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IN THE HIGH COURT OF DELHI AT NEW DELHI

RESERVED ON : JANUARY 24, 2017

DECIDED ON : FEBRUARY 13, 2017

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CRL.A. 641/2014 & CRL.M.B. 1072/2014

SUNIL KUMAR

..... Appellant

Through : Mr.Mukesh Kalia, Advocate with
Mr.Hanumanth & Mr.Akshay
K.Verma, Advocates.

versus

STATE

..... Respondent

Through : Mr.Amit Gupta, APP.

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CRL.A. 647/2014 & CRL.M.B. 1088/2014

SUNIL KUMAR

..... Appellant

Through : Mr.Mukesh Kalia, Advocate with
Mr.Hanumanth & Mr.Akshay
K.Verma, Advocates.

versus

STATE

..... Respondent

Through : Mr.Amit Gupta, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. In Criminal Appeal No.641/2014, the appellant Sunil Kumar impugns a judgment dated 15.02.2014 of learned Additional Sessions Judge in Sessions Case No.08/2013 arising out of FIR No.223/2012 registered at Police Station Ashok Vihar whereby he was held guilty for committing offence punishable under Section 392 read with Section 397 IPC. By an order dated 26.02.2014, he was sentenced to undergo Rigorous Imprisonment for seven years with fine ₹10,000/-.

2. By another judgment dated 15.02.2014 of learned Additional Sessions Judge in Sessions Case No.122/2013 arising out of FIR No.220/2012 registered at Police Station Bharat Nagar, the appellant was held guilty for committing offence under Section 25 Arms Act and Criminal Appeal No.647/2014 has been filed to challenge it. By an order dated 26.02.2014, he was awarded Rigorous Imprisonment for three years with fine ₹5,000/-. Sentences in both the FIRs were to run consecutively.

3. Briefly stated, the prosecution case as reflected in the charge-sheets were that on 08.09.2012 at about 9.15 a.m. at Ring Road, Richi Rich Banquet Hall, towards Prembari Bridge, Ashok Vihar, the appellant in furtherance of common intention with his associate Sonu @ Kalia (since acquitted) robbed the complainant Praveen Parashar of ₹21,000/ and a gold chain. The appellant used deadly weapon i.e. country made pistol at the time of commission of robbery. Rajender Kumar @ Kallan (since acquitted) was charged for commission of offence under Section 413 IPC for receiving and retaining stolen property i.e. gold chain belonging to the complainant Praveen Parashar. Information regarding the incident was conveyed to the

police and DD No.09 (Ex.PW-1/A) came to be recorded at Police Post W.P.I.A. at around 9.40 a.m. The investigation was assigned to SI Ved Prakash who after recording victim's statement (Ex.PW-11/A) lodged First Information Report. Statements of witnesses conversant with the facts were recorded. Efforts were made to find out the assailants but in vain. The victim was taken to Police Station where he was shown dossiers/photographs of various criminals of the area. The complainant was able to identify one of the assailants i.e. the appellant.

4. On 27.09.2012 at 12.35 p.m. at Sunder Lal Jain Hospital Road, opposite Picnic Hat Park, Ashok Vihar, the appellant was found to be in possession of a country made pistol along with one live cartridge in contravention of notification issued by the GNCT of Delhi and was so arrested. FIR 220/2012 under Section 25 Arms Act was lodged at Police Station Bharat Nagar.

5. On 28.09.2012 SI Ranbir Singh of Police Station Bharat Nagar gave information vide DD No.43B about the appellant's apprehension in the FIR No.220/2012. The appellant was arrested in FIR No.223/2012. Subsequently, Sonu @ Kaliya and Rajender Kumar @ Kallan were also arrested. Upon completion of investigation, a charge-sheet was filed against all accused persons in the court.

6. The prosecution examined various witnesses in both the cases. In their statements recorded under Section 313 Cr.P.C., the appellant and his associates denied their involvement in the crime and pleaded false implication. The trial resulted in the conviction of the appellant in FIR No.223/2012 registered at Police Station Ashok Vihar under Section 392 read with Section 397 IPC whereas his associates Sonu @ Kalia and

Rajender Kumar @ Kallan were acquitted. In FIR No.220/2012 registered at Police Station Bharat Nagar, the appellant suffered conviction under Section 25 Arms Act.

7. It is relevant to note that the State did not challenge the acquittal of Sonu @ Kalia and Rajender Kumar @ Kallan.

8. I have heard the learned counsel for the parties and have examined the file. The occurrence whereby the complainant Praveen Parashar was deprived of his cash and gold chain took place on 8.9.2012 at around 9.15 a.m. The information was conveyed to the police promptly and DD No.09 (Ex.PW-1/A) came into existence at 9.40 a.m. In his complaint (Ex.PW-11/A) the victim gave vivid detail of the occurrence as to how and in what manner he was robbed of cash and gold chain by the appellant who along with associate had arrived the spot on a scooter. Description of the assailants was given by the complainant and he claimed to identify them, if shown.

9. In his Court statement, the complainant appearing as PW-11 proved the version given to the police without any deviation and deposed that on 08.09.2012 at around 9.00 a.m., he was going to his shop by a car bearing No.DL 8C Q 5613. He had kept a brief case containing documents on the rear seat of his car. When he reached just ahead of Richi Rich Banquet Hall, Red Light, at around 9.15 a.m., one two wheeler scooter of light blue colour stopped in front of his car. Two persons wearing Coca Cola shirt and blue coloured jeans pant, aged around 30 years were sitting on the scooter. The pillion rider of the scooter got down from the scooter and put a pistol upon his chest and threatened “*hum chaudhary adami hai humara dimang ghuma hua hai or tera ghar se pichha kar rahe hain complaint ki to*

gole mara denge”. Thereafter the said individual snatched his gold chain from the neck. The driver of the scooter came on the left side door of the car, opened the brief case lying on the rear seat and found nothing valuable therein. The individual who had put pistol on his chest snatched his chain and took ₹21,000/ from his jeans pant. The assailants fled the spot towards Azadpur on their scooter after extending threats. The complainant further revealed that he moved forward for about 1/2 kilometer and parked his car at the corner of the road in front of Wazipur Depot and made a call at 100. PCR gypsy reached and he was brought to Wazirpur Police Post; his statement (Ex.PW-11/A) was recorded. He further deposed that on the same day, he went to the police station where he was shown mini dossier (Ex.PW-11/B). He identified the photograph of the assailant who had put pistol upon him.

10. In the cross-examination, he disclosed that it being a second Saturday, the offices were closed and there was no heavy rush at the spot. He denied that the assailants were wearing full mask helmets and he was unable to recognize them. The complainant volunteered to mention that the pillion rider was not wearing any helmet and one who was driving in scooter was wearing cap type helmet which did not have a front visor. He fairly admitted that due to fear, he had become perplexed and was unable to note down the number of the scooter.

11. On perusal of the statement of the complainant in its entirety, it transpires that despite lengthy cross-examination, no material discrepancy or infirmity has been elicited to suspect the version narrated by him. No ulterior motive was assigned to the complainant for falsely identifying the appellant to be one of the assailants. The complainant had no prior

acquaintance with the appellant and did not nurture any ill-will or grievance to implicate him in a false case. The complainant being a victim of robbery at the point of country made pistol is not expected to let the real culprit/offender go scot free and falsely rope in a innocent one. It is relevant to note that during investigation, the victim had participated in the Test Identification Proceedings conducted by the Metropolitan Magistrate and he duly identified the appellant to be one of the assailants. In the Court testimony too, he had no hesitation to identify the appellant to be one of the assailants and the perpetrator of the crime.

12. The robbed gold chain was subsequently recovered pursuant to appellant's disclosure statement at the shop of co-accused Rajender @ Kallan. During Test Identification Proceedings, the complainant was able to identify the gold chain robbed at the time of crime. It further lends credence to the victim's statement.

13. No valid reasons exist to disbelieve the testimony of the victim. It has been corroborated by the testimony of the various police officials who had no extraneous consideration to support him.

14. Subsequently, on 27.09.2012 at around 12.35 p.m. the appellant while coming on a motor cycle from the side of Satyawati Colony, was apprehended by the police team on picket duty. PW-2 (Constable Darvesh Kumar) deposed that the appellant, on seeing the police party got afraid and stopped the motorcycle for a moment but again tried to raise its speed. He, however, was stopped and apprehended. On his search, a country made pistol was recovered. Subsequently, SI Ranbir arrived at the spot and the country made pistol was handed over to him. On checking, it was found to contain one live cartridge. FIR No.220/2012 under Sections 25/54/59 Arms

Act was registered and the motor cycle bearing No.DL-6S-AF-6288 (Ex.P-4) was taken into possession. Similar are the statements of PW-6 (Ct.Jitender), PW-7 (HC Rajeev Kumar) and PW-9 (SI Ranbir), who have corroborated each other on material aspects and despite their lengthy cross-examination, nothing material could be extracted to disbelieve them. The appellant did not give plausible explanation as to how and for what purpose he was in possession of a country-made-pistol. He did not deny his presence at the spot and failed to produce any evidence to show himself to be present at any other place at the time of occurrence.

15. Both the judgments referred above are based upon fair appreciation of evidence and conviction for the offences mentioned therein cannot be faulted. The convictions, are, thus affirmed.

16. The minimum sentence prescribed under Section 392 read with section 397 IPC is seven years (FIR No.223/2012) which cannot be modified or altered. Moreover, the appellant was found involved in number of criminal cases. Apparently, he was a habitual offender. He has been convicted in number of cases whereas other cases for similar offences are pending trial. His jail conduct is also not satisfactory.

17. Sentence of Rigorous Imprisonment for three years awarded under Section 25 Arms Act (FIR No.220/2012) also deserves no alteration.

18. The Trial Court has awarded the sentences in both the cases mentioned previously, which are to run one after the other i.e. consecutively. Considering the facts and circumstances of the case and the period already undergone by the appellant; and the fact that co-accused Sonu @ Kalia and Rajender Kumar @ Kallan have been acquitted, the Sentence Order directing substantive sentences to operate 'consecutively' seems

unreasonable. The Sentence Orders are accordingly modified and sentences in FIR Nos. 223/2012 and 220/2012 shall run 'concurrently'. Other terms and conditions of the sentence orders are left undisturbed.

19. The appeals stand disposed of in the above terms. Pending applications also stand disposed of. Trial Court record along with the copy of the order be sent back forthwith. Intimation be sent to the Superintendent Jail.

FEBRUARY 13, 2017/sa

**(S.P.GARG)
JUDGE**