

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

Date of order: June 07, 2017

+ CRL.A. 1085/2016

KANHIYA

..... Appellant

Through: Ms. Saahila Lamba, DHCLSC
Panel Advocate

Versus

STATE

..... Respondent

Through: Ms. Neelam Sharma, Additional
Public Prosecutor for respondent-
State with SI Chandan Singh

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
ORAL

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1. Impugned judgment and sentence holds appellant guilty of the offences under Sections 307/392/394/397/34 of IPC and Section 411 IPC and has sentenced him to undergo rigorous imprisonment of ten years for offence under Sections 307/394/34 IPC with fine of ₹10,000/- with default clause and for offence under Section 392/34 IPC, he has been sentenced to rigorous imprisonment for eight years with fine of ₹2,000/- with default clause. Appellant has been also sentenced for rigorous imprisonment of seven years for offence under Section 397/34 IPC and for offence under Section 411 IPC, appellant has been sentenced to rigorous imprisonment for two years with fine of ₹1,000/- with default clause. However, all the sentences awarded to appellant have been

directed to run concurrently.

2. The facts of the case, as noted in the impugned judgment, are as under:-

“Stating briefly as per prosecution story, it is alleged that on 11-1-2011, a PCR call was received from mobile no.9810880712 that the brother of caller, who resident of WZ-572/D, Naraina Village has been stabbed which was recorded vide DD No. 33A and handed over to HC Subhash. In the mean time, another DD No.34A was received at about 11.20 p.m. on 11-1-2011 that one Jugal Kishore, s/o Bhim Singh has been admitted in DDU Hospital vide MLC No.565/11 and SI along with staff reached DDU Hospital where the injured was declared unfit for making statement and on next day, i.e. 12-1-2011 in the morning SI got recorded the statement of injured Jugal Kishore who had stated that he is working in Chandan Optical Eye Centre at Raja Garden as Assistant and on 11-1-2011, he came back to his house from office at about 9.30 p.m. and he had gone to bring Chhole Bhature at 10.15 pm from Mangal Bazar, Naraina Vihar but he could not get the same and at about 10.30 p.m. he was returning from the park situated behind C Block Gurdwara then in the park he was caught hold of two young persons and both the young persons were in their early twenties and one of them was wearing a jeans blue colour jacket and a ear ring in his right ear has put a knife in his stomach and another boy in the age group of 24-25 years, who was wearing a grey colour jacket has put the knife on the back of victim. Both the accused persons abused him in the name of his mother and sister and asked him to hand over his mobile and money immediately, otherwise, he will be finished and despite having fear, victim dared to oppose

them and, thereafter, both the accused persons stabbed the victim in his stomach as well as in his back and they snatched his mobile LG colour Black Model GW 300 along with his wallet containing I- card and Rs.700/- and he kept on crying but nobody was present at that time and on seeing that blood was oozing out from the body of victim, accused persons fled away and victim in the injured condition went to Mangal Bazar but no help was provided to him by anyone and somehow he managed to go to his house where his brother was present and he narrated the whole incident to him and he was taken to Behl Hospital, Naraina where doctor referred him to DDU hospital and he can identify the accused persons if brought before him”

3. On the strength of evidence of complainant and other witnesses, trial court has held appellant guilty for the offences in question and has sentenced him to the period as narrated above.

4. At the outset, learned Counsel for appellant submits that at the time of commission of offence, appellant was in his twenties and that he is a poor person and is sole bread earner of his family. It is submitted that by now, appellant has undergone sentence of more than seven years and his conduct in jail has been satisfactory and that appellant has already undergone the minimum sentence prescribed for the offence under Section 397 IPC. It is pointed out that there is no minimum sentence for the remaining above referred offences. So, it is submitted that the sentence awarded to appellant deserves to be reduced to the period already undergone by him.

5. Learned Additional Public Prosecutor for respondent-State

supports the impugned judgment and order on sentence and submits that the sentence awarded to appellant is just and appropriate.

6. Upon hearing and on perusal of evidence on record, I find that the conviction of appellant is well merited. However, order on sentence needs to be varied. Considering the fact that appellant is in jail for last more than seven years with remissions and Nominal Roll of appellant indicates that his conduct in jail has been satisfactory and also the fact that the status report filed by respondent-State on record does not disclose any previous involvement of appellant, the substantive sentence awarded to appellant for offences under Sections 307/392/394/34 of IPC is reduced to seven years while sentence under Section 397 of IPC and the fine imposed for remaining offences is maintained. However, on parity basis the period in default of payment of fine for the offence under Section 394 is reduced from 06 months to 02 months. The substantive sentences shall ofcourse run concurrently.

7. If appellant has served out the modified sentence of seven years and has paid fine or has already undergone the period in default of payment of fine, then he be released forthwith, provided he is not wanted in any other case.

8. This appeal is partly allowed to the extent indicated above.

9. The concerned Jail Superintendent be intimated forthwith to apprise appellant about the fate of this appeal.

(SUNIL GAUR)
JUDGE

June 07, 2017

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