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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 15th April, 2019

+ CRL.A. 665/2002 and CrI. M (Bail) 433/2019

DHARAMBIR SINGH @ BOBBY Appellant

Through: Mr. S.N. Bhardwaj and Mr. Satish
Chandra, Advocates

versus

STATE OF DELHI Respondent

Through: Mr. Raghuvinder Varma, APP
with SI Pradeep, PS Vasant Vihar

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The appellant was arrested in case arising out of first information report (FIR) no.322/2000 of police station Vasant Vihar on 10.10.2000 and on the basis of report (charge-sheet) under Section 173 of the Code of Criminal Procedure, 1973 (Cr. PC) was sent up for trial, the case (no.27/2001) having been committed to the court of sessions wherein charges were framed against him for offences under Sections 394 and 397 read with Section 34 of the Indian Penal Code, 1860 (IPC) and Section 25 of Arms Act, 1959. On the conclusion of the trial, by judgment dated 15.07.2002, he was held guilty and convicted by the Additional Sessions Judge for offences under Section 397 IPC and Section 25 of Arms Act. By separate order passed on the

same day, punishment in the form of rigorous imprisonment for seven years was awarded for offence under Section 397 IPC with fine of Rs.5000/-, with rigorous imprisonment for two years and fine of Rs.500/- for offence under Section 25 of Arms Act. Both the substantive sentences were directed to run concurrently, the benefit of set off under Section 428 Cr. PC having been accorded.

2. The present appeal was filed in August 2002. By order dated 08.04.2004, the sentence was suspended and the appellant was released on bail pending hearing on the appeal. The appeal was admitted, to come up in due course. When its turn came, the appellant failed to appear. This led to non-bailable warrants being issued against him with notice to his surety by order dated 16.01.2019. He was arrested on 04.03.2019 in execution of the said warrant of arrest and sent to custody.

3. Earlier, the trial court record had been requisitioned. It came to be lost by the registry, having gone missing. Pursuant to directions issued on the administrative side, the said record has been reconstructed. It is conceded by both sides that the appeal can be decided on the basis of reconstructed record.

4. Arguments on both sides have been heard and the record has been perused.

5. It is pointed out by the counsel for the appellant that there is no evidence worth the name showing the appellant to have used any deadly weapon in commission of the offence of robbery. It is his

submission that, in this view, the conviction under Section 397 IPC cannot be upheld. It is argued that at best the conviction may be returned by modifying the order of the trial court, for offence under Section 394 IPC. The counsel for the appellant submitted that given the long period that has elapsed, the offence having been committed more than eighteen years ago, there being no other case faced by the appellant either prior to the case at hand or thereafter, he may be treated leniently in the matter of punishment.

6. The trial court record would show that the robbery was committed on 10.10.2000 sometime around 10.30 a.m. in the office of S. Balaji (PW-2) who runs a proprietary business in the name and style of Epic Forex and Travels at 31, Vasant Enclave, Vasant Vihar, New Delhi. He was assisted during the said period by his employee (peon) Vijay Kumar (PW-7). Both PW-2 and PW-7 speak about entry of four persons, one after the other, into the office of former, on the pretext of exchanging eleven (US) dollars into Indian currency. It is at that stage when one of the four intruders whipped out a firearm described as a country-made pistol, at pointing of which, PW-2 was relieved of his purse which contained cash Rs.1,35,000/- besides certain sterling pounds and dollars and personal effects. At the time of he being relieved of such valuables, the robbers got hold of PW-7, one of them having hit him on his head with fists. PW-2 was petrified and he requested for his employee to be spared. The robbers tied up both PW-2 and PW-7 and went out bolting the door from outside. It is on PW-2 freeing himself from the wires with which he had been tied up

and banging on the door, that Ganesh Kumar (PW-3), an employee of neighbouring office came and opened the door from outside.

7. It is the prosecution case that while three of his accomplice fled away possibly with the looted property of PW-2, the appellant was sighted by PW-7 running away. He gave a chase in the midst of which he came across HC Harsahai (PW-4) who was posted in the local police station. When PW-7 brought the facts to the notice of PW-4, he (PW-4) accompanied by PW-7 on the pillion of his scooter started chasing the appellant. It is stated that the appellant had, in the meanwhile, robbed one Sajid of his scooter and started running away. It may be mentioned here that the alleged robbery committed against Sajid resulted in another FIR no.458/2000 being registered in police station Delhi Cantt., it leading to another prosecution against the appellant. Eventually, PW-4 was able to catch up the appellant. He over-powered him, during the chase and, thereafter, recovered eleven US dollars besides one mobile phone.

8. Though the case of robbery against Sajid (arising out FIR no.458/2000) of police station Delhi Cantt. could not succeed, the appellant having been acquitted in the corresponding criminal case by a Metropolitan Magistrate, by judgment dated 29.09.2001, the said Sajid not having identified the appellant, there being no other eye witness to the occurrence (which was subject matter of the said case), there is sufficient evidence adduced in the present case in the form of statements of PW-2 and PW-7 affirming that the appellant was one of the four persons who had entered the office of PW-2 and had relieved

him of his belongings, with assistance of others, under threats extended at the point of revolver, PW-7 having been roughed up in the process.

9. But, as the counsel for the appellant has argued, it is not shown by any evidence on record that the firearm which was used by the intruders was held by the appellant or that it was he who had used it at the time of commission of robbery. Though there is evidence of some firearm having been recovered at his instance, the statement of SI Gajender Singh (PW-8) makes it clear that the said recovery was made on 13.10.2000. The country-made pistol recovered at the instance of the appellant on 13.10.2000 has led to he being found guilty on the charge under Section 25 Arms Act. But, there is no evidence showing any connection between the said country-made pistol recovered on 13.10.2000 and the offence of robbery on 10.10.2000. None of the witnesses speaks of the appellant having used any such weapon in the commission of robbery.

10. In the facts and circumstances, the conviction of the appellant for offence under Section 397 IPC cannot be upheld. On the facts proved, however, his guilt for offence under Section 394 IPC read with Section 34 IPC has been brought home.

11. The judgment holding the appellant guilty is, thus, modified. Instead of his conviction under Section 397 IPC, he shall be treated as having been held guilty and convicted under Section 394 read with Section 34 IPC. The conviction for the offence under Section 25

Arms Act for the recovery of firearm effected on 13.10.2000 is maintained.

12. The offence was committed on 10.10.2000, more than eighteen and half years ago. There is no past criminal record. It is not the case of the respondent/State that the appellant has been involved in any offence after the case from which the present appeal arises. While the punishment awarded by the trial court for the offence under Section 25 of Arms Act is found to be appropriate and, thus, maintained, in the considered view of this court, ends of justice would be met if the sentence for the offence of robbery, modified to be punishable under Section 394 IPC, is reduced to rigorous imprisonment for three years with fine of Rs.5,000/-. Ordered accordingly. In case of default in payment of fine, the appellant shall undergo further rigorous imprisonment for four months.

13. As per the nominal roll dated 22.11.2018 submitted by Superintendent, Central Jail no.2, Tihar, New Delhi the appellant had undergone imprisonment for two years eleven months and twelve days by the time the sentences were suspended and he was released on bail. In addition, he had also earned remission for six months and twenty one days. After being arrested and sent back to custody on 04.03.2019, he has suffered further incarceration for one month and twelve days. Thus, if the period of remission were to be added, the appellant has suffered incarceration for over three and half years. This means that he has already undergone the sentence, as modified, on

both counts, including the default sentence. He shall, therefore, be released forthwith.

14. The appeal and the application filed therewith are disposed of in above terms.

R.K.GAUBA, J.

APRIL 15, 2019

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