

\$~39

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

+ **CRL.A. 1089/2017 & CRL.M.(BAIL) 2009/2019**

SABEER

..... Appellant

Through: Mr Mayank Mikhail Mukherjee,
Advocate (DHCLSC).

versus

THE STATE GOVT OF NCT OF DELHI

..... Respondent

Through: Ms Meenakshi Chauhan, APP for
State with SI Vipin Teotia, Ps Khajuri
Khas.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

%

21.11.2019

1. The appellant has filed the present appeal impugning a judgment dated 23.09.2017, whereby the appellant was convicted of an offence under Section 392/397/34 of the Indian Penal Code, 1860 (IPC). In addition, the appellant also impugns an order dated 07.10.2017, whereby he was sentenced to serve four years of rigorous imprisonment and pay a fine of ₹10,000/-, in default of which, he would have to undergo simple imprisonment for a period of six months.

2. It is the prosecution's case that on 08.08.2016, the appellant had snatched the gold chain worn by the complainant. The complainant had stated that on that date, she was returning from Cantbury Public School along with her daughter at about 01:20 p.m. She stated that while on her way, she was approached by two persons who were riding a motorcycle and

the pillion rider had snatched her gold chain which weighed about 10 grams. She had also alleged that she had attempted to chase them, but the pillion rider had threatened her by showing her a country made pistol (*katta*). She subsequently identified the appellant as the pillion rider who had snatched her gold chain.

3. The appellant was detained in another case (FIR No. 344/2016 registered with PS Karawal Nagar). It is alleged that during interrogation, the appellant had made certain disclosures regarding his involvement in the offence in question. The complainant had identified the appellant in TIP proceedings held on 20.10.2016. She had also identified the appellant as the person who had snatched her chain, in her testimony.

4. The learned counsel appearing for the appellant initially submitted that there was a serious dispute as to the identification of the appellant, as according to the complainant, both the riders were wearing helmets. He submitted that it would be impossible for the complainant to have identified the appellant, as he was wearing a helmet and that alleged encounter was very brief.

5. After some arguments, the learned counsel appearing for the appellant gave up the challenge to the impugned judgment dated 23.07.2019 convicting the appellant and he restricted his challenge to the order on sentence dated 07.10.2017. He submitted that there were certain mitigating circumstances that warranted the sentence to be reduced.

6. Ms Chauhan, learned APP submitted that the appellant has five children. He submitted that the appellant's family consists of his wife and

four minor daughters and his wife has not been able to manage the household responsibility. He stated that the appellant's family is on the brink of starvation and it is imperative that the appellant be released to provide for them. He also submitted that he has already been released on bail in other cases.

7. It is seen that the appellant has already served actual custody of more than two years and eleven months and has also earned remission of seven months. The appellant is required to serve a further period of approximately five months.

8. Given the mitigating circumstances, this Court considers it apposite to reduce the sentence awarded to the appellant to the sentence already served.

9. The order on sentence dated 02.07.2017 is modified to the aforesaid extent.

10. The appellant shall be released from the custody forthwith subject to his not being required to remain in custody in any other case.

11. The appeal is disposed of in the aforesaid terms. The pending application is also disposed of.

VIBHU BAKHRU, J

NOVEMBER 21, 2019
MK