

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

Date of decision: June 16, 2017

+ **CRL.A. 432/2015**

PURAN RAM

..... Appellant

Through: Mr. Amar Nath, Amicus Curiae
Counsel Curiae with Mr. Dinesh
Malik, DHCLSC panel counsel

Versus

STATE

..... Respondent

Through: Mr. Mukesh Kumar, Additional
Public Prosecutor for respondent-
State with SI Nisar Ahmad, Police
Station Sadar Bazar

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

%

1. Vide impugned judgment of 3rd May, 2014, appellant-accused has been held to be guilty of offences under Sections 392/397/34 IPC and under Section 27 of Arms Act. Vide order of even date, appellant-accused has been sentenced to undergo rigorous imprisonment of seven years with fine of ₹5,000/- with default clause for offence under Section 397 IPC and for offence under Section 27 of Arms Act, he has been directed to undergo simple imprisonment for three years with fine of ₹2,000/- with

default clause.

2. The factual matrix emerging from the impugned judgment is as under:-

“On 29.9.2012 on receipt of DD no.21-A, ASI Shiv Kumar reached at the spot at Rani Jhansi Road where Ct. Pradeep along with complainant Sugreev Chaubey met him and produced two boys including the accused herein alongwith knife and belongings of complainant. IO took the articles into possession vide seizure memo and recorded statement of complainant wherein he stated with respect to robbery of his bag at the point of knife by accused and his associate namely Shanu Rehman who is facing trial in juvenile justice board. After registration of the case, IO arrested the accused, prepared site plan, recorded disclosure statement of accused and after completion of investigation, filed the charge sheet u/S 392/397/34 IPC & Sec. 27/54/59 Arms Act against the accused in court. Accused Shanu Rehman was found to be juvenile and therefore separate charge sheet against him was filed in Juvenile Justice Board.”

3. Trial court has relied upon the evidence of complainant (PW-1) and other police officials to convict and sentence appellant-accused as noted hereinabove, while discarding appellant's plea of false implication.

4. To assail the impugned conviction, learned counsel for appellant had contended on instructions from appellant who was produced in custody that appellant was driver by profession and he used to station his TSR near the *Mama Bhanja* Park and on the fateful day, appellant was sleeping in the park at a distance of 200 meters from the spot and it is highly unlikely that his co-accused could be apprehended whereas appellant could not have been apprehended. It was further submitted that

Mr. Desai, Accounts Manager of complainant's company, from whose mobile phone complainant had made a call to the local police, has not been made a witness. It was next submitted that version of complainant stands contradicted by the version of police official (PW-2), as according to complainant he had made a call to local police after about 10 minutes whereas, as per version of PW-2, the apprehension of appellant-accused was within a short time of this incident. It was also pointed out that appellant was apprehended after about 15 minutes of this incident and was found to be in drowsy condition and is so evident from his MLC. Lastly, it was submitted that this case has been planted upon appellant and so, without any independent corroboration, prosecution version ought not to be relied upon.

5. To the contrary was the submission advanced by learned Additional Public Prosecutor for respondent-State, who had submitted that the conviction and sentence of appellant is just and proper.

6. Submissions advanced by both the sides on the last date of hearing, have been duly considered and on perusal of impugned judgment, order on sentence, nominal roll of appellant and the evidence on record, I find that nothing has come in the cross-examination of complainant (PW-1) to substantiate appellant's plea of his not being apprehended at the spot. Since there is no cross-examination of complainant (PW-1) regarding appellant not being apprehended at the spot (*though appellant claims that he was very much near the spot*), therefore no benefit accrues to appellant on this count. Regarding contradiction *inter se* evidence of complainant (PW-1) and police official (PW-2), I find after going through their

evidence that there is no apparent contradiction *inter se* their evidence. No doubt, it has come in the evidence of complainant (PW-1) that there were many passersby but there is no cross-examination of complainant as to why no such person was joined in the investigation. In any case, denial by police official (PW-2) regarding presence of public persons at the spot, is of no avail as Investigating Officer (PW-6) has not been cross-examined on this aspect. It is for the Investigating Officer to explain as to why public persons were not joined in the investigation. Nothing turns on this aspect for the reason that evidence of complainant (PW-1) is clinching and after scrutinizing of evidence of complainant (PW-1), I find no reason to disbelieve the version putforth by him. MLC of appellant-accused does show that he was in a drowsy state, as he was a drug addict. However, it is also noted in appellant's MLC that appellant was conscious. So, it cannot be said that appellant was not in a position to commit the offence in question due to his drowsiness. No reason is forthcoming as to why complainant (PW-1) would falsely implicate appellant, from whom weapon of offence i.e. knife used in commission of offence in question, was recovered and also complainant's bag containing looted articles was recovered. The ocular version putforth by complainant (PW-1) receives ample corroboration from the recoveries made from appellant-accused.

7. In the considered opinion of this Court, the conviction of appellant is well merited. Since appellant-accused had used a big knife in commission of this crime and the said knife has been recovered at the instance of appellant, therefore, I find that the minimum sentence of

seven years awarded to appellant for offence under Section 397 of IPC does not call for any interference. The sentence awarded to appellant is just and proper in the facts and circumstances of his case.

8. In light of the aforesaid, finding no substance in this appeal, it is dismissed. Appellant be apprised of the fate of his appeal through the concerned Jail Superintendent.

(SUNIL GAUR)
JUDGE

June 16, 2017

r

