

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

Date of Decision : March 30th, 2017

+ CRL.A. 455/2000

MESSAR ALI

..... Appellant

Through: Mr. Chetan Lokur, Mr. Nitish
Chaudhary, Advocates

versus

THE STATE

..... Respondent

Through: Mr. Panna Lal Sharma, Additional
Public Prosecutor for the State

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

JUDGMENT

P.S.TEJI, J

1. The present appeal has been filed being aggrieved by the judgment of conviction dated 25.05.2000 convicting the appellant under Section 397 r/w Section 34 IPC and also Section 411 IPC and order on sentence dated 26.05.2000 vide which the appellant was sentenced to undergo seven years rigorous imprisonment with fine of Rs.5,000/- for the offence under Section 397 read with 34 IPC, in default of payment of fine, the appellant had been ordered to further

undergo simple imprisonment for six months. The appellant was sentenced to undergo rigorous imprisonment for one year and a fine of Rs.1,000/- and in default of payment of fine 3 months simple imprisonment for the offence punishable under Section 411 IPC. Appellant was further sentenced to undergo rigorous imprisonment for two years and a fine of Rs.1,000/-, and in default of payment further SI for three months for the offence punishable under Section 27/54/59 Arms Act.

2. The factual matrix emerging from the record is that on 12.05.1998, Constable Ajai Kumar along with SI Sanjiv Sharma and Constable Giriraj was present in Yamuna Vihar for the purpose of checking vehicles. At about 9.30 PM, TSR No. DL 1R 8643 came from the side of Seelampur and an alarm was being raised in the T.S.R of “bachao bachao” and on hearing the same, the vehicle was stopped by the police. The driver of the TSR, accused Saleem (juvenile), tried to flee the spot but was apprehended by Const. Ajai Kumar. Accused Kishore @ Kalu (juvenile) was sitting beside the driver while other occupants were found to be accused Messar Ali and Mehboob. Accused Messar Ali was found to possess a buttondar knife whereas accused

Mehboob was found to possess a khukhri on his person. Upon inquiry of the accused, it was found that they had robbed one Rakesh Kumar Bhatnagar of two currency notes of Rs. 100 each, which were recovered from the pocket of the shirt of accused Messar Ali, whereas robbed wrist watch was recovered from co-accused Mehboob.

3. Subsequently, on the recording of statement of complainant Rakesh Kumar, FIR No.251/98 was lodged under Sections 394/412/34 IPC. A separate FIR No.252/1998 was lodged against accused Messar Ali under Section 27/54/59 Arms Act. Thereafter, accused was arrested and upon completion of investigation, charge sheet was filed against accused Messar and Mehboob under Sections 397 r/w Section 34 IPC, along with Section 411 IPC (S.C. No.88/1998). A separate charge sheet was also filed u/s 27/54/59 Arms Act against accused Messar Ali (S.C. No. 88/1998). The learned Trial Court clubbed both the cases and passed a common judgment which is under challenge.
4. Charges under Section 397 read with Section 34 IPC and 411 IPC were framed against both the accused. A charge under Section 27/54/59 Arms Act was framed against accused Messar Ali. Both the accused persons pleaded not

guilty and claimed trial.

5. The prosecution in order to prove the charges had examined 11 witnesses, namely PW1 HC Dharam Singh, PW2 Nizam, PW3 Ruksar, PW4 HC Hardev Singh, PW5 Const Giriraj, PW6 Const Ajai Kumar, PW7 Amit Aggarwal, PW8 Const Sushil Kumar, PW9 Rakesh Kumar Bhatnagar, PW10 SI Sanjeev Verma and PW11 HC Lokender Singh.
6. After completion of prosecution evidence, the statements of the accused persons were recorded under Section 313 of the Cr.P.C. The appellant did not prefer to examine any witness in his defence.
7. The appellant and co-accused Mehboob were held guilty by the learned Additional Sessions Judge vide judgment of conviction dated 25.05.2000 and order on sentence was passed on 26.05.2000.
8. Proceedings against juveniles Salim (juvenile) and Kishore @ Kalu (juvenile) were initiated before the Juvenile Justice Board and they were convicted vide judgment dated 19.01.2007 under Section 392/397/34 IPC read with 394/34 IPC. Against the judgment of conviction, co-accused Mehboob preferred an appeal before this Court vide CrI.A. No.389/2000. During the pendency of appeal, accused

Mehboob had expired and consequently the proceedings against him stood abated vide order dated 14.09.2010.

9. Argument advanced by the learned counsel for the appellant is that the appellant has been wrongly convicted under Sections 27/54/59 of the Arms Act as the “buttonder knife” alleged to have been found on the person of the accused does not fall within the ambit of the said sections. It was also alleged that Section 397 and Section 411 are not made out in the present matter. Further, the injury caused to the complainant was of a minor nature and not caused on the vital part of the body, even if it is assumed that the accused caused the said injury. The learned counsel for the appellant has also submitted that there are material contradictions in the statements of the prosecution witnesses.
10. Per contra, argument advanced by learned Additional Public Prosecutor for the State is that the appellant has been rightly held guilty under 397 r/w Section 34 IPC and also under Section 411 IPC by the trial court. The complainant and other witnesses have deposed against the appellant and narrated the role played by him at the time of commission of offence. There is sufficient evidence against the appellant to hold him guilty and there is no infirmity in the judgment of

conviction.

11. Arguments advanced by the counsel for the appellant as well as learned APP for the State were heard. It is apparent from the record that after filing of the present appeal, the sentence awarded to the appellant was suspended vide order dated 18.09.2000.
12. To appreciate the arguments advanced by both the sides, I have gone through their submissions and material available on record meticulously.
13. The complainant in the present case is PW9 Rakesh Kumar Bhatnagar. In his testimony, PW9 had deposed that on 13.05.1998 at about 9/9.15 PM after finishing work; he came at Seelam Pur and hired a TSR for going to Yamuna Vihar. Three boys were already sitting in that TSR which the complainant also boarded. Upon crossing the red light of Mojpur, one of the boys in the TSR placed a knife while the other placed a khukri on the complainant and tried to snatch his money. This witness then raised an alarm and one of the boy gave him a knife blow in the palm of his right hand upon which it started to bleed. This witness further stated that at some distance some police personnel were checking vehicles due to which the TSR driver stopped the TSR near

the police checking. One of the boys managed to flee while the others were apprehended. This witness narrated his story to the police at the spot and thereafter accompanied them to the police station to file a report. This witness further deposed that robbed currency notes were recovered from accused Messer in his presence, whereas his wrist watch was recovered from accused Mehboob. He identified the recovered currency notes as Ex.P3 (1 to 2) and wrist watch as Ex.P5 which was seized by the police. He also identified the recovered knife as Ex.P2 and khukhri as Ex.P4 which was seized by the police.

14. The other material witness to the incident is PW10 SI Sanjeev Sharma. PW10 had deposed that on the day of incident i.e. 12.05.1998, he was present along with Const. Giriraj on patrolling duty around Yamuna Vihar and was checking vehicles. At about 9.30 PM, a TSR No. DL 1R 8643 which was coming from Seelam Pur side and from which a noise “bachao bachao” was coming, was made to stop by him. On checking thereafter, PW 9 the complainant was found to be seated inside along with four other persons including the driver. One of the boys started running but was apprehended and the accused Messer was apprehended by

Const Giriraj. This witness further stated that the complainant PW 9 informed him that the accused persons had committed robbery with him and looted him of Rs. 200 and a wrist watch, upon which he carried out a search of the appellant and recovered two currency notes of denomination Rs. 100 each and a buttondar knife which were identified by the complainant on the spot.

15. PW 5 Const Giriraj corroborated the testimony of PW 10 in as much as stopping the TSR and apprehending the accused persons travelling therein, along with SI Sanjeev Kumar. The said witness seized the articles found on the person of accused Mehboob , i.e. a wrist watch and a khukri, being Ex. PW5/A and 5/B respectively. The witness further stated in his testimony that both accused were arrested via arrest memo Ex. PW 5/F and 5/G, which bore his signatures.
16. From the testimony of the complainant PW9 Rakesh Kumar Bhatnagar, PW10 SI Sanjeev Sharma and Const Giriraj (PW5), it has duly been established that on the day of the incident, appellant Messar Ali along with co-accused persons robbed the complainant of two currency notes of Rs. 100 each, along with a wrist watch. The complainant duly identified the appellant as one of the robbers and has also

stated that he was armed with a “buttoner knife” at the relevant time of the alleged incident. There is nothing to disbelieve the testimony of these witnesses. The defence had cross-examined these witnesses at length, but failed to put any dent to their testimony.

17. From the testimony of the above mentioned witnesses, it has duly been established beyond any reasonable doubt that on the day of the incident, the appellant along with co-accused persons has committed the robbery of cash worth Rs.200 and a wrist watch of the complainant while being armed with a deadly weapon i.e. a buttondar knife in the present matter. It has also been established beyond reasonable doubt that the robbed money was recovered from the person of the appellant when he was apprehended at the spot. There is no justification for disbelieving the statement of PW 9, the complainant who is the victim of robbery and his statement inspires confidence and is entirely reliable and acceptable.
18. Contention raised by the counsel for the appellant that the knife allegedly recovered from the appellant does not fall within the meaning of deadly weapon or weapon so as to cover the case under Section 27 of the Arms Act. There is no force in this contention of the learned counsel for the

appeal for the reasons that the prosecution has also placed on record the notification dated 17.02.1979 Ex.PW4/J according to which acquisition, possession and carrying of spring actuated knives, gararidar knives or buttondar knives which open or close with any of the mechanical device with a blade in size or gararidar knives with a blade of 7.62 cm or more than in length and 1.72 cm or more than in breadth in public place should be regularized. In the instant case, the knife was a buttondar knife which was in contravention of the aforesaid notification. As per the seizure memo and sketch of the knife, the blade was of 10.8 cm in length and its breadth was 2.6 cm. Therefore, the appellant was rightly convicted under Section 27/54/59 of the Arms Act.

19. From the totality of evidence discussed above, the prosecution has successfully established its case against the appellant that he along with his co-accused persons had committed the robbery of Rs.200/- and wrist watch of the complainant. The offence under Section 397 IPC has also been duly proved against the appellant as it has come in evidence that at the time of robbery, he was armed with a deadly weapon i.e. knife which is prohibited as per notification Ex.PW4/J and he used the same while causing

injury to the complainant. The recovery of robbed money from the appellant has also been duly established from the evidence led by the prosecution.

20. From the perusal of testimony of the complainant (PW9) and other eye witnesses (PW5 and PW10), it is apparent that the accused did use a deadly weapon, the same being a buttondar knife in the present matter and the same was recovered by PW 5 and PW 10 upon apprehending the accused. The said knife was also identified by the complainant present on the spot along with two currency notes of Rs. 100 each and complainant's wrist watch found on the person of the appellant.

21. From the totality of the discussion made above, this Court is of the considered opinion that the prosecution has successfully established its case against the appellant for the commission of robbery under Section 392/34 IPC and use of a deadly weapon at the time of robbery punishable under Section 397 IPC. Since, Section 397 IPC is an aggravated form of Section 392, there was no need to separately sentence the appellant under Section 392 IPC and he has been rightly convicted under Section 397 IPC apart from under Section 411 IPC and 27/54/59 of the Arms Act.

Therefore, the conviction of the appellant and sentence awarded to him are upheld.

22. Appellant is on bail. His personal bond and surety bond stands cancelled. He is directed to surrender within a period of 15 days before the trial court concerned to serve the remainder of sentence.
23. With the above observations, the present appeal stands disposed of.

(P.S.TEJI)
JUDGE

MARCH 30, 2017
dd