

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

Date of Decision: June 05, 2017

+ **CRL.A. 1207/2015**

MONU @ SAHIL

..... Appellant

Through: Mr. Amar Nath, Amicus Curiae
counsel with Ms. Rakhi Dubey,
DHCLSC panel Advocate

versus

STATE

..... Respondent

Through: Ms. Meenakshi Chauhan,
Additional Public Prosecutor for
respondent-State with SI Abhijit
Kumar

**CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR**

**JUDGMENT
(ORAL)**

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1. In this appeal, which has been preferred through Jail, the challenge is to appellant's conviction under Section 395 of IPC read with Section 34 of IPC. Vide impugned order of 30th May, 2015, appellant has been sentenced to rigorous imprisonment for four years with fine of ₹5,000/- with default clause.

2. The facts as culled out from impugned judgment are as under: -

“Complainant Deepu Bhardwaj who was examined as PW2 deposed that on 04.12.2013, it was his weekly off. He

had his cousin Brijesh Bhardwaj/ PW1 were going to Seema Puri to meet their uncle. At about 1.30-2.00 p.m., they got down at the Monastery flyover from the Bus and started walking towards ISBT inquiring about the location. His cousin Brijesh Bhardwaj/PW1 took out his touch screen mobile phone make BQ to see the time. In the meantime, they saw 5 boys coming towards them from the front side. The tall boy snatched the mobile phone from the hand of his cousin Brijesh Bhardwaj/PW1 and the other 4 boys caught hold of him and his cousin brother. When they raised an alarm, two boys caught hold of his cousin brother and the other 3 boys caught him and pushed him on the road. One of them removed his brown coloured wallet containing cash of Rs.200/- election I card and other things and the black coloured wallet of his cousin containing Rs.60/-, one mobile and some documents.

PW2 Deepu Bhardwaj further deposed that one of the boys snatched his mobile phone make NOKIA and also slapped him. Thereafter, all the dacoits after threatening them escaped from the spot. They started chasing them and while chasing they entered a colony through a gali. However, the dacoit who had snatched the mobile phone of Brijesh Bhardwaj/PW1 managed to escape but the remaining 4 dacoits were apprehended by them with the help of the public persons.

In the meantime, PCR van arrived at the spot and on inquiry, the name of four dacoits were revealed as Monu @ Sahil, Sattar, Amar Nath and Shahnawaz. He identified accused Monu @ Sahil to be the dacoit who had caught hold of his neck and accused Sattar as the dacoit who had held his hand while their co-accused had removed his purse.”

3. Pertinently, the prosecution case qua appellant is that from him, currency notes worth ₹165/- were recovered whereas from his co-accused-Amar Nath, who was a juvenile, a mobile phone and ₹300/- were

recovered and from another co-accused-*Sattar*, currency notes of ₹50/- only was recovered and as per prosecution case, no weapon was recovered from any of the accused persons.

4. Apart from evidence of complainant-*Deepu* (PW-2) and the victim-*Brijesh* (PW-1), there is evidence of Investigating Officer (PW-7) and other police witnesses and while relying upon the evidence recorded and after taking note of the stand taken by appellant and his co-accused, trial court has rendered the impugned judgment vide which appellant stands convicted and sentenced, as noted hereinabove. Since appellant is on bail, therefore, vide last order bailable warrants were issued against appellant, which has been received back with the report that appellant is in custody in District Jail in Mathura in a theft case.

5. Learned counsel for appellant volunteers to argue this appeal.

6. With the assistance of learned counsel for appellant and learned Additional Public Prosecutor for respondent-State, impugned judgment and the evidence on record have been perused.

7. The precise submission of appellant's counsel is that appellant was one of the public persons, who had run to catch assailants and mistakenly, appellant had been taken to be one of the assailants and that mere recovery of ₹165/- from appellant does not prove that he was one of the assailants. It is pointed out by learned counsel for appellant that as per Personal Search Memo of appellant, nothing was recovered from him and so, prosecution case of recovery of ₹165/- from appellant is false and so, appellant deserves to be acquitted. In the alternative, it is submitted that as per Nominal Roll of appellant, he has already undergone sentence of

two years and one month and that he is a poor person and sole bread-earner of his family and so the sentence awarded to him ought to be reduced to the period already undergone by him.

8. Learned Additional Public Prosecutor for respondent-State supports the impugned judgment and submits that appellant has been identified by the complainant and the victim to be one of the assailants and after the apprehension of appellant, ₹165/- were recovered from him. So, it is submitted that merely because nothing was recovered in personal search of appellant after his formal arrest, is inconsequential. Thus, it is submitted that the conviction of appellant is fully justified and sentence awarded to him is adequate and so, no case for showing any leniency towards appellant is made out as his conduct in jail has been unsatisfactory and he is involved in other criminal cases.

9. Upon hearing and on perusal of impugned judgment, order on sentence and the Nominal Roll of appellant, I find that evidence of complainant (PW-2) and the victim (PW-1) inspires confidence and the version put forth by them cannot be discarded merely because appellant has taken a stand that he was one of the public persons, who was chasing the assailants. The version put forth by appellant appears to be improbable on the face of it because appellant gives no reason as to why the complainant or the victim would falsely implicate him in such a serious case. Merely because nothing was recovered from the personal search of appellant would not entitle appellant to acquittal in this case because there is recovery of currency notes of ₹165/- on the immediate search of appellant on his apprehension. Pertinently, appellant has not

claimed that recovered currency notes belongs to him.

10. In the considered opinion of this Court, there is no justification whatsoever to acquit appellant for the offence in question as his conviction for the offence under Section 395 of IPC is well merited. As per the Nominal Roll of appellant, he has undergone sentence of 2 years and 1 month but his conduct in jail is unsatisfactory and so, he cannot claim parity with co-accused-*Sattar*, whose appeal has been disposed of vide judgment of 1st June, 2017, as he had undergone substantial sentence of 3 years and 6 months or so, out of the sentence of 4 years.

11. While taking into consideration the fact that appellant is involved in other criminal cases also and that his conduct in jail has been unsatisfactory, I find that no case for reduction of sentence is made out. Hence, this appeal is dismissed.

JUNE 05, 2017

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**(SUNIL GAUR)
JUDGE**