

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.A No.234/2019**

Judgment reserved on : 13.11.2019
Date of decision : 30.09.2020

CHAND @ CHANDU Appellant
Through: Ms. Iram Majid, Advocate
(DHCLSC)
versus

STATE Respondent
Through: Ms.Meenakshi Dahiya, APP for
State with SI Virender Kumar,
PS M.Park

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

Crl.M.A No. 4691/2019

Crl.M.A.No.4691/2019 was filed on behalf of the appellant seeking condonation of delay in institution of the appeal, which prayer was allowed in as much as the appellant was in jail.

The application is disposed of.

Crl.A. 234/2019 and Crl.M.(Bail) 410/2019

1. The appellant, vide the present appeal assails the impugned judgment dated 20.11.2018 of the learned Trial Court of the Special Judge (NDPS), North District, Rohini Courts, Delhi, in SC No. 58100/16 in relation to the FIR No. 204/2013, Police Station

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Mahendra Park under Sections 392/394/397/34 of the Indian Penal Code, 1860, vide which the appellant herein along with the co-accused Govinda @ Jeet S/o Champa Lal, was convicted qua commission of the offences punishable under Sections 392/34 of the Indian Penal Code, 1860, and Section 394 of the Indian Penal Code, 1860 and the appellant herein, was also convicted qua the commission of an offence punishable under Section 397 of the Indian Penal Code, 1860.

2. Vide the impugned order on sentence dated 22.11.2018, the appellant herein was sentenced to undergo rigorous imprisonment for a term of two years qua the commission of an offence punishable under Sections 392/34 of the Indian Penal Code, 1860, and to pay a fine of Rs. 2000/- and in default of payment of the said fine to further undergo simple imprisonment for a period of six months with the appellant having been sentenced to undergo rigorous imprisonment for a period of three years qua the commission of the offence punishable under Section 394 of the Indian Penal Code, 1860, and to pay a fine of Rs.3,000/- and in default of payment of the said fine to undergo simple imprisonment for a period of nine months. The appellant was further convicted to undergo rigorous imprisonment for a period of seven years qua the commission of the offence punishable under Section 397 of the Indian Penal Code, 1860, and to pay a fine of Rs.5,000/- and in default of payment of the said fine to undergo simple imprisonment for a period of one year and all the sentences were directed to run concurrently with the benefit under Section 428 of the Cr.P.C. having been given to the appellant as well as to the co-convict.

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3. The notice of the appeal was issued to the State. Vide order dated 8.7.2019, it was considered essential to ascertain the aspect as to whether the co-convict Govinda @ Jeet had filed any appeal, whereafter the nominal roll in relation to the co-convict Govinda @ Jeet was received from the Superintendent of Prisons, Central Jail No.3, Delhi to the effect that the substantive sentence of that convict had since been completed and that he did not seek to file any appeal and that he was serving his fine sentence, which was to expire on 26.04.2020. The appellant herein as per the Nominal Roll dated 28.1.2019 received from the Superintendent, Central Jail No.2 Tihar, Delhi, till the date 23.1.2019 had undergone 1 year 2 months and 10 days of incarceration and the remaining sentence then was 5 years 9 months and 16 days in the event of the fine being paid.

4. The Trial Court Record having been requisitioned was received and arguments were addressed on behalf of the appellant by Ms.Iram Majid, Advocate (DHCLSC) and Ms. Meenakshi Dahiya, learned APP for the State assisted by the Investigating Officer SI Baljit Singh, Police Station Mahendra Park.

5. The allegations levelled against the appellant and the co-convict as charged on 21.1.2014 were to the effect that on 13.7.2013 at about 2 p.m., at Road No.8, Azadpur Sabzi Mandi, Delhi within the territorial jurisdiction of Police Station Mahendra Park, the appellant herein in furtherance of his common intention with the co-accused (since convicted) committed extortion and robbed a purse containing Rs.5000/- and a NOKIA mobile phone belonging to the complainant Krishan Kumar and also caused injuries on the elbow of Ravinder

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with a knife allegedly committing robbery and thus committed an offence punishable under Sections 392 and 394 of the Indian Penal Code, 1860, and that the appellant herein at the time of the commission of the said robbery was armed with a knife and thus committed an offence punishable under Section 397 of the Indian Penal Code, 1860 as well, to which the appellant pleaded not guilty to the said charges.

PROSECUTION VERSION

6. Krishan Kumar S/o Maha Singh examined as PW-17, the complainant of the FIR, on whose statement vide Ex.PW17/ A the FIR No.204/2013 Police Station Mahendra Park was registered, corroborated the prosecution version. The FIR was to the effect that he, Krishan Kumar was working as a Driver on a Truck bearing No. RJ-32GA-9899 for the last eight months prior to the date 13.7.2013 and on 11.7.2013 he along with his helper Ravinder started from Gujarat with watermelons to go to the Azadpur Sabzi Mandi and on 13.7.2013 they had reached at Azadpur Sabzi Mandi at about 5 a.m. to shed No.8 of Sonu and parked his truck at that shop.

7. The complainant, in his examination had stated that another Truck bearing No. GJ-1CY-2992 had also come with them, and the driver of this truck Hawa Singh knew Krishan Kumar and Ravinder, the helper of Krishan Kumar. The complainant further stated that then at about 11 a.m. after having their meals they slept in the truck i.e. Krishan Kumar slept in his truck and Ravinder slept in the truck standing adjacent with the truck of the complainant with Hawa Singh and in as much as Krishan Kumar had not slept in the night, he slept

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very soundly and at about 2:15 p.m. he heard some movement in his vehicle and opened his eyes and saw that a boy aged 20 to 25 years was trying to get out of the window of the truck and then Krishan Kumar put his hand on his pocket and found that his pocket had been picked and that his purse containing Rs.5000/- was missing and so was his phone bearing No. 9728303491. He made a noise and thus Ravinder apprehended that boy who was trying to jump out of the truck and in the meantime three other boys aged about 25-26 years came at the spot and started fighting with Ravinder and at that time the second boy in order to free his associate took out a sharp edged instrument and hit on the elbow of Ravinder as a consequence of which Ravinder left the boy who had been apprehended and all the four boys ran away from there and stated that his purse contained Rs.5000/- and some papers and mobile. It is also stated by Krishan Kumar that Hawa Singh made a call to the police at No.100. The Police came and took him and Ravinder to the hospital who had been injured. Thus on telephonic information DD No. 20PP Azadpur Sabzi Mandi was lodged when SI Anoop Singh along with Constable Pradeep of Police Station Mahendra Park reached the spot where it was learnt that the injured had been taken to the BJRM hospital and thus SI Anoop Singh and Constable Pradeep reached the BJRM Hospital, at Jahangir Puri, and the MLC No. 62646/13, of Ravinder S/o Sarupnand r/o Azadpur Mandi, Delhi was obtained and at the spot the complainant Krishan Kumar made his statement on 13.7.2020 on the basis of which the rukka was sent to the police station for the registration of the FIR. SI Anoop Singh then returned to the spot and

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at the pointing of the complainant, the site plan was prepared and the matter was investigated by the police and the accused persons were arrested and statements were recorded and after the completion of the investigation, the charge sheet was filed.

8. In support of the prosecution version, the State put forth 24 witnesses in the witness box.

9. The appellant in his statement under Section 313 Cr.P.C. pleaded not guilty and stated that he had been falsely implicated in this case and that he had been apprehended from his house by the officers of the Crime Branch, Pitam Pura, two days prior to the date of his arrest. Though the appellant herein stated that he wanted to lead his evidence in his defence but no such evidence in defence was led by the appellant and thus the defence evidence was closed on 13.7.2018.

10. The learned Trial Court put forth the analysis of the testimonies of the prosecution witnesses, as detailed in paragraph 10 thereof, which reads to the effect:

" 10. The depositions made by the witnesses are :

i) PW-1 is Ved Prakash. He is a formal witness. He deposed regarding purchase of mobile phone make Nokia 1280 from — Baiaji Communications, Mohammadpur Ahir, Tawru, Mewat and handing over the game to his brother Krishan. He also identified the said mobile in the court as Ex. P1.

ii) PW-2 is Hawa Singh. He deposed regarding the incident as taken place in the present case. He also identified the accused persons present in the court.

iii) PW-3 is the injured Ravinder. He deposed as per the lines of the prosecution case and corroborated the testimony of PW2. He deposed during his deposition that about four months prior- to 13.07.2013, he joined

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Truck No. RJ32GA9899 as helper. He got loaded the truck with watermelons from Ahmedabad, came to Delhi on 13.07.2013 and parked it in Azadpur vegetable Market, Delhi. A truck No. GJ-1CY-2992 was parked besides his truck. Driver of that truck Hawa Singh and his brother was previously known to him and Krishan Kumar. After taking his meal, Krishan Kumar slept in his truck and he and Hawa Singh slept in the truck No. GJ-1CY-2992 at 11 am. They heard the noise of Krishan Kumar at 2:15 pm and hence were awakened. PW 3 further deposed that he saw a boy jumping out of the cabin of their truck. The boy was 20-22 years old and he caught him. The witness(PW3) identified the said boy as accused Govinda. PW-3 further deposed that one of those boys gave sharp edged object, blow on his elbow due to which he had to release accused Govinda. PW 3 further pointed out towards Accused Chand @ Chandu as the same person who had stabbed him. He further proved the rough site plan as Ex. PW 3/A.

iv) PW-4 Sh. Mukkadar has not supported the case of the prosecution and has turned hostile.

v) PW-5 Chotti Mandal has also not supported the case of the prosecution and has turned hostile.

vi) PW-6 is Sanjay Kumar Yadav is the owner of vehicle bearing No. RJ-32-GA-9899 and proved the copy of national permit of the truck as Ex. PW 6/A and copy of challan issued by Gurgaon police as Ex. PW 6/B.

vii) PW-7 Dr. Vaibhav Gulati stepped into the witness box and proved the MLC No. 62646 of injured Ravinder as Ex. PW7/A.

viii) PW-8 Ct. Deepak is the witness to the arrest and personal search of accused Chand @ Chandu as Ex. PW 8/A and Ex. PW 8/B.

ix) PW-9 Ct. Sante Singh also proved the arrest memo of accused Chand @ Chandu as Ex. PW 9/A.

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x) PW-10 Ct. Pradeep Kumar is the witness who accompanied IO of this case for conducting proceedings of this case. He also proved disclosure statement of accused Chand @ Chandu as Ex. PW.10/A, pointing out of place of occurrence as Ex. PW 10/B and non-recovery memo of knife as Ex. PW 10/C.

xi) PW-11 Ct. Manoj Kumar deposed regarding the arrest of accused Govinda at the pointing out of accused Chand @ Chandu and proved arrest memo as Ex PW 11/A, his personal search memo as Ex. PW 11/B, version of Govinda as Ex. PW11/C.

xii) PW-12 Sh. Rameshwar Bhagat deposed regarding purchase of mobile phone for Rs.350 from Mukkadar and identified the said mobile phone as Ex PI and the seizure memo of the mobile phone as Ex.PW 12/A.

xiii) PW-13 Sh. Sharda Yadav is the co-resident of PW 12. He deposed that in mid of year 2013, his mobile phone was broken and he was not in a position to purchase new mobile phone. After some days, he noticed that his co-resident Rameshwar Bhagat was having mobile phone with him and PW 13 asked Rameshwar Bhagat that whether he can use his sim in that mobile phone so that they both can use that mobile phone. After using 3-4 days, he had returned the mobile phone to Rameshwar Bhagat with sim. PW 13 further deposed that after 3-4 days police officials from PS Mahendra Park met him and Rameshwar Bhagwat and enquired from them about the said mobile phone and sim. PW 13 narrated whole fact to the police officials and proved the seizure memo of sim as Ex. PW 13/A. This witness has also proved SIM card as Ex. P2.

xiv) PW-14 Ct. Usha proved the DD no. 20 PP regarding information of stabbing" and snatching of money from the injured in the present case and proved the said DD entry as Ex. PW 14/A.

xv) PW-15 Mr.Jasram is the shopkeeper from whose shop the mobile in question was purchased. He

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deposed regarding sale of mobile phone to Sh. Ved Prakash. He also proved the bill cash memo as Mark PW15/A.

xvi) PW-16 Ct. Sumit Kumar deposed regarding receipt of information in this case and forwarding the same to Console Operator for action. He proved the PCR form as Ex. PW 16/A.

xvii) PW-17 Mr. Krishan Kumar is the complainant. He has also deposed as per the case of the prosecution and proved his statement as Ex. PW 17/A, seizure memo of mobile phone as Ex. PW 17/B, judicial TIP proceedings of accused Chand @ Chandu as Ex. PW 17/C, judicial TIP proceedings of accused Govinda as Ex. PW 17/D.

xviii) PW-18 HC Satpal Singh is the duty officer in the present case. He proved the copy of FIR as Ex. PW18/A, ' endorsement on the rukka as Ex. PW18/B and certificate U/s 65B of Indian Evidence Act as Ex. PW 18/C.

xix) PW-19 HC Dharambir is also witness of arrest of accused Chand @ Chandu. He also proved the copy of DD no. 19 as Ex. PW 19/A, copy of DD no. 87B as Ex. PW 19/B, Kalandara under Section 41.1(a) Cr.PC as Ex, PW 19/C.

XX) PW-20 Mr. Israr Babu, Alternate Nodal Officer proved the copy of CAF of mobile no. 8860493641 as Ex. PW 20/A, photocopy of voter ID card of Mr. Sarada as Ex. PW 20/B, certified copy of CDR for the period 10.07.2013 to 30.07.2013 as Ex. PW 20/C, certified copy of Cell ID chart as Ex. PW20/D, certificate U/s 65 B of Indian Evidence Act as Ex. PW 20/E.

xxi) PW-21 Sh. Deepak Dabas, ACMM, West Tis Hazari Courts, Delhi proved the application of IO for conducting TIP proceedings as Ex. PW 21/A, application for providing copy of TIP proceedings qua accused Chand @ Chandu as Ex. PW 21/B, application for conducting TIP proceedings of accused

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Govinda as Ex PW 21/C and application for providing copy of TIP proceedings as Ex. PW 21/D.

xxii) PW-22 Mr. Roshan Lal proved the copy of order of declaration and of ossification test report of Govinda as Ex. PW 22/A and Ex. PW 22/B.

xxiii) PW-23 SI Anoop Singh is IO of the present case, He also deposed as per the lines of the prosecution case and proved the endorsement made on the statement of complainant as Ex. PW 23/1 and also deposed regarding the arrest proceedings of accused persons conducted in this case.

xxiv)PW-24 HC Ashok Kumar proved the entry No. 2390 in malkhana Register as Ex. PW 24/1."

11. It was observed by the learned trial Court vide the impugned judgment that the testimonies of the eyewitnesses PW-2 Hawa Singh, PW-3 Ravinder and PW-17, the complainant, corroborated each other and supported the prosecution version and during cross examination nothing fruitful could be extracted which could support the case of the accused and thus it was held that the accused persons had committed robbery of the purse belonging to the complainant Krishan containing Rs.5000/- and a Nokia Mobile phone and had also caused injuries on the elbow of Ravinder and that the appellant herein had used a sharp edged weapon at time of commission of the offence in question and that the said fact is corroborated by Ex. PW-7/A, the MLC No. 62646/13 of the injured Ravinder

CONTENTIONS OF THE APPELLANT

12. Through the arguments addressed on behalf of the appellant, it was submitted that there were discrepancies in the testimonies of the complainant and the other witnesses and that there were material

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contradictions in the testimonies of PW-2, PW-3 and PW-17 which variations were set forth through Grounds B and C of the appeal which read to the effect:

"B. Because the Ld. Trial Court failed to appreciate that there are discrepancy in testimony of complainant and eye witnesses, benefit of doubt is required to be given to the appellant.

C. Because the Ld. Trial Court erroneously placed reliance on the testimony of PW2 who has not stated anything about the appellant. The said witness/PW2 has not even stated that it is the appellant who committed the alleged offence. PW2 only testified to the aspect that the appellant was one of the 4-5 boys who had come to the spot but has not stated that it is the appellant who has caused the injuries. Moreover, PW2 has not stated anything about causing injury by the appellant or any other person. PW2 has only stated to the limited extent i.e. one of them gave sharp edged instrument blow on the elbow but nothing stated for inflicting injury as alleged by PW3 and PW17."

13. It was also submitted on behalf of the appellant that there were variations in the testimonies of PW-14 and PW-16 on one hand and testimonies of PW-2, PW-3 and PW-17 on the other, for whereas, as per PW-14 and PW- 16 the victim was first stabbed and then robbed and that he was walking at the time of incident whereas, as per PW-2, PW-3 and PW-17, the victim was first robbed and then stabbed while he was sleeping at the time of incident.

14. It has been further submitted on behalf of the appellant to the effect:

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"H. Because the Ld. Trial Court failed to appreciate that as per PW3 (injured) and PW17 (complainant) they both are known to PW2. Similarly, PW2 has stated in his examination in chief "I was knowing previously the driver Krishan Kumar and helper Ravinder who were employed on the said truck". However, as per prosecution, call at 100 no. was made by PW2 who as stated above has stated "unknown admi padel, ek admi ko chaku". Thus, it is highly unbelievable that PW2 despite knowing the injured by name will say "ek admi" while making the alleged PCR call. Therefore, it can safely be assumed that the entire case is concocted to falsely implicate the appellant in the commission of the alleged offence."

15. The appellant further contended that the prosecution had been unable to connect the appellant with the alleged mobile phone or the co-accused. *Inter alia*, it was submitted on behalf of the appellant that a bare perusal of the testimonies and contradictions recorded in the proceedings in view of the discrepancies in the testimonies of the witnesses made the prosecution version and consequentially the impugned judgment convicting the appellant herein infirm. *Inter alia*, it was submitted on behalf of the appellant that there was no recovery from the appellant and neither the robbed articles nor the weapon of offence was recovered from the appellant and thus prayed that the charges levelled against the appellant for which he was convicted be set aside.

CONTENTIONS OF THE STATE

16. On behalf of the State, it was submitted by the learned APP for the State that the prosecution version stood wholly established in

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relation to the commission of the offences with which the appellant was charged in view of the testimonies of the prosecution witnesses.

17. It was submitted by the State that PW-3 Ravinder had stated that he saw a boy jumping out of the cabin of the truck and that he caught him and that in the meantime 4 -5 accomplices of that apprehended boy came to the spot and started quarrelling with him and one of those boys gave a sharp edged instrument blow on his elbow due to which he had to release that boy and identified the accused as being the assailant. On being cross-examined, this witness PW-3 Ravinder denied that the appellant herein was not caught red handed and it was also submitted on behalf of the State that there were no TIP proceedings required to be conducted by the police, in as much as the witness PW-3 Ravinder, the helper of the complainant identified the appellant as being the person who had given him a stab blow on his elbow with a sharp edged instrument as a consequence of which PW-3 had to release the co-accused Govinda @ Jeet. The witness categorically stated that all truck occupants were looking at the incident but none of them came forward and stated that the sharp edged weapon was of the length of 10-11 inches.

18. PW-2 Hawa Singh, the driver of the Truck No. GJ-1CY-2992 corroborated the factum that after their meals at 11 a.m. Krishan Kumar slept in his truck and that the helper Ravinder slept with Hawa Singh in his truck and thereafter he and Ravinder woke up by some noise at about 2:15 p.m. which noise was being made by Krishan Kumar, and a boy jumped out off the truck of Krishan Kumar from its cabin but was caught by Ravinder and PW-4 pointed out to the

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appellant as being that accused wearing a red T-shirt and stated that he is the same boy who had jumped off the truck and had been caught by Ravinder.

19. This witness stated that the appellant told his name as Govinda and in the meantime Krishan Kumar had also come out of his truck and informed that a mobile phone and Rs.5000/- in cash were missing from his pocket. It was also submitted by PW-2 that 4 to 5 accomplices of that apprehended boy came there and started quarrelling and one of those boys gave a sharp edged instrument blow on the elbow of Ravinder due to which his grip on the apprehended boy loosened and consequently the boy got himself released from his custody and all the accused ran away from there. Inter alia this witness identified the appellant present in the Court as being that boy who had hit a blow on the elbow of Ravinder with a sharp edged instrument. This witness stated that he gave a call to the PCR from his mobile phone No.9950524967, the PCR van came there and took Krishan Kumar and Ravinder to the hospital and the local police also came to the spot and he intimated them that Ravinder and Krishan Kumar had been taken to the hospital by the PCR van. This witness further stated that the police again came at the spot with Ravinder and Krishan Kumar and inquired the facts from them and him and his statement was also recorded .

20. PW-6 Sanjay Kumar Yadav the owner of the Truck RJ32-GA-9899 testified to the effect that Krishan Kumar, i.e., the complainant had been employed by him as a driver and Ravinder as a helper and stated that they had loaded the said truck from Surat with coconuts and

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arrived at the Azadpur Sabzi Mandi, Delhi 13.7.2013 and on that day Ravinder had informed him telephonically that he had been stabbed by a boy with a sharp edged weapon. Though undoubtedly, this witness stated that the truck had been loaded with coconuts and the complainant Krishan Kumar the driver had stated that the truck had been loaded with watermelons, the same does not detract from the veracity of the testimony of PW-6 who stated that Ravinder had informed him that he was stabbed on his elbow by a sharp edged weapon in Delhi at Azadpur Sabzi Mandi.

21. PW-7 Dr.Vaibhav Gulati, the Medical Officer of the BJRM Hospital, testified to having examined Ravinder on 13.7.2013 who had come to the hospital with the alleged history of physical assault and even on examination found an injury of an incised wound over the lateral aspect of the left arm elbow which was of the size 2 X 0.5 cm and that Ravinder had sustained simple injuries and that the patient had been given treatment.

22. The witness PW-17 corroborated the prosecution version set forth in his statement EX.PW-17/A which forms the basis of the registration of the FIR in relation to all material particulars and stated that he had slept at 11 a.m. in his truck on 13.7.2013 after reaching the Azadpur Sabzi Mandi having come from Gujarat and that at about 2:15 p.m. he noticed some activity in his truck and woke up and saw a young boy of the age of 22-25 trying to get out of his truck through its window and he checked his pocket and found that his purse containing an amount of Rs.5,000/- and his mobile had been stolen, as a consequence of which he raised an alarm and on hearing the alarm,

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the helper Ravinder came out of the truck of Hawa Singh and apprehended the young boy who was trying to get off the truck of Krishan Kumar and suddenly three more young persons appeared there and started grappling with Ravinder and one of them inflicted injuries on the elbow of Ravinder with a sharp edged object who thus left the person who had been apprehended, scot free. Hawa Singh is then stated to have made a call to the police at 100 number and the PCR van reached at the spot and took Ravinder to the BJRM Hospital. Inter alia this witness stated that on 16.8.2013 he had accompanied the Investigating Officer to Tihar Jail for the TIP proceedings and in those proceedings he had identified the one person who had inflicted injuries on the person of Ravinder and later on the name of that person was told to him as Chand @ Chandu i.e., the appellant, herein, and he identified the appellant before the learned Trial Court as that person correctly. Inter alia, this witness on being cross-examined by the learned counsel for the accused persons stated that he had identified the other co-accused person who had committed theft of his purse and mobile phone. He also stated that he identified the appellant herein at the Tihar Jail in the TIP proceedings 27.7.2013.

23. The other prosecution witnesses who have been examined supported the prosecution version in relation to the FIR and the Investigating Officer and HC Dharambeer denied that the appellant had been picked up from his house and denied that he had been illegally arrested.

24. PW-21, the then ACMM West, Tis Hazari Courts in his testimony dated 6.1.2015 testified to the effect that Krishan Kumar,

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during the TIP proceedings conducted by him, had identified the appellant herein i.e., Chand @ Chandu and the said TIP proceedings were exhibited as EX.PW-17/D. The testimony of this witness had not been challenged by the appellant herein through the cross-examination conducted on his behalf despite an opportunity given.

25. SI Anoop Singh, the Investigating Officer, in his testimony examined as PW-23 apart from corroborating the averments and contents in the ruqqa and the recording of the statement of the complainant, production of the case property and seizure, inter alia testified to bring forth the chain of investigation to indicate that the mobile phone belonging to the complainant herein had been sold to one Rameshwar on 6.8.2013 which Rameshwar stated that he had purchased it from Mukaddar and Mukaddar stated that he had purchased the mobile from Chotti Mandal and the said Chotti Mandal stated that he purchased it from the co-convict Govinda. Inter alia, the Investigating Officer, PW-23, testified to the effect that after the arrest of the appellant herein his TIP was conducted on 16.8.2013 in which the witness duly identified him and that pursuant to the appellant having been remanded to police custody the appellant had led the police to the spot and pointed out the same. The Investigating Officer SI Anoop Singh, PW-23, categorically denied that the appellant and the co-convict had been arrested from their house and that they had been falsely arrested.

26. It is essential to observe that on appreciation of the prosecution evidence led the learned Trial Court had observed to the effect:

" APPRECIATION OF EVIDENCE.

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(A) During cross-examination PW-2 deposed that both accused were wearing T shirt and pants on the day of the incident. The weapon of offence was the knife having total length of about 10-11 inches. At that time, more than 200-300; trucks were parked at the site. All truck occupants were looking at the incident but none came forward for help. During further cross-examination a suggestion was denied by PW-2 that Govinda was not the accused caught by Ravinder or that it was accused Chand who stabbed him on the elbow.

(B) During cross-examination of PW-3 he also denied the suggestion that Govinda was not the accused who was caught by him at the spot or that it was accused Chand who had stabbed PW 3 on his elbow In further cross-examination PW 3 deposed similarly as PW 2 deposed.

(C) Testimonies of PW 4 to PW 8 remain un rebutted. Hence, their testimonies remain unchallenged.

(D) PW-10 during cross-examination deposed that when he and SI Anoop Singii reached the spot, they found second driver Hawa Singh at the spot. Statement of Hawa Singh was recorded after returning to the spot from the hospital.

(E) PW-11 was the witness of arrest of accused Govinda at the instance of accused Chand @ Chandu. His testimony remain un rebutted and thus there is no challenge to fact of arrest of accused Govinda at the instance of accused Chand @ Chandu.

(F) PW-12 is the witness who had purchased the mobile phone from one Mukaddar and later on handed over the said mobile phone instrument to Sharda Yadav. During cross-examination, a suggestion was given that he had not purchased the mobile phone Ex. P1 from the Mukaddar. The suggestion was denied. He further deposed that mobile was of black colour and perhaps it was of Nokia company.

(G) PW 13 Sharda Yadav also supported the testimony of PW12. During cross-examination he deposed that he had

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purchased the sim from Sarai Peepalthala, Azadpur, Delhi about two years ago. He had given copy of his I card as proof of his ID to the shopkeeper. He denied the suggestion that SIM was not taken by him and rather Vis identity proof was used by somebody else in taking that sim and person signed in English at points B and C.

(H) The testimonies of PW 14, PW 15 and PW 16 remain unchallenged. Hence, their testimonies remain uncontroverted.

(I) During cross-examination PW 17 deposed that accused persons were not known to him prior to the present case. He had not bolted the door of the truck before going to sleep. At the time of incident Ravinder was in other truck. PW 17 deposed that he had identified accused Govinda as the person who had committed theft of his purse and his mobile phone. He further deposed that on 27.07.2013 he identified accused Chand during TIP proceedings.

(J) Testimony of PW-18 remains unchallenged.

(K) PW-19 deposed that at the time of arrest of accused Chand he was wearing pant and shirt but he did not remember the colour of his wearing clothes.

(L) Testimonies of PW-20, PW-21, PW-22 remains unchallenged.

(M). PW 23 is the 10 of the case who deposed during crossexamination that he 'recorded statement of Kishan Kumar in BJRM hospital. He had reached the spot at about 3 pm. It was an official motorcycle. He further deposed that he arrested accused Chand from Rohini court and Govinda from Railway line Track Adarsh Nagar. He denied the suggestion that both of them had been arrested by him from their houses.

He furtiher deposed that rukka was handed over to Ct. Pradeep at 5:10 pm. PW 23 came to the spot from the hospital at about 5.45 pm. He denied the suggestion that nothing incriminating was recovered or that a false case has been planted upon the accused.

N) Testimonies of eye witnesses PW-2 Hawa Singh, PW-3 Ravinder(injured) and PW-17 Sh. Krishan

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Kumar(complainant) corroborated each other and supported the case of the prosecution and during cross-examination nothing fruitful could be extracted which could support the case of the accused.”

ANALYSIS

27. It is essential to observe that the discrepancies that are submitted to exist in the testimonies of the witnesses do not relate to any material particulars, in as much as, the variation in the number of accomplices who came at the time of the apprehension of the co-accused i.e. Govinda, from ‘being 4-5’ accomplices as per PW- 2 and PW-3 and being ‘three another persons’ as per PW-17 is not a material circumstance which can detract from the veracity of the corroborated testimony of PW-2, PW-3 and PW-17. As regards the submission made on behalf of the appellant that there is a variation in the testimonies of PW-2 and PW-3 in relation to the number of trucks that were parked at the site, for according to them there were 200-300 trucks parked but as per PW-17, 15 trucks were parked it is essential to observe that PW-17 in his testimony has stated that there were 15 trucks parked near his truck which does not detract from the existence of 200 to 300 trucks parked at the Azadpur Sabzi Mandi which is wholly probable.

28. As regards the contention raised on behalf of the appellant that there were variations in the testimonies of PW-3 and PW-17 in relation to the injuries inflicted as testified by PW-3 Ravinder and as stated by PW-17 that only a blow was given, it is essential to observe that it has been categorically stated by PW-2 that one of the persons

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had given a sharp edged instrument blow on the elbow of Ravinder due to which his grip on the apprehended boy had loosened and that apprehended boy escaped from his custody and it was stated by PW-3 in his testimony to the effect that the boy wearing a yellow striped shirt was one of the boys amongst 4-5 accomplices who had come to the spot and the boy told his name in the Court as Chand, the same thus again does not detract from the veracity of the prosecution version in relation to the occurrence as testified by PW-2 and PW-3 and PW-17 and the aspects of the investigation conducted by the Investigating Officer.

29. Though there appear to be some variations as contended on behalf of the appellant in relation to PW-2 having stated that one of the boys gave him a blow nevertheless the testimony of PW-2 is categorical when he states that the person who had given the sharp edged instrument blow on the elbow of Ravinder had given his name as Chand @ Chandu, i.e., the appellant herein and this person, i.e., the appellant herein, was also identified by the witness PW-2 as being that Chand @ Chandu who had given a sharp edged instrument blow on the elbow of Ravinder.

30. As regards the contention that has been sought to be raised on behalf of the applicant in relation to PW4 and PW5, i.e., Sh. Mukaddar and Sh.Chotti Mandal, respectively having not supported the prosecution version, it is essential to observe that their testimonies relate to the chain of events in the purchase of the mobile phone and it appears that the said persons had been won over by the side of the accused, i.e., the appellant, but the same does not suffice to detract

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from the testimony of PW-17 in relation to the identification of the mobile and from where it was recovered having stated that the mobile phone EX.P-1 was recovered from Sharda Singh which Sharda Singh had stated that he purchased it from his neighbor Rameshwar who had purchased the same from Mukaddar and Mukaddar had purchased the mobile from Chotti Mandal and Chotti Mandal had purchased the mobile from Govinda (i.e. the co-convict).

31. As regards the contention raised on behalf of the appellant in relation to the information sent to the PCR and to the aspect that one person had stabbed a person and had snatched his cash and had run away towards Shalimar Bagh and that there was another information that an unknown pedestrian had struck a knife and had snatched the money and had gone away at Aaloo wala Gate, Azadpur Mandi, and ran towards Shalimar Bagh, with it having been contended on behalf of the appellant that as per the witnesses PW-13 and PW-17, the injured was sleeping inside his truck when he was allegedly robbed and thereafter stabbed as testified by PW-3 and PW-17 and it was thus submitted on behalf of the appellant that there were material contradictions in the testimonies of the prosecution witnesses as well as the prosecution version through the FIR, it is essential to observe to the effect that though there are minor discrepancies in relation to some information recorded by the PCR, this does not detract from the corroborated testimony of PW-2, PW-3 and PW-17 in relation to the mode and manner of commission of the offence committed by the appellant herein and by the co-convict Govinda.

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32. On a consideration thus of the testimony of the witnesses and the submissions made on behalf of either side it is brought forth that there is no infirmity in the impugned judgment dated 20.11.2018 of the learned Trial Court in relation to FIR No. 204/2013, Police Station Mahendra Park, under Sections 392/394/397/34 of the Indian Penal Code, 1860, whereby the appellant was convicted for the commission of the robbery of the purse and the mobile phone belonging to the complainant and causing injuries on the elbow of Ravinder with a sharp edged knife and thus the consequential conviction of the appellant herein for the commission of offences punishable under Sections 392/394/397/34 of the Indian Penal Code, 1860, is upheld.

33. Though undoubtedly, the nominal roll of the convict till the date 23.1.2019 gives the satisfactory conduct of the appellant and he is of a young age of 24 years yet in as much as the offence punishable under Section 397 of the Indian Penal Code, 1860 is punishable with a minimum sentence of seven years of imprisonment, as provided by Section 397 of the Indian Penal Code, 1860, which reads to the effect:

"Section 397 in The Indian Penal Code

397. Robbery, or dacoity, with attempt to cause death or grievous hurt.—If, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years."

and as the appellant herein was armed with a deadly weapon within the meaning of Section 397 of the Indian Penal Code, 1860, i.e., a knife with a length of 11 inches, though the knife has not been

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recovered and the nature of injuries sustained by the injured are simple, yet the offence punishable under Section 397 of the Indian Penal Code, 1860 is wholly complete.

34. This is so as laid down by the Hon'ble Supreme Court in ***Ashfaq Vs. State (2004)3 SCC 116*** with reference to ***Phool Kumar Vs. Delhi Administration AIR 1975 SC 905*** in para 6 thereof, wherein it has been observed to the effect:

“when the offence of robbery is committed by an offender being armed with the deadly weapon which was within the vision of the victim so as to be capable of creating a terror in his mind, the offender must be deemed to have used that deadly weapon in the commission of the robbery.....”

35. Vide para 8 of the verdict in ***Ashfaq (supra)***, it has been observed to the effect:

*“8. Thus, what is essential to satisfy the word "Uses" for the purposes of Section 397 IPC is the robbery being committed by an offender **who was armed with a deadly weapon which was within the vision of the victim so as to be capable of creating a terror in the mind** of victim and not that it should be further shown to have been actually used for cutting, stabbing, shooting, as the case may be.”*

36. Furthermore, as laid down by this Court in ***Sonu VS. State (Govt. of NCT of Delhi) 2019 SCC Del Online 11183*** as observed vide para 28 thereof, which reads to the effect:

*“28. In view of the observations made by the Supreme Court in *Phool Kumar v. Delhi Administration (supra)*; and *Ashfaq v. State (Govt. of NCT of Delhi) (supra)* and decisions of this Court in *Salim v. State (Delhi Admn.) (supra)*, *Ikram Ansari v. State (supra)* and *Sanjay Kumar v. State (supra)*, it is not essential to categorize the knife in*

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order to determine whether it is a deadly weapon. Thus, irrespective of whether a knife is a kitchen knife, or a butcher knife, it would qualify as a deadly weapon for the purposes of Section 397 of the IPC.”

irrespective of whether a knife is a kitchen knife or a butcher knife, it qualifies for being a deadly weapon for the purpose of Section 397 of the Indian Penal Code, 1860,

37. Furthermore, in view of the verdict of the Hon'ble Supreme Court in *State of Madhya Pradesh Vs. Vikram Das* in CrI.A.208/2019, a verdict dated 08.02.2019 as observed vide para 8 thereof that where a minimum sentence is provided for, the Court cannot impose less than a minimum sentence and even the provisions of Article 142 of the Constitution cannot be resorted to impose a sentence less than the minimum sentence.

CONCLUSION

38. Thus, the conviction of the appellant as held vide the impugned judgment dated 20.11.2018 and the impugned order on sentence dated 22.11.2018 of the learned Trial Court of the Special Judge (NDPS), North District, Rohini Courts, Delhi in relation to the FIR No. 204/2013, Police Station Mahendra Park under Sections 392/394/397/34 of the Indian Penal Code, 1860 is upheld.

39. The appeal is dismissed.

40. The appellant shall thus undergo the sentence as imposed vide the impugned order on sentence dated 22.11.2018 of the learned trial Court in SC No. 58100/16 in relation to the FIR No. 204/2013, Police

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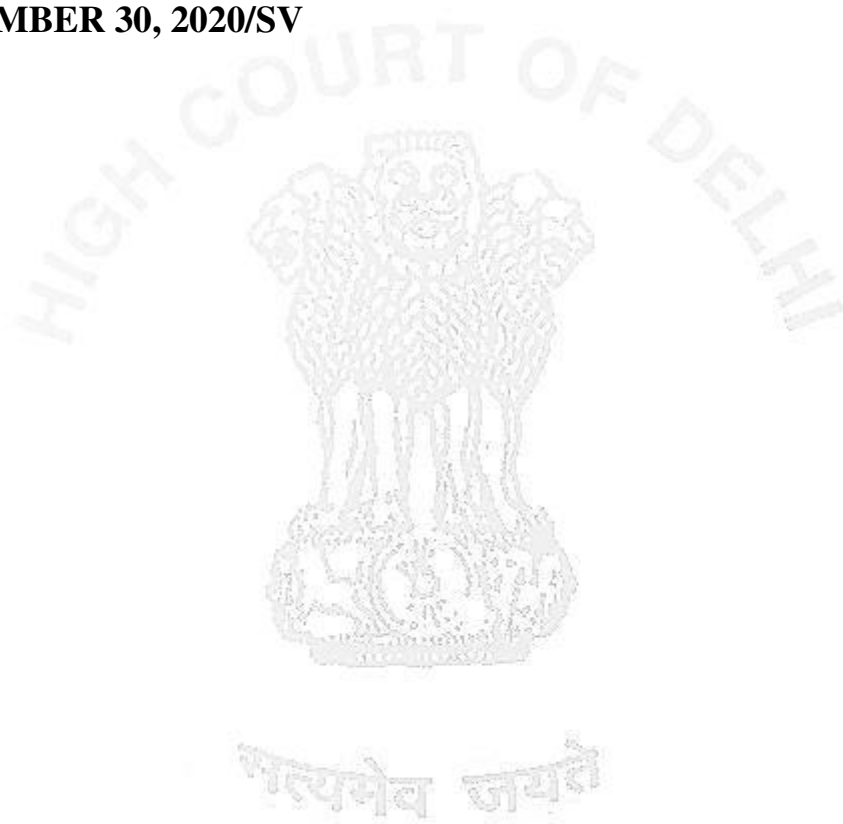
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Station Mahendra Park under Sections 392/394/397/34 of the Indian Penal Code, 1860.

41. The copy of the judgment be supplied to the appellant through the Superintendent Jail, Delhi concerned.

ANU MALHOTRA, J.

SEPTEMBER 30, 2020/SV



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