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

RESERVED ON : 2nd SEPTEMBER, 2016
DECIDED ON : 5th SEPTEMBER, 2016

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CRL.A.747/2015

IMTIYAZ @ TINKU

..... Appellant

Through : Ms.Suman Chauhan, Advocate.

versus

THE STATE (NCT OF DELHI)

..... Respondent

Through : Mr.Raghuvinder Varma, APP.

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CRL.A.1760/2014

SUNNY @ YOGESH

..... Appellant

Through : Ms.Suman Chauhan, Advocate.

versus

THE STATE (GOVT. OF NCT), DELHI

..... Respondent

Through : Mr.Raghuvinder Varma, APP.

AND

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CRL.A.143/2015 & CRL.M.B.241/2015

NARESH

..... Appellant

Through : Mr.Saurabh Kansal, Advocate with
Ms.Pallavi S.Kansal, Advocate.

versus

THE STATE (GOVT. OF NCT), DELHI

..... Respondent

Through : Mr.Raghuvinder Varma, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Aggrieved by a judgment dated 06.08.2014 of learned Additional Sessions Judge in Sessions Case No.08/1/13 arising out of FIR No.137/12 registered at Police Station Inderpuri by which the appellants -

Imtiyaz @ Tinku (A-1), Sunny @ Yogesh (A-2) and Naresh (A-3) were held guilty for committing offences punishable under Sections 392/394/34 IPC and A-2 in addition under Section 397 IPC, they have filed the instant appeals. By an order dated 08.08.2014, they were awarded various prison terms with fine.

2. Briefly stated, the prosecution case, as reflected in the charge-sheet, was that on the night intervening 01/02/11.2012 at about 01.40 a.m. near D-Block, Main Road, JJ Colony, Inderpuri, New Delhi, the appellants in furtherance of common intention robbed the complainant – Virender Mehto of his purse containing ₹1,000/- and a driving licence. Injuries were also inflicted to the complainant – Virender Mehto by a knife. The police machinery came into motion on getting information about the incident vide Daily Diary (DD) No.6A (Ex.PW-3/A) recorded at PS Inderpuri at 01.50 a.m. The investigation was assigned to SI Surender Singh. After recording victim's statement (Ex.PW-2/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 arrested and certain recoveries were effected at their instance. Upon completion of investigation, a charge-sheet was filed against the appellants in the Court. To establish its case, the prosecution examined fourteen witnesses and relied upon various documents. In 313 Cr.P.C. 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. The occurrence took place at around 01.40 a.m. on the

night intervening 01/02.11.2012. Intimation to the police was conveyed promptly and Daily Diary (DD) No.6A (Ex.PW-3/A) came into existence at PS Inderpuri at 01.50 a.m. In the complaint (Ex.PW-2/A), the victim gave detailed account as to how and in what manner, he was robbed by assailants three in number inflicting injuries to him. He claimed to identify the assailants if shown to him. In his Court statement as PW-2, the complainant proved the version given to the police without any variation and identified the appellants to be the assailants. He assigned specific and definite role to each of the assailants in the commission of crime. He deposed that on the night intervening 01/02.11.2012, he was returning in his auto bearing registration No.DL 1RK 9149 after dropping a passenger at C-Block, JJ Colony, Inderpuri, New Delhi in between 01.00 to 01.30 a.m. When he reached near D-Block, JJ Colony, Inderpuri, New Delhi, the appellants stopped his TSR. A-1 caught hold of him by neck and asked him to hand over all the belongings; A-2 stabbed him on his upper thigh and left-side buttock, A-3 removed his purse from the back side pocket of the pant containing cash ₹1,000/- and driving licence. After the commission of robbery, the assailants fled the spot. He made a call at 100 to the police. Police took him to RML Hospital where he was medically examined and his statement (Ex.PW-2/A) was recorded. In the cross-examination, he elaborated that A-1 had caught hold of him from behind after sitting in his TSR which was at a slow speed. Despite his raising alarm, none came to his rescue. He denied the suggestion that it was a case of mistaken identity and the assailants were not the 'boys' who had robbed him.

4. On scanning the entire statement of the complainant, it transpires that despite searching cross-examination, nothing material could

be extracted to disbelieve him. No extraneous motive was attributed to the complainant to make a false statement against the appellants. In the absence of prior animosity or ill-will, the complainant who was a victim was not expected to let the real offenders go scot free and implicate innocent ones. The victim did not nurture any grievance against the accused persons and for that reason none of them was named in the FIR. The victim, however, claimed to identify the assailants if shown to them as he had seen their faces at the spot. The complainant had given brief description of the assailants also. It is relevant to note that during investigation, Investigating Officer filed applications for conducting Test Identification Proceedings. However, the appellants declined to participate in Test Identification Proceedings. Adverse inference is to be drawn for not participating in the Test Identification Proceedings. Besides this, all the appellants were identified by the complainant in the Court statement without any hesitation and that is the substantive evidence.

5. The victim had sustained injuries by a sharp weapon. Soon after the occurrence, he was taken to RML Hospital and was medically examined vide MLC (Ex.PW-8/A). The arrival time at RML Hospital recorded is 02.30 a.m. and brought by HC Ved Prakash of PCR. The victim had sustained four stab injuries on various body parts. Apparently, there is no inconsistency between ocular and medical evidence. These injuries were not self-inflicted. Being an injured, the victim's statement stands on higher footing.

6. During the course of investigation, the crime weapon i.e. knife (Ex.P1) was also recovered at A-2's instance. PW-1 (Dr.Yogesh Tyagi) prepared its sketch (Ex.PW-1/A) and submitted its report (Ex.PW-1/B)

informing that the injuries suffered by the victim were possible with the crime weapon recovered. The prosecution further relied on the circumstance of recovery of the 'part' of the robbed cash.

7. The accused persons did not furnish any plausible explanation in their 313 Cr.P.C. statements; they did not examine any witness to substantiate if they were not present at the spot or were lifted from their respective houses or Court as alleged. Minor discrepancies regarding the manner in which the appellants' arrest has been shown are not material due to identification of the assailants by the victim in the Court.

8. 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.

9. The Sentence Order is based upon fair reasoning. Considering the gravity of the offence and the fact that an innocent was not only deprived of his hard earned money but also inflicted injuries on his body, Sentence Order needs no modification / alteration.

10. The appeals lack merit and are dismissed. Trial Court record be sent back forthwith with the copy of the order. Intimation be sent to the Superintendent Jail.

(S.P.GARG)
JUDGE

SEPTEMBER 05, 2016 / tr