

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

% *Judgment Reserved on: November 06, 2017*
Judgment Delivered on: November 10, 2017

+ **CRL.A. 918/2001**

VIKRAM SINGH Appellant

Through: Mr.Yash Anand, Mr.David A.
& Mr.Saksham Tyagi,
Advocates

versus

STATE GOVT. OF N.C.T. OF DELHI Respondent

Through: Mr.Kewal Singh Ahuja, APP
for the State with SI Praveen
Kumar, PS Mandawali

CORAM:
HON'BLE MS. JUSTICE PRATIBHA RANI

JUDGMENT

1. The appellant Vikram Singh has preferred the instant appeal assailing the judgment dated 23rd October, 2001 and order on sentence dated 29th October, 2001 whereby he has been convicted for committing the offence punishable under Section 394/34 IPC and 397 IPC and sentenced as under:

- | | | | |
|------|----------------|---|--|
| (i) | U/S 394/34 IPC | : | to undergo RI for seven years and to pay a fine of ₹1000/- and in default of payment of fine to undergo RI for three months. |
| (ii) | U/S 397 IPC | : | to undergo RI for seven years and to pay a fine of ₹1000/- and in default of payment of fine to undergo RI for three months. |

Both the sentences awarded to the appellant were ordered to run concurrently with benefit of Section 428 Cr.P.C.

2. Vide impugned judgment and order on sentence, co-accused Mohd. Yunis has also been convicted for committing the offence punishable under Section 394/34 IPC and sentenced in the same manner.

3. Perusal of record reveals that vide order dated 30th March, 2017, this appeal was dismissed for non-prosecution. Thereafter the appellant Vikram Singh moved Crl.M.A. No.8993/2017 seeking restoration of the appeal which was allowed vide order dated 26th July, 2017 and the appeal was restored to its original number.

4. During the hearing of this appeal bearing Crl.A. No.918/2001 filed by the appellant Vikram Singh, it was informed by learned APP for the State that co-convict Mohd.Yunis had also preferred an appeal bearing Crl.A. No.144/2002 challenging his conviction and sentence awarded to him for committing the offence punishable under Section 394/34 IPC and the said appeal bearing No.144/2002 was also dismissed for non-prosecution vide order dated 22nd October, 2007 but no application seeking restoration of the appeal was moved by convict Mohd. Yunis.

5. Vide order dated 1st November, 2017, Registry was directed to place before the Court the judicial file of Crl.A.144/2002 preferred by co-convict Mohd.Yunis. Fresh nominal roll of the appellant herein namely Vikram Singh and that of co-convict Mohd. Yunis was also called for.

6. On 6th November, 2017 judicial file of Crl.A. No.144/2002 preferred by co-convict Mohd. Yunis has been placed before this Court. Nominal roll of the co-convict has also been received.

7. Perusal of the Crl.A.No.144/2002 reveals that the appeal was dismissed for non-prosecution vide order dated 22nd October, 2007 and thereafter the appellant did not move any application seeking restoration of the appeal. Fresh nominal roll of co-convict Mohd.Yunis has also been received which reveals that he has already undergone the sentence awarded to him in this case. Hence so far as Crl.A.144/2002 filed by co-convict Mohd.Yunis is concerned, which is lying dismissed for non-prosecution, neither the appellant Mohd. Yunis has appeared nor he seems to be interested in continuing with the appeal, on his release after undergoing the sentence awarded to him. Case file of Crl.A.No.144/2002 filed by co-convict Mohd. Yunis be returned to the Registry.

8. The appellant Vikram Singh (Crl.A.No.918/2001) and co-convict Mohd. Yunis (appellant in Crl.A. No.144/2002) were sent to face trial for committing the offence under Section 392/394/34 IPC, 397 IPC and under Section 25/27 of the Arms Act in case FIR No.144/2000 registered at PS Mandawli.

9. Since the LCR in this case has been misplaced in the Branch, for purpose of reconstruction of the LCR, learned APP for the State and learned counsel for the appellant have placed on record the copy of the report under Section 173 CrPC as well the copy of the memos and DD entries and submitted that authenticity of the copies placed on record is not disputed by them.

10. I have heard Mr.Yash Anand, learned counsel for the appellant as well as Mr.Kewal Singh Ahuja, learned APP for the State. In addition to oral submissions, written submissions have also been filed by learned counsel for the appellant Vikram Singh.

11. Mr.Yash Anand, learned counsel for the appellant has submitted that the appellant has been convicted for committing the offences punishable under Section 394/34 and 397 IPC but the injury received PW-2 Sh.Vivek Kumar – the complainant was caused by knife. He has stated before the Court that the knife was used by another person not produced before the Court. Hence, the appellant Vikram Singh could not have been convicted under Section 397 IPC which, in case of conviction, provides the minimum sentence of seven years.

12. Learned counsel for the appellant has also submitted that the appellant Vikram Singh was got identified by the complainant at the police station, before producing him for Test Identification Parade (TIP). In that circumstance, he had good reason to refuse for TIP. In that case, the Court should not have drawn any adverse inference against him.

13. Learned counsel for the appellant has further submitted that in this case, registration number of two three-wheeler scooters have been given i.e. DL1R3079 and DL1R2930. The three-wheeler scooter No.DL1R3079 (number given in the FIR) along with two other persons connected with that scooter was shown to the injured Vivek Kumar (PW-2) but he did not identify either the TSR No.DL1R3079 or the two persons produced before him to be involved in the crime. There is no evidence on record to connect the appellant with second

TSR i.e. TSR No.DL1R2930 and that except the disclosure statement, there is neither any recovery from the appellant of the robbed amount nor the TSR No.DL1R2930 could be connected to the appellant Vikram Singh in any manner whatsoever. Hence, the impugned judgment and the order on sentence cannot be sustained.

14. Mr.Yash Anand, learned counsel for the appellant, on instructions, also submitted that the appellant had remained in custody for almost a period of about five years which can be ascertained from his nominal roll. He has no criminal antecedents and except this case, which pertains to the year 2000, during past 17 years till date, he is not involved in any criminal case. In the given circumstances, if the offence punishable under Section 397 IPC is held to be not proved against the appellant, the appellant does not wish to challenge his conviction for the offence punishable under Section 394/34 IPC. Learned counsel for the appellant has submitted that a lenient view may be taken on the quantum of sentence.

15. Mr.Kewal Singh Ahuja, learned APP for the State submitted that the learned Trial Court has given good reasons for convicting the appellant for offence punishable under Section 394/34 and Section 397 IPC. As per the statement of PW-2 Sh.Vivek Kumar – the complainant, injury was caused by the appellant Vikram Singh, hence he has been rightly convicted for offence punishable under Section 397 IPC and awarded the minimum sentence of seven years.

16. In brief, the prosecution case is that on 1st May, 2000 at about 2235 hrs. DD No.22A Ex.PW-8/A was recorded at PS Mandawli in respect of a person being stabbed by the occupants of TSR

No.DL1RC3079 (TSR number given in FIR) in front of Aman Petrol Pump on National Highway. The DD was assigned to ASI Vikram Singh. At 2305 hrs. another information was received from SDN Hospital and recorded vide DD No.25A (Ex.PW-8/C) at PS Mandawli in respect of the admission of injured Vivek Kumar which was also sent to ASI Vikram Singh through Ct.Heera Lal. ASI Vikram Singh reached the hospital and collected the MLC of the injured. As the patient was declared fit for statement, he recorded his statement Ex.PW-2/A and made his endorsement Ex.PW8/D thereon and sent the Rukka for registration of the case.

17. During investigation PW-8 ASI Vikram Singh interrogated the three-wheeler scooter driver of TSR No.DL1R3079 and brought the two-wheeler scooter as well two persons, who were shown to PW-2 Vivek Kumar. But PW-2 - the complainant/injured did not identify either the TSR or the two persons to be the same who were involved in the occurrence. Thereafter the investigation was transferred to SI Sanjay Gupta.

18. PW-13 SI Sanjay Gupta, who was posted at PP ISBT, Anand Vihar at the relevant period, has stated that on 26th May, 2000 in the night time he alongwith Ct.Puran Singh and HC Shivaji Singh was on patrolling duty in the area. At about 10.15 PM the accused persons were coming from the side of drain but on seeing the police persons, they started running back. He suspected and both the accused persons were overpowered. On interrogation, both the accused persons made disclosure statements Ex.PW13/A and B and confessed their involvement in this case also. Thereafter he informed SI Sanjay Gupta

and SI Vikram Singh of PS Mandwali who came there and he handed over the custody of both the accused persons to SI Sanjay Gupta and SI Vikram Singh.

19. PW-17 SI Sanjay Gupta has stated that he apprehended accused Vikram Singh and Mohd.Yunis on 27th May, 2000 in this case and recorded their disclosure statement. At the instance of the accused persons, he seized one TSR No.DL1R2930, one sword, katta, one cartridge from under the rear seat of the TSR No.DL1R2930. On completion of the investigation, he produced both of them for TIP. The appellant Vikram Singh refused to take part in the TIP taking the plea that he had been shown to the witness.

20. Since the main witness to prove the offence in this case is the complainant/injured i.e. PW-2 Sh.Vivek Kumar, learned Trial Court relied on his statement and convicted the appellant for the offence punishable under Section 394/34 and 397 IPC observing that an adverse inference has to be drawn against the appellant Vikram Singh on his refusal to take part in TIP.

21. PW-2 Vivek Kumar (injured) in his examination-in-chief has stated that he hired the TSR No.DL1R3079 for going to Noida and at that time he was having ₹39,000/- in his possession. In the TSR two persons were already seated. He also made himself seated in the TSR and the driver said that he would charge ₹50/- from him for taking him to Noida. The driver turned the scooter towards Nizamuddin side. The person sitting on his right side took out a knife from his pocket and the person sitting on his left side took out a *katta* and snatched ₹29,000/- from him. He tried to run away from there and got down

from the scooter when he received injuries with the knife. Then he went running to Aman Petrol Pump where he met PW-1 (Sunil Jaiswal) to whom he handed over ₹10,000/-. Then he went to Shivam Petrol Pump and police officials were called by giving information on telephone. The police officials came there and sent him to the hospital in three wheeler scooter. The police recorded his statement Ex.PW2/A. PW-2 Vivek Kumar after seeing both the accused persons stated that Mohd. Yunis was driving the scooter and Vikram Singh was seated in the scooter No.DL1R3079 and that the person having knife with him was not present in the Court.

22. The MLC of PW-2 Vivek Kumar, the complainant has been placed on record by the State and in the column – Name of the relative or concerned ‘Self’ is written. The time of examination has been given as 1.5.2000 at 11:20 PM. The MLC has been prepared with the alleged history of being stabbed by somebody around 10:30 PM. Although during his cross-examination the complainant has stated that he remained unconscious for 15 days but the medical record of the injured reveals that at the time of preparation of MLC he was conscious and oriented, gave the alleged history himself and when ASI Vikram Singh reached the hospital, PW-2 Vivek Kumar, the injured was declared ‘fit for statement’. FIR has been registered on the basis of his statement. Only two accused persons namely Vikram Singh and Mohd. Yunis were sent to face trial. The role attributed to the appellant Vikram Singh is that he took out ₹29,000/- from him and the person who caused knife injury was not present in the Court. The

role of Mohd. Yunis, the co-convict is that of TSR driver.

23. The prosecution has not led any evidence to connect the second TSR No.DL1R2930 with the appellant either in the capacity of driver or owner. It has come in the statement of IO ASI Vikram Singh (first IO) that he brought TSR No.DL1R3079 from Jamia Nagar with two persons but the complainant did not identify either the TSR or the persons brought by him to be involved in the occurrence. So far as the appellant Vikram Singh is concerned, no recovery has been affected from him. The stab injuries received by the complainant PW-2 Vivek Kumar was not caused by him and at the most it can be said that he robbed the complainant of ₹29,000/-. Thus, the conviction and sentence of imprisonment awarded under Section 397 IPC to the appellant Vikram Singh cannot be sustained for the reason that it can be awarded to the offender who used the deadly weapon or caused grievous hurt or attempted to cause death or grievous hurt. In the instant case, neither the TSR No.DL1R2930 could be connected by the prosecution with the appellant Vikram Singh nor the sword claimed to have been found therein has any connection with this occurrence.

24. So far as the refusal of the appellant Vikram Singh to take part in TIP is concerned, PW-2 Sh.Vivek Kumar - the complainant has admitted that he was made to identify both the accused (Mohd. Yunis and Vikram Singh) at PS Anand Vihar after calling them from lock-up. If the appellant had already been shown to the witness in the lock-up, he had every reason to refuse to take part in TIP on the plea that he had already been shown to the witness. In the circumstances, it was

not proper for the learned Trial Court to draw adverse inference against him on his refusal to take part in TIP.

25. In view of the above discussion the conviction and the sentence awarded to the appellant Vikram Singh for committing the offence punishable under Section 397 IPC is set aside.

26. As the appellant is not challenging his conviction under Section 394/34 IPC, his conviction for the said offence is maintained.

27. Coming to the quantum of sentence, except the instant case, which was registered against him about 17 years ago, he has no other involvement. As per nominal roll, as on 18th September, 2004, he has already undergone sentence of 3 years 11 months and 22 days and earned the remission of ten months and 26 days, meaning thereby that he has already undergone almost four years and eleven months in this case.

28. Taking into consideration that the appellant has spent about four years and eleven months in custody, the substantive sentence awarded to him for committing the offence punishable under Section 394/34 IPC is reduced to the period already undergone in custody.

29. The appeal stands allowed in above terms.

30. Copy of this order be sent to the concerned Jail Superintendent for information.

31. As prayed, copy of the order be given dasti to learned counsel for the parties.

**PRATIBHA RANI
(JUDGE)**

NOVEMBER 10, 2017/ 'hkaur'