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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 1st February, 2022Decided on : 13th July, 2022

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CRL.A. 299/2020

CRL.M.(BAIL) 6267/2020 (for suspension of sentence/bail and stay of order dated 20.12.2019 & 21.12.2019)

CRL.M.(BAIL) 757/2021 (for interim suspension of sentence/interim bail)

RAJU THAPA

..... Appellant

Represented by: Ms Richa Dhawan,
Advocate (DHCLSC).

versus

STATE

..... Respondent

Represented by: Mr Tarang Srivastava, APP
for the State.

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CRL.A. 644/2020

ASHISH

..... Appellant

Represented by: Mr Gaurav Gupta and Mr
Samyak, Gangwal, Advs.

versus

THE STATE

..... Respondent

Represented by: Mr Tarang Srivastava, APP
for the State.

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CRL.A. 23/2021

CRL.M.(BAIL) 62/2021 (for interim bail)

MOHD NAJIL

..... Appellant

Represented by: Mr Anuj Kapoor with Ms
Pragya Ganjoo, Advocates.

versus

THE STATE GOVT. OF NCT OF DELHI Respondent

Represented by: Mr Tarang Srivastava, APP
for the State.



CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

1. By these three appeals, the appellants challenge the impugned judgment dated 20th December, 2019, whereby they were convicted for offences punishable under Sections 394/397/411/34 IPC besides appellant Raju Thapa being convicted for offence punishable under Section 411 IPC as also the order on sentence dated 21st December, 2019, whereby they were directed to undergo rigorous imprisonment for a period of seven year with fine of ₹2,000/- each and in default thereof to undergo simple imprisonment for one month each. Appellant Raju Thapa was also sentenced to undergo rigorous imprisonment for one year for the offence punishable under Section 411 IPC and the sentences were to run concurrently.

2. Assailing the impugned judgment, learned counsel for the appellant contends that the evidence of the complainant does not connect the appellant to be the person who caused injury to him or who as per the prosecution threw him out from the running train on the railway track, which finding of the learned Trial Court has been arrived at based on the disclosure statement which is inadmissible in evidence. Sanjay Singh, the complainant who appeared as PW-1 clearly stated that on receiving the injuries by the sharp object he became unconscious and when he regained consciousness, he found himself on the trailway track, he raised alarm and he found that all his belongings were missing. His bag having clothes, mobile phone make Lenovo, Voter ID Card and some passport size photographs, one sim and ATM Card were not there. He shouted for help, no one came for his help. After some time, a train engine passed



from that place and came for help, he narrated the incident to the engine driver, who assured him for help and called 100 number and then PCR came and took him to the hospital. Dharmendra Kumar, PW-2, who was the driver of the railway engine running from Ghaziabad towards New Delhi Railway Station and located the complainant at the railway track, is not an eye witness nor is Const. Karanveer Singh, PW-12, who was also travelling on the same train when the incident took place. Thus, the allegations against the appellants are based on disclosure statements and cannot be read in evidence. In any case, the appellants have not been found to be in possession of the deadly weapon, therefore offence under section 397 IPC is not made out. Even as per the statement of the complainant, the fourth accused, who was discharged, that is, Mohd. Rehan inflicted injury on the neck, thus at best an offence punishable under Section 392 IPC is made out against the appellants and they be released on the period already undergone.

3. Learned APP for the State countering the arguments of learned counsel for the appellant submits that since the complainant received four fractured injuries, which were grievous in nature, the offence under section 397 IPC is attracted, even if there was no eye witness to the throwing of the complainant from the running train on the track, the fact that the appellant had stolen his articles, which were duly recovered and they were the ones who had caught hold of him and inflicted injuries is sufficient to show the complicity of the appellants and convict them for offences punishable under Section 392/397/34 IPC. Further, appellant Raju Thapa has also been rightly convicted for offence punishable under Section 411 IPC. Mohd. Rehan, who is stated to have inflicted the blade



on the neck of the complainant was not identified in the TIP and thus discharged by the learned Trial Court. He further states that the appellants were duly subjected to test identification parade, however, appellant Raju Thapa and Ashish refused to participate in the TIP whereas Najil participated in the TIP and was duly identified, hence, there is no error in the impugned judgment of conviction and order on sentence.

4. FIR No.62/2016 was registered at Police Station Anand Vihar Railway Station on the statement of Sanjay Singh, the complainant, who deposed as PW-1 stating that he was a resident of Meerut and was working in a company at Sahibabad. On 28th May, 2016, he sat in the train at Sahibabad Railway Station in the train from Khurja to Shakurbasti to go to Tilak Bridge. When the train was running from Anand Vihar to Tilak Bridge, one boy came to him and asked him to give his mobile phone and when the complainant resisted, he caught hold of his neck and two other boys caught hold of his hand and the fourth boy who had a blade in his hand inflicted injuries on his neck and head. They took out his mobile phone Lenovo, ATM Card and ₹1580/-, his Voter ID Card and other papers including his passport size photographs and pushed him from the train. He fell on the track. After he regained consciousness he was taken to the hospital.

5. Sanjay Singh deposed before the court on the same lines and stated that since there are no direct train from Agra to Sahibabad, he boarded a train from Khurja-Shakurbasti to reach Tilak Bridge so that he could board a train for Agra and when the train reached at Anand Vihar Railway Station, one person came and asked him to give his mobile



phone. Witness identified appellant Raju Thapa as the accused, who asked him to give the mobile phone. When Sanjay Singh asked him “*kya karoge*” Raju Thapa slapped him, he also tried to strangulate him with his arms and hands. When he tried to save himself, two other boys came there and caught him from both the sides. The two other boys who had caught hold of him were identified as Ashish and Najil. He stated the one more boy came there and he started hitting him on his head with some object when Raju Thapa, who was holding his neck shouted “*blade jyada mat maar*”. The fourth boy inserted some sharp object to the right side of his neck. He tried to rescue himself but became unconscious. When he regained his consciousness, he found himself lying near the railway track. He raised an alarm and found all his belongings were missing. No one was present in that lonely place. After some time, a train engine passed by from there when he waived for help. The engine stopped and the driver enquired about his condition. Thereafter, he called 100 number. Then the PCR van came and brought him to the hospital. He remained in the ICU, thereafter, he was advised private treatment and was admitted at Meerut where he remained in ICU for four days. He identified the three appellants as the assailants and the fourth one who hit on his head was not present.

6. Dharmendra Kumar, the driver who was taking two railway engines from Ghaziabad towards New Delhi Railway Station and had seen the complainant lying near the railway track appeared in the witness box as PW-2. He stated that after talking to the complainant, he informed the Station Master of Tilak Bridge on wireless set and he stopped the loco engine only for two minutes.



7. Prosecution also relied on the testimony of PW-12, Const. Karanveer Singh, who was travelling in the same train in which the complainant was travelling. He stated that on 9th June, 2016, he was traveling in EMU train from Khurja Railway Station to Anand Vihar Railway Station when the train reached Ghaziabad Railway Station and he was sitting in the train, three accused persons were present in the coach and one more person boarded the train at Ghaziabad. All the said persons surrounded him when the train was between Ghaziabad and Sahibabad. He got suspicious when the train stopped at Sahibabad Railway Station, he made enquiries from them. The nepali boy who was identified as Raju Thapa got angry and asked the witness what he could do. Const. Karanveer Singh tried to apprehend him, however, Raju Thapa jumped from the running train. As he had caught hold of the shirt of Raju Thapa due to which his shirt torn. One another associate of Raju Thapa went ahead in the train. There were 8-10 other passengers travelling in the train and he caught hold of Ashish and Najil, who were present in the court, with their assistance. Enquiries were made from them and they stated that they were going to Anand Vihar Railway Station. He questioned their behaviour in the running train and why they are accompanying the nepali boy, who jumped off the train. When he deboarded at Anand Vihar Railway Station along with Ashish and Najil, he asked them about their third associate. While, he was on way with the accused persons, he met SI Om Prakash, HC Maharaj Singh, Const. Sanjeev and Const. Anurag. When he talked about the behaviour of the accused persons, their custody was taken over by the police team. He found Mohd. Rehan sitting in the park, he apprehended him also. Rehan



was found in possession of two blades, which were also taken in possession. Statements of the three of accused were recorded.

8. Undoubtedly, Const. Karanveer Singh is not an eye witness to the incident and has narrated what transpired after a period of nearly twelve days. While coming in the train in view of the strange behaviour of the accused person, he apprehended them and, on their disclosure, they were arrested in the above-noted FIR. Raju Thapa was arrested and from his possession it is stated that the mobile phone of the complainant make Lenovo was discovered.

9. Undoubtedly, the complainant who is the sole eye witness in the case, has identified the three appellants out of which Raju Thapa was the first one who caught hold of him and asked his mobile phone and on his refusal caught of his neck and head and the other two caught hold of his hands. Injuries by sharp weapon were inflicted by the fourth accused. As per the deposition of the complainant, he became unconscious on inflicting of the injuries. However, the fact that he was subsequently found on the railway track in an injured condition and there being no railway station in-between, it is evident that the complainant was thrown out of the running train and is also evident from the injuries received by him. As per the MLC of the complainant, he receives the following injuries

- “1. CLW of 1 cm x 0.5 over central forehead.
2. CLW over frontal region of scalp 4 m x 0.5 cm.
3. CLW over right parietal eminence of scalp 3 cm x 0.5 cm.
4. CLW lateral to the left eye 1 cm x 0.5 cm.
5. Abrasion over the left leg and
6. Tenderness on the left knee.”



10. Section 397 IPC reads as under:

“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.”

11. In Phool Kumar Vs. Delhi Administration AIR 1975 SC 905 it was clarified that Section 397 cannot be attracted with the aid of Section 34. As noted in the testimony of the complainant, the injury by the deadly weapon was inflicted by the fourth accused and not the three appellants here. Therefore, in view of the settled legal position the appellants cannot be convicted for offence punishable under Section 397 IPC. The appellants have also been convicted for offence punishable under Section 394/34 IPC. From the MLC of the complainant and the fact that not only injuries were caused physically by Raju Thapa and the two other appellants caught hold of the complainant, however with the common intention they also threw him out of the train and as the complainant was found in an unconscious condition at the railway track offence punishable under Section 394 read with 34 IPC is clearly made out. The sentence that can be awarded for offence punishable under Section 394 IPC being up to imprisonment for life or with rigorous imprisonment for a term which may extend to 10 years and fine, and the appellants having been awarded 7 years rigorous imprisonment, this Court finds no error in the sentence awarded to the appellants. Further, mobile phone of the complainant was recovered from appellant Raju Thapa and hence he has



been rightly convicted for offence punishable under Section 411 IPC.

12. Consequently, this Court finds no error in the impugned judgment of conviction and order on sentence. Consequently, conviction of the appellants for offence punishable under Section 397 IPC is set aside.

However, their conviction for offence punishable under Section 394 read with Section 34 IPC is maintained and Raju Thapa's conviction for Section 411 IPC is also maintained. This Court also finds no error in the order on sentence as no separate sentence was awarded for offence punishable under Section 397 IPC.

13. Appeals are accordingly dismissed.

14. Order be uploaded on the website of this Court and be also conveyed to the Superintendent Mandoli Jail for intimation to the appellants and updation of record.

CRL.M.(BAIL) 6267/2020 in CRL.A. 299/2020

CRL.M.(BAIL) 757/2021 in CRL.A. 299/2020

CRL.M.(BAIL) 62/2021 in CRL.A. 23/2021

Applications are disposed of as infructuous.

JULY 13, 2022
MK

(MUKTA GUPTA)
JUDGE