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

+ **CRL.A. 922/2005**

PREM PAL

..... Appellant

Through: Mr. Simon Benjamin, Advocate.
(DHLSC.)

versus

STATE

..... Respondent

Through: Ms. Aasha Tiwari, APP for State

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

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12.06.2018

The nominal roll has been received from the Superintendent Central Jail-04, Tihar New Delhi which indicates that the appellant as on the date 19.07.2007 when he was released from jail, he had undergone a period of 6 years, 8 months and 29 days of incarceration having earned a remission of 3 months and one day and that there is now no unexpired portion of the sentence and that he had undergone the entire period of the sentence imposed of 7 years of Rigorous Imprisonment and a fine of Rs.5,000/-, which fine is reported to have been paid at the jail gate and was thus released from jail on 25.07.2007.

The appellant having been convicted vide the impugned judgment dated 13.07.2005 qua the commission of the offences

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punishable under Section 397/412 of the Indian Penal Code, 1860 and having been sentenced vide the impugned order on sentence dated 13.07.2010 in relation thereto, it has been contended on behalf of the appellant that the testimonies of the prosecution witnesses who have been examined do not spell out as to what was the alleged deadly weapon in the possession of the appellant at the time of the commission of the alleged offences on the night intervening 3-4/10/1999 and it has thus been submitted that the ingredients of the alleged commission of the offence punishable under Section 397 of the Indian Penal Code, 1860 are not brought forth even remotely.

It has *inter alia* been submitted on behalf of the appellant placing reliance on the charge framed against the appellant qua the commission of the robbery at the knife point with the co-accused persons from a nursery on 04.10.1999 at about 12.00 at the mid-night at Pratap Nursery, at Siraspur, of Rs.20,000/- kept in a attache in one of the room of the nursery apart from other articles, i.e., 3 radios make Philips, one local radio make Bahadur, three wrist watches, mini watch, two gents watches and two blankets to submit that the charge framed under Section 412 of the Indian Penal Code, 1860 against the appellant, relates to his being in possession of articles different from those for which he has been convicted qua the alleged commission of the offences punishable under Section 392 & 397 of the Indian Penal Code, 1860, inasmuch as he was stated to have been found in possession of one walkman Bingo-US202A, one silver

karghani, one saree, one blouse, one piece of cloth and cash amount of Rs.700/- which have been stated to have been dishonestly retained with him and it has been submitted that there is no reason to believe that the same had been transferred to him pursuant to a commission of a dacoity on 04.10.1999 and it has thus been submitted that the ingredients of the alleged commission of the offence under Section 412 of the Indian Penal Code, 1860 are also not brought forth.

It has been submitted on behalf of the appellant further that the testimonies of the prosecution witnesses are wholly generic and do not spell out as to which was the specific deadly weapon used and in possession of the appellant.

The observations of the learned Trial Court in relation to the user of the deadly weapon and being armed with the same are to the effect that PW-6 had stated that Prempal, i.e., the appellant herein, Yad Ram, Anil and Balbir Singh were armed with country made pistols, lathis and axes, PW-7 had stated that Kali Charan, Ram Phal, Anil, Prem Pal and Chatura were armed with desi Kattas, knife and dandas, PW-8 had stated that Ram Phal, Kali Charan, Yad Ram, Chatura and Anil (without naming the appellant Prempal) were armed with country made pistols, PW-12 had stated that all the accused persons were armed with knives and country made pistols and PW-16 had stated all the accused persons were armed with revolvers etc and it was thus held by the learned Trial Court that the testimonies of PW-5, PW-6, PW-7, PW-8, PW-12, PW-13, PW-16 brought forth that the

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accused persons were armed with country made pistols, knives and dandas at the time they committed the offence and at the point of the weapon of the offence committed a dacoity, observing *inter alia* to the effect that Prem Pal had also been identified by PW-7 & PW-6. *Inter alia*, the learned Trial Court further observed to the effect that it was impossible to pin point as to which of the accused persons were having which weapons inasmuch as all prosecution witnesses had deposed that all the accused persons were armed with deadly weapons such as knife, country made pistols and lathis and that it was free from doubt that the accused persons were armed with deadly weapons.

In relation to the said aspect, learned counsel for the appellant has placed reliance on the verdict of the Hon'ble Supreme Court in **“Dilawar Singh Vs. State of Delhi” AIR 2007 Supreme Court 3234** to contend that for invocation of Section 397 of the Indian Penal Code, 1860, the offender refers to the only culprit who actually used the deadly weapon and that Section 397 of the Indian Penal Code, 1860 only envisages an individual liability and not a constructive liability and that Section 397 of the Indian Penal Code, 1860 is attracted only against the particular accused who uses the deadly weapon or does any of the acts mentioned in the provision and other accused cannot be vicariously liable under this section for the acts of the accused.

Taking the said verdict relied upon on behalf of the appellant
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into consideration and the testimonies the prosecution witnesses which do not specifically categorically spell out as to which was the weapon of the offence specifically in possession of the appellant at the time of commission of the offence non 04.10.1999, the conviction of the appellant under Section 397 of the Indian Penal Code, 1860 and Section 412 of the Indian Penal Code, 1860 are set aside. However, the testimonies of the prosecution witnesses examined on the record conclusively establish the commission of the offence punishable under Section 392/411 of the Indian Penal Code, 1860 and the appellant is thus convicted in relation thereto. As he has already undergone the impugned sentence nothing more survives in the instant appeal.

The appeal is disposed of accordingly.

ANU MALHOTRA, J

JUNE 12, 2018
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