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

**RESERVED ON : 31<sup>st</sup> MAY, 2016**

**DECIDED ON : 11<sup>th</sup> JULY, 2016**

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**CRL.A.979/2015**

SAGAR

..... Appellant

Through : Mr.Nazim Husain Qureshi, Advocate.

versus

STATE (NCT OF DELHI)

..... Respondent

Through : Ms.Meenakshi Dahiya, APP.

**CORAM:**

**HON'BLE MR. JUSTICE S.P.GARG**

**S.P.GARG, J.**

1. Aggrieved by a judgment dated 23.07.2015 of learned Additional Sessions Judge in Sessions Case No.35/2015 arising out of FIR No.287/2013 registered at Police Station Neb Sarai by which the appellant – Sagar was held guilty for committing offences punishable under Sections 392/397 IPC, he has filed the instant appeal. By an order dated 10.08.2015, he was sentenced to undergo Rigorous Imprisonment for seven years under Section 397 IPC and Rigorous Imprisonment for three years under Section 392 IPC. Both the sentences were to operate concurrently.

2. Briefly stated, the prosecution case, as reflected in the charge-sheet, was that on 25.08.2013 at about 08.05 p.m. near Aggarwal Sweets, D-Block, Krishna Park, New Delhi, the appellant snatched purse containing ₹1200/- from the complainant – Alka and while escaping, showed her a knife to intimidate.

3. On 25.08.2013 at around 08.00 p.m. complainant – PW-3 (Alka) along with her husband - PW-6 (Dinesh Prasad) was present near

Aggarwal Sweets, Krishna Park, Deoli Village. The appellant snatched a purse from Alka's hand and ran away. He was chased and was apprehended by two police officials PW-2 (Ct.Ramesh Chand) and PW-5 (Ct.Varun). The robbed purse and a knife were recovered from his possession. Daily Diary (DD) No.46-A (Ex.PW-1/A) came into existence at Police Station Neb Sarai at around 08.50 p.m. about the occurrence. The Investigating Officer after recording Alka's statement (Ex.PW-3/A) lodged First Information Report. Statements of witnesses conversant with the facts were recorded. Upon completion of investigation, a charge-sheet was filed against the appellant in the Court for committing offences under Sections 392/397/411 IPC and 27 Arms Act. To establish its case, the prosecution examined eight witnesses. In 313 statement, the appellant denied his involvement in the crime and pleaded false implication. He examined his grand-mother DW-1 (Shanti) in defence to prove that he was lifted from the house on 25.08.2013 at around 11.00 p.m. The trial resulted in his conviction as aforesaid. It is pertinent to note that the appellant was acquitted of charge under Section 25/27 Arms Act and the State did not challenge the said acquittal.

4. I have heard the learned counsel for the parties and have examined the file. Appellant's counsel urged that ingredients of Section 397 IPC are not attracted in this case. The prosecution version cannot be believed as no independent public witnesses were associated despite their availability in the market.

5. The appellant was named by the victim in the complaint (Ex.PW-3/A) to be the author of crime. She gave detailed account as to how and in what manner the accused came from behind and snatched purse from

her hand. When she raised alarm, her husband chased him; two police officials coming from the other direction caught hold of the appellant and recovered the purse and knife. In their Court statements, PW-3 (Alka) and PW-6 (Dinesh Prasad) have proved the version narrated in the complaint (Ex.PW-3/A) without any variations. The appellant was identified to be the individual who had snatched the purse forcibly from Alka's hands. Both of them were not cross-examined on material aspects. No extraneous consideration was assigned to them for falsely implicating him in the crime. The accused did not deny his presence at the spot at the relevant time. No suggestion was put to PW-3 and PW-6 that he was not apprehended by the police officials at the spot while fleeing. PW-2 (Ct.Ramesh Chand) and PW-5 (Ct.Varun) present on patrolling duty in the area have corroborated the testimonies of the victim and her husband. They were able to apprehend the appellant when was being chased by the victim's husband. Soon thereafter, the stolen purse was recovered from his possession. The case property was identified by the victim in the Court. In the absence of prior animosity or ill-will, these independent witnesses were not expected to fake the incident of purse snatching and to implicate the appellant for the crime falsely.

6. Mere non-joining of independent public witnesses during investigation per se is of no consequence. Many a time public witnesses due to certain compulsions exhibit reluctance to join police investigation. The evidence of the complainant and her husband coupled with the testimonies of police officials is sufficient to prove the appellant's guilt.

7. I do agree with the appellant's contention that ingredients of Section 397 IPC are not attracted in the instant case. Admittedly, at the time

of snatching of the purse forcibly from the complainant's hand, the appellant did not use any deadly weapon. No injuries whatsoever were caused with the said knife to the complainant or her husband. The complainant in her initial statement (Ex.PW-3/A) as well in her Court statement as PW-3 did not claim if she was threatened by the appellant by using the knife. Allegedly the knife was 'used' by the appellant after the commission of the crime when he was escaping from the spot. It is relevant to note that the Trial Court did not believe the prosecution about recovery of knife and it resulted in his acquittal under Sections 25/27 Arms Act. Since the prosecution was unable to establish possession of the knife, it cannot be inferred with certainty that this deadly weapon was 'used' at the time of crime to attract Section 397 IPC. The prosecution was thus unable to establish commission of offence under Section 392 IPC with the aid of Section 397 IPC. Sentence to undergo Rigorous Imprisonment for seven years with the aid of Section 397 IPC, thus, cannot be sustained and is set aside.

8. The appellant shall undergo Rigorous Imprisonment for three years for commission of offence under Section 392 IPC.

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

**(S.P.GARG)**  
**JUDGE**

**JULY 11, 2016 /tr**