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

RESERVED ON : JUNE 01,2016

DECIDED ON : JULY 15, 2016

+ **CRL.A. 1508/2014 & CrI.M.B.669/2016**

HASIN @ CHIGU

..... Appellant

Through : Mr.Sheikh Israr Ahmad, Advocate.

versus

STATE

..... Respondent

Through : Mr.Amit Gupta, APP.

+ **CRL.A. 1483/2014 & CrI.M.B.1131/2016**

NEERAJ

..... Appellant

Through : Ms.Charu Sachdev with Mr.Yogesh
Gautam, Advocates.

versus

STATE

..... Respondent

Through : Mr.Amit Gupta, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. The appellants Hasin @ Chugu (A-1) and Neeraj (A-2) impugn a judgment dated 5.8.2014 of learned Additional Sessions Judge in Sessions Case No.36/13 arising out of FIR No.117/12 registered at Police Station

Hazarat Nizamuddin by which A-1 under Section 392 read with Section 397/34 IPC and A-2 under Section 392 read with Section 394/34 IPC were convicted, they have preferred the instant appeals. By an order dated 14.08.2014, A-1 was sentenced to undergo Rigorous Imprisonment for seven years with fine ₹10,000/-; A-2 was sentenced to undergo Rigorous Imprisonment for five years with fine ₹10,000/-.

2. Briefly stated, the prosecution case as stated in the charge-sheet was that on 06.04.2012 at about 10.45 p.m. near MCD Park, Rain Basara, Hazrat Nizamuddin, the appellants in furtherance of their common intention with their associate Naseem @ Bhura (since expired) committed robbery upon Sajid and deprived him of ₹20,000/- and gold chain. 'Grievous' injuries were also inflicted at the time of commission of the said offence. Daily Diary (DD) No. 26B (Ex.PW-12/DA) came into existence on 06.04.2012 at around 11.02 p.m. about a quarrel at Alvi Chowk, Nizamuddin. The investigation was assigned to SI Veer Singh who along with Ct.Arvind went to the spot. After recording victim-Sajid's statement (Ex.PW-2/A), the Investigating Officer lodged First Information Report. The complainant was medically examined. During investigation, the appellants were arrested and certain recoveries were effected at their instance. Statements of witnesses conversant with the facts were recorded. Upon completion of investigation, a charge-sheet was filed against the appellants. In order to establish its case, the prosecution examined twelve witnesses. In 313 statements, 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. Material inconsistencies and infirmities in the statements of the prosecution witnesses were ignored without cogent reasons. PW-5 (Ajmal) and PW-10 (Dharmender) did not support the prosecution case and completely exonerated the appellants. It was a case of quarrel over parking of A-2's Scorpio at the place of occurrence. The complainant could not identify the crime weapon and currency notes allegedly recovered in this case. The prosecution has given different 'timings' of incident. No scratch was found on the complainant's neck at the time of alleged snatching of the gold chain. It is unbelievable that both the appellants would made available themselves at the place of occurrence for arrest after so many days. Learned Additional Public Prosecutor urged that the complainant has fully supported the prosecution and no sound reasons prevail to disbelieve his testimony.

4. The occurrence took place on 6.4.2012 at about 10.45 p.m. Information to the police was conveyed promptly and DD No.26B (Ex.PW12/DA) came into existence at 11.02 p.m. PCR arrived at the spot and admitted the complainant at Jai Prakash Narayan Apex Trauma Center at 11.08 p.m. The complainant was medically examined vide MLC (Ex.PW-9/A) and nature of injuries was opined as 'grievous' caused by blunt object. After recording victim-Sajid's statement (Ex.PW-2/A), the Investigating Officer sent rukka (Ex.PW1/B) at around 5.50 a.m. In the complaint, the victim Sajid gave graphic account as to how and in what manner he was inflicted injuries on his body at the of commission of robbery. The assailants were named in the FIR. Since FIR was lodged without any delay,

there was least possibility of the complainant to concoct a false story in such a short period.

5. In his Court statement as PW-2, the complainant supported the version given to the police at first instance without any major deviation. He identified the appellants to be the perpetrators of the crime along with their associate Naseem @ Bhura. He deposed that on 06.04.2016 after closing shop, when he was going to his house, he reached near MCD park, Nizamuddin. At around 10.45 p.m. when he was urinating, a Scorpio car arrived there. The appellants along with their associate Naseem @ Bhura alighted from the said Scorpio car. A-1 after showing 'churi' asked him to bring out whatever he had. On his objection, A-2 gave beatings to him with 'danda'. Naseem @ Bhura also had a 'churi' in his hand. Both Naseem @ Bhura and A-1 took out ₹20,000/- from his purse. A-1 also snatched his gold chain from the neck. He sustained several injuries on his leg, hand and head. Thereafter, the appellants fled the spot. Some public persons gathered and called PCR who shifted him to Trauma Center, AIIMS where his statement (Ex.PW-2/A) was recorded. In the cross-examination, he informed that the assailants were known to him as they lived in the 'basti'. He explained that he had no prior acquaintance or friendship with them; they were known BC of the area. He denied if Naseem @ Bhura used to park Scorpio at the place of occurrence. He denied if the appellants were implicated due to enmity. On scanning the testimony of the injured witness, it transpires that despite searching cross-examination, nothing material could be extracted to discredit his version. 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 time of occurrence.

Nothing was elaborated as to how the victim nurtured ill-will against any of them to falsely implicate them. Specific and definite role was assigned by the complainant to each of the assailants in the crime. Nothing has emerged on record if there was any history of previous hostility between the complainant and the accused persons. Injuries sustained by the victim were not denied by the accused person. They have failed to explain as to how and in what manner, the victim sustained injuries 'grievous' in nature. DW-1 (Hussain) merely stated that Naseem @ Bhura used to park Scorpio on road side and a quarrel had taken place between him and some residents of the 'basti'. He did not divulge as to with whom the said quarrel had taken place. In the cross-examination, he admitted that no such quarrel took place between the accused and Sajid. Complainant had nothing to do with the parking of the Scorpio. On the day of occurrence, as usual, he was returning to his house after closing his meat shop at Kailash Colony. On the way, he was not only robbed of cash and gold chain but was also inflicted 'grievous' injuries on his person. The complainant must be interested to bring the real culprits to book and is not expected to spare them. In the absence of any prior animosity, the complainant is not expected to falsely implicate the accused persons.

6. Recovery of gold chain (Ex.P-1) during investigation, identified by the victim in TIP proceedings lends credence to his testimony. Medical evidence is in consonance with ocular evidence; MLC (Ex.PW9/A) reveals that the complainant had suffered injuries on various body parts with blunt object. The injuries are not self-inflicted. PW-5 (Ajmal) divulged that when he was present at Alvi Chowk at about 10.00 p.m., Sajid came to them having injuries on his head and legs; he was bleeding profusely. On being

enquired by him, Sajid disclosed that he was beaten by 2/3 persons. He called the Police Control Room by dialing 100. Police arrived at the spot and took Sajid to Trauma Center, AIIMS. Statement of Ajmal is in consonance with the version narrated by the complainant.

7. Minor discrepancies and infirmities highlighted by the appellants' counsel are of no consequence as they do not affect the core of the prosecution case. The complainant fairly admitted that he was unable to identify the 'churi'; cash/currency recovered in this case.

8. Since the assailants had shared common intention and had inflicted 'grievous' injuries to the complainant at the time of committing robbery, their conviction under Section 392/394/397 IPC cannot be faulted. The conviction is affirmed.

9. The sentence order is based upon fair reasoning. A-2's nominal roll dated 22.01.2015 reveals that he is involved in three other criminal cases. A-1's nominal roll dated 22.01.2015 reflects that he is involved in five criminal cases all somewhat similar nature. The appellants appear to be habitual offenders and deserve no leniency.

10. The appeals lack merits and are dismissed. Pending Applications stand disposed of. Trial Court record (if any) be sent back forthwith along with the copy of the order. Intimation be also sent to the Superintendent Jail.

(S.P.GARG)
JUDGE

JULY 15, 2016/sa