

**Firoz and Another Vs. the State**

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**Court :** Delhi

**Decided On :** May-22-2014

**Judge :** S. P. Garg

**Appellant :** Firoz and Another

**Respondent :** The State

**Judgement :**

\* IN THE HIGH COURT OF DELHI AT NEW DELHI RESERVED ON :

19. h MAY, 2014 DECIDED ON :

22. d MAY, 2014 + CRL.A. 512/2011 FIROZ AND ANOTHER Through : .....  
Appellants Mr.Sunil Tiwari, Advocate. Versus THE STATE ..... 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 conviction recorded by a judgment dated 19.02.2011 of learned Addl. Sessions Judge in Sessions Case No.63/2008 arising out of FIR No.93/2008 PS New Usmanpur under Sections 392/394/397/34 IPC. By an order dated 17.03.2011, the appellants were awarded various prison terms with fine.

2. Allegations against the appellants as projected in the charge- sheet were that on the night intervening 18/19.04.2008 at about 12.30 A.M. at 2nd pushta, Khajuri,

they with their associate Robin (facing trial before Juvenile Board) robbed complainant - Narender Singh Rawat of `380/- at knife point and inflicted injuries to him. Police machinery was set in motion when incident was reported and Daily Diary (DD) No.44B was recorded at 03.45 (night) at Police Station New Usmanpur. The appellants were apprehended at the pointing out of the complainant and the robbed articles were recovered from their possession. Statements of the witnesses conversant with the facts were recorded. After completion of investigation, a charge-sheet was submitted against the appellants; they were duly charged and brought to trial. To prove its case, the prosecution examined nine witnesses. In 313 statements, the appellants denied their complicity in the crime and pleaded false implication. The trial resulted in their conviction as aforesaid. Being aggrieved and dissatisfied, they have preferred the appeal.

3. Appellants counsel urged that the Trial Court did not appreciate the evidence properly and ignored the discrepancies in the prosecution case without any valid reasons. The Investigating Officer did not move any application for conducting Test Identification Proceedings. The appellants were shown to the complainant in the police station. No independent public witness was associated at any stage of investigation. Learned Addl. Public Prosecutor urged that the complainant has fully supported the prosecution case and despite searching cross-examination, his testimony could not be shattered.

4. The crucial testimony is that of the complainant - Narender Singh Rawat at whose instance the appellants were apprehended soon after the incident. The occurrence took place at around 12.30 (night) and the incident was reported to the police at 03.45 (night) when DD No.44B (Mark P-9/A) was recorded. The victim was medically examined vide MLC (Ex.PW-6/A) at Guru Teg Bahadur Hospital. Nature of injuries was opined as simple caused by sharp object. In his statement (Ex.PW-1/A) which formed the basis of First Information Report, the complainant gave detailed account as to how and under what circumstances, three assailants robbed him of ` 380/- when he was returning to his house from the hospital at 12.30 (night) and was also inflicted injuries by a knife. While appearing as PW-1, the complainant fully supported the prosecution and proved the version given to the police at the first instance without any variation. He identified the appellants

and attributed specific role to them in committing robbery. He also deposed that both the appellants were apprehended and the robbed cash ` 380/- and an ustra was recovered from Firoz @ Sameers possession. Suraj was also found in possession of a knife. He identified the kurta (Ex.P1) which he was wearing on the day of incident and was seized by the police having blood stains. He also identified ustra (Ex.P2) and knife (Ex.P3) used in the crime. Despite lengthy cross-examination, no material discrepancies could be extracted to disbelieve him. He disclosed that he was alone on the bicycle at the time of incident. There were not too many public persons present at the place of occurrence. The incident was over in 2 or 3 minutes. Nothing was suggested to him as to when and where the appellants were shown in the police station. Prosecution case from the very inception was that the appellants were arrested at the pointing of the complainant soon after the occurrence. There was no question of the police showing the appellants in the police station. The complainant had no animosity or acquaintance with the appellants prior to the incident to falsely name and implicate them. He was not going to be benefited by falsely attributing precise role to them. The accused persons did not give plausible explanation to incriminating circumstances against them. The complainants statement is in consonance with medical evidence.

5. All the relevant contentions of the appellants have already been considered with reasons in the impugned judgment which needs no intervention. The minimum sentence prescribed under Section 397 IPC cannot be modified or altered.

6. The provisions of Section 397 IPC do not create any new substantive offence as such. Section 397 IPC simply prescribes a minimum sentence for the offence of robbery / dacoity under the aggravating circumstances. It regulates only the substantive sentence which cannot be less than seven years. Apparently, Section 397 IPC does not prescribe imposition of fine. Since the appellants were sentenced to pay fine under Sections 392/394 IPC, imposition of fine under Section 397 IPC is not permissible and is set aside. Sentence order is modified to the extent that default sentence for non-payment of fine ` 10,000/- under Sections 392/394 IPC shall be SI for fifteen days, each.

7. In the light of above discussion, the appeal stands disposed of in the above terms. Trial Court record be sent back immediately with the copy of the order. A copy of the order be sent to the Superintendent jail for information. (S.P.GARG)  
JUDGE MAY22 2014/tr

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