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IN THE HIGH COURT OF DELHI AT NEW DELHI

RESERVED ON : FEBRUARY 04, 2015

DECIDED ON : FEBRUARY 12, 2016

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CRL.A. 1713/2014 & CrI. M A No. 16274/2015

DEEPAK

..... Appellant

Through : Mr. S K Sethi with Ms. Dolly
Sharma Advocates

versus

STATE

..... Respondent

Through : Mr. Vinod Diwakar, APP

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. The present appeal has been preferred by the appellant Deepak to impugn a judgment 18.10.2014 of learned Additional Sessions Judge in Sessions Case No.56/13 arising out of FIR No.15/10 PS New Delhi Railway Station whereby he was convicted along with his associates under Section 392 read with Section 397 and 411 IPC. By an order dated 18.10.2014, he was awarded Rigorous Imprisonment for seven years under Sections 392/397 IPC with fine ₹5000/- and Rigorous Imprisonment for two years under Section 411 IPC. Both the sentences were to operate concurrently.

2. Allegations against the appellant and his associates were that on 28.01.2010 at about 2.00 a.m. (night) on a running train, he and his associates committed robbery of various articles belonging to Sukhdeep Singh and his family members travelling in coach No.D-I of Himalayan Queen Express at the point of knives.

3. During pendency of the appeal, the appellant filed Crl.M.A.No.16274/15 for release on the period already undergone by him. Learned counsel for the appellant stated at Bar that the appellant has opted not to challenge the findings recorded by the Trial Court under Section 392/411 IPC. He urged that offence under Section 397 IPC is not proved as no deadly weapon was 'used' by the appellant in the crime. He prayed to modify the sentence order as the appellant is not a previous convict and is not involved in any other criminal case.

4. I have heard the learned counsel for the parties and have examined the file. On perusal of the statements of the material witnesses/victims, it stands established that the appellant and his associates were armed with deadly weapons and had robbed them by putting them in fear. The police was able to recover knives from two co-convicts during investigation. PW-1 (Sukhdeep Singh), complainant and victim, specifically deposed that all the assailants including the appellant

were armed with knives and they used deadly weapons to commit robbery. In the cross-examination, no suggestion was put to the witness if the appellant was not armed with any such weapon. Similar are the testimonies of PW-2 (Ranjeet Kaur), PW-3 (Baljeet Kaur), PW-5 (Manjeet Kaur), PW-6 (Simran Kaur), PW-8 (Raman Mehta) and PW-10 (Pawan Kumar). There are no sound reasons to disbelieve their statements. They did not nurture any grievance against the appellant to falsely implicate him in the crime. The appellant and his associates were duly identified by them in the court. Certain robbed articles were also recovered from the appellant's possession. Non-recovery of the crime weapon from the appellant is not fatal as he was arrested after considerable period. I find no illegality or material irregularity in the impugned order, whereby the appellant was convicted with the aid of Section 397 IPC. Even otherwise, the offence committed by the appellant and his associates in a running train is very serious and grave. No adequate and sufficient reasons exist to take lenient view. Minimum sentence for seven years prescribed under Section 397 IPC cannot be modified. The sentence order is modified only to the extent that the default sentence for non-payment of fine of ₹5,000/- will be Simple

Imprisonment for one month instead of two months. Other terms and conditions of the sentence order are left undisturbed.

5. The appeal stands disposed of in the above terms. Trial Court record along with the copy of the order be sent back forthwith. Intimation be also sent to the Superintendent Jail.

(S.P.GARG)
JUDGE

FEBRUARY 12, 2016

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