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

+ **CRL.A. No.951/2002**

Date of Decision : 26th APRIL, 2017

AMIT@RAHUL

..... APPELLANT

Through Mr.Yogesh Verma, Adv. (Amicus
Curiae)

versus

STATE (THRU NCT OF DELHI)

..... RESPONDENT

Through Mr.Panna Lal Sharma, Additional
Public Prosecutor for the State
with ASI Rajender Prasad, PS
Delhi Cantt.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

P.S.TEJI, J

1. Aggrieved by the judgment of conviction dated 27th September, 2002, convicting the appellant as well as the co-accused under Section 397 of the Indian Penal Code, 1985 and order on sentence dated 28th September, 2002, vide which the sentence was passed against the appellant as well as the co-accused, to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs.500/- each for the offence punishable under Section 397 of the IPC, in default of payment of fine, appellant was ordered to undergo simple imprisonment for three months, the present appeal has been filed.
2. The facts in brief are that a report was lodged by the complainant Ravi Kumar Sonkar to the effect that on 6th February,

2001 at about 8.45 p.m., after closing his petrol pump when he reached at Kirbi Place square at about 9.30 p.m., a young boy tried to open his car; took out a knife and then tried to drag him out of the car. The complainant further stated in his complaint that he started driving his car when another boy hit the windscreen of the car with the butt of a revolver and from the broken windscreen of the car, took away the bag which was kept on the front seat of the car. The bag was stated to contain keys of the Filling Station, important papers, bank pass book and Rs.8,000/- in cash. The complainant stated that he tried to resist but the first boy gave a knife blow on his right thigh. Thereafter, the complainant came out of the car and removed the keys while those boys got into the car which was standing two-three cars ahead of his car and fled away. Thereafter, investigation began, statement of the complainant was recorded, site plan was prepared and the accused persons were apprehended by the Special Staff, South District on 17th February, 2001 while they were suspected to have come in a stolen car. It emerges from the record that thereafter accused persons were produced before the Duty Magistrate and accused Amit@Rahul (appellant herein) refused to join the Test Identification Parade (TIP). Recovery of a rexine bag was effected at the instance of the appellant which contained documents belonging to the complainant. After investigation, a case under Sections 394/397/34 IPC and Section 25 of Arms Act, was made out and the challan was filed.

3. The appellant was held guilty under Section 397/34 IPC by the learned Additional Sessions Judge, Delhi and by an order dated 28th September, 2002, sentenced to undergo rigorous imprisonment for a period of seven years and also to pay fine of Rs.500/-, in

default further RI for three months.

4. The prosecution had examined as many as nine prosecution witnesses namely PW 1 Ct.Ajit Kumar; PW 2 ASI Paramjit Singh; PW 3 Ravi Kumar Sonkar; PW 4 HC Moti Ram; PW 5 SI Ved Parkash; PW 6 Ms.Poonam Choudhary; PW 7 HC Jaibir Singh; PW 8 Dr. Shalini Aggarwal & PW 9 SI Jitender. The statement of the accused Amit@Rahul was recorded under Section 313 of the Cr.P.C.

5. The appellant was held guilty by the learned Special Judge, Delhi and by an order dated 28th September, 2002, sentenced to undergo rigorous imprisonment for seven years and fine of rupees five hundred for the offence punishable under Section 397 of the IPC. In default of payment of fine, the convict was to undergo simple imprisonment for three months.

6. The main grounds of challenge are that the prosecution filed challan under Sections 394/397/34 IPC but, thereafter, the appellant was charged under Sections 394/397/34 IPC & Section 25 of Arms Act. No disclosure statement was given by the appellant and that the police had obtained the signature of the accused forcibly. PW 2 in his statement stated that the accused led him to his house and produced one bag and in cross-examination, the said witness stated that secret informer had not given the number of car and at the time of disclosure statement, no public witness was asked to join. Neither any eye witness nor any circumstantial evidence was produced by the prosecution and thus no case can be made out on the basis of only complainant witness. There is no medical report in view of the statement of PW 3.

7. Apart from challenging the judgment of conviction, learned counsel for the appellant further submitted that vide order dated

18th November, 2004 passed by this court, on the basis of the grounds of appeal, facts and circumstances of the case and the period already undergone, the sentence of the appellant was suspended till the disposal of the appeal.

8. Per contra, argument advanced by learned Additional Public Prosecutor for the State is that the appellant was rightly held guilty under Section 397 of the IPC. It is submitted that a complaint was lodged by the complainant on 6th February, 2001 to the effect that while committing robbery, the accused persons used a knife and caused injury to him. It is submitted by learned APP that the accused persons were apprehended on 17th February, 2001 and at the instance of Amit@Rahul, (appellant herein), recovery of a rexine bag was made which contained documents belonging to the complainant.

9. Upon hearing the rival contentions of the parties at length, evidence led is being examined.

10. PW 9 SI Jitender in his statement stated that while posted at PS Delhi Cantt, on 6th February, 2001, DD Nos.22A & 23A were marked to him for investigation and on 7th February, 2001, the complainant PW 3 i.e. Ravi Kumar Sonkar visited the police station and his statement (Ex.PW 3/A) was recorded which was signed by the complainant at point 'A' and endorsed as Ex.PW 9/C. This witness handed over ruqqa to the Duty Officer on the basis of which FIR was lodged by HC Bishan Singh and, thereafter, site plan (Ex.PW 9/E) was prepared by him. Thereafter, on the basis of telephonic information received on 18th February, 2001 by Spl. Staff of South District, this witness arrested the accused persons in FIR No.88/01. After seeking permission from the court, this witness interrogated the accused persons and

sent them to judicial custody. PW 9, thereafter, obtained disclosure statement of the accused persons including Amit@Rahul (Ex.PW 5/A) and moved application (Ex.PW 6/D) for Test Identification Parade which was conducted by the Metropolitan Magistrate at Tihar Jail. On 26th February, 2001, the accused persons were taken on police remand for two days and disclosure statement (Ex.PW 1/A) was made by the appellant on 27th February, 2001. The bag involved in this case was stated to be already recovered. Thereafter, all the accused persons including Amit@Rahul pointed out the spot and the pointing out memo was marked as Ex.PW 9 G & J. Thereafter, TIP of the bag was fixed for 23rd March, 2001 and the complainant identified accused Amit@Rahul (who had refused to join the TIP) on 27th February, 2001. PW 9 got the complainant medically examined and the case property was transferred from PS Ambedkar Nagar to PS Delhi Cantt. by this witness.

11. PW 1 Ct.Ajit Kumar in his statement stated that on 27th February, 2001 while he was posted at Police Station Delhi Cantt., he along with the investigating officer i.e. PW 9 SI Jitender visited the court of learned Metropolitan Magistrate. This witness stated that the accused Amit@Rahul as well as the co-accused were arrested by PW 9 SI Jitender; the disclosure statement (Ex.PW 1/A) of the accused Amit@Rahul was recorded in the police station after interrogation and also bore his signatures at point 'A'.

12. PW 2 ASI Paramjit Singh in his statement stated that on 17th February, 2001 while he was posted at Special Staff, South District, a secret information was received to the effect that some boys involved in the theft cases of vehicles would approach, he joined investigation along with PW 5 SI Ved Parkash, ASI Balbir Singh and HC Zilay Singh. This witness stated that four-five

public persons were asked to join but nobody agreed to join the raiding party. PW 2 stated that at about 2.00 p.m., a nakabandi was made at the 'T' point crossing of MB Road, Khanpur; on the pointing out of informer, a maruti car coming from Badarpur side, was stopped; four persons were found to be inside the car whom ASI Balbir Singh overpowered and forced the accused Amit to be driving the vehicle. This witness identified the accused person in court. PW 2 with the help of Ct.Rajesh, overpowered the persons sitting on the front seat while the persons sitting on the rear seat, were overpowered by HC Bijender Singh & HC Zilay Singh. The disclosure statement made by Amit was marked 'A' which bore the signature of this witness. This witness stated that on enquiry, it came to the fore that the said car was stolen and that a case under Section 411/34 IPC was registered vide FIR No.88/2001 in PS Ambedkar Nagar and that on search, both the accused persons were found in possession of a country made pistol. The disclosure statement of the accused Amit@Rahul was marked 'A' which bore the signature of this witness at point 'A' and that as per the disclosure statement made by Amit@Rahul, a rexine bag was recovered which the accused stated to have robbed from Kirbi Place, Delhi Cantt. This bag was kept in a pulanda along with the recovered document and sealed with the seal of ZS which was taken into possession vide recovery memo marked 'C' bearing the signature of this witness at point 'A'. PW 2 stated that the bag (Ex.P 1) contained one letterpad of Ravi Filling Station (Ex.P 2); two blank voucher Ex.P3 & 4; two key rings Ex.P 5/1-2 and sixteen visiting cards (Ex.P6/1-16) of Ravi Somkar; one piece of mobile phone cover (Ex.P7) and one written paper Ex.P8.

13. PW 3 Ravi Kumar Sonkar in his statement stated that he was

running a filling station in the name of Ravi Filling Station and on 6th February, 2001, after leaving for home, at about 9.30 p.m., when he reached traffic point at Kirbi Place stop, at the red light signal, one person of the age of about 25-30 years, opened the door of his car; pointed out a knife towards him and started brandishing the same and tried to hurt him and when he tried to push him with his leg, that person caused injury with the said knife on his right thigh. PW 3 stated that another boy broke the glass of the door of his car with a revolver and lifted the bag which was kept in the left side of his car. The bag stated to have contained Rs.8,000/- cash, some documents, mobile charger, calculator and keys of his filling station. PW 3, the complainant, tried to overpower the boy by chasing him but the boy who had a knife, sat on the driving seat and tried to start the car but the complainant snatched the keys thereof and raised an alarm. Both the boys ran away in a car which was parked at a distance ahead of two cars. Thereafter, this witness got back to his filling station at Madangir and informed the police of P.S. Madangir. This witness, thereafter, reached Safdarjung hospital for medical treatment while his family members informed the police of the area of Kirbi Place. The police from PS Delhi Cantt., recorded the statement of this witness. He identified the appellant Amit during his testimony in the court as the person who was having a knife in his hand and caused injury on his thigh. He also identified the robbed bag as Ex.P 1 containing letter pad (Ex.P 2) of Ravi Filling Station and blank vouchers (Ex.P 3 & 4).

14. PW 4 HC Moti Ram in his statement stated that on 8th February, 2001 while he was posted at Police Station Ambedkar Nagar and was on emergency duty, at about 2.25 p.m., he received

a message to the effect that one car bearing Registration No.DL 6C 7753 was lying abandoned in Ambedkar Nagar and that he along with Ct.Balwir Singh reached the spot and took possession of the same under Section 66 of D.P. Act. The copy of the memo was marked as Mark 'X' which was in the hand of this witness and bore his signatures at point 'A'. PW 4, thereafter, deposited the car in the malkhana and on enquiry, it was found that the car was stolen from the area of Police Station Kalkaji and the same information was conveyed to them.

15. PW 5 SI Ved Parkash in his statement stated that on 17th February, 2001 while posted in special staff, South District, a secret information was received regarding the presence of accused persons who were involved in theft and other heinous offences, he along with other police staff laid a trap and pursuant thereto, the car of the accused persons was stopped near Khanpur Depot. It was stated by this witness that four persons were found sitting in the car; in the personal search of these persons, countrymade revolver was recovered from the possession of both the accused and that the car was found to be stolen from C.R. Park. The disclosure statement of the accused Amit@Rahul as well as Ajay was recorded by this witness which was marked as Ex.PW 5/A & 5/B in which they disclosed that that they were involved in FIR No.88/2001 registered at PS Delhi Cantt. and that a rexine bag was recovered on the pointing out of the accused Amit from his residence.

16. PW 6 Ms.Poonam Choudhary in her statement stated that on 19th February, 2001, while she was posted as Metropolitan Magistrate, an application was duly marked to her by learned Link M.M., the Test Identification Parade of accused Amit

Kumar@Rahul and co-accused Ajay Kumar@Chootey was fixed to be held in Tihar Jail and that on 22nd February, 2001, she went to Tihar Jail for holding the TIP. However, the accused Amit Kumar refused to join the same. The accused Amit was warned that his refusal to join the TIP would cause adverse reference against him but the accused refused to join the TIP.

17. PW 7 HC Jaibir Singh in his statement stated that on 17th February, 2001 while he was posted as Duty Officer at P.S. Ambedkar Nagar, he received a ruqqa through Ct.Phool Singh which was sent by SI Ved Parkash on the basis of which he recorded FIR No.88/01. This witness stated that on the same day at about 4.25 p.m., he received a ruqqa through Ct.Rajesh Kumar and recorded FIR No.90/01 thereto. PW 7 stated that at about 4.35 p.m. he received a ruqqa through Ct.Ashok Kumar sent by HC Zile Singh on the basis of which he recorded FIR No.92/01.

18. PW 8 Dr.Shalini Aggarwal, Medical Officer in her statement stated that she was conversant with the handwriting of Dr.S. Kadiyan who had left the hospital and that his personal whereabouts were not known. This witness had seen the MLC Ex.PW 8/A. On 7th February, 2001, this witness examined Ravi Kumar with the alleged history of assault and stab injury was found on his right thigh. CIW on back of right thigh 1x1 cm. PW 8 testified that the injuries were found to be simple caused by a sharp object.

19. Thus, as per the testimony of PW 9 SI Jitender, the complainant (PW 3) visited the police station whose statement was recorded by him to the effect that on 6th February, 2001, while coming from the petrol pump, his bag containing cash of Rs.8,000/-, important papers, bank pass book and keys of filling

station, was snatched by the accused persons including the appellant herein and upon resistance, he was attacked by knife on his right thigh. Thereafter, on the basis of telephonic information received on 18th February, 2001, this witness arrested the appellant and other accused persons. PW 1 Ct.Ajit Kumar testified and corroborated the statement of PW 9 to the effect that the accused person was arrested by him and the statement of the accused persons including the appellant herein, was recorded in the police station. PW 2 ASI Paramjit Singh also stated that on the basis of secret information received, he along with PW 5 SI Ved Parkash, ASI Balbir Singh & HC Zilay Singh led a nakabandi at 'T' point, M.B. Road and on the pointing out of informer, the accused appellant as well as co-accused persons were arrested. PW 2 stated that upon search, both the accused persons were found in possession of country made pistol. This witness also identified the accused person in Court. PW 2 ASI Paramjit Singh testified that on enquiry, it was revealed that the said car was stolen and a case under Section 411/34 IPC was registered in PS Ambedkar Nagar. PW 5 SI Ved Parkash also testified and corroborated the statement given by PW 2 HC Moti Ram with regard to laying of trap and pursuant where to, the car of the accused persons was stopped near Khanpur Depot; four persons were found sitting in the car; upon the personal search of these persons, countrymade revolver was recovered from the possession of both the accused and that the car was found to be stolen from C.R. Park.

20. The testimony of PW 9 SI Jitender has been corroborated by PW 1 Ct.Ajit Kumar & PW 2 ASI Paramjit Singh and PW 3 HC Moti Ram and PW 5 SI Ved Parkash All these witnesses in the same breath have stated that the appellant was apprehended with

country made pistol and stolen car and in the disclosure statement and recovery, a bag containing documents pertaining to the appellant, was recovered. These witnesses also stated that proper procedure was followed in the enquiry as well as investigation.

21. PW 3 Ravi Kumar Sonkar who is the victim of the present case has duly supported the case of prosecution. He has identified the appellant Amit as one of the robbers and as the person who was having knife at the time of incident and assaulted him with the same on his thigh. He has stated that on the day of incident, when he reached the traffic point at Kirbi Place, accused Amit opened the door of his car, pointed a knife at him, brandished the knife and when PW 3 tried to push him with his leg, appellant Amit caused injury with the knife on his right thigh. He also stated that co-accused Ajay broke the glass of the door of his car with a revolver and lifted the bag containing cash Rs.8,000/-, documents, mobile charger, calculator and keys of filling station.

22. All the above witnesses were cross-examined at length but the defence failed to put any dent to their testimony. They remained unshaken with regard to their statements.

23. The testimony of the public witness has also been duly corroborated by the statement of PW 8 Dr. Shalini Aggarwal, Medical Officer who in her statement stated that she was conversant with the handwriting of Dr. S. Kadiyan who had left the hospital and that his personal whereabouts were not known. This witness had seen the MLC Ex. PW 8/A. On 7th February, 2001, this witness examined Ravi Kumar with the alleged history of assault and stab injury on right thigh. PW 8 testified that the injuries were found to be simple caused by a sharp object.

24. The discussion made above shows that the testimony made

by the complainant/injured Ravi Kumar Sonkar has duly been corroborated by other prosecution witnesses and medical evidence. The testimony of the injured is trustworthy and his testimony coupled with report of the doctor, brings the case of prosecution within the four corners of the alleged commission of offence which culminated into the conviction of the appellant. This court is of the considered opinion that the prosecution has successfully proved the guilt of the appellant.

25. As a result, no error or illegality is found in the view taken by the Trial Court and the judgment of conviction dated 27th September, 2002 and order on sentence dated 28th September, 2002 are upheld.

26. The appellant is on bail. His bail bond and surety bond are cancelled. The appellant is directed to surrender immediately before the trial court concerned to serve the remaining sentence of imprisonment.

27. The appeal is accordingly dismissed.

The fee of Mr.Yogesh Verma, Advocate appointed as amicus curiae to represent the case of the appellant, shall be as per the schedule of the Delhi High Court Legal Services Committee.

(P.S.TEJI)
JUDGE

APRIL 26, 2017

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