

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

Date of Decision : July 21st, 2017

+ CRL.A. 843/2005

NARESH Appellant

Through Mr. M.L.Yadav, Adv

versus

STATE Respondent

Through Mr.Panna Lal Sharma, APP for the
State with SI Vasant Kumar

AND

+ CRL.A. 42/2006

RAJU ALIAS RAKESH Appellant

Through: Mr. M.LYadav, Adv

versus

STATE Respondent

Through: Mr. Panna Lal Sharma, APP with
SI Vasant Kumar

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

JUDGMENT

P.S.TEJI, J

1. The present appeals have been filed being aggrieved by the judgment of conviction dated 27.09.2005 convicting the appellants under Section 394/34 read with 397 IPC and order on sentence dated 27.09.2005 vide which the appellants were sentenced to undergo five years rigorous imprisonment each with fine of Rs.5,000/- each for the offence under Section 394/34 IPC. Further, the appellants were sentenced to undergo rigorous imprisonment for a period of seven years each with fine of Rs.5,000/- each for the offence under Section 397 IPC. In default of payment of fine, the appellants have been ordered to further undergo simple imprisonment for five months each, for both the offences.

2. Since the trial of both the applicants was commonly conducted and both the appellants have been convicted by the common impugned judgment and have been awarded sentence by the common order on sentence, therefore, both these appeals are hereby disposed of by this common judgment.

3. The factual matrix emerging from the record is that on

27.09.2003 at about 12 noon, the complainant, Ishwar Singh was present at Taxi Stand Najafgarh with his taxi bearing registration No. DL-2CG-9698 when the three accused persons namely, Naresh, Raju and Ajay approached him for hiring of the Taxi to Pataudi (Haryana) and further asked him that they had to pick up ladies from Bharat Vihar near Kakrola and accordingly reached Bharat Vihar where the ladies refused to join and thereafter the vehicle proceeded further towards Shahbad and after crossing the railway track the accused persons asked the complainant to take a kaccha road as it was a short-cut. The complainant allegedly notified them that the road was not fit for driving, for which he was beaten and hit with a country made pistol on his head from the back and accused Naresh put a knife on his belly and threatened him. The accused persons snatched his mobile and threw it outside the vehicle and the vehicle was driven away.

4. On the basis of statement made by the complainant, FIR was registered against all the accused persons who were subsequently arrested at Gurgaon (Haryana) in a case under Section 399/402 IPC and arrested in the present case. All the accused persons were charged under Sections 397/394/34 IPC to which they pleaded not guilty and

claimed trial.

5. The prosecution had examined 13 witnesses in support of its case, namely PW1 ASI Ramkishan, PW2 Constable Rupesh Kumar, PW3 Smt. Sheela, PW4 Rajaram Sharma, PW5 SI Ramesh Kumar, PW6 Ishwar Singh (complainant) , PW7 Gulshan Arora, PW8 Head Constable Chattarmal, PW9 Head Constable Raghuvir Singh, PW10 Head Constable Mahipal, PW11 Dr.Ritu Vinayak, PW12 IO SI Anil Berwal and PW13 Sh. Deepak Garg.

6. After completion of prosecution evidence, the statements of the accused persons were recorded under Section 313 of the Cr.P.C. The defence produced one witness to prove their case, DW 1- Suresh Chand.

7. The appellants were held guilty by the learned Additional Sessions Judge vide judgment of conviction dated 27.09.2005 and passed the order on sentence on 27.09.2005. However, the third accused Ajay was acquitted by the trial court.

8. Argument advanced by the learned counsel for the appellants is that the testimony of the complainant is not reliable and errs

specifically with respect to description of the third accused who has been let off in the present case and thus it is evident that he has adopted the policy of pick and choose among the accused persons to save the third accused, Ajay. The alleged weapons to have been used by the appellants were not recovered by the police. That the prosecution further failed to examine the material witness Ved Prakash near whose house the incident had taken place. There is no convincing evidence against the appellants and the appellants are entitled for acquittal.

9. Per contra, argument advanced by learned Additional Public Prosecutor for the State is that the appellants have been rightly held guilty under Section 394/34 read with Section 397 IPC by the trial court. The complainant has deposed against the appellants and narrated the role played by them at the time of commission of offence. There is sufficient evidence against the appellants to hold them guilty and there is no infirmity in the judgment of conviction.

10. Arguments advanced by the counsel for the appellants as well as learned APP for the State were heard.

11. It is apparent from the record that after filing of the present appeal, the sentence awarded to the appellant- Naresh was suspended vide order dated 10.11.2006 and sentence awarded to the appellant- Raju was suspended vide order dated 26.07.2006.

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 PW6 Ishwar Singh. In his testimony, PW6 stated that on 27.09.2003 he was present along with his Tata Sumo DL-2C-G-9698 at Civil Hospital, Najafgarh Taxi Stand at about 12 noon. Accused Naresh and Raju came to him for hiring a taxi and another boy was accompanying them who sat in his car when it was hired to go to Pataudi. Accused persons told the complainant that they had to pick up two ladies from colony Bharat Vihar near Kakraula, to where the complainant drove. Thereafter, after a short while, the accused persons asked the complainant to take a kaccha road to which he objected and thus was beaten by accused persons and he had his phone snatched and thrown out of the vehicle. This witness asked them not to kill him. The accused persons threw

the complainant out of his vehicle, who fell down and thereafter accused persons drove away in his vehicle. The complainant was hit on his head by the butt of the country made pistol at two places and one of the accused was threatening him with a knife. Thereafter, this complainant was dropped nearby to a village where he told the incident to the person in the village and then informed the police. He identified both the accused persons Naresh and Raju in the Court as the persons who had hired his taxi and committed robbery with him.

14. From the testimony of the complainant Ishwar Singh (PW6) it has duly been established that on the day of the incident, appellants beat up the complainant when he objected to their suggestion of taking a kaccha road enroute which they intended to take and thereafter robbed the complainant of his mobile phone and also his vehicle. Both accused persons were duly identified by the complainant as the robbers while also stating that they were armed with knife and a country made pistol at the relevant time. There is nothing to disbelieve the testimony of the complainant with respect to the robbery. The defence had cross-examined the complainant (PW 6) at length, but failed to put any dent to his testimony. However, what is

pertinent to point is that the alleged weapons of offence, that is, the knife and country made pistol, both have not been recovered in the present matter.

15. From the sole testimony of the above mentioned witness, it has duly been established beyond any reasonable doubt that on the day of the incident, the appellants committed the robbery of the complainant's mobile phone along with his vehicle in which they were travelling under the garb of hiring the complainant as a taxi driver while also beating him up when he protested to their ill intentions. This court is conscious of the fact that the main witness in the present case is complainant-Ishwar Singh (PW-6) on the basis of which the appellants have been convicted.

16. In **Anil Phukan vs State Of Assam 1993 SCR (2) 389** the Hon'ble Apex Court observed that : *"Indeed, conviction can be based on the testimony of a single eye-witness and there is no rule of law or evidence which says to the contrary provided the sole witness passes the test of reliability. So long as the single eye-witness is a wholly reliable witness the courts have no difficulty in basing conviction on his testimony alone."*

17. Further, 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.”*

18. Apart from commission of robbery, the appellants have also been convicted under Section 397 IPC i.e. for using a deadly weapon i.e. knife and a country made pistol at the time of commission of robbery.

19. Case of the prosecution is that at the time of robbery, the appellants were armed with a knife and a country made pistol and the same were used in beating the complainant and the knife was pointed

on his belly and thereafter he was threatened. What is pertinent to mention herein is that both the alleged weapons of offence have not been recovered, which casts a doubt as to the commission of the offence under Section 397 at the very outset. In the absence of recovery of weapon of offence under Section 397, the alleged offence alone shall stand outside the ambit of the said section and the accused persons in that case cannot be held guilty for the same.

20. As discussed above, this Court is of the considered opinion that the prosecution has failed to prove beyond reasonable doubt that the accused was armed with any weapon at all, what to say about a deadly weapon at the time of commission of robbery to cover its case under Section 397 IPC. Therefore, the appellants are entitled to be acquitted under Section 397 IPC.

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 appellants for the offence under Section 394/34 IPC. However, it has failed to establish beyond reasonable doubt the offence under Section 397 IPC against the appellants. Consequently, the conviction of the appellants under Section 394/34

IPC is upheld, however their conviction under Section 397 IPC is set aside.

22. So far as the quantum of sentence is concerned, it is apparent from the record that the incident of the present case took place on 27.09.2003 and judgment of conviction and order on sentence were passed on 27.09.2005 and now we are in the year 2017. It is apparent from the nominal roll of the appellants, that both have already faced incarceration for more than three years each in the present case.

23. Keeping in view the fact that the appellants have now been acquitted for the offence under Section 397 IPC and their conviction has been upheld under Section 394/34 IPC wherein no minimum sentence has been prescribed, it would be in the interest of justice to release the appellants for the period already undergone by them in the present case. The sentence awarded to the appellants is modified accordingly.

24. Appellants are on bail. Their personal bonds and surety bonds are discharged.

25. With the above observations, the present appeal stands disposed of.

(P.S.TEJI)
JUDGE

JULY 21, 2017
dd

