

\$~R-14

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Date of Decision : August 23, 2017*

+ **CRL.A. 609/2017**

PRADEEP Appellant
Through : Mr. Anand Kumar, Advocate
with appellant in J/C.

versus

STATE OF N.C.T. OF DELHI Respondent
Through : Ms. Kusum Dhalla, APP for the
State.

PRATIBHA RANI, J. (Oral)

1. The instant appeal under Section 374 of Code of Criminal Procedure has been preferred by the appellant impugning the judgment dated 24th April, 2017 and order on sentence 27th April, 2017 whereby he has been convicted for committing the offence punishable under Section 394/34 IPC and sentenced to undergo imprisonment for seven years with fine of ₹5000/- and in default of payment of fine, to undergo imprisonment for three months.
2. Briefly stating, the case of the prosecution is that on 1st August, 2011 at about 3.00 pm the complainant Pradeep Singh (PW-1), who was running an agency of Amul Milk, was going to PNB, Sainik Vihar on his scooter No.DL-8S-V-4894 to deposit the sale proceed of ₹16,22,000/- which was kept in a rexin bag. He was carrying the rexin bag on his shoulder. When he reached near Ahuja Dry Cleaner street, he saw one person namely Islam standing at the corner of the street. Islam gave indication to some person in a suspicious manner. Apprehending some danger, the complainant stopped his scooter and

in the meantime, two more persons namely Vishnu and Pradeep came there. Vishnu was having katta and he tried to snatch the bag from him (complainant). In the process, complainant (PW-1) fell down from the scooter. When he tried to resist, Vishnu fired at him and the bullet touched him and caused abrasion. Thereafter all the accused persons fled from the spot with the robbed money of ₹16,22,000/-.

3. Matter was reported to the police. Police came at the spot and on coming to know that injured had been removed to Bhagwan Mahavir Hospital, SI Kuldeep Singh reached the hospital and found the injured admitted there with alleged history of gunshot injury. Since the injured was declared fit to make statement, IO SI Kuldeep recorded his statement and sent the rukka for registration of FIR.

4. After completion of investigation, total five accused persons were sent to face trial.

5. After trial, the two accused persons namely Kishore @ Pappu and Ajay were acquitted of the charges by extending benefit of doubt. The remaining three accused persons namely Vishnu, Islam and Pradeep (appellant herein) have been convicted and sentenced as under:-

Name of convict	Under Section	Period of imprisonment	Fine	Sentence in default of fine
Vishnu	394/34 IPC	7 Years	₹5,000/-	Three months
	397 IPC	7 Years	--	--
	25 Arms Act	3 Years	₹5,000/-	Three months

Islam	394/34 IPC	7 Years	₹5,000/-	Three months
Pradeep	394/34 IPC	7 Years	₹5,000/-	Three months

6. Feeling aggrieved, the appellant has challenged his conviction and sentence by filing this appeal.

7. Vide order dated 16th August, 2017 the Registry was directed to verify whether any appeal has been preferred by the co-convicts namely Vishnu and Islam and if so, the appeal files be placed before the Court alongwith the instant appeal.

8. As per the report received from the Registry, no appeal has been filed by the co-convicts Vishnu & Islam.

9. Pursuant to the production warrants issued against the appellant, he has been produced from the J/C today.

10. During the course of hearing, learned counsel for the appellant, on instructions, submits that the appellant is not challenging his conviction in this case. However, prayer has been made by the appellant to take a lenient view on the point of sentence and reduce the substantive sentence awarded to him in this case.

11. The appellant submits that he is unmarried and his family consists of his aged parents, who are suffering from various ailments, and six sisters and there is none to take care of his family. The appellant submits that a lenient view may be taken on the point of sentence as he has not been convicted under Section 397 IPC nor any such allegations were made against him.

12. Perusal of the impugned judgment shows that as per the prosecution case when PW-1 Sh.Pradeep Singh – the complainant was carrying a rexin bag containing the money and reached near Ahuja Dry Cleaners, convict Islam who was standing at the corner, gave some signal. Thereafter two persons who are convicts Vishnu and Pradeep (appellant herein) reached there. The bag was tried to be snatched by convict Vishnu who was armed with a katta (country made pistol) and caused injuries to him.

13. Only convict Vishnu has been held guilty under Section 397 IPC and awarded the minimum sentence prescribed therein i.e. seven years. The appellant has been held guilty only under Section 394/34 IPC but sentenced in the same manner.

14. Taking into consideration the submissions made on behalf of the appellant and the offence proved against the convict/appellant Pradeep, while upholding the conviction of the appellant, the substantive sentence awarded to him under Section 394/34 IPC is reduced from seven years to five years.

15. It is made clear that the modification is only in respect of the substantive sentence awarded to the appellant in this case. The sentence of fine of Rs.5,000/- is maintained.

16. As per the nominal roll of the appellant available on record, as on 1st August, 2017, he has undergone two years, five months and twenty eight days in this case.

17. The appeal is allowed only to the extent of modification of order on sentence to the above extent.

18. TCR be sent back alongwith copy of this order.

19. Copy of this order be sent to the concerned Jail Superintendent for information.

20. As prayed, copy of the order be given dasti to learned counsel for the appellant under the signature of Court Master.

**PRATIBHA RANI
(JUDGE)**

AUGUST 23, 2017

'st'

