twenty-five witnesses. In 313 statements, the appellants denied their involvement in the crime and pleaded false implication. They examined DW-1 (Abdulla) and DW-2 (Aurangzeb) in defence. The trial resulted in their conviction as aforesaid. Being aggrieved and dissatisfied, the instant appeals have been filed.

3. I have heard the learned counsel for the parties and have examined the file. Learned counsel for the appellants urged that the Trial Court did not appreciate the evidence in its true and proper perspective. No recovery was effected from the accused persons. Since there was dark at the

spot, it was highly improbable for the victim to identify the assailants. Moreover, the appellants were shown to the complainant before moving an application for conducting Test Identification Proceedings. Crime weapon could not be recovered. No independent public witnesses were associated at any stage of investigation. Learned Additional Public Prosecutor urged that there are no sound reasons to disbelieve the testimony of the victim.

4. The occurrence took place on 28.04.2011 at around 10.25 p.m. DD No.34A (Ex.PW-23/A) came into existence promptly at 11.27 p.m. Information was conveyed to the police that the victim has been robbed of ₹2,700/- and a mobile and injuries have been inflicted to him at the spot. PCR had arrived at the spot and had taken the victim to Babu Jagjivan Ram Memorial Hospital, Delhi. Arrival time recorded in the MLC (Ex.PW-9/A) is 11.45 p.m. In the complaint (Ex.PW-3/A), the victim gave detailed account as to how and in what manner, he was robbed of his purse containing ₹2,700/- and one mobile by the assailants and how they inflicted injuries to him. He claimed to identify the assailants, if shown. Since the FIR was lodged promptly, there was least possibility of the victim to have concocted a false story. The victim did not nurture any grievance against any of the appellants to fake the incident of robbery; none of them was named in the FIR.

5. While appearing as PW-3, the victim Ishrar proved the version given to the police at the first instance without any variation. He gave graphic account as to how the accused persons surrounded him and one of them had wiped out a knife on his stomach uttering “Jo bhi tere pass hai nikal de”. When he told that he had nothing, he was stabbed on his left temple and stomach. The said assailant had removed his purse from the

backside and the other one who was behind him had snatched his mobile. Thereafter, both of them fled the spot after giving push to him. He made a telephone call to his family and informed them as to what had happened. In the meantime, someone made a call to PCR who shifted him to BJRM Hospital. He was referred to Ganga Ram Hospital and he remained there till 10th May, 2011. His statement (Ex.PW-3/A) was recorded. He identified A-1 to be the individual who had snatched his mobile and A-2 to be the individual who had inflicted injuries to him by knife and later on had removed his purse containing ₹2,700/-. In the cross-examination, he elaborated that he was working at Samaypur Badli in Gali No.9 in a workshop and used to go there at around 9 to 9.30 am and return back at 9 to 9.30 p.m. He used to go by foot. The whole incident continued for around 2-3 minutes. He had made a telephone call to his family from STD booth. His brother Abrar had accompanied him to the hospital in PCR. He denied that no such incident had taken place or that he had identified the accused persons as their photos were shown to him by the police.

6. On scanning the entire testimony of this injured witness, it reveals that no material discrepancy or infirmity could be extracted to discredit his version. The material facts deposed by him in examination-in-chief remained unchallenged and unrebutted. The accused persons did not deny their presence at the spot at the relevant time. No ulterior motive was assigned to the victim to falsely identify them in the court. Nothing has come on record to show if the victim was acquainted with any of the appellants or he nurtured any enmity. In the absence of any prior animosity, the injured witness was not expected to let the real offender(s) go scot free and to implicate the innocent ones. Not only the victim was deprived of his

valuable articles, he was brutally injured on his denial to part with the cash in his possession. Earlier he was medically examined at Babu Jagjivan Ram Memorial Hospital vide MLC Ex.PW-9/A. The nature of injuries sustained by him were opined 'dangerous' in nature. Subsequently, he was shifted to Ganga Ram Hospital where he remained admit for sufficient duration. It can be inferred that how violent the assailants were when injuries were caused to the victim for no fault of him. The complainant attributed a specific role to each of the appellants and identified them in the court without any hesitation. His testimony inspires implicit confidence.

7. It is pertinent to note that during investigation, A-1 was correctly identified by the victim in TIP proceedings (Ex.PX-3). A-2 had declined to participate in the TIP proceedings. Nothing has come on record to show if A-2 was shown to the victim before moving an application for holding Test Identification Proceedings. The complainant also identified the purse (Ex.P-2) in Test Identification Proceedings conducted by the learned Metropolitan Magistrate.

8. Victim's statement has been corroborated by electronic evidence as well. Mobile phone (Ex.P-1) belonging to him was recovered during investigation. The prosecution examined number of witnesses to prove as to in whose hands this mobile came into possession at different stages. PW-11 (Dinesh) disclosed that A-1 used to make telephone calls to him from his mobile No.97180226954. A-1 failed to explain as to how he came into possession of this mobile number. This SIM was used in the mobile (Ex.P-1) belonging to the complainant.

9. Ocular testimony of the complainant is in consonance with medical evidence. PW-9 (Dr.Neeraj Chaudhary) proved MLC (Ex.PW-9/A)

as per which the victim had sustained lacerated wound of 6 cm over left temporal region and other clean lacerated wound of 3 cm adjacent to it and CLW of 01 cm adjacent to CLW of 3 cm. A lacerated wound of 0.5 cm was found over nose. A lacerated wound of 1 cm was found over left iliac region with protruted omentum. The witness was not cross-examined. PW-12 (Dr.R.S.Mishra) proved the nature of injuries as 'dangerous'.

10. In 313 statement, the accused did not give plausible explanation to the incriminating circumstances proved against them. The Trial Court has discussed all the relevant aspects minutely in the impugned judgment. The conviction recorded by the Trial Court is based upon fair appraisal of evidence and warrants no intervention.

11. The sentence order is based upon fair reasoning. Both appellants were found involved in a number of criminal cases. They were found to have been convicted in many criminal cases as detailed in the sentence order. Considering the gravity of the offence and the fact that an innocent was not only deprived of his hard earned money but also inflicted dangerous injuries on his body. Sentence order needs no modification/alteration. The appellants had taken advantage of darkness at the spot and had laid a trap to rob the innocent passerby. One of the appellants was armed with deadly weapon and it was used in committing a crime. It was a planned act.

12. The appeals lack merit and are dismissed. Trial Court record be sent back forthwith along with the copy of the order.

CRL.M.A.No.10016/2015 in CRL.A.811/2015

13. The instant application has been filed by A-2 to direct sentence awarded in case FIR No.64/2011 registered under Sections 392/397/411/34 IPC at PS Bhalaswa Dairy to run concurrently with the sentence awarded in this FIR No.67/2011. Similar prayer has been made by A-1.

14. I have heard the learned counsel for the parties and have examined the file. A-2 after conviction under Sections 392/394 IPC read with Section 397 IPC was sentenced to undergo RI for ten years with fine ₹10,000/-. In FIR No.64/2011 under Sections 392/397/411/34 IPC PS Bhalaswa Dairy, he (A-2) was sentenced to undergo RI for ten years with fine ₹10,000/-. Nominal Roll dated 19.09.2015 reveals that he has already undergone one year, two months and ten days incarceration as on 17.09.2015 in FIR No.67/2011. A-2 is presently undergoing sentence in case FIR No.64/2011. Similarly, A-1 was convicted in case FIR No.64/2011 under Section 394 read with Section 397 IPC and was sentenced to undergo RI for ten years with fine ₹10,000/-. In the instant case, the sentence is seven years with fine ₹10,000/- under Sections 392/394 IPC. Nominal Roll dated 10.10.2013 reveals that A-1 has undergone RI for one year, two months and eighteen days incarceration as on 06.10.2013. At present he is undergoing sentence in case FIR No.64/2011 under Sections 394/397/34 IPC.

15. In the impugned judgment, the Trial Court at the time of considering the arguments on sentence noted all the relevant facts and specifically ordered that the sentence in the present case (FIR No.67/2011) shall run after the completion of the sentence in FIR No.64/2011 PS Bhalaswa Dairy.

16. The sentences awarded in the cases i.e. FIR No.64/2011 and FIR No.67/2011 are for commission of distinct offences at different periods. Sentence order records that A-2 has suffered conviction in case FIR No.1180/2003 under Sections 356/379/34 IPC PS Uttam Nagar; FIR No.37/2006 under Sections 324/341/34 IPC PS Hari Nagar; he is involved in fifteen other criminal cases under various offences at various police stations. A-1 has been convicted in FIR No.51/06 under Sections 25/54/59 Arms Act PS Samaypur Badli; FIR No.8/07 under Sections 379/411/34 IPC PS Swaroop Nagar and FIR No.2/07 under Sections 452/324 IPC PS Samaypur Badli; he is involved in sixteen criminal cases.

17. Apparently, the appellants are habitual hard core criminals. In the instant case, not only the victim was robbed of valuable articles but also inflicted dangerous injuries on his body.

18. Considering the facts and circumstances, I find no substance in the appellants' prayer to order both the sentences in FIR No.64/2011 & FIR No.67/2011 to run concurrently. The application is dismissed.

(S.P.GARG)
JUDGE

MAY 20, 2016/sa/tr