

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

RESERVED ON : 11th MAY, 2017

DECIDED ON : 19th MAY, 2017

+ CRL.A.486/2016

ASHOK KUMAR @ ASHU

..... Appellant

Through : Mr.Pramod Kumar Dubey, Advocate
with Ms.Namita Wali & Mr.Akshay
Sehgal, Advocates.

versus

THE STATE (NCT OF DELHI)

..... Respondent

Through : Ms.Meenakshi Dahiya, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Challenge in this appeal is a judgment dated 29.02.2016 of learned Addl. Sessions Judge in Sessions Case No.44564/2015 arising out of FIR No. 363/2015 PS Bhajan Pura by which the appellant – Ashok Kumar @ Ashu was held guilty for committing offence punishable under Sections 392/34 IPC. By an order dated 05.03.2016, the appellant was sentenced to undergo RI for three and a half years with fine ₹500/-.

2. Briefly stated, the prosecution case as reflected in the charge-sheet was that on 22.03.2015 at around 07.45 p.m. at a place near Venus

Tailor, Gali No.4, Subhash Vihar, Delhi, the appellant in furtherance of common intention along with his associate (not traceable) committed robbery and deprived the complainant – Rohit of ₹500/- at the point of blade. The information about the incident was conveyed to the police vide Daily Diary (DD) No.32A (Ex.PW-2/A) at 08.30 p.m. The investigation was assigned to SI Harbhajan Singh who along with Const.Ajender went to the spot. After recording Rohit's statement (Ex.PW-1/A), he lodged First Information Report. The appellant was arrested and the crime instrument was recovered at his instance. Statements of the witnesses conversant with the facts were recorded. Upon completion of investigation, a charge-sheet was filed against the appellant for committing offences punishable under Section 392 read with Section 397/506 IPC. To prove its case, the prosecution examined five witnesses. In 313 Cr.P.C. statement, the appellant denied his involvement in the crime and pleaded false implication due to a previous quarrel with the complainant and his brother. He did not examine any witness in defence. The trial resulted in conviction under Sections 392/34 IPC. It is relevant to note that the appellant was acquitted of the charges under Sections 397/506 IPC and the State did not challenge the said acquittal under those offences. Being aggrieved and dissatisfied, the instant appeal has been preferred by the appellant.

3. I have heard the learned counsel for the parties and have examined the file. The occurrence took place on 22.03.2015 at around 07.45 p.m. The incident was reported to the police promptly by the complainant on his mobile No.9711229035 and DD No.32A (Ex.PW-2/A) came into existence at 08.30 p.m. at PS Bhajan Pura. In his complaint (Ex.PW-1/A), the victim gave detailed account of the occurrence and named the appellant

to be one of the assailants who had committed robbery and had deprived him of ₹500/-. In his Court statement as PW-1, the complainant proved the version given to the police without any variation. Identifying the appellant to be the individual at whose instance his associate had taken out ₹500/- from his pocket, the witness deposed about his acquaintance with him. He further stated that when he was present in Gali No.4, Venus Tailor at Subhash Vihar, Delhi, at around 07.35 p.m., two boys met him. One of them pointed a blade on his neck and took out ₹500/- from the left side pocket of his pant. The other boy had instigated the assailant to take out the money from his pocket. After the occurrence, both the assailants fled the spot. He made a call at 100; PCR police arrived the spot. The witness was fair to admit that no recovery of blade was effected in his presence. He further admitted that the appellant was not arrested in his presence. For that reason, the appellant was not held guilty with the aid of Section 397 IPC.

4. Admitted position is that both the victim and the appellant were acquainted with each other before the incident as they lived in the same vicinity. In the cross-examination of the complainant, nothing has come on record if he ever nurtured any ill-will or animosity against the appellant to falsely implicate him in this case. No suggestion was put to the complainant in the cross-examination if any quarrel whatsoever had taken place with the appellant's elder brother. The appellant did not furnish detailed particulars of the said quarrel. Moreover, for petty dispute, if any, the appellant, a student of 12th standard, is not expected to make serious allegations of robbery against an acquaintance to settle score. Material facts deposed by the complainant remained unchallenged and un-rebutted in the cross-examination. Appellant's presence at the spot has been established at the

time of commission of the crime. Soon after the occurrence, the complainant with the police had visited the appellant's house but he was not found there. The appellant did not produce any evidence in defence to show his presence at some other place at the time of crime. No valid reasons exist to disbelieve the complainant; he had no axe to grind to falsely implicate the appellant. Conviction based upon fair appreciation of the evidence under Section 392 IPC cannot be faulted.

5. The appellant aged around 25 years is not a previous convict. The complainant, in the cross-examination, admitted that the appellant was residing at a distance of two minutes' walk from his house and was known to him for the last two years. He further disclosed that the appellant was running a shop to fill gas near his grand-mother's house and used to sit there in between 09.00 a.m. to 09.00 p.m. He was unaware if the appellant was involved in any other criminal case. He further admitted that his uncle used to go to the appellant's shop for getting the gas filled. He himself had visited the appellant's shop. It is unclear as to what compelled the appellant to indulge in this nefarious activity. Sentence Order records that the appellant was earlier involved in a theft case.

6. Nominal Roll dated 09.02.2017 reveals that the appellant has already undergone one year, six months and three days incarceration besides remission for one month and eighteen days as on 09.02.2017. It further reveals that he is not a previous convict and is not involved in any other criminal case. His jail conduct for the last about one year is satisfactory.

7. Considering all above facts and circumstances, Sentence Order is modified and the appellant is ordered to undergo RI for two years with

fine ₹500/-; default sentence being SI for one month under Section 392/34 IPC.

8. The appeal stands disposed of in the above terms.
9. Trial Court record be sent back forthwith with the copy of the order. Intimation be sentence to the Superintendent Jail.

(S.P.GARG)
JUDGE

MAY 19, 2017 / tr

