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

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Reserved on: 25th January, 2022

Decided on: 29th April, 2022

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CRL.A. 739/2018

MAINUDEEN

.... Appellant

Represented by: Ms. Mallika Parmar,
Advocate.

versus

STATE

..... Respondent

Represented by: Mr. G.M. Farooqui, APP for
the State with SI Sunil, PS
Mahendra Park.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By this appeal, the appellant challenges the impugned judgment dated 23rd February, 2018 convicting the appellant for offences punishable under Sections 392 read with 397 IPC and Section 25 of the Arms Act and the order on sentence dated 28th February, 2018 whereby he was directed to undergo rigorous imprisonment for a period of 7 years and a fine of ₹2000/- in default whereof to undergo simple imprisonment for 3 months for offences punishable under Section 392 read with Section 397 IPC and rigorous imprisonment for a period of 1 year and a fine of ₹1000/- in default whereof to undergo simple imprisonment for 1 month for offence punishable under Section 25(1B)(b) Arms Act.

2. Assailing the impugned judgment, learned counsel for the appellant states that there are material discrepancies in the statements of the victim. In her deposition she neither gave the date of incident and even the time of incident was also incorrect. Though the victim stated that her statement was

recorded at the Police Station, however the Police Officer stated that her statement was recorded at the spot and then the rukka was sent. No document showing the ownership of the chain was exhibited by the prosecution. Further, the original chain was also not produced in the Court as the complainant stated that she had taken loan after pledging the same. There was no identification mark on the same and since it was an ordinary chain, complainant could not have identified that the same belonged to her. Even the photograph produced in the Court does not show that the same chain was broken and hence the allegation that the chain was snatched by breaking is falsified. Despite number of people being present at the spot, no public witness was joined with the investigation. No finding has been returned by the learned Trial Court that the weapon of offence was a deadly weapon. In her deposition the complainant stated that the knife was not visible and hence offence under Section 397 IPC is not made out. Even if an offence under Section 392 IPC is made out, the appellant having undergone nearly 6 years imprisonment including remissions, thus he be released on the period already undergone.

3. Countering the arguments of learned counsel for the appellant, learned APP for the State submits that the complainant clearly stated that the appellant put the knife on her neck by one hand and by the other he snatched the chain. There were marks of injuries on her neck. Further, the appellant was apprehended at the spot few meters away from the incident of snatching by the Police Officers who were on patrolling duty. Hence appellant cannot claim that the chain recovered does not belong to the complainant because no documents of the ownership have been produced nor any identification mark of the same has been given. The knife was also recovered on the spot

from the appellant which is a deadly weapon in view of the total length of knife being 24 cms with pointed edges. Further, from the photographs of the chain it is found that it has broken at one point which supports the version of the complainant. The sentence of imprisonment for a period of 7 years being the minimum prescribed under Section 397 IPC, no case for reduction of the sentence is made out. Further, as per the nominal roll, the appellant is involved in similar other cases. The appellant's antecedents not being clean, he is not entitled to any leniency.

4. FIR No. 167/2016 was registered under Section 392/397/411 IPC and Section 25/27 Arms Act at PS Jahangirpuri on the complaint of Vaijayanti Mala who stated that she was residing as a tenant and on 16th March, 2016 she went to A-1 market, Jahangirpuri from her house at Sant Nagar, Burari. While she was going to the shop of Yes Painters, at about 2.45 PM, she reached the main road, A Block, Jahangirpuri near market when one boy came from behind and stood in front of her. He kept an open knife which was in his hand on her neck and from the other hand he snatched the gold chain worn by her by breaking it and ran towards the main door. She shouted '*pakdo pakdo*' '*chor chor*'. On hearing her noise, the Police Officers who were passing from the said place ran after the boy and at a distance of 60 feet they apprehended him with an open knife in his right hand and her golden chain pressed in the mouth, which were both taken from him. The boy revealed his name as Mainuddin. She further stated that the measurement of the chain was taken and thereafter it was seized and sealed and kept in a match box covered with a white cloth. Sketch of the knife measuring 24 cms was also prepared.

5. Before the Court, the complainant who deposed as PW-3 reiterated

the same version, however stated that it was the month of March-April, 2016 and she did not remember the date. As regards the time instead of 2.45 PM she stated it was at about 12.00 PM. Rest of the depositions of the complainant was in line with her statement on the basis of which FIR was registered. The deposition of this witness was recorded on 8th January, 2018 i.e. after nearly 2 years of the incident and in the examination by the learned APP she admitted that the incident took place on 16th March, 2016 and she forgot the date due to lapse of time. In her cross-examination, she clarified that the chain was snatched when she alighted from the rickshaw and the Police did not enquire from the rickshaw-wala as he had already left. She further stated that when she raised the alarm, two persons were there who tried to catch the accused, however as he showed the knife they stopped and in the meanwhile Police Officer came and caught the appellant. She clarified that the said persons were at a distance of 3 - 4 yards only and were taking food from a street cart. Though she did not exactly tell the distance where the accused was caught but she stated that the accused was apprehended near the liquor shop. The site plan clearly shows that the appellant was apprehended a few paces away from the place of incident. Further, the gold chain was released on superdari to the complainant vide Ex.PW-3/C and before releasing the gold chain from the malkhana, photographs were taken which were exhibited as Ex.PW-3/D1 to PW-3/D6 and from the photographs of the chain it is clear that it had broken from one point. The knife seized from the appellant was a buttondar knife and as noted in the testimony of Vaijayanti Mala, the appellant put the knife on her neck with one hand and from the other snatched the chain.

6. The plea taken by the appellant that the offence punishable under

Section 397 IPC was not made out as the knife was not visible to the complainant, as also to the two boys who tried to catch the appellant, deserves to be rejected. The complainant clearly stated that when she got down from the rickshaw on the main road near A-Block market, Jahangirpuri, one boy came and pulled her gold chain from her neck on the point of buttondar knife and she sustained minor scratches on her neck. In her cross-examination, she clarified that she had knife scar marks on her neck which corroborates her version. As regards her stating that when the appellant showed the knife to the two boys who tried to apprehend the appellant, she was at a distance 4-5 meters and the knife was not visible to her, would not thereby belie that the knife was used for the reason, knife was clearly used in the commission of offence by putting the same on the neck of the complainant who even suffered scar marks due to the same. The knife having been shown to the complainant at the time of commission of offence, ingredients of offence punishable under Section 397 IPC are clearly made out.

7. Version of the complainant was duly supported by HC Rajender Singh/PW-2 who stated that he along with HC Rameshwar Rana, Constable Kuldeep and IO Dalbir Singh were on patrolling duty, at about 2.45 PM when they reached the main road, Jahangirpuri they heard an alarm from a woman and on hearing the alarm, they chased the appellant and apprehended him. From the right hand of the appellant a buttondar knife and a gold chain tucked in his mouth were recovered. He stated that the investigating officer requested 5-6 passerby to join the investigation but none agreed.

8. In her cross-examination Vaijayanti Mala further denied that the site plan was prepared while sitting in the Police Station. She also denied that

she had not read all the documents before signing and had read 1 or 2 pages and these documents were signed by her in Police Station. Thus, though the documents were prepared at the spot, she signed the same at the Police Station. Version of the complainant is further corroborated by the deposition of Constable Kuldeep/PW-4 as also SI Dalbir Singh who all had witnessed the incident and caught the appellant immediately after the incident near to the place of incident. No specific explanation was rendered by the appellant in his statement under Section 313 Cr.P.C. and he only stated that he was innocent, falsely implicated and nothing was recovered either from his possession or at his instance and that he was forced to sign certain blank papers at Police Station. The appellant did not lead any defence evidence.

9. Considering the evidence on record and that the same satisfy the ingredients for offences punishable under Sections 392 and 397 IPC as also Section 25(1B)(b) of the Arms Act, this Court finds no ground to interfere in the impugned judgment of conviction and the order on sentence.

10. Appeal is accordingly dismissed.

11. Copy of the judgement be sent to the Superintendent Jail for updating the records.

12. Judgment be uploaded on the website of this Court.

CRL.M.B. 1519/2021

Disposed of as infructuous.

**(MUKTA GUPTA)
JUDGE**

APRIL 29, 2022
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