

\$~R-16

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

% *Date of Decision: 30th May, 2016*

+ **CRL. A. 790/2015**

NEERAJ @ GOFANDA

..... Petitioner

Through: Mr.Jatin Rajput and Mr.Anupam
Dubey, Advocate.

Versus

STATE

..... Respondent

Through: Mr.Kewal Singh Ahuja, APP for the
State

PRATIBHA RANI, J. (Oral)

1. This appeal has come up for hearing pursuant to the directions issued for expediting hearing in appeals filed by persons in custody (with sentence more than five years and upto seven years).
2. The appellant has preferred the instant appeal against the judgment dated 20th October, 2014 and order on sentence dated 30th October, 2014, whereby the appellant has been convicted for committing the offence punishable under Section 397 IPC and under Section 27 of Arms Act and sentenced as under:-

Under Section 397 IPC	:	to undergo RI for 7 years.
Under Section 27 Arms Act	:	to undergo RI for 3 years with fine of ₹5,000/- and in default of payment of fine, to undergo SI for 1 month.

3. In brief the prosecution case is that on 23rd July, 2012, at about 4:00 PM, the complainant, who was a TSR Driver, was going on his TSR No.DL-1R-L-9765 to Karol Bagh via DBG Road. When he crossed PS Pahar Ganj, one person wearing yellow T-Shirt i.e. the appellant signalled him to stop the TSR. After sitting in the TSR he asked the complainant to take him to Karol Bagh. When the complainant was driving the TSR and covered some distance, the appellant robbed him at knife point of his purse containing cash of ₹500. When the traffic signal was red on the roundabout, the appellant got down from the TSR. The complainant raised alarm and on hearing the alarm, the appellant was caught by the PCR officials on duty. Local police was informed and the purse robbed by the appellant as well as the knife were recovered from him. On completion of investigation, charge-sheet was filed. After committal of the case to the Court of Sessions and conclusion of trial, he was convicted for offence punishable under Sections 397 IPC and under Section 25/27 Arms Act.

4. During trial, prosecution examined eight witnesses to prove the guilt of the appellant. In statement under Section 313 Cr.P.C. the appellant simply denied the case of the prosecution claiming his false implication as he refused to pay the excess fair, as demanded by the TSR driver i.e. the complainant.

5. After considering the entire evidence, finding the testimony of the complainant/PW-7-Rakesh Kumar to be worthy of credence, the appellant was convicted for committing offence punishable under Section 397 IPC as well Section 27 Arms Act and sentenced as above.

6. On behalf of the appellant it has been submitted that the testimony of the complainant is full of contradictions. It is not clear as to whether while

chasing the appellant when he was trying to escape after committing robbery, the complainant was on foot or in his TSR. He has further submitted that as per complainant he has dropped his family for shopping at 4:00 PM and the time of the incident is also the same time which makes the testimony of the complainant/PW-7 – Rakesh Kumar to be unbelievable.

7. Learned counsel for the appellant has also submitted that admittedly the complainant is a TSR driver. The appellant has admitted having hired his TSR for going to Karol Bagh. Thus the real dispute was on account of higher fair being demanded by the TSR driver due to which the quarrel took place and appellant has been falsely implicated in this case and sentenced for a period of seven years.

8. On behalf of the State, learned APP has submitted that the appellant had robbed the TSR driver after hiring his TSR as a passenger but while sitting on the passenger seat, he put his knife on his neck and took out the purse of TSR driver (PW-7). On seeing that the traffic signal is red at the roundabout, he got down and tried to flee. However, alarm raised by the complainant attracted the attention of the PCR officials present nearby resulting in apprehension of the appellant immediately after commission of the offence and purse of the complainant as well the knife used for the commission of robbery have also been recovered. Learned APP for the State has submitted that since there is no discrepancy in the testimony of the material prosecution witnesses and the case against the appellant being proved beyond reasonable doubt, the appeal may be dismissed.

9. Learned APP for the State has also placed on record the list of 28 cases in which the appellant is involved.

10. During trial, PW-7 Sh.Rakesh Kumar – the complainant was examined who stated that on 23.07.2012 he was going to Karol Bagh to take back his family members who were earlier dropped by him at about 12.00/12.30 noon for shopping. When he reached a little ahead of PS Pahar Ganj, the appellant signalled him to stop. After boarding the TSR, the appellant asked him to take him to Karol Bagh. However, when the TSR proceeded a little ahead, the appellant put a knife on his neck and took out his black colour purse from left pocket of his shirt which was containing ₹500/-, his driving licence, one small photograph of his daughter and a currency note of Rupee 1/-. As traffic signal was red and TSR stopped, the appellant got down near Gol Chakkar and started running. Then PW-7 raised alarm *pakdo pakdo chor chor*, which attracted the attention of PCR Van parked nearby and they apprehended the appellant. Local police was informed. During search of the appellant, knife Ex.P1 and his (complainant's) purse Ex.P2 were recovered.

11. In cross examination, the only suggestion given to the complainant is that he was demanding excess fare and due to that reason a quarrel took place and he has been falsely implicated in this case.

12. The version of the complainant had been fully supported by PW-2 SI Satbir Singh and PW-4 Ct.Om Pal Singh. The presence of PCR Van Oscar 33 near the place of occurrence has also been proved by the prosecution by placing on record the duty roster of the PCR Van Staff.

13. The complainant in this case was going to Karol Bagh to collect his family and at that time, he got a passenger who also wanted to go in the same direction. In that circumstance, getting a passenger for the same destination where he was going would have been considered as extra income by the

complainant and he had no occasion to demand extra fare if the passenger was heading towards the same direction where he was going. Otherwise also, the complainant must have been in a hurry to pick up his family members who were dropped at noon time for shopping and he hardly had any reason to falsely implicate the appellant who hired the TSR pretending to be a passenger.

14. I have reassessed the evidence adduced before the learned Trial Court. I am of the opinion that the learned Trial Court has rightly considered the testimony of the complainant who was robbed of his purse on knife point in his own TSR by the appellant but because of the courage shown by the TSR Driver by raising alarm and presence of PCR Van nearby, the appellant was apprehended there and then and recovery of knife and purse effected from him.

15. I do not find any ground to interfere with the impugned judgment whereby the appellant has been convicted for committing the offence punishable under Section 397 IPC and under Section 27 Arms Act.

16. Even on the quantum of sentence, the appellant does not deserve any leniency for the reason that the minimum sentence prescribed for committing offence punishable under Section 397 IPC is seven years which has been awarded to him in this case.

17. The appeal is dismissed.

18. TCR be sent back alongwith copy of this order.

19. Appellant be informed through concerned Jail Superintendent about the orders passed.

PRATIBHA RANI, J.

MAY 30, 2016/ 'hkaur'