

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

+ **CRL.A. 599/2015**

Reserved on : 21.08.2019

Date of Decision: 26.08.2019

IN THE MATTER OF:

CHHOTAY LAL @ CHHOTALLA Appellant

Through Mr. Ajayinder Sangwan, Mr.
Sachin Choudhary and Mr.
Prashant Sharma, Advocates.

versus

STATE GOVT NCT OF DELHI Respondent

Through Ms. Radhika Kolluru, APP for the
State with SI Parmod Kumar, PS
Shahdara.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

MANOJ KUMAR OHRI, J.

1. By way of the present appeal, the appellant has assailed the judgment dated 10.03.2015 passed by the Addl. Sessions Judge, Delhi vide which the appellant was convicted for the offence punishable under Section 392 read with Section 397 IPC in SC No.80/13 arising out of FIR No.153/2013, registered under Sections 397/411 IPC at Police Station Shahdara, Delhi.

2. Vide order on sentence dated 10.03.2015 the appellant was sentenced to undergo RI for 7 years under Section 392 read with Section 397 IPC along with fine of Rs.5,000/-, in default of which the appellant was directed to undergo SI for 6 months. The benefit of Section 428

Cr.PC was given to the appellant.

3. Brief facts, as noted by the Trial Court are that:

“On 15.04.2013, a PCR call was received that an injured unconscious male was found near the railway tracks behind Shahdara Metro Station. The call was marked to HC Shri Pal for further enquiry. He reached at the spot and came to know that the victim had been rushed to GTB Hospital by CATS ambulance. From the bio-data of the victim lying at the spot, his identity was revealed as Jaiveer Singh. Constable Amit, who made the PCR call, was contacted and he informed that the neighbourers informed him about the victim. The victim was unfit and unconscious in GTB Hospital. No eye witness was found and therefore initially, the case was registered under Section 308 IPC. In the evening, the relatives of the victim came from Ferozabad, who shifted him to Sir Ganga Ram Hospital. On enquiry, it was revealed that victim used to live with his elder sister at Ferozabad. On 17.04.2013, statement of Joginder Pal Singh (brother in law of the victim) was recorded wherein he stated that the victim works with Baidyanath Company and had left Ferozabad in the night of 14.04.2013 at about 10.00 pm to Delhi to attend an interview in another firm. He also stated that the victim was carrying with him one black colour bag, two mobile phones, one gold ring and also provided IMEI number of the mobile phone of the victim. Since no article of the victim was found either in the hospital or on the person of the victim, Section 397 IPC was added. On 24.04.2013, the victim was declared stable and his family got him discharged from the hospital. During investigation, an information was received that Chhotey Lal @ Chuttala, who was the BC of PS Shahdara, might be involved in the present incident. On 18.04.2013, Chhotey Lal was apprehended. On interrogation, he stated that in the night of 14/15.04.2013 at about 2.30 am, the victim was urinating in the bushes near the railway track and he hit him on his head with railway track stone and when the victim fell down, he robbed him. At his instance, a looted Nokia phone and a golden ring and a bag containing documents in the name of victim Jaiveer Singh were recovered from his house. On

24.05.2013, victim and his sister Somwati came to Delhi. The victim correctly identified his ring in the TIP. He also produced the bill of purchase of Nokia phone. Statement of victim was recorded on 24.05.2013 wherein he stated that he got down from the train at Shahdara Railway Station at 2.00 - 2.15 am with water bottle and that someone hit him over head and when he became partly conscious, he found himself in Ganga Ram Hospital. Investigation was completed and charge sheet was filed against the accused under Section 397/411 IPC."

4. The charge was framed against the appellant under Section 392 read with Section 397 IPC and Section 411 IPC, to which he pleaded not guilty and claimed trial.

5. During the course of the trial, in order to prove its case, the prosecution examined 14 witnesses. Jaiveer Singh, the victim was examined as PW-2. Ct. Amit Kumar who, on being informed by a rag picker that a person was lying unconscious near the railway track behind the metro station, passed on the information to PCR was examined as PW-7. HC Shri Pal Singh and Ct. Krishan, who on receipt of DD No.9A reached the spot, were examined as PW-8 & PW-12 respectively. Dr.Badri Narain Sharma, who examined the victim and prepared his MLC, was examined as PW-6. He proved the MLC as Ex.PW-6/A. Dr. Shrey Jain gave his opinion on the MLC as *Grievous* and was examined as PW-10. Shri Ankur Sharma, the then MM, who conducted the TIP of the case property, was examined as PW-5. Inspector YugBandhu, the Investigating Officer along with SI Ashish Sharma and Ct. Neeraj, were examined as PW-14, PW-9 and PW-13 respectively to prove the arrest, seizure and recovery of the case property from the appellant. Shri Rajiv Gupta, the owner of the shop from whom the victim had purchased the

Asha Nokia mobile phone for Rs.5,000/- was examined as PW-11. He proved the bill of purchase of the mobile phone (Ex.PW-11/A).

6. I have heard the arguments of learned counsel for the parties and gone through the trial court record.

7. Learned counsel for the appellant contended that the prosecution failed to explain as to how the victim, who was alleged to have been hit while being on the platform, was found in the bushes near the railway track. He further argued that as per the statement of the victim, he was hit from the backside, however, the injuries as per the MLC the injuries appeared on his forehead. He thus contended that there are inconsistencies in the oral testimonies of the witnesses and the medical evidence available on record. He next contended that since neither the description of the weapon of offence was given nor the same was recovered, the ingredients of Section 397 IPC are not made out. He also urged that the Police in order to solve a blind case, the police falsely implicated the appellant, as he was a BC (Bad Character) of the area.

8. Ms. Radhika Kolluru, learned APP for the State, on the other hand, supported the impugned judgment and invited the attention of this Court to the status report filed on record, which indicated that apart from the present case, the appellant is involved in as many as 18 other similar cases. The appellant was an active BC of Bundle-A in the records of Police Station Shahdara, Delhi and was found involved in as many as 18 other involvements.

9. The details as mentioned in the status report were not denied in the rebuttal arguments. Rather it was urged that since the appellant was a

BC, therefore, a blind case was solved by falsely implicating the appellant.

ANALYSIS

10. The investigation in the present case began with the information received at Police Control Room by Ct. Amit Kumar, who deposed that he was informed by some rag picker that a person was lying unconscious in the bushes near the railway track behind the metro station. The victim was taken by CATS Ambulance to the hospital. Shri Mahipal Singh, a Paramedic in CATS Ambulance was examined as PW-4, who deposed that the victim was found lying in the injured condition behind Shahdara Metro station from where he took the victim to the GTB hospital. In the meanwhile, HC Shri Pal Singh and Ct. Krishan reached the spot where they found a stone and the documents of the injured. In the testimony of Inspector YugBandhu (PW-14), it has come on record that the documents seized from the spot was in fact the bio-data of the victim.

11. Jaiveer Singh, the victim, deposed that on 14.04.2013, he took the Farakha Express train from Firozabad (U.P) to Delhi as he had to appear in an interview. While leaving, he carried a bag containing documents, a Gold ring and two mobile phones. The train reached Shahdara railway station at about 4 a.m. He got down to take water, when somebody hit on his head from behind due to which he became unconscious. He remained unconscious in Ganga Ram Hospital for 2-3 days and when he regained consciousness, he found that his bag containing the aforesaid articles was missing. During the investigation, he handed over the receipt of Nokia Asha Mobile Phone (Ex.PW-2/B) to the I.O. He also deposed that in the TIP proceedings, he identified his. The TIP proceeding was exhibited as

Ex.PW-2/C. He also identified the Gold ring along with the bag and the Nokia mobile phones in the Court.

12. During the cross-examination, the witness clarified that when he got down for taking water at Shahdara railway station, his bag was on his shoulders. He also denied the suggestion that he was hit in the train or while getting down from the moving train.

13. Learned counsel for the appellant contended that if some document was already found at the spot and seized then the subsequent recovery at the instance of the appellant, was planted. In this regard, it is relevant that HC Shri Pal Singh, who had reached the spot along with Ct. Krishan, deposed that they recovered a stone as well as the document of the injured which were handed over to the IO. Inspector YugBandhu, deposed that the document which was handed over by HC Shri Pal Singh to him was in fact the bio data of the victim.

MLC

14. The MLC of the victim was proved by Dr. Badri Narain Sharma as Ex.PW-6/A. As per the MLC, the following injuries were noted by the Doctor on the body of the victim.

- (i) *Laceration on right forehead about 1 x .1 cms;*
- (ii) *Contusion of right eye;*
- (iii) *Laceration over left pinna approx. 2 x 0.2 cms;*
- (iv) *Laceration behind left ear approx. 2.5 x 0.2 cms;*

Dr. Shrey Jain, who had also examined the victim, opined that the injuries were *Grievous* in nature.

ARREST AND RECOVERY

15. The appellant was arrested on the basis of a secret information. Inspector YugBandhu deposed that on 18.04.2013, the appellant was arrested from the platform No.2 at Shahdara Railway station. Thereafter, the appellant made a disclosure statement and led the police party to his house from where he got recovered a black coloured bag which was kept under the bed. A Gold ring and Asha Nokia mobile phone was recovered from the bag.

16. The TIP of the Gold ring was conducted on 24.05.2013 in which the victim identified it. On the same day, the victim also provided the IO with a purchase receipt of the Nokia Asha mobile phone. The prosecution had examined Shri Rajiv Gupta (PW-11) to prove the bill book containing bill/invoice dated 25.02.2013 for sale of Asha Nokia mobile phone bearing IMEI No.354606055094086.

17. Learned counsel for the appellant argued that the IMEI and the mobile details were given by the victim which was then planted on the appellant to falsely implicate him. It is relevant to note that the brother-in-law of the victim, namely, Joginder Pal Singh was examined as PW-3. He deposed that the victim was his brother-in-law and he used to reside with the witness since childhood. He further deposed that on 14.04.2013, the victim had left his house to appear in an interview in Delhi. At the time of leaving, the victim was carrying a black colored bag and was wearing a blue colored check shirt. The victim was also having a Gold ring embedded with a white stone and two mobile phones. The witness further deposed that on 15.04.2013, his wife called the victim on his mobile phone at about 2:30 a.m., however, the call was not taken. On

15.04.2013, he came to know that the victim was admitted in the hospital. The witness gave the IMEI number of the mobile phone of the victim to the Investigating officer. He identified the case property in the Court. From a perusal of the case records, it appears that Joginder Pal Singh had given the IMEI number of the mobile phone on 16.04.2013 i.e, prior to the arrest of the appellant on 18.04.2013.

18. Besides Insp. Yug Bandhu, the prosecution also examined SI Ashish Sharma and Ct. Neeraj to prove the arrest and recovery from the appellant. Learned counsel for the appellant had argued that neither any weapon of offence was recovered nor its description was given at any place. He thus contended that the ingredients of the offence under Section 397 IPC are not made out. He has relied upon the decision of Roshanlal vs. State of Delhi reported as **2017 SCC onLine Delhi 7480** in support of his submissions.

19. The only material put against the appellant was recovery of the case property at his instance on 18.04.2013. The victim never claimed to have seen the appellant. He deposed that he was hit from the backside. There is no eye witness of the incident. The prosecution has failed to connect the appellant with the assault. It is only that part of the disclosure statement made by the appellant, which led to the recovery, would be admissible against him. The disclosure and the subsequent recovery of the case property, if believed, do not ipso facto prove the involvement of the appellant for the offence under Section 397 IPC especially since there was a gap of more than 3 days. Reference in this regard is made to Shivappa v. State of Mysore reported as **AIR 1971 SC 196**.

20. The prosecution, in order to prove the arrest of the appellant and subsequent recovery of the case property, relied upon the testimony of police witnesses. The testimony of police witnesses, if found creditworthy, can be relied upon. Reference is made to State of UP vs Anil Singh reported as **1989 SCC (Crl.) 48**.

CONCLUSION:

21. The appellant was charged and faced trial for the offence punishable under section 411 IPC. Although the prosecution failed to prove the charge under section 397 IPC yet it has successfully proved the charge under section 411 IPC. Accordingly, the appellant's conviction is altered from offence under section 392/397 IPC to offence under section 411 IPC. As per the Nominal Roll, the appellant has undergone a sentence of 6 years and 8 months including remission. Resultantly, the appellant is directed to be released on the period already undergone, if not required in any other case.

22. The appeal is partly allowed in above terms. The LCR be returned. A copy of this judgment be sent to the trial court.

(MANOJ KUMAR OHRI)
JUDGE

AUGUST 26th, 2019
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