

* IN THE HIGH COURT OF DELHI AT NEW DELHI
Judgment delivered on : March 15, 2017

+ CRL.A. No.448/2000
ROSHAN LAL Appellant
Through: Mr.H.P. Aditya, Advocate with
appellant in person.

versus

STATE OF DELHI Respondent
Through: Mr.Ashish Dutta, Additional Public
Prosecutor for the State with Sub-
Inspector Sher Singh, Police Station
Mayur Vihar, Delhi.

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI
JUDGMENT
P.S.TEJI, J.

1. Present appeal has been preferred by the appellant being aggrieved by the judgment of conviction dated 01.07.2000, passed by the learned Additional Sessions Judge, Delhi, thereby convicting the appellant – Roshan for the offences under Section 392/394 of IPC. He was also held guilty for commission of offence under Section 392 read with section 397 of IPC. The appellant has also challenged the order on sentence dated 04.07.2000 passed by learned Additional Sessions Judge whereby the he has been sentenced to undergo rigorous imprisonment for a period of ten years for the offence under Section 392 read with section 397 of IPC with fine of Rs.200/- and in default to further undergo rigorous imprisonment for ten days and in addition,

he was ordered to undergo rigorous imprisonment for 7 years with fine of Rs.300/- and in default, to further undergo rigorous imprisonment for 15 days for the offence under Section 394 of IPC.

2. The facts emerging from the impugned judgment are that five accused persons viz Kamlesh, Roshan, subhash @ Pancho, Hardeep @ Takla and Govind were sent by Police Station Mayur Vihar for the trial of the offence under Section 394/397/412/34 of IPC in relation to the incident that occurred in a bus on 28.12.1998 at about 10.15 AM. Victim Ram Dulare was alleged to have been robbed of his hand bag containing Rs.39,330/-, bank account payee cheques for about 1 lakh 30 thousand, identity card and few papers including his passbook and pass book of Super Bazar Society and keys of cash chest at the point of knife and during that course was also injured. Since after the committing of the case to the court of Sessions, the case was received on allocation by this court. On the consideration of the police report and the material submitted therewith, in the absence of admissible evidence available with the prosecution, the accused persons Subhash, Hardeep @ Takla and Govind were discharged at the stage of consideration of charge and the remaining two accused persons Kamlesh and Roshan were charged for the offence under Section 392/394/34 IPC and the accused Roshan was also charged for the offence under Section 392 read with section 397 of IPC and under Section 411 IPC. To the said charges the appellants did not plead guilty and claimed trial.

3. To bring home the guilt of the appellants, the prosecution

examined as many as 16 witnesses. They are, Vinod Kumar (PW-1); Kewal Chand (PW-2); Soban Singh (PW-3); Ram Dulare (PW-4); Head Constable Shiv Kumar (PW-5); Constable Lalit Kumar (PW-6); Constable Om Prakash (PW-7); Ashwani Sachdeva (PW-8); Sub-Inspector Ram Narain (PW-9); Constable Rajesh (PW-10); Constable Rajender (PW-11); Sub-Inspector D.P. Singh (PW-12); Head Constable Satender (PW-13); Dr. B.D. Singh (PW-14); Sub-Inspector M.A. Khan (PW-15); and Head Constable Shiv Kumar (PW-16).

4. Thereafter, entire incriminating material on record was put to the appellant, and his statement under Section 313 of Cr.P.C. was recorded, in which he pleaded innocence and stated that he was falsely implicated. However, the appellant did not prefer to lead any defence evidence.

5. After considering the facts, evidence led and the material on record, the learned Additional Sessions Judge held the appellant - Roshan guilty for the offence as mentioned above and vide order on sentence passed separately, the appellant was sentenced, as indicated above. During pendency of the present appeal, the sentence imposed upon the appellant was suspended vide order dated 10.12.2003.

6. Argument advanced by the learned counsel for the appellant is that on 10.11.1999 at about 11 PM at night, the appellant was sleeping in his house when Inspector Santosh Kumar alongwith two constables in civil dress came to his residence and brought him to Police Station Kalyanpuri where on the next day a case vide FIR No. 13/1999 under

Section 399/402 IPC and also case vide FIR No. 15/1999 under Section 25/54/59 of Arms Act were fabricated and he was falsely implicated in those cases. After having fabricated the confessional statement of the appellant, the case property in the form of Rs.1200/- and two pay-in-slips were planted by the prosecution and he was falsely implicated in the present case. Learned counsel for the appellant further contended that no independent witness had joined the investigation when the appellant was raided and arrested at the spot nor recovery of knife was alleged. Apart from the aforesaid contentions, the learned counsel for the appellant contended various contradictions in the statement of PW-13 H.C. Satinder Singh regarding personal search of the appellant; PW-12 SI D.P. Singh, regarding the secret informer accompanying him, however, PW-13 HC Satinder Singh deposed in his cross-examination that the secret informer had accompanied the raiding party; contradiction regarding timing is also alleged. Regarding disclosure statement, learned counsel for the appellant has contended that as per PW-13, the disclosure statement was recorded at the spot, however PW-12 deposed in his cross-examination that the disclosure statement was recorded at the Police Station on 12.01.1999. Learned counsel for the appellant further contended that no independent witness had joined the prosecution at the time of interrogation and recording of the disclosure statement. Learned counsel for the appellant also drew attention of the court to the impugned judgment wherein the appellant has been acquitted from the offence under Section 411/34 as the prosecution failed miserably to prove the recovery at the instance of the appellant.

Lastly, it is vehemently urged on behalf of the appellant that the FIR suggests that weapon of offence was Chhuri but PW-4 deposed before the Trial Court that knife blows were given on his person and moreover, even the weapon of offence has not been recovered in the present case, therefore in the absence of recovery of weapon of offence the offence under Section 397 of IPC cannot be said to have been established against the appellant.

7. On the quantum of sentence, learned counsel for the appellant urged that the appellant has already remained behind bars for the period of about six years including remission and the appellant was of 19 years of age at the time of incident. The appellant has already been acquitted in other cases registered against him vide FIR No. 13/99 and 15/99 Police Station Kalyanpuri, and after sentence of the appellant being suspended, the appellant has been married and has a five year old school going son and wife to look after. Apart from the above, the appellant has an aged mother and five unmarried sisters of marriageable age and after the death of his father he has to perform the family duties being the elder son and therefore, in such a situation some lenient view be taken and the sentence of the appellant be reduced to the period already undergone.

8. Per contra, learned Additional Public Prosecutor for the State has submitted that the present case was registered on the statement of Ram Dulare (PW-4), who has categorically deposed in his statement before the court that on 28.12.1998, when he left the office with his hand bag containing Rs.39,330/- in cash and cheques for the total

amount of Rs.1 lakh 30 thousand, identity card issued by his office, cash chest keys and the passbook of Super Bazar Thrift and Credit Society, and reached the bus stop near his office to take a bus to Khichripur, a bus route No.364 came. He boarded the bus and sat down on a seat. He observed that two boys were watching him. One of them came from the front side and one of the boys came from the rear side. One of the boys caught hold of his hand bag, to which he resisted. On this, the other boy tried to put chilli powder in his eyes but they could not succeed in snatching his bag. One of those boys gave him leg blows and both of them started giving knife blows on his person. He further deposed that both the boys were carrying knives. During the scuffle he fell down in the space between the seats and when the bag came in the hands of those two boys, they immediately ran away. At the time of deposition, this witness identified the accused Kamlesh who snatched away the bag from him. He further deposed that on 14.01.1999 he identified the appellant – Roshan at Police Station Mayur Vihar and he identified him to be the person who had robbed him and had inflicted knife blows on his person.

9. The driver of the bus - Vinod Kumar (PW-1) had deposed in his statement recorded before the Trial Court that on the date of incident i.e. 28.12.1998, he was driving the bus from Lajpat Nagar to Kalyanpur and when his bus reached the bus stand at Block No.26, Trilokpuri, 20/30 persons boarded his bus and when he was turning the bus, he heard a noise that 'churi wagera chal gai' and one of the persons coming over to him asked him to stop the bus and on that he

stopped the bus and got down from the side of the driver seat. Conductor had gone to make telephone call but he did not see anything happening. He further deposed that the person who received the injury on his person after getting down from the bus, ran away. Mirch powder was laying in the bus after the incident and one shawl of maharoon color was also lying in the bus after the incident. In his cross-examination he deposed that he did not know the name of the injured was Ram Dulare. He further deposed that the speed of the bus was not even 20 km per hour when he heard the voice that someone had been stabbed. Police reached the spot in 15 minutes of the occurrence.

10. Conductor of the bus – Kewal Chand (PW-2) is the other relevant prosecution witness, who deposed in his statement that on the date of incident, he was working as conductor on bus route No.364, Bus No. DL 1P 5275 and the said bus was coming from Lajpat Nagar to Kalyanpuri and when the bus reached near Super Bazar Block No.26, few of the passengers got down and just after the bus had started off again he heard the noise of the passengers that 'bus me chaku chal gaya'. Thereafter the bus stopped and the passengers started getting down from the front gate and rear gate. He got down from the rear gate and went to the public telephone booth installed nearby and informed the police over telephone no.100, and subsequently thereafter police reached. When he returned, he saw blood and some powder lying in the bus. A shawl was also lying in the bus. On reaching at the spot, he came to know that one employee of

Super Bazar was the victim, who was not present at the spot when police arrived. The police got the spot in the bus photographed, collected the sample of blood, the powder and shawl lying in the bus. Finger prints were also picked up from the bus. Samples and articles were collected by the police from the spot and relevant signatures obtained.

11. Dr. B.D. Singh, CMO, GTB Hospital (PW-14) was also examined by the court, who in his deposition stated that on the date of incident i.e. 28.12.1998, he was working as CMO at GTB Hospital and at about 11.20 AM, he examined R.D. Verma, who was brought by Soban Singh with the history of assault. On the medical examination of R.D. Verma, he prepared the MLC and recorded the alleged history. During examination, the doctor found (i) clear incised wound two in numbers, one inch each on the scalp, (ii) one clear incised wound on back of neck which was one inch incised; (iii) two clear incised wounds which were one inch each on the right cheek; (iv) one clear incised wound which was one inch on the chin; and (v) clear incised wound on the left ring finger, which he so mentioned in the MLC (Ex. PW-14/A). He further deposed that the patient was brought in fully conscious condition.

12. I have heard the submissions made on behalf of both the sides and also gone through the evidence of relevant witnesses as well as material placed on record. The material witnesses to the present case are Ram Dulare (injured) (PW-4), Bus Driver – Vinod Kumar (PW-1), Kewal Chand (PW-2) and Dr. B.D. Singh (PW-14), who prepared the

MLC of the victim. This court observes that initially the case was registered under Section 394/397/412/34 of IPC and the appellant – Roshan was charged under Section 392/394/397/34 IPC.

13. From a careful scrutiny of the case in hand, the identity of the appellant, who had committed the robbery and inflicted the knife blows on the injured, is established by the deposition of injured witness – Ram Dulare (PW-4). In the considered opinion of this court the evidence of injured witness is sufficient to hold the appellant guilty for the offence with which the appellant is charged. In ***Abdul Sayeed vs State Of M.P.***, (2010) 10 SCC 259, the Hon'ble Apex Court, while dealing with the reliability of testimony of injured witness, has held as under:

“The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an in-built guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein.”

14. Apart from the deposition of the injured – Ram Dulare (PW4),

Bus driver Vinod Kumar (PW-1) and the conductor Kewal Chand (PW-2) have also corroborated the incident of robbery committed by the appellant therefore, this court has no hesitation to hold that the appellant was rightly convicted for the offence under Section 392/394/34 of IPC and accordingly, the impugned judgment to that extent is upheld.

15. So far as the conviction for the offence under Section 397 IPC is concerned, this court observes from a perusal of the record of this case that there is no recovery of the weapon of offence, what to say the knife which was used as a deadly weapon to commit the offence of robbery. No doubt, to convict the accused the evidence of the injured witness is sufficient but for convicting the accused for the offence under Section 397 of IPC, the prosecution must produce convincing evidence that the knife used by the accused was a deadly weapon. It is therefore a question of fact to be proved by the prosecution that the knife used by the accused was a deadly weapon. In the absence of such evidence and particularly, the non-recovery of the weapon, it would certainly bring the case outside of the ambit of Section 397 of IPC. Therefore, in the considered opinion of this court the accused could only be convicted under Section 392 of IPC and not under Section 397 of IPC.

16. This court having considered the facts and circumstances of the case and the material placed on record and the depositions made on behalf of the relevant witnesses is of the opinion that the prosecution has not been able to establish the dimensions of the knife and has

failed to recover and produce the same at the time of trial, therefore, it will not be appropriate to raise a presumption that the knife so used by the appellant was in fact a 'deadly weapon' within the meaning of the term, as there are knives of hundreds of type available in different length and width. Accordingly, in the considered opinion of this court, even though the sentence of the appellant for the offences under Section 392/394 are based on the material brought on record, the conviction of the appellant for the offence under Section 397 IPC cannot be upheld and the appellant is entitled to the benefit of doubt on that account. Resultantly, the appeal filed by the appellant is partly allowed. While maintaining the conviction of the appellant for the offences under Section 392/394 of IPC the conviction of the appellant under Section 397 of IPC is set aside.

17. On the quantum of sentence, this court observes that the appellant – Roshan has been awarded sentence of rigorous imprisonment for a period of 10 years for the offence under Section 392/397 IPC and for 7 years with fine of Rs.300/- for the offence under Section 394 of IPC. This court also find the nominal roll of the appellant – Roshan Lal, according to which, he has already undergone the sentence for about 6 years, including remission. Considering the peculiar facts and circumstances of this case, wherein the incident relates to the year 1998 and that the appellant has faced the agony of trial for the last 19 years, and the fact that in the other cases registered against the appellant vide FIR No. 13/99 and 15/99 Police Station Kalyanpuri, he has been acquitted and after suspension of his sentence

on 10.12.2003, nothing adverse is found against him coupled with the facts that the appellant is married and apart from his wife and child, he has an aged mother and five unmarried sisters of marriageable age and after death of his father, he has to perform the family duties being the elder son, this court is of the considered opinion that in the interest of justice would be met if the sentence awarded to the appellant – Roshan for the offence under Section 392/394 of IPC be reduced to the extent of period already undergone by him. It is ordered accordingly.

18. Consequently, the court culminates into an opinion that the appellant – Roshan Lal deserves to be acquitted from the charge under Section 397 of IPC. So far as the remaining charge under Section 392/394 of IPC is concerned, the impugned judgment thereby holding the appellant guilty for the offence under Section 392/394 of IPC is upheld.

19. Accordingly, the order on sentence dated 04.07.2000 is modified to the extent that the appellant – Roshan Lal is convicted for the offence under Section 394 of IPC and since the conviction under Section 392 of IPC merges with section 394 of IPC, therefore, no separate sentence needs to be passed under Section 392 IPC. Considering the peculiar facts and circumstances of the present case, the sentence of the appellant –Roshan Lal for the offence under Section 394 is reduced to the period already undergone by him.

20. Appellant –Roshan Lal is on bail. His bail bonds and surety bonds are discharged. He is ordered to be set free from this case.

21. A copy of this order be sent to the Trial Court for information and necessary steps.

22. With aforesaid directions, the present appeal is disposed of.

(P.S.TEJI)
JUDGE

MARCH 15, 2017
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