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IN THE HIGH COURT OF DELHI AT NEW DELHI

RESERVED ON : FEBRUARY 10, 2016

DECIDED ON : MARCH 10, 2016

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CRL.A.1499/2013

VIKAS @ VICKY

..... Appellant

Through : Ms.Inderjeet Sidhu with Ms.Divya
Chugh, Advocates.

versus

STATE

..... Respondent

Through : Mr.Tarang Srivastava, APP.

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CRL.A.1020/2013

YAMIN @ SOHAIL

..... Appellant

Through : Ms.Inderjeet Sidhu with Ms.Divya
Chugh, Advocates.

versus

STATE

..... Respondent

Through : Mr.Tarang Srivastava, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Aggrieved by a judgment dated 28.05.2012 of learned Additional Sessions Judge in Sessions Case No.40/2011 arising out of FIR No.64/2011 registered at Police Station Bhalaswa Diary by which the

appellants Vikas @ Vicky (A-1) and Yamin @ Sohail (A-2) were held guilty for committing offence under Section 394 read with Section 397 IPC, the instant appeals have been filed by them. By an order dated 02.06.2012, they were sentenced to undergo Rigorous Imprisonment for ten years with fine ₹10,000/- each.

2. Briefly stated the prosecution case, as reflected in the charge-sheet, was that on 16.04.2011 at about 10.15 pm under bye-pass flyover, service road, in between GT Road and Outer Ring Road, the appellants along with their associate Deepak @ Nepali (since Juvenile) committed robbery upon Braham Dev Singh and deprived him of his briefcase containing clothes, school certificates, ₹3,500 cash, two mobile phones, ATM card and driving licence. The assailants inflicted injuries on complainant's body during the crime. The police machinery came into motion on receipt of intimation at 10:40 p.m. about the occurrence and Daily Diary (DD) No.58B (Ex.PW2/A) came into existence. The investigation was assigned to ASI Charan Singh. The Investigating Officer after recording victim's statement (Ex.PW14/A) lodged the FIR. The victim was medically examined. Statements of witnesses conversant with the facts were recorded. During investigation, all the three assailants were apprehended; they declined to participate in the Test Identification

Proceedings. Certain recoveries were affected from their possession. Upon completion of investigation, a charge-sheet was filed against the perpetrators of the crime. Deepak @ Nepali being juvenile was sent before Juvenile Justice Board to face trial. The prosecution examined twenty seven witnesses. In 313 statement, the appellants denied their involvement in the crime and pleaded false implication. 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. Appellants' counsel urged that the Trial Court did not appreciate the evidence in its true and proper perspective. Ingredients of Section 397 are not attracted as the injuries suffered by the victim were 'simple' in nature. The appellants were not named in the FIR. Their photographs were shown to the complainant and for that reason, they did not participate in the Test Identification Proceedings conducted after an inordinate delay. It is highly unbelievable that the complainant would be able to recognize all the assailants when there was darkness at the spot. Nothing was recovered at the instance of the appellants. The prosecution witnesses have given contradictory and inconsistent statements on many aspects including the number of assailants. Learned Additional Public

Prosecutor urged that there are no valid reasons to disbelieve the statement of the complainant who had no ulterior motive to falsely implicate the appellants.

4. The occurrence took place on 16.04.2011 at about 10.15 pm when the complainant-Brahm Dev Singh, r/o B-56-I, Police Colony, Model Town II, Delhi, posted in Punjab in Food Corporation of India (FCI) had come to Delhi by bus after completing his training at Chandigarh. When he was going on foot to catch local bus and reached the spot, the three assailants arrived there on a black colored Pulsor motorcycle and robbed him. In his statement (Ex.PW-14/A) given to the police at the first instance, the complainant-Brahm Dev Singh gave detailed account as to how and in what manner he was robbed and injured. He gave detailed list of articles robbed from his possession. He also described the description of the assailants and claimed to identify them on being shown. The PCR van took him to the hospital. Daily Diary (DD) No.58B (Ex.PW2/A) came into existence at 10.40 p.m. on getting information about the occurrence. MLC (Ex.PW-5/A) reveals that the victim was taken to Babu Jagjivan Ram Memorial Hospital at 11:30 p.m. on 16.04.2011. He had sustained various injuries on his body parts and the nature of injuries suffered by him was opined as 'grievous' in nature

vide MLCs (Ex.PW-5/A) and (Ex.PW12/A). As per report/opinion given by PW-12 (Dr.Shipra Rampal), the victim had suffered fracture. Since the FIR was lodged promptly, there was no occasion for the complainant to concoct a false story in such a short period. The complainant had not named any assailants in the FIR.

5. During investigation, the appellants and their associate Deepak @ Nepali were apprehended. Both the appellants declined to participate in the Test Identification Proceedings (Ex.PX3 and Ex.PX6). The complainant in his Court statement disclosed that he had come to participate in the TIP proceedings twice but the appellants did not participate therein. No plausible explanation has been offered by the appellants for not participating in the Test Identification Proceedings. Nothing has come on record to show as to when their photographs were taken and shown to the complainant. The complainant, who was not acquainted with any of the assailants, was not expected to falsely recognize them in the Court to be the authors of the crime. Being an injured and victim he must be interested to bring the real culprits to book and is not expected to let the real offenders to scot free. Adverse inference is to be drawn against the appellants for not participating in the Test Identification Proceedings. It was not open to the appellants to

refuse to participate in the Test Identification Proceedings. If the appellants had reasons to do so, especially on the plea that they had been shown to the eye-witness in advance, the value and admissibility of the evidence of the TIP could have been assailed by them at the stage of trial.

6. The complainant in his Court statement identified both the appellants to be the perpetrators of the crime without any hesitation and he assigned specific and definite role to each of them in the crime. In *Rabinder Kumar Pal @ Dara Singh vs. Republic of India* (2011) SCC 490, the Supreme Court held as under:-

“.....Photo identification and TIP are only an aides in the investigation and do not form substantive evidence. The substantive evidence is the evidence in the court on oath. The logic behind TIP, which will include photo identification lies in the fact that it is only an aid to investigation, where an accused is not known to the witnesses, the IO conducts a TIP to ensure that he has got the right person as an accused. The practice is not borne out of the procedure, but out of prudence. At best it can be brought under Section 8 of the Evidence Act, as evidence of conduct of a witness in photo identifying the accused in the presence of an IO or the Magistrate, during the course of an investigation.”

7. In his Court statement as PW-14, the complainant-Brahm Dev Singh proved the original version given to the police without any variation, whatsoever. Despite searching cross-examination, his testimony could not be shattered. No material contradictions or discrepancies could

be extracted to disbelieve him. The material facts deposed by him rather remained unchallenged and uncontroverted in the cross-examination. No extraneous motive was assigned to the complainant to falsely implicate the accused in the crime. Being an injured victim, his testimony which is in consonance with medical evidence inspires implicit confidence.

8. During investigation, the robbed mobile phones belonging to the complainant were recovered. The Investigating Officer collected Call Detail Record (CDRs) of the mobile bearing IMEI No.353180037737490 belonging to the complainant which was recovered from A-2. A-1's location was detected at Sanjay Gandhi Transport Nagar on 16.04.2011 at 9:51:37 p.m. near the place of occurrence. The complainant was robbed near Karnal Bye-pass and the area came under the tower of Sanjay Gandhi Transport Nagar. Calls Details further detected that there were multiple calls between A-1 and JCL Deepak @ Nepali on 17.04.2011 and 18.04.2011. There were also multiple calls connecting A-1, A-2 and JCL Deepak @ Nepali on their mobile Nos.9718026954, 9990875073 and 7838393249 respectively.

9. I find no merit in the appellants' argument that ingredients of Section 397 IPC are not attracted. It has come on record that at the time of commission of robbery the injuries were inflicted on the complainant's

body. The injuries were opined as 'grievous' in nature, hence, Section 397 IPC is attracted in this case. Minor discrepancies and infirmities pointed out by the appellants' counsel have no impact on the core of the prosecution case as they do not go to the root of the case.

10. The impugned judgment is based upon comprehensive appraisal of the evidence and warrants no intervention. The appellants are involved in number of other criminal cases detailed in the Sentence Order and deserve no leniency.

11. In the light of the above discussion, the appeals lack merit and are dismissed. Trial Court record be sent back forthwith along with the copy of the order. Intimation be also sent to Superintendent Jail.

(S.P.GARG)
JUDGE

MARCH 10, 2016

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