



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

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Date of Decision: 24.01.2024

+ **CRL.REV.P. 58/2024, CRL.M.(BAIL) 76/2024 CRL.M.A. 1417/2024 and CRL.M.A. 1418/2024**

IN THE MATTER OF:

KAMAL KASHYAP

..... Petitioner

Through: Mr. Hirein Sharma, Ms.Meena Chaudhary, Mr.Tushar Ahuja and Mr.Saurabh Goel, Advocates.

Versus

THE STATE GOVT OF NCT OF DELHI

..... Respondent

Through: Mr.Sunil Kr. Gautam, APP for State with SI Kapil Singh.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. The petitioner has instituted the present revision petition under Section 401 Cr.P.C. assailing the judgment and order on sentence dated 10.07.2023 passed by the learned ASJ-03 (Central), Tis Hazari Courts, Delhi in Criminal Appeal No.74/2023 titled as 'Kamal Kashyap v. The State (Govt. of NCT of Delhi)', whereby the petitioner's conviction and sentence passed by the learned Trial Court was upheld.

2. Earlier, the learned Trial Court had convicted the petitioner under Section 394/34 IPC vide judgment dated 26.09.2022 and vide order on sentence dated 28.02.2023, he was sentenced to undergo rigorous



imprisonment for a period three years and fine of Rs.2,000/-. In default of payment of fine, petitioner was directed to undergo simple imprisonment for a period of two months.

3. The facts of the case as noted by the Appellate Court are extracted hereinbelow:-

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4. *The case of the prosecution, as unfolded in the statement of the complainant, is that on 25.12.2017 at about 07.30 p.m., the complainant boarded TSR bearing registration No. DL l RK 0630 at Kashmere Gate. The appellant was driving the said TSR. Two passengers were already sitting on rear seat of the said TSR. After some time, the co-accused, namely, Sumit @ Hakla sat adjacent to the appellant. The passengers sitting on the rear seat de-boarded at Majnu Ka Tila. On the instruction of the appellant, the co-accused, namely, Sumit @ Hakla moved to rear seat of the said TSR. The appellant ascended TSR to Wazirabad Flyover and when he saw that it was dark, he stopped the said TSR on the side. The co-accused, namely, Sumit @ Hakla taken out a knife and asked the complainant to take out his articles. When the complainant refused to follow his command, he stabbed the knife on his left hand. The complainant handed over his wallet to him. He taken out entire amount from the said wallet. The appellant instructed the co-accused, namely, Sumit @ Hakla to finish the job quickly. After committing robbery, the co-accused, namely, Sumit @ Hakla returned wallet to the complainant and stabbed knife in leg of the complainant.*

xxx”

4. After investigation, the charge-sheet came to be filed against the present petitioner as the co-accused namely *Sumit @ Hakla* could not be arrested. The learned Court framed charge under Section 394/34 IPC against



the present petitioner. In trial, the prosecution examined the complainant Harender Maurya as PW-1. The complainant had deposed that on 25.12.2017 at about 07.30 p.m., he reached Kashmiri Gate and boarded an auto. The auto was driven by the present petitioner. There were two other passengers who were sitting on the passenger seat, who de-boarded at Majnu Ka Tila, whereafter the petitioner asked the person sitting alongwith him on the driver seat, to sit on the passenger seat. After some time, the petitioner stopped the auto and the person sitting on the passenger seat next to him took out a knife and caused injuries on his left hand and also took a sum of around Rs.5,000-6,000/- from his purse. The said person further inflicted another knife injury on the complainant's left thigh. While the co-accused managed to escape, the petitioner was caught on the spot by the complainant. The injuries on the person of complainant were corroborated by the MLC.

5. Learned counsel for the petitioner states that though the petitioner is not challenging the impugned judgment passed by the appellate and trial court on merit however, he prays that the sentence awarded to the petitioner be reduced.

6. Admittedly, the role assigned to the present petitioner is that of driving the auto and then instructing the passenger sitting with him on the driver's seat to shift to the passenger seat. It is the co-accused who had inflicted the knife injuries as well as robbed the complainant of his monies.

7. As per the nominal roll, as on 21.01.2024, the petitioner has undergone a sentence of seven months and one day alongwith a remission of one month. The petitioner is not found involved in any other case and his jail conduct is also found to be satisfactory. The nominal roll is also



accompanied by the petitioner's health status report as per which, he has been diagnosed with a history of hypertension, glaucoma, diabetes mellitus and coronary artery disease (angioplasty in 2017). He has been regularly visiting OPD for consultation for the aforesaid ailments and was also sent for cardiology consultation on 07.08.2023 at GB Pant Hospital, wherein appropriate medication and follow up was advised. The petitioner was also provided consultation for his eye-related complaints in the Ophthalmology Department at AIIMS on 23.11.2023. The report further states that at present, the general condition of petitioner/inmate patient is stable with good control of diabetes, however regarding cardiac condition, the ejection fraction is 30% based on old report (desired 60% above) and raised intraocular pressure in the eyes. Patient is planned for surgery for glaucoma at AIIMS Hospital on 17.05.2024. He is receiving all the medications as applicable from CJ-02, Dispensary.

8. Considering the fact that both the Trial Court as well as the Appellate Court have held the petitioner guilty of the offence under Section 394/34 IPC, this Court finds no ground to interfere with the judgment on conviction as the case against the petitioner stands proved in view of the statement of the complainant and the medical record. However, considering the medical status of the petitioner as well as the fact that he is not involved in any other case alongwith the period of custody already undergone, the petition is disposed of with the direction that the petitioner's sentence is modified and the petitioner is directed to undergo sentence of rigorous imprisonment for a period of nine months. The fine of Rs.2,000/- and default sentence is however, maintained. The order on sentence is modified to the aforesaid extent.



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9. The petition alongwith pending applications is disposed of in above terms.
10. A copy of this order be communicated to the concerned Trial Court as well as the concerned Jail Superintendent.

MANOJ KUMAR OHRI
(JUDGE)

JANUARY 24, 2024/rd