

IN THE HIGH COURT OF DELHI AT NEW DELHI

Crl.A. No. 67/2001

Judgment pronounced on 17th June, 2009.

Kadir Appellant
Through: Mr. Sumeet Verma, Adv.

Versus

\$ State of Delhi Respondent
Through: Mr. Lovkesh Sawhney, Adv.

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

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| 1. | Whether reporters of local papers may be allowed to see the Judgment ? | Yes |
| 2. | To be referred to the Reporter or not? | Yes |
| 3. | Whether the Judgment should be reported in the Digest? | Yes |

G.S. SISTANI, J.

1. The present appeal is directed against the judgment and order on sentence, both dated 21st December, 2000, passed by the learned Additional Sessions Judge, Delhi in SC No.115/1994, by virtue of which the appellant herein had been sentenced to undergo rigorous imprisonment, under Section 392 IPC for a period of three years with a fine of Rs.1,000/- and in default of payment of fine, to undergo further simple imprisonment for two months.
2. The case of the prosecution, as noticed by the learned Additional Sessions Judge, is that four accused persons, namely, Afzal, Kadir, Rahis and Mehboob, allegedly

robbed the complainant Sunil Gauba of his bag and wrist watch on 14th May, 1992 at about 10:15 pm. A deadly weapon was alleged to have been used by the accused persons in committing the offence of robbery. Accordingly, the accused persons were charged with offences punishable under Section 392 of the IPC as well as Section 397 IPC. In support of its case, prosecution examined fourteen (14) witnesses. No evidence was led by the defence. The principal witness of the prosecution is the complainant, who has deposed that on 14th May, 1992 he was coming from Faridabad to Delhi by bus and he got down at Inter State Bus Terminal (I.S.B.T.) at about 9.00 – 9.15 pm. From I.S.B.T, he took a bus for Silam Pur and got down at the bus stand Silam Pur around 10.15 pm. While he was walking via jhuggis towards the railway line, and as he was crossing the railway line, 2-3 boys came in front of him. One of the boys caught hold of his collar and made him sit whereas another boy snatched his bag containing Rs.3750/-, visiting cards, spectacles and some bills. The third person put a knife on his neck. His wrist watch HMT make was also snatched from him. He pointed out towards the appellant as the person who snatched his bag. He also identified accused Mehboob as the one who caught his neck. The complainant then corrected himself and

deposed that appellant, Kadir had placed knife on his neck and also snatched the bag while accused Rahis had caught hold of him. Thereafter, all the four escaped. The complainant after being robbed off his belongings, went to the police station, Gandhi Nagar and lodged a report which is Ex.PW-7/A. On the next day, he along with I.O. and 2-3 constables went to the railway lines where the incident had taken place and at his instance accused Afzal was apprehended. On 16th May, 1992 appellant Kadir was arrested while he was carrying the bag of the complainant which was snatched at the time of the robbery. The bag was seized by the police which contained visiting cards and some bills but the money was not there. After 4-5 months, accused Mehboob and Rahis were arrested. The complainant identified his bag as Ex.P1 and the spectacles as Ex.P3, several visiting cards collectively as Ex.P-10.

- 3.** Post trial, all the accused persons except Kadir were acquitted of all the charges. Kadir though acquitted of the charge under section 397 IPC, was convicted of having committed an offence under section 392 IPC.
- 4.** Learned counsel for the appellant, Kadir, submitted that the appellant has been convicted solely on the basis of the statement of the complainant while, admittedly, the incident took place at about 10.15 pm and there was not

enough light for the complainant to have identified the appellant. It is further submitted that there were no public witnesses at the time of arrest of the appellant and it is highly improbable that two days after the incident the appellant would be carrying the snatched bag which allegedly is sought to have been recovered from him. Even otherwise, besides the bag, no recovery of money has been made from the appellant and the appellant has been falsely implicated in the matter.

5. Counsel for the appellant further submitted that all the other co-accused persons have been acquitted on the ground that it was difficult to lend credence to the identification with regard to other accused persons. Counsel submitted that the learned Additional Sessions Judge has observed that no test identification parade has been held. Accused Mehboob was acquitted on the ground that he was arrested after five months from the date of the incident and the incident took place in an area which was not very well lit. The learned trial court has observed that "the light at the place was coming either from the jhuggis or from the street lights which was not very close to the spot. Further, the occurrence, described in the evidence, must not have taken more than a few minutes". It is also observed by the learned trial court that nothing was recovered from Mehboob. Counsel for

the appellant also submitted that the evidence of the appellant is highly unreliable as all the co-accused persons have been acquitted for the offence under Section 397 IPC. No weapon, alleged to have been used, has been recovered and further the complainant has given two diagrammatically opposite versions of the offence. On the one hand, it has been stated that he did not chase the culprits as he was afraid of being stabbed and on the other hand he has stated that he chased one of the accused persons for nearly 20 minutes, which would show that in case culprits had used any knife, the complainant would not have the courage to chase them.

6. Mr.Sumeet Verma, learned counsel for the appellant, however submitted that at this stage, he would confine his arguments to the question of quantum of sentence only. He submitted that the sentence already undergone by the appellant would suffice for the reason that the case relates to the year 1992. The appellant has undergone the ordeal of trial for nearly 17 years and presently he has been on bail. There has been no complaint whatsoever about his having belied the trust reposed upon him by this court by granting him bail. Even at the time of awarding sentence, the appellant had pleaded that he is married and has three children and for

the last eight years he has not committed any other criminal offence.

- 7.** Learned counsel for the State, however, submitted that the case against the appellant has been proved beyond any shadow of doubt and the judgment and the order of conviction should be upheld.
- 8.** I have heard learned counsel for the parties and gone through the material on record carefully.
- 9.** The incident in the present case occurred on 14th May, 1992. The trial court has acquitted three out of the four accused persons. Appellant, Kadir was also acquitted under section 397 IPC but was found guilty under section 392 IPC. Admittedly, at the time when the order of sentence was made, it was noticed by the learned Additional Sessions Judge that the appellant is married and has three children who are dependant on him. As per the nominal roll of the appellant, his conduct in jail was found to be satisfactory. The appellant has been on bail and there is nothing on record to show that he had any previous criminal history or barring the incident in question he has committed any other offence. The order of sentence was passed in the year 2000 and almost nine (9) years have elapsed. As of now, the appellant has assimilated in the mainstream society as a useful citizen. Today, in case the appellant is asked to serve the

remaining portion of his sentence and put with hardened criminals, no purpose would be achieved. Besides, to meet the ends of justice, I do not consider it appropriate requiring the appellant to undergo the remaining period of sentence after facing the ordeal of trial for over seventeen years. Not only would the appellant suffer, but his children and family will also undergo agony and misery. It has been beautifully enunciated by the Apex Court in the case of **State of Punjab Vs. Prem Sagar & Ors.** reported at (2008) 7 SCC 550, that in operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. By deft modulation, sentencing process be stern where it should and tempering with mercy where it warrants to be. Accordingly, I upheld the order of conviction dated 21.12.2000, passed by the learned Additional Sessions Judge, Delhi in SC No.115/1994, but modify the order of sentence to already undergone by the appellant.

- 10.** Appeal stands disposed of. Bail bond and the surety stand discharged.

**(G.S. SISTANI)
JUDGE**

**17th June, 2008
sjs**