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ASLAM @ DEEWAN

v.

STATE OF RAJASTHAN

(Criminal Appeal No. 1531 of 2008)

SEPTEMBER 25, 2008

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[DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM SHARMA, JJ.]

Penal Code, 1860 – s. 394 – Voluntarily causing hurt in C *committing robbery – Accused looted a person by inflicting grievous injury – Conviction u/s 394 with 10 years RI by courts below – Interference with – Held: Test identification parade was held – Injured victim identified accused during investigation in presence of Magistrate – Victim identified the articles* D *recovered – Thus, order of courts below does not call for interference.*

According to the prosecution case, on the fateful day, some miscreants looted PW-11 by inflicting grievous blow on his head with iron rod. They snatched the bag and ran E **away. FIR was lodged. Appellant and accused W were arrested. On basis of the information by accused W, articles looted and also the weapon used were recovered. PW 11-injured witness as also other witnesses were examined. Trial court on basis of the evidence on record** F **held the appellant and accused W guilty and convicted them u/s 394 IPC and imposed rigorous imprisonment for 10 years. High Court upheld the order. Hence, the present appeal.**

Dismissing the appeal, the Court

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HELD: 1.1 In the instant case, test identification parade was held. The identification proceeding was conducted by PW-21-Judicial Magistrate. The accused persons were identified during investigation by PW-11-in-

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jured witness in the presence of PW-21. PW-11 identified the articles which were recovered in the presence of the Magistrate. The identification proceedings reports are Ex. P-13 and P-14. The stand that PW-11 may have got opportunity to see the accused persons earlier was found to be without any substance by both the trial court and the High Court. [Paras 8 and 9] [1014,A-C]

1.2 The appellant's case that he has already suffered custody for a considerable length of time is of no consequence. Trial court also noted that both the accused persons are habitual offenders and appeals involving similar offences were pending before the High Court. Since minimum sentence of 10 years has been awarded, there is no reason to interfere with the appeal. [Paras 10 and 11] [1014,D-E]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1531 of 2008

From the Judgment and Order dated 2.3.2007 of the High Court of Judicature for Rajasthan, Bench at Jaipur in S.B. Crl. Jail Appeal No. 1233 of 2004

Chityanya Siddarth (A.C.) and P. Purnima for the Appellant.

Milind Kumar and Aruneshwar Gupta for the Respondent.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the judgment of a learned Single Judge of the Rajasthan High Court, Jaipur Bench. Two appeals, one filed by the present appellant and the other by Wasim @ Raju were directed against the common judgment and order of learned Special Judge, Fake Currency Cases, Jaipur City, Jaipur. The accused persons were found guilty and were convicted for offence punishable under Section 394 of the Indian Penal Code, 1860 (in short 'IPC'), and sentenced to undergo RI for 10 years.

3. The background facts in a nutshell are as follows:

A written report (Exhibit P-1) was lodged by Jagdish Soni (PW-1), at Police Station Manak Chowk, Badi Chopad, Jaipur, wherein it was mentioned that on 24.4.2002 at about 8.30 to 8.45 p.m. his brother-in-law - Shri Nand Kishore S/o Shri Rameshwar Das, was looted by some miscreants in between Partanion-Ka-Rasta and Gali Mahadev, who inflicted grievous blow on his head by iron rod and snatched his bag and ran away. Shri Nand Kishore was got admitted in the Bangar Hospital.

On the basis of the above report, the police registered a chalked FIR (Exhibit P-2) under Section 392 IPC. During investigation of the case, accused Waseem @ Raju S/o Qadir was arrested by the police on 2.5.2002 at Kadkad-duma Court premise, Delhi, at about 3.00 p.m., vide arrest-memo (Exhibit P-27) and accused-appellant Aslam @ Deewan S/o Shamshu Khan was arrested vide Exhibit P-25 on 11.5.2002 in the house of Sheokat Bhai, near Bilala Masjit, Delhi. Accused Waseem gave an information vide Exhibit P-21, under Section 27 of the Indian Evidence Act, 1872 (in short 'Evidence Act') about the place of incident; he gave another information vide Exhibit P-22 in respect of shop from where he took one cycle on rent for the said incident, and the bag, which was looted on the date of the incident, and told that these articles lying at House No.C-48, Shahid Nagar, Gali No.3, Police Station Sahibabad (UP). He gave the third information under Section 27 of the Evidence Act vide Exhibit P-23 about Rs.10,000/- which were given to Bharat Properties, Loaini Road, to purchase a plot. In pursuance of the aforesaid information, a sum of Rs.10,000/- was recovered vide recovery – memo Exhibit P-24 in presence of witnesses Sajid and Manzoor Hasan. The other recoveries were also made in pursuance of the information given by the accused. The iron rod which was used for inflicting injury on the person of injured Nand Kishore was seized vide seizure-memo Exhibit P-12 on 15.5.2002. The handbag and other gold items were recovered as per the information of the accused persons vide

Exhibit P-18. The other informations were also given by the accused persons under Section 27 of the Evidence Act and recovery was effected at their instance and information given in writing by them voluntarily. A

4. Since the accused persons pleaded innocence, trial was held. 21 witnesses were examined to further the prosecution case. Nand Kishore (PW-11) was the injured witness. The trial Court considering the evidence on record found the accused persons guilty. Thereafter appellants, as noted above, filed appeals. Before the High Court the primary stand was that the evidence of PW-11 was not sufficient to fasten the guilt on the accused. The High Court did not find any substance and dismissed the appeal. B C

5. In support of the appeal, it was submitted that the evidence adduced by the prosecution was not sufficient to fasten the guilt on the appellant for offence punishable under Section 394 IPC. D

6. Learned counsel for the State, on the other hand, supported the judgment.

7. Section 394 describes punishment for voluntary causing hurt in committing or attempting to commit robbery. The offence under this section is more serious offence than one under Section 392. Section 394 postulates and contemplates the causing of harm during commission of robbery or in attempting to commit robbery when such causing of hurt is hardly necessary to facilitate the commission of robbery. Section 394 applies to cases where during the course of robbery voluntary hurt is caused. Section 394 classifies two distinct class of persons. Firstly, those who actually cause hurt and secondly those who do not actually cause hurt but are "jointly concerned" in the commission of offence of robbery. The second class of persons may not be concerned in the causing of hurt, but they become liable independently of the knowledge of its likelihood or a reasonable belief in its probability. E F G H

A 8. In the instant case test identification parade was held. The accused persons were identified during investigation by the injured Nand Kishore Soni (PW-11) in the presence of A.C.J.M, Mukesh Jat (PW-21). PW-11 identified the articles which were recovered in the presence of the Magistrate Arti
B Bhardwaj (PW-20). The identification proceedings reports are Ex. P-13 and P-14.

9. As noted above, the identification proceeding was conducted by Mukesh Jat, the Judicial Magistrate (PW-21). The stand that PW-11 may have got opportunity to see the accused
C persons earlier was found to be without any substance by both the Trial Court and the High Court. The identification of the articles was done in the identification proceedings carried out by Arti Bhardwaj, Judicial Magistrate (PW-20).

D 10. So far as the sentence is concerned, the minimum is ten years. Therefore, there is no question of reducing the sentence, though the appellant's stand was that the appellant has already suffered custody for a considerable length of time. Same is of no consequence. The Trial Court has also noted that both the accused persons are habitual offenders and appeals in-
E volving similar offences were pending before the High Court.

11. Since in the instant case minimum sentence has been awarded, we find no reason to interfere with the appeal.

12. The appeal is dismissed.

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N.J. Appeal dismissed.