



2024:DHC:8898



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

RESERVED ON -20.09.2024

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PRONOUNCED ON -14.11.2024

+ **CRL.A. 312/2022, CRL.M.A. 23738/2024 & CRL.M.A. 23878/2024,
CRL.M.A. 23879/2024**

MOHD. DANISH

.....Appellant

Through: **Mr.B.K.Patra, Mr.SatyajeetPatra,
Ms.Kiran and Ms.Khushboo Gupta,
advts.**

versus

STATE (GOVT. OF NCT DELHI)

.....Respondent

Through: **Mr.Raghvinder Varma, APP for the
State.
SI Sachin Kumar, PS Jagatpuri**

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J.

1. The Present Criminal Appeal has been filed under Section 374(2) of the Code of Criminal Procedure, 1973, challenging the judgment dated 05.03.2022 and the order on sentence dated 31.03.2022 passed by Sh. Naveen Gupta, Additional Sessions Judge-05, District Shahdara, Karkardooma Courts, Delhi, in SC No. 1005/2016 arising out of FIR

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No. 153/2016, registered under Sections 394/397/411/34 IPC and Section 25 of the Arms Act at Police Station Jagat Puri, Delhi whereby the appellant has been convicted under Section 394 IPC read with Section 34 IPC and Section 397 IPC and Section 25 (1B) of the Arms Act and has been sentenced to seven years rigorous imprisonment alongwith fine of Rs.30,000/- in default to undergo simple imprisonment of six months for commission of offence punishable under Section 394 read with Section 34 IPC and Section 397 IPC. The convict is further sentenced to one year rigorous imprisonment alongwith fine of Rs.5,000, in default to undergo simple imprisonment of two months for commission of offence punishable under Section 25 (1B) of the Arms Act.

2. Briefly stated the facts are that on receipt of DD No. 14- A 21.05.2016, SI Praveen (PW-5) alongwith Ct. Shiv Hari (PW-4) reached on the spot where they found people gathered and beating a person. During inquiry it was found that the person who was beaten was Danish, the appellant herein. The complainant also met there who had suffered head injury. The complainant handed over one desi katta (country made pistol) to PW-5 and stated that the appellant along with his accomplice had come on a motorcycle and snatched the chain. The appellant took out a country made pistol and being resisted by the complainant and assaulted on his head. The complainant caught hold of the appellant. However, another person who was driving the bike ran away. It was found that the appellant snatched gold chain. On the statement of the complainant, FIR No. 153/2016, registered under Sections



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394/397/411/34 IPC and Section 25 of the Arms Act at Police Station Jagat Puri was lodged. Appellant was arrested. After investigation, charge sheet was filed.

3. After conducting the trial, learned Additional Sessions Judge recorded conviction of the appellant under Section 394/397/411/34 IPC & 25 (1B) of Arms Act. The appellant has challenged the order of conviction on various grounds. It was submitted that no Test Identification Parade, and the dock identification is not admissible in the eyes of law. Reliance has been placed upon *Amrik Singh vs The State of Punjab* (2022) 9 SCC 402. It has further been submitted that even during the cross examination PW1 complainant has stated that he had not seen the appellant at the time of the offence. The appellant has also challenged the conviction on the ground that no independent public person has been examined. The appellant has also challenged the conviction on the ground that there is discrepancy in the case of the prosecution regarding recovery of country made pistol. It has been submitted that as per initial case of the prosecution.
4. It has been submitted that as per initial case of the prosecution, the complainant stated that when the police official reached on the spot, he handed over the country made pistol to them. However, in his testimony before the court, PW1 stated that he actually handed over the katta to public person present there and went to the Monga Hospital for medical treatment. The appellant has further submitted that has miserably failed to prove that while the alleged offence was committed, the accused had caused any hurt to the victim. It has been submitted



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that the alleged injury was even as per the case of the prosecution inflicted on the victim after the commission of the alleged offence.

5. The appellant has also submitted that the recovery of the chain is also doubtful as there is major contradiction between the statement of the victims PW1 and PW5. The appellant has further submitted that no case under Section 397 IPC is made out as the recovery of the country made pistol is doubtful. Learned counsel for the appellant has also made the detailed submissions on the grounds as stated above and has placed reliance upon *Vinod Samuel vs. Delhi Administration* (1992 Supp. (3) SCC 23), *Vikramjit Singh vs. State of Punjab* (2006) 12 SCC 306, *Ram Niwas vs. State of Haryana* (2022)15 SCC 306 and *Azad Ansari vs. The State of Bihar* MANU/BH/0731/2023.
6. Learned APP has submitted that the learned trial court has recorded the conviction after taking into account all the contentions being put forth by the appellant. Learned APP submitted that the evidence being led by the prosecution has been threadbare examined by the learned trial court. It has further been submitted that there is no error in the order of the learned trial court.
7. It is pertinent to mention that initially, a charge under Section 394 read with Section 397 of the IPC, Section 411 of the IPC, and Section 25 of the Arms Act was framed against the accused on 23.12.2016. However, subsequently, upon an application moved by the prosecution, an additional charge under Section 34 of the IPC was also framed against the appellant. The jurisdiction of the appellate court has been thoroughly discussed, and the scope of its jurisdiction is as follows:



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8. In **B.V. Nagesh v. H.V. Sreenivasa Murthy** (2010) 13 SCC 530, the Supreme Court *inter alia* held as under;

“4. The appellate court has jurisdiction to reverse or affirm the findings of the trial court. The first appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate court. Sitting as a court of first appeal, it was the duty of the High Court to deal with all the issues and the evidence led by the parties before recording its findings. The first appeal is a valuable right and the parties have a right to be heard both on questions of law and on facts and the judgment in the first appeal must address itself to all the issues of law and fact and decide it by giving reasons in support of the findings. (Vide Santosh Hazari v. Purushottam Tiwari [(2001) 3 SCC 179 : (2001) 1 SCR 948] , SCC p. 188, para 15 and Madhukar v. Sangram [(2001) 4 SCC 756 : AIR 2001 SC 2171] SCC p. 758, para 5.)”

9. The case of **B.V. Nagesh** (*supra*) emphasizes the critical role of appellate courts in independently reviewing lower court judgments. It mandates a thorough examination of evidence and legal reasoning to identify and rectify any errors. This ensures that justice is administered fairly and accurately, safeguarding the rights of all parties involved in legal proceedings. Section 386 of the Cr.P.C. further reinforces this principle by granting appellate courts the authority to modify or reverse lower court decisions.
10. The court has considered the submission of the learned counsel for the appellant, learned additional P.P. for the State and has minutely gone



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through the trial court record. The perusal of the impugned judgment indicates that the learned trial court has minutely appreciated the testimony of the prosecution and has also taken into account the defence being put up by the appellant. The submissions made by both the parties have also been taken into account. It is pertinent to mention here that PW1, the complainant in his statement before the court has made a categorical statement on oath that on 21.05.2016 at about at about 7.45 a.m., he was going to a saloon situated at Radhey Puri, Jain Mandir and when he reached at the saloon and parked his scooty, two persons came on black colour bike and snatched his gold chain, which he was wearing in his neck. PW1/complainant stated that the chain was snatched by the pillion rider from the back side. The perusal of testimony of PW1 though indicates that there appears some inconsistency in his statement made before the court and his statement made to the police. In the statement made before the police, the complainant has simply stated when the chain was being snatched, he resisted on which the pillion rider took out a country made pistol and assaulted on his head. However, in his statement before the court, the complainant has stated that after snatching the chain, two persons on the bike fled away but he chased them and could caught the pillion rider as there was a turn after few distance.

11. However, I consider that this contradiction or inconsistency in the testimony of PW1 does not go to the root of the case and has been very well explained by the learned trial court. The learned trial court has also taken into account the averment as to the false implication of the



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appellant. I consider that there is no reason that the complainant would implicate a person falsely. The entire testimony of PW1 read along with the testimonies of PW4 and PW5 does not leave even an iota of doubt that it was the appellant who had snatched the god chain from the neck of the complainant and this court finds no reason to interfere into the findings of the learned trial court in this regard. The testimony of the complainant has found to be consistent and corroborative in this aspect and evaluation of the learned trial court is also in accordance with the law.

12. However, this court disagrees with the finding of the learned trial court as the recovery of the country made pistol and finding as to Section 397 IPC. There is a major contradiction in the form that in the statement made before the police, the complainant stated that he had handed over the country made pistol to the police officials when they reached on the spot whereas in the statement made before the court on oath, the complainant stated that he handed over the country made pistol to one public person standing there and went to Monga Hospital for treatment and by the time he reached back, the police had already reached and the country made pistol had been given by that public person to the police. Admittedly, no public person has been joined as a witness by the appellant and therefore a major link is missing. The evidence regarding recovery of the country made pistol from the possession of the appellant creates a serious doubt. This is a major contradiction which cannot be ignored. If the complainant had gone to the hospital for the medical treatment and handed over the country made pistol to public



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person, the examination of that public person was necessary. Non-examination of such person is fatal for the case of the prosecution.

13. I consider that in view of the discussion above, the judgment is modified to the extent that the appellant is convicted for the offence under Section 394/34 IPC.
14. The appellant was convicted and sentenced to seven years of rigorous imprisonment along with a fine of Rs. 30,000; in default of payment, the appellant shall further undergo simple imprisonment for six months for the offense punishable under Section 394 read with Section 34 IPC and Section 397 IPC. The appellant was also sentenced to one year of rigorous imprisonment along with a fine of Rs. 5,000; in default of payment, the appellant shall further undergo simple imprisonment for two months for the offense punishable under Section 25(1B) of the Arms Act. Only the benefit of Section 428 Cr.P.C. was granted to the appellant. As per the nominal roll dated 25.10.2023, the appellant has already undergone custody for three years, six months, and twenty-seven days. The court considers that since the appellant has been acquitted for the offence under Section 397/34 IPC and 25 of Arms Act, and the appellant has only been convicted for the offence under Section 394/34 IPC, it would be in the fitness of things that the appellant is convicted for four years rigorous imprisonment and fine of Rs.2,000/-, in default of payment of fine to undergo simple imprisonment for three months under Section 394/34 IPC.
15. With these observations the appeal and all the pending applications stand disposed of.



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16. Copy of the order be sent to the concerned Jail Superintendent for information and compliance.

DINESH KUMAR SHARMA, J

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