

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

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Reserved on: 29th August, 2018

Decided on: 9th October, 2018

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CRL.A. 379/2017

SUNNY @ GATTU

..... Appellant

Represented by: Mr. Anwesh Madhukar, Mr.
Pranjal Shekhar and Ms.
Prachi Nirwan, Advocates

versus

STATE

..... Respondent

Represented by: Ms. Meenakshi Chauhan,
APP for the State with SI
Nipender Kumar, PS
Madhu Vihar

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By the present appeal, Sunny @ Gattu challenges the impugned judgment dated 21st August, 2015 convicting him for the offence punishable under Section 394 IPC read with Section 397/34 IPC in FIR No. 92/2014 registered at PS Madhu Vihar and the order on sentence dated 7th September, 2015 directing him to undergo rigorous imprisonment for a period of seven years and to pay a fine of ₹5,000/- and in default whereof to undergo simple imprisonment for a period of 30 days for the offence punishable under Section 394 IPC read with Section 397 IPC.

2. Learned counsel for the appellant contends that no certificate under Section 65B of the Evidence Act was exhibited to prove the FIR. No FSL report was sought of the blood stained clothes allegedly recovered

from the appellant. Neither there was any recovery of robbed articles from the appellant nor of the weapon of offence. As per order dated 24th November, 2014, the Investigating Officer stated that the juvenile was having the knife, however, in court, it was a different story. Thus, conviction of the appellant for offence punishable under Section 397 IPC cannot be sustained and the appellant be released on the period already undergone. The nature of injury was simple. No public witness was associated at the time of preparing the purported pointing out memo. Appellant has been falsely implicated in the present case, thus he be acquitted.

3. Learned APP for the State on the other hand contends that the appellant has been rightly convicted for the offences punishable under Sections 394/397/34 IPC.

4. Police machinery was set into motion on 21st January, 2014 at around 19:50 P.M. when information from PCR (East) was received regarding stabbing and robbing of one person by 3-4 boys near Sai Baba Mandir, Khichdipur Village. Aforesaid information was recorded by HC Gajender Singh vide DD No. 33A (Ex.PW-3/A) and was entrusted to SI Rajpal who along with Ct. Sandeep went to the place of incident and on enquiry from local persons, he came to know that the injured was taken to LBS Hospital in the police van. Ct. Sandeep remained at the spot, however, SI Rajpal left for LBS Hospital. After reaching the hospital, he collected the MLC of the injured Chandan Puri and recorded his statement.

5. Chandan Puri stated that he worked as a peon at ITO Sales Tax Bar Association. On 21st January, 2014 he was coming back home from work

by bus route number 740 and deboarded the bus in front of Fire Station, Madhu Vihar. While he was walking, at about 7:00 P.M., when he reached near Sai Mandir, four boys aged around 18-20 years came from the back side. They caught hold of him and closed his mouth. They took him on the side and tried to snatch his bag. When he tried to resist, one of the boys stabbed him on the right side of his abdomen. When that boy was trying to stab him again, he held the knife by his left hand, as a result of which, his fingers got injured. In the meantime, the boys snatched his bag and ran away. His bag contained ₹300/-, his I-card and some stamp tickets. Aforesaid statement was recorded vide Ex.PW-2/A on which FIR No. 92/2014 (Ex.PW-3/B) was lodged at PS Madhu Vihar for offence punishable under Sections 394/34 IPC.

6. SI Rajpal prepared the site plan at the instance of the local persons which was proved vide Ex.PW-8/C. Thereafter, search for accused persons was made but they could not be found. On 25th January, 2014, telephonic information was received from the secret informer regarding the presence of one of the assailant in the present case beneath Khichdipur flyover. A team was constituted comprising of SI Sanjeev, Ct. Sandeep, Ct. Nand Lal and SI Rajpal who along with the secret informer reached the aforementioned place and pointed out towards the person standing on footpath near Khichdipur flyover. The person was apprehended and on interrogation, his name was revealed as Sunny @ Gattu. He was arrested vide arrest memo Ex.PW-5/B and his personal search was conducted vide Ex.PW-5/C. Thereafter, he led the police to the place of incident and on that basis, pointing out memo was prepared. Search for remaining three accused persons was made but they could not

be traced.

7. An application for TIP of Sunny @ Gattu was filed. On 3rd February, 2014, Chandan Puri was taken to Tihar Jail for TIP of Sunny @ Gattu wherein Chandan Puri correctly identified him. After completion of the investigation, charge sheet was filed. Charge was framed vide order dated 4th April, 2015 for the offences punishable under Sections 394/397/34 IPC.

8. Chandan Puri (PW-2) deposed in sync with his statement made before the police. He also stated that three of the boys had tied handkerchief over their face and one of them had not tied the handkerchief. Thus, he could only see the face of that boy and that boy had stabbed him with a knife. He correctly identified Sunny @ Gattu in Court as the person who stabbed.

9. Dr. Manoj Teotia (PW-1), Medical Officer, LBS Hospital stated that on 21st January, 2014, he had medically examined Chandan Puri and prepared his MLC vide Ex.PW-1/A. As per the examination, following injuries were found:

- i. *Fresh incised wound on left hand index, middle and ring finger with bleeding present.*
- ii. *Fresh stab wound right side upper abdomen measuring into 4 X 1 cm with fresh oozing of blood.*

10. Ms. Mayuri Singh (PW-4), Metropolitan Magistrate, Karkardooma Court, stated that she conducted the test identification proceedings of Sunny @ Gattu and the same were proved vide Ex.PW-4/A.

11. Sunny @ Gattu in his statement recorded under Section 313 Cr.P.C. stated that he had been falsely implicated in the present case. He

had a fight with the brother-in-law of the informer in the past due to which he was nurturing grudge against him and he got him arrested in criminal cases falsely through the police in the past as well as in the present case. Though appellant pleads false implication at the instance of the informer however, his case to the Investigating Officer is simply of false implication.

12. From the deposition of Chandan Puri who duly identified the appellant as the person who inflicted injury on him with the knife in the TIP and before Court, which is corroborated by his MLC, the prosecution has proved its case beyond reasonable doubt against the appellant. Hence this Court finds no error in the impugned judgment of conviction or order on sentence.

13. Appeal is dismissed.

14. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record.

15. TCR be returned.

(MUKTA GUPTA)
JUDGE

OCTOBER 09, 2018
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