



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

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**Reserved on: 21.08.2024**

**Pronounced on : 22.11.2024**

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**CRL.A. 759/2002**

RAJEEV @ SONU & ANR.

.....Appellants

Through: Mr. Afsan and Mr. Moin Akhtar, Advocates  
for appellant No.2 with appellant  
No.2/Manish in person.

versus

STATE GOVT. OF N.C.T. OF DELHI

.....Respondent

Through: Mr. Laksh Khanna, APP for State  
Mr. Sanjeev Sabharwal, APP for State.

**CORAM:**

**HON'BLE MR. JUSTICE MANOJ KUMAR OHRI**

**JUDGMENT**

1. The present appeal has been instituted against the judgement of conviction dated 07.09.2002 and order on sentence dated 19.09.2002 passed by ASJ, New Delhi in the case arising out of FIR No.94/2001 registered under Sections 392/397/411/34 IPC at P.S-Delhi Cantt.

Vide the impugned judgement, the appellants were convicted for the offence punishable under Sections 397 IPC and directed to undergo rigorous imprisonment for a period of 7 years. The benefit of Section 428 Cr.P.C. was also given.

During the pendency of present proceedings, the appellant Rajeev @Sonu had expired and his appeal stood abated. As per record, the appeal of co-convict Prakash being Crl Appeal 703/2004 was dismissed on 15.07.2019.

2. The facts, in a nutshell, are that on 16.03.2001, the complainant was driving his friend's TSR bearing No. DL1RE 9514. At about 1 am, when the complainant was waiting for passengers near Munirka Road, four accused aged about 18-20 years came and hired the TSR for going to Palam. While three accused sat on the back seat, the fourth sat in front along with the complainant on the driver seat. When he reached



Mehram Nagar Road, one of the accused who was sitting in the back seat asked the complainant to stop the TSR on the pretext of easing himself. The said accused put a knife on the neck of the complainant and told him to sit at the back. Thereafter, on reaching a secluded place, all the culprits took the complainant towards a secluded place near Mehram Nagar and made the complainant get down. All the accused were armed with knives. They threatened the complainant and robbed him of Rs. 367/-, purse, driving license and a diary. One of the accused, who was thinly built, put tape on complainant's mouth. The other stoutly built accused tied his hands and legs with a rope, whereafter they ran away in the complainant's TSR. Later, on a secret information, four accused namely Rajiv @Sonu, Parkash Bahadur, Manish Kumar and D (a CCL) were apprehended along with the stolen TSR. Charges under Sections 411/397 read with 34 IPC were framed against the accused persons.

3. In trial, a total of 6 witnesses were cited by the prosecution to prove its case. The complainant namely *Jagdish Mehto* was examined as PW5. *Santosh Kumar Bansal*, the owner of the said TSR was examined as PW4. The other witnesses were formal in nature, who deposed relating to various aspects of investigation.

On the other hand, the accused persons, in their statement recorded under Section 313 Cr.P.C. claimed innocence and false implication.

4. Learned Counsel for the appellants while assailing the impugned judgement contended that appellant's identification in court by the complainant was of no consequence as no TIP was conducted and the accused persons were shown to the complainant in the police station. It was next contended that the complainant's testimony doesn't inspire confidence being full of material contradictions and omissions. Lastly, it was contended the alleged weapon of offence i.e., knives were not recovered from any of the accused persons.

5. Per contra, learned APP for the State while seeking dismissal of the appeal defended the impugned judgment as well the complainant's deposition in court. Referring to the appellant's Nominal Roll, it was submitted that he is also convicted and sentenced for life in FIR No. 50/2008 regd. under Section 302/364/397/392/394/201/34 IPC and conviction has been upheld by the Apex court.



6. I have heard the counsels for the parties and have perused the documents which have been placed on record.
7. The owner of TSR viz. *Krishna Parshad* was examined as PW4. He deposed that on 16.03.2001, he had given his TSR to the complainant and on that night, he was informed about the robbery of his TSR. Later, the TSR was recovered. The TSR was exhibited as Ex.P1.
8. The complainant, *Jagdish Mehto* was examined as PW5. He deposed in detail as to how on the night of 16.03.2001, he was robbed of his belongings and TSR by all the four accused persons. He specifically stated insofar as the present appellant is concerned, he initially sat on back seat and it was him who had asked him to stop TSR for easing himself. The appellant put knife on his neck whereafter the other accused (the CCL) had also put a knife on his side. Further, the appellant also tied complainant's feet and hand on the back side with a rope. The role of putting tape on his mouth was attributed to *Prakash* who had taken out Rs. 367/- from his pocket. The allegation of tying the complainant's hand and legs with muffler was ascribed to convict *Rajiv*. All the three accused persons including the present appellant were correctly identified.
9. Doubting the complainant's testimony, it was contended that he had not clearly stated as to which of the accused had sat in front or back seat of the auto. Also, while the complainant had claimed that after freeing himself, he ran towards the road and stopped a PCR, PW1, on the other hand, stated that he found the complainant lying down. In his statement recorded during investigation, the complainant had omitted to state that all the four accused had knives in their hands and that after being tied down, he was thrown in a pit. Lastly, while in his testimony, the complainant had stated that at the time of recovery of TSR all the four accused were sitting inside the TSR, in his statement recorded during investigation, it was not stated so.
10. On a careful perusal of the record, it is evident that the factum of all the accused having knives was stated in statement recorded during investigation as well as in deposition. Similarly, at the time of recovery of TSR, all the four accused found sitting in the TSR was also stated consistently. The contentions on these aspects being factually incorrect, are rejected. The other contention that whether he was thrown in a pit or the



place he was found when seen in light of the entire deposition, are immaterial. On the aspect of there being no TIP conducted, note is taken of the decision in Malkhan Singh & Ors v. State of MP reported as **(2003) 5 SCC 746** wherein while dealing this contention, it was held as under:

*“The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The purpose of a prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence. It is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. This rule of prudence, however, is subject to exceptions, when, for example, the court is impressed by a particular witness on whose testimony it can safely rely, without such or other corroboration. The identification parades belong to the stage of investigation, and there is no provision in the Code of Criminal Procedure, which obliges the investigating agency to hold, or confers a right upon the accused to claim, a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by section 162 of the Code of Criminal Procedure. Failure to hold a test identification parade would not make inadmissible the evidence of identification in court. The weight to be attached to such identification should be a matter for the courts of fact. In appropriate cases it may accept the evidence of identification even without insisting on corroboration.”*

11. Pertinently, the complainant in unequivocal terms, had identified the appellant and stated about his role of showing knife, threatening at the time of commission of robbery and later tying him with a rope. The TSR was recovered from all the accused persons, the driving license from the deceased appellant and Rs. 100/-, slip of medicine and small diary belonging to the complainant from accused Parkash. This court concurs with approval the finding of trial court that the complainant’s testimony is trustworthy and reliable and thus, non-holding of TIP in these facts, is of no consequence.

12. Coming to the last contention that non-recovery of knife is fatal to prosecution case is also insignificant in light of the well established position in law that to prove



offence under Section 397 IPC, the recovery of knife is not necessary. Gainful reference is made to the decision in Aas Mohd. @Ashu v. State, reported as **2021:DHC:4339**.

13. Another contention raised that while the trial court had observed that one Rameshwar Das (PW3) was a member of the raiding party alongwith I.O., Ct Santosh Kumar and Ram Niwas, the I.O. (SI R S Naruka-PW6) in his testimony did not mention the presence of Rameshwar Das. Even this submission does not cut much ice as the other witnesses in no uncertain terms had deposed about the recovery of TSR from all the accused persons and the recovery memo as well as personal search memos were signed by the said Rameshwar Das. Besides, no cross-examination was carried out on this aspect.

14. Upon a careful analysis of the testimonies as well as the material placed on record, this Court is of the considered opinion that the allegations against the appellant under Section 397 IPC are conclusively proved. Consequently, the appeal fails and the appellant's conviction under Sections 397 is upheld. His bail bonds are cancelled.

15. The appeal is disposed of in the above terms.

16. A copy of this judgment be communicated to the concerned Trial court alongwith the records as well as to the concerned Jail Superintendent for information.

**MANOJ KUMAR OHRI  
(JUDGE)**

**NOVEMBER 22, 2024/js**