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

RESERVED ON : JUNE 05, 2017

DECIDED ON : JUNE 06, 2017

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Crl.A.298/2017 & Crl.M.B.504/2017

ANOOP

..... Appellant

Through: Mr. Sumeet Verma with Mr. Abhijeet
Sharma, Advocates.

versus

STATE

..... Respondent

Through: Ms. Meenakshi Dahiya, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Aggrieved by a judgment dated 26.09.2016 of learned Additional Sessions Judge in Sessions Case No.2031/16 arising out of FIR No.631/2014 at Police Station Sun Light Colony by which the appellant was held guilty for committing offence punishable under Section 394 IPC, the instant appeal has been preferred by him. By an order dated 26.09.2016, the appellant was sentenced to undergo Rigorous Imprisonment for four years with fine ₹1,500/- under Section 394 IPC.

2. Briefly stated the prosecution case as reflected in the charge-sheet was that on on 28.09.2014 at around 1.22 a.m. at Barapulla Flyover, near Ring Road, New Delhi, the appellant and his associate Vicky Kumar Malhotra @ Hemant in furtherance of common intention robbed Naresh Kumar of ₹1,300/- Driving licence and RC of motorcycle No.DL-12SC7639. While committing robbery, they also inflicted injuries to Naresh Kumar. The appellant was arrested at the spot on the victim's raising alarm by the police officials present on patrolling duty. Co-accused Vicky Kumar Malhotra @ Hemant was arrested and at his instance certain recoveries were effected. Statements of witnesses conversant with the facts were recorded. Upon completion of investigation, a charge-sheet was filed against the appellant and Vicky Kumar Malhotra @ Hemant in the court. In order to establish its case, the prosecution examined seven witnesses. In 313 Cr.P.C. statement, the appellant denied his involvement in the crime and pleaded false implication. The trial resulted in his conviction under Section 394 IPC. It is relevant to note that the appellant was acquitted of the charge under Section 397 IPC and the said findings remained unchallenged.

3. I have heard the learned counsel for the parties and have examined the file. Learned counsel for the appellant urged that the Trial Court did not appreciate the evidence in its true and proper perspective. Various glaring discrepancies emerging in the statements of the prosecution witnesses were ignored without cogent reasons. The appellant was not arrested at the spot and no knife was recovered from his possession as is evident from the Personal Search Memo (Ex.PW-1/F). Arrest Memo (Ex.PW-1/E) dated 29.09.2014 records appellant's arrest on 28.09.2014 at 9.00 a.m. The time seems to have been altered. The prosecution was unable

to establish the purpose of the victim for going at odd hours to buy flowers. The documents have been manipulated to show the appellant's false implication in the case. Counsel further urged that the appellant has already undergone about two years and ten months incarceration and it is a case for taking lenient view.

4. Learned Additional Public Prosecutor urged that no valid reasons exist to disbelieve the statement of the complainant who had no extraneous consideration to name the appellant to be the perpetrator of the crime.

5. The occurrence took place on the night intervening 28/29.9.2014 at around 1.22 a.m. On the victim's raising alarm, the police officials who were already in the area for patrolling duty chased the assailants and were able to apprehend one of them i.e. the appellant. DD No.40 dated 28.09.2014 recorded at Police Station Sun Light Colony at 1.22 a.m. reflects that two assailants were fleeing after committing robbery and were being chased by the police officials. The victim was taken to Jai Prakash Narayan Apex Trauma Centre, All India Institute of Medical Sciences for medical examination soon after the incident. MLC (Ex.PX) reflects the patient's arrival time as 4:12 hours on 28.09.2014. It further records that the patient was hit by a bottle over head. It corroborates the victim's version that he along with his mother-in-law PW-2 (Long Sri) was going on a motor-cycle to Gazipur for purchasing flowers. When they reached near Saria Kale Khan, near the speed breaker where they had to slow down the vehicle, one 'boy' came from the left side and put a knife on his stomach. There was no delay in lodging the report with the police. In the complaint (Ex.PW-1/D) lodged soon after the occurrence, the victim

gave detailed account of the occurrence and disclosed that robbery was committed upon him, and how he was injured in the occurrence. In the cross-examination, the incident as such was not disputed by the appellant. It was suggested that it was handy-work of someone else. This defence deserves outright rejection. The complainant had no prior animosity or ill-will against the appellant to falsely implicate him. Being an injured and victim, he must be interested to bring the real culprit to book and is not expected to let the real offender go scot free and to falsely implicate an innocent one. In the absence of any prior animosity or ill-will the victim who had no acquaintance with the appellant was not imagined to name him as the perpetrator of the crime. The appellant was duly identified in the court. In the court statement, specific role was assigned to the appellant whereby he hit him with a broken beer bottle on his head. The court has no cogent reasons to disbelieve the victim's natural version particularly when in the cross-examination no material infirmities could be extracted. Though there were certain contradictions in the statements of the prosecution witnesses regarding the exact role played by the appellant and his associate, for that the Trial Court has already given benefit of doubt to the appellant and his associate and they have not been convicted under Section 397 IPC. Certain infirmities pointed out by the appellant's counsel are not material to shake the prosecution case as a whole and discard the testimony of uninterested witnesses in its entirety. Presence of the appellant at the spot at the time of crime is beyond suspect. The appellant did not explain as to from where else he was apprehended. He did not examine any witness in defence from his family to prove if at the relevant time he was present at his residence or place of work. The appellant did not explain why he was

present at the place of occurrence at odd hours without any specific purpose. Apparently, the appellant's motive was to rob the innocent passers-by.

6. The Trial Court judgment based upon fair appreciation of evidence deserves no intervention and is affirmed. Regarding modification of sentence order, I find no sufficient reason to intervene in the sentence order based upon fair reasoning. The crime committed by the appellant is serious whereby he and his associate not only robbed an innocent individual of his valuable articles but also inflicted injuries for no fault of his. The court can well understand the trauma of the victim and his mother-in-law who had to face the robbers at odd hours of the night. The appellant deserves no leniency.

7. The appeal lacks in merits and is dismissed.

8. All pending application(s) also stand disposed of.

9. Trial Court record (if any) be sent back forthwith along with the copy of the order. Intimation be also sent to the Superintendent Jail.

(S.P.GARG)
JUDGE

JUNE 06, 2017/sa