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

RESERVED ON : OCTOBER 25, 2016
DECIDED ON : **DECEMBER 21, 2016**

+ **CRL.A.1364/2014**

SHYAM MURTI SHARMA Appellant.
Through : Mr.Vishal Raj Sehijpal, Advocate.

VERSUS

STATE OF NCT OF DELHI Respondent
Through : Mr.Amit Gupta, APP.

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

S.P.GARG, J.

1. Challenge in this appeal is a judgment dated 06.05.2014 of learned Additional Sessions Judge in Sessions Case No.60/11 arising out of FIR No.66/10 registered at Police Station Dhaula Kuan by which the appellant-Shyam Murti Sharma was held guilty for committing offence under Section 392 read with Section 397 IPC. By an order dated 16.05.2014, he was sentenced to undergo Rigorous Imprisonment for ten years with fine ₹10,000/- under Section 392/34 IPC and Rigorous Imprisonment for seven years with fine ₹5,000/- under Section 397 IPC. Both the sentences were to run concurrently.
2. Briefly stated, the prosecution case as set up in the charge-sheet was that on 03.04.2010 at around 12.45 a.m., at or near Indian Oil Petrol

Pump, Nanakpura, New Delhi, the appellant along with his associate Vinod Sharma (since dead) in furtherance of common intention robbed Vikas Chopra of his Swift Car, ₹11,000/- cash, purse, mobile phone and gold chain by using deadly weapons. Information to the police was conveyed promptly and DD No.4A came into existence. The investigation was assigned to ASI Gajender who went to the spot. Injured Vikas Chopra present there was taken to Safdarjung Hospital for medical examination. After recording victim's statement (Ex.PW-3/A), the Investigating Officer lodged First Information Report. Statements of the witnesses conversant with the facts were recorded. During investigation, the appellant was arrested in case FIR No.22/2010 under Sections 186/506/411/34 IPC read with Section 25/27/54/59 Arms Act registered at Police Station Gulabi Bagh on 5.4.2010. The appellant's involvement in the present case too emerged in the disclosure statement made by him in the said proceedings. Certain recoveries including the case property robbed in the instant case were effected therein. PW-20 (SI Sandeep Sharma) on getting information about appellant's involvement in the case arrested him after seeking court's permission. The appellant declined to participate in the Test Identification Proceedings. It is relevant to note that Vinod Sharma (appellant's associate) expired on 7.4.2010. In order to prove its case, the prosecution examined 21 witnesses in all. In 313 statement, the appellant denied his involvement in the crime and pleaded false implication. He examined DW-1 (Dr.Sanjeev Lalwani) in defence. The trial resulted in his conviction, as aforesaid. Being aggrieved and dissatisfied, the instant appeal has been preferred.

3. I have heard the learned counsel for the parties and have examined the file.

4. The occurrence took place on the night intervening 3/4.4.2010 at around 12.45 a.m. Information about the occurrence was given to the police without delay and DD No.4A came into existence at around 4.15 a.m. at Police Station Dhaula Kuan. Soon the Investigating Officer arrived at the spot and took the victim to Safdarjung Hospital for medical examination for the injuries sustained by him in the occurrence. MLC (Ex.PW-6/A) records the arrival time of the patient at 01.00 a.m. The victim had sustained one lacerated wound at base of left hand thumb besides abrasion on various body parts. After recording victim's statement (Ex.PW-3/A), rukka (Ex.PW-20/A) was sent for lodging the FIR at 4.15 a.m. In the complaint, the victim gave vivid description of the occurrence and disclosed as to how and in what manner, he was physically assaulted by the assailants numbering two and was robbed of his valuable articles including a vehicle being driven by him. He claimed to identify the assailants. Since the FIR was lodged without any delay and the victim had no extraneous consideration to fake the incident of robbery particularly when he had not named the assailants with whom he had no prior acquaintance, complainant's version can't be suspected.

5. In his court statement as PW-3, the victim proved the version given to the police at first instance without any variation. He deposed that on 03.04.2010 while going to his house in his car No.DL 5CD 3969 he reached near India Oil Petrol Pump, Nankpura Gurudwara. At around 12.45a.m., he stopped the car to take dinner. In the meantime, two individuals came on a motor-cycle and stopped it behind him. One of them kept revolver on his waist and asked him to hand over ATM Card and keys of the car. They robbed him of ₹11,000/-, gold chain, driving license, PAN Card, purse, mobile phone make Nokia along with the keys of the car. On

his resistance, he was assaulted on his left hand thumb by a knife. Another individual hit him with the butt of his revolver on his head. Thereafter, one of the accused started his vehicle and another rode on the same motorcycle and fled the spot. He informed the police by making a telephonic call on mobile of a Sikh gentleman and lodged report (Ex.PW-3/A). The witness identified the appellant to be the individual who had given a knife blow to him. He further stated that the robbed articles (Ex.P-1 to P-7) were taken on *superdari* by him. In the cross-examination, he disclosed that he had received a call from the Police Post Dhaula Kuan about the recovery of his vehicle on Sunday. When he arrived at the Police Station, he came to know that the another assailant had been killed. He further stated that the accused was identified by him after the incident at Tis Hazari Courts. He denied the suggestion that the accused was identified subsequently at the instance of the police.

6. On scanning the testimony of complainant (PW-3), it reveals that despite searching cross-examination, nothing material could be extracted to discard the complainant's version. No ulterior motive was assigned or attributed to the victim to falsely implicate the appellant with whom he had no prior animosity or ill-will. In the absence of any prior acquaintance or familiarity, the appellant is not expected to let the real offender go scot free and to involve or rope in an innocent one. The victim had even not named any of the assailants in the FIR.

7. Adverse inference is to be drawn against the appellant for declining to participate in the Test Identification Proceedings. Nothing has come on record to show as to when the appellant was shown to the complainant and if so, where. It has come on record that the appellant and

his associate were arrested in Case FIR No.22/2010 under Sections 186/506/411/34 IPC registered at Police Station Gulabi Bagh. The Investigating Officer in the instant case came to know about the appellant's involvement due to his disclosure statement (Ex.PW-1/B) in the said proceedings. Apparently, the police officials of Police Station Gulabi Bagh were not aware about the involvement of the appellant in the present proceedings before his arrest. The Investigating Officer of this case had no ill-will to falsely implicate the appellant on getting information about his involvement in the case in some other FIR.

8. Besides this, the case property robbed by the appellant from the possession of the complainant was recovered by the police in Case FIR No.93/2010 registered at Police Station R.K.Puram. On getting information from the said Police Station on 10.04.2010, the Investigating Officer collected the seizure memo and took the possession of the case property from the said police station and deposited the same in the Malkhana of Police Station Dhaula Kuan on 19.04.2010. On 14.5.2010 he got transferred the case property of this case i.e. one gold chain and ₹11,000/- cash deposited in the malkhana of Police Station Gulabi Bagh. The case property was identified by the complainant to be the one robbed from his possession. The police officials are not expected to plant a huge amount from their own pocket to falsely implicate the accused.

9. There is no conflict between the ocular and medical evidence. The police officials have also corroborated the testimony of the complainant in its entirety. Their testimony is to be treated in the same manner as the testimony of any other witness as there is no principle of law that without corroboration by independent witness, their testimony cannot be relied upon.

The presumption that a person acts honestly applies as much as in favour of police official as of any other person.

10. In 313 statement, the appellant did not offer plausible explanation to the incriminating circumstances proved against him. The impugned judgment based upon fair appreciation of evidence warrants no intervention. The conviction under Section 392 read with Section 397 stands affirmed.

11. The appellant was sentenced to undergo Rigorous Imprisonment for ten years with fine ₹10,000/- under Section 392/34 IPC. Nominal roll dated 21.02.2015 reveals that the appellant has undergone two years, six months and twenty six days incarceration besides remission for three months and twenty four days. The appellant is involved in various FIRs and has already been convicted in FIR Nos.159/2011 and 22/2010. Annexure 'A' disclosed other FIRs showing his involvement in various similar offences. Apparently, the appellant is a habitual offender and deserves no leniency.

12. The appellant was further sentenced to undergo rigorous imprisonment for seven years with fine ₹5,000; default sentence being simple imprisonment for two months under Section 397 IPC. This part of the Sentence order cannot be sustained. The provisions of Section 397 IPC do not create any new substantive offence as such but merely serve as complementary to Section 392 and 395 IPC by regulating the punishment already provided by fixing a minimum term of imprisonment. Since the Trial Court has convicted the appellant under Section 392 IPC for imprisonment for more than seven years, separate punishment under Section 397 IPC was

uncalled for. For these reasons, the sentence awarded to the appellant under Section 397 IPC is set aside.

13. The appeal stands disposed of in the above terms.

14. Trial Court record be sent back forthwith along with the copy of the order. Intimation be also sent to the Superintendent Jail.

(S.P.GARG)
JUDGE

DECEMBER 21, 2016/sa

