

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

RESERVED ON : 11th MARCH, 2014

DECIDED ON : 2nd APRIL, 2014

+ **CRL.A. 133/2014**

RAHUL JAIN @ SONU Appellant

Through : Ms.Alpana Pandey, Advocate.

Versus

THE STATE (GOVT. OF NCT), DELHI Respondent

Through : Mr.M.N.Dudeja, APP.

**CORAM:
HON'BLE MR. JUSTICE S.P.GARG**

S.P.GARG, J.

1. Challenge in this appeal is to a judgment dated 09.03.2011 of learned Addl. Sessions Judge in Sessions Case No. 1030/09 arising out of FIR No. 336/2008 PS Keshav Puram by which the appellant – Rahul Jain @ Sonu along with his associates Sanjay Yadav and Rattan @ Minto was convicted under Sections 392/397 IPC. By an order on sentence dated 19.03.2011, he was awarded RI for seven years with fine ₹ 5,000/- under Section 392 IPC read with Section 397 IPC.

2. The prosecution case as projected in the charge-sheet was that on 17.12.2008 at about 11.15 P.M. opposite Gali No. 125, Shanti Nagar, near Road No.37, Delhi, the appellant along with his associates Sanjay Yadav and Rattan @ Mintoo robbed complainant – Umesh Chand Vashisht and deprived him of cash ₹ 15,000/-, five or six credit cards, mobile phone make Nokia-6610, two diaries and a bag containing clothes and documents at knife point. First Information Report was lodged on the complainant's statement (Ex.PW-2/A) at Police Post Shanti Nagar, PS Keshav Puram. In the complaint, Umesh Chand Vashisht gave detailed account of the occurrence and disclosed how and under what circumstances, he was robbed of his valuable articles at knife point by two assailants and claimed to identify them. Efforts were made to find out the culprits but in vain. On 19.12.2008, the appellant and his associates were arrested in case FIR No. 312/08 under Sections 392/395/412/34 IPC PS Vikaspuri by Special Staff (West district) and recoveries were effected from their possession. Pursuant to their disclosure statements, robbed articles were recovered. Intimation was given to the Investigating Officer of this case who moved application for holding Test Identification Proceedings. The accused and his associates declined to participate in the Test Identification Proceedings. Statements of the witnesses conversant

with the facts were recorded. After completion of investigation, a charge-sheet was filed against the accused persons; they were duly charged and brought to trial. The prosecution examined ten witnesses to substantiate the charges. In 313 statement, the appellant pleaded false implication and denied his complicity in the crime, claiming that he was lifted from Jaipur Golden Hospital. After appreciating the evidence and considering the rival contentions of the parties, the Trial Court, by the impugned judgment held the appellant and his associates guilty for the offences mentioned previously. Being aggrieved and dissatisfied, the appellant has preferred the appeal. It is unclear if Sanjay Yadav and Rattan @ Minto have challenged the conviction. It appears that they have served the sentence awarded to them.

3. I have heard the learned counsel for the parties and have examined the file. Appellant's counsel urged that the Trial Court did not appreciate the evidence in its true and proper perspective and fell into grave error in relying upon the statement of the complainant without independent corroboration. The delay in lodging the FIR remained unexplained. No information was conveyed to PCR about the incident. Initially, the complainant had stated that there were two assailants. However, subsequently, he changed the version and stated that the

assailants were three in number. The prosecution was unable to establish beyond doubt that the credit cards were used by the appellant or any purchases were made out of it. PW-4 (Mohit) could not explain as to how and under what circumstances, he put his signatures on Ex.PW-4/A to Ex.PW-4/C on 15.02.2009. The photographs of the appellant were taken and shown to the complainant and he was justified to decline to participate in the Test Identification Proceedings. No weapon was recovered from his possession and no injury was caused to the complainant. Addl. Public Prosecutor urged that the judgment of the Trial Court is based upon minute evaluation of the evidence and no interference is called for.

4. The appellant along with his associates was arrested by Special Staff (West district) on 19.12.2008. PW-9 (SI Manoj Kumar) deposed that on the basis of secret information, in case FIR No. 312/08 PS Vikaspuri at about 12.00 (noon), they apprehended Rahul Jain @ Sonu, Rajesh @ Vijay, Rattan, Juned Qureshi and Ravi Kant Rekhi when they were travelling in a robbed i10 car bearing No. DL 3C-ND-6075. Various weapons were recovered from their possession. A dagger was recovered from the left side dub of the accused Rahul. On 20.12.2008 pursuant to the disclosure statements, some credit cards and some smart cards were recovered and taken into possession vide memo Ex.PW-9/H under Section

102 Cr.P.C. The co-accused Rattan recovered clothes purchased by them using the robbed credit cards and were seized vide seizure memo (Ex.PW-9/J). Invoices (Ex.PW-4/A to Ex.PW-4/C) and the receipts of the shopping (Ex.PW-4/D, Ex.PW-4/E, Ex.PW-5/A and Ex.PW-5/B) were collected. Mobile phone was seized by ASI Dharamvir of PS Vikaspuri vide memo mark X1. Intimation was given to PS Keshav Puram on 20.12.2008 when their involvement in said case emerged. Apparently, the police of PS Keshav Puram had nothing to do with the apprehension and recovery effected at the instance of the appellant and his associates. Crucial testimony is that of PW-2 (Umesh Chand Vashisht), the complainant, a Professor, Lucknow University Campus who had visited Delhi to attend a meeting in the Ministry of Human Resources on 17.12.2008. When, after attending the meeting, in the evening, he was going to Deepankar Sharma's residence at Tri Nagar by DTC bus No.816, he got down at Inderlok Metro Bus Stand and walked on foot towards Shanti Nagar. When he crossed the 'nala' and entered gali No.125 at around 11.15 P.M., he was surrounded by three individuals and they caught hold of him. He was shown a pronged knife and was criminally intimidated. He became frightened. The assailants took ₹ 15,000/- in cash, ten credit cards / I-cards, bag, two diaries, mobile phone make Nokia No.

9415521737 and his clothes, sweater, etc. He deposed that he begged the assailants to at least give him the important papers of MHRD and University but they did not agree. They fled the spot. He went to his relative's residence. Thereafter, they reported the matter to the police of Police Post Shanti Nagar where his statement (Ex.PW-2/A) was recorded. He identified appellant to be the assailants who had threatened him with a knife. He also deposed that he was called at Rohini Courts where he participated in the Test Identification Proceedings and identified the case property recovered. He also identified six cards collectively exhibited (Ex.P1 & Ex.P2), mobile phone (Ex.P3), bag (Ex.P4). He was fair enough to state that the clothes produced were not robbed from his possession. It was informed by learned Addl. Public Prosecutor that these articles were purchased by the accused persons using the stolen / robbed credit cards / debit cards. In the cross-examination, the witness fairly admitted that initially he had given the number of the assailants as two. However, on 20.12.2008, he returned to Delhi and informed the police that the number of the assailants was three and he was unable to give the correct number as he was perplexed and under fear. He further admitted that due to fear and being night time, he could not properly see the said boys at the time of incident. He denied the suggestion that at Tagore Garden the accused

persons were shown to him. Despite lengthy and searching cross-examination, no material discrepancy emerged to disbelieve the complainant who had no prior animosity with any of the accused persons to falsely implicate them. This witness had come to attend the meeting in connection with official work and had no acquaintance with any of the accused persons to falsely rope them in this case and recognise the appellant as one of the assailants. He had direct confrontation with the appellant and had reasonable and sufficient opportunity to see him and to observe his broad features. In the statement (Ex.PW-2/A), he had categorically stated that he would be able to identify the assailants. In Court statement, he identified appellant without hesitation as one of the assailants and attributed specific role to him that he was armed with a knife and had threatened him. Adverse inference is to be drawn against the appellant for declining to participate in the Test Identification Proceedings. Nothing has come on record as to on which particular and specific date the appellant was shown and his photographs were taken. Complainant categorically denied if he visited Tagore Garden office. In the statement recorded by the learned Magistrate in Test Identification Proceedings, the plea of the accused was that his photographs were taken. He did not claim that he was shown to the complainant.

5. Recovery of the robbed articles from his possession or at his instance is an additional relevant incriminating circumstance to connect him with the crime. PW-4 (Mohit) identified the appellant as one who with his associates had visited his showroom on 18.12.2008 and had purchased garments of total amount of ₹ 10,695/- vide invoices / bills Ex.PW-4/A to Ex.PW-4/C. The credit card slips are Ex.PW-4/D and Ex.PW-4/E. He further stated that the credit cards were in the name of one Umesh Vashisht i.e. the complainant. Similarly, PW-5 (Vinay) supported the prosecution and stated that on 18.12.2008, three boys had purchased two sweaters, one pair of socks and three pair of shoes through credit card for a total sum of ₹ 14,253/- at his showroom. The credit card was in the name of Umesh Vashisht. He issued bill no. 1919 dated 18.12.2008. The relevant cash memos and merchant copies are Ex.PW-5/A and Ex.PW-5/B. Both these independent witnesses had no ulterior consideration to falsely show purchase of these articles by the appellant and his associates. These purchases were made soon after the occurrence before the complainant could block the credit cards. The police did not expect to plant all these articles of substantial value of their own.

6. Minor contradictions, discrepancies and improvements highlighted by the appellant's counsel do not affect the basic structure of

the prosecution case. The complainant was categorical to identify the appellant as one of the assailants who had robbed him at knife point. Inconsistency in the number of assailants given by the complainant at the first instance was inconsequential. There was no inordinate delay in lodging the First Information Report as the occurrence had taken place at around 11.15 P.M. After the incident, the complainant went to his relative's residence and thereafter approached the police of Police Post Shanti Nagar to lodge the report. The FIR was lodged at 10.45 A.M. next date on 18.12.2008. Since the occurrence had taken place at midnight during winter days and the complainant was deprived of his mobile phone, no adverse inference can be drawn for omission to inform PCR at 100.

7. To attract Section 397 IPC, causing of injury is not a condition precedent. Only 'use' of a deadly weapon is sufficient. Moreover, at the time of his arrest in case FIR No. 312/08, a dagger is alleged to have been recovered from the possession of the appellant. All the relevant contentions of the appellant have been dealt with minutely and dispelled with reasons. The findings are based upon proper appreciation of the evidence and need no interference. The accused did not give plausible explanation to the incriminating circumstance proved against him. He did not produce any evidence to show when and under

what circumstances, he had gone to Jaipur Golden Hospital and when and from where he was lifted by the police. He did not examine any family member / doctor to substantiate his defence. The findings on conviction under Section 392 IPC read with Section 397 IPC are affirmed.

8. Turning to the alternative plea to modify the sentence order, minimum sentence prescribed under Section 397 IPC is seven years which cannot be altered or modified. The sentence order is maintained except that the fine amount will be ₹ 1,000/- and default sentence for its non-payment would be 10 days. Other terms and conditions of the sentence order are left undisturbed.

9. The appeal stands disposed of in the above terms. Trial Court record be sent back immediately.

(S.P.GARG)
JUDGE

APRIL 02, 2014/tr