

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

**CRL.A. 234/2002**

Reserved on : 17<sup>th</sup> April 2009

Decision on : 19<sup>th</sup> May 2009

KISHAN PANDIT ..... Appellant  
Through Mr. Manjit Singh Ahluwalia, Advocate

versus

GOVT. OF N.C.T. OF DELHI ..... Respondent  
Through Mr. Pawan K. Bahl, APP

**CRL.A. 326/2002**

ALLAHNOOR ..... Appellant  
Through Mr. K.Z. Khan, Advocate

versus

STATE (NCT OF DELHI) ..... Respondent  
Through Mr. Pawan K. Bahl, APP

**CRL.A. 262/2002**

NARESH KUMAR ..... Appellant  
Through Mr. K.B. Andley, Senior Advocate with  
Mr. M.L. Yadav, Advocates

versus

THE STATE NCT OF DELHI ..... Respondent  
Through Mr. Pawan K. Bahl, APP

**CORAM:**

**HON'BLE DR. JUSTICE S.MURALIDHAR**

1. Whether Reporters of local papers may be  
allowed to see the judgment? No
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

**JUDGMENT**

**19.05.2009**

**S. Muralidhar, J.**

1. These three appeals are directed against the impugned judgment dated 18<sup>th</sup> February 2002, passed by the learned Additional Sessions Judge (ASJ), New Delhi convicting the appellant Kishan Pandit under Section 397 IPC and appellants Allahnoor and Naresh Kumar under Sections 411 IPC. It is also directed against the order dated 18<sup>th</sup> March 2002 passed by the learned ASJ sentencing the appellant Kishan Pandit to rigorous imprisonment (RI) for eight years and to pay a fine of Rs.1,000/- and in default to undergo simple imprisonment (SI) for one month and sentencing the appellants Naresh and Allahanoor under Section 411 IPC to RI for one year and to pay a fine of Rs.1,000/- each and in default of payment of fine to further undergo SI for one month.

2. The present appeals were admitted by this Court by orders dated 1<sup>st</sup>, 8<sup>th</sup> and 19<sup>th</sup> April 2002 respectively. The sentence awarded to the appellants has been suspended during the pendency of the appeals.

3. The case of the prosecution is that on 27<sup>th</sup> July 1989 on receiving the DD entry No.16A, Sub Inspector (SI) Mawasi Lal along with Constable Satpal reached D-50, Defence Colony. The SHO also reached the spot along with the staff. Shanti Parshad who was working as servant in the said premises, gave a statement that at 9.05 p.m. while he was laying the table for the house owner K.L. Chopra, the door bell rang. When he

peeped from the glass of the door he saw a boy standing outside. The boy asked him to open the door as he wanted to get his patient examined. On opening the door Shanti Parshad saw that there were three persons; one was having a revolver and the other two were having a knife each. The person holding the revolver placed it on Shanti Parshad's head and others pointed their knives at him. They then pushed him and went upstairs. One of the boys hit him above the eyebrow of his left eye and they tied him with the rope and put him under the bed and asked for the keys of the almirah. The person holding pistol opened the almirah and took out jewellery and kept it in their pockets. They also cut the telephone wires and told the owner K.L. Chopra that they would be killed if they raised an alarm. They asked for the keys of the car which were handed over by Mrs. K.L. Chopra. The remaining two accused who were having knives with them and were about 5 ft. 3 inches tall and fair complexioned also accompanied the first named person and left the spot in the car of K.L. Chopra.

4. On 9<sup>th</sup> August 1989 information was received that the accused would be visiting D-311 Sarvodaya Enclave. On the basis of this information SHO Raj Laxmi of PS Defence Colony along with her staff, K.L. Chopra and the secret informer reached D-311 Sarvodaya Enclave. They were informed that one of the co-accused had gone inside the house. He was arrested with the help of the police. On enquiry he disclosed his name to

be Kishan Kumar Pandit. On his pointing out accused Veerpal and Raju were arrested from Lodhi Colony. They disclosed that they had looted D-50 Defence Colony by showing knives and revolver and that the case property had been kept with co-accused Allahnoor and Naresh and that they could get it recovered. They also stated that they had hidden the knife and revolver in Lodhi Colony which too they could help in getting recovered.

5. According to the prosecution, Kishan Kumar got recovered one revolver and knife regarding which a separate FIR was lodged. Case property was got registered from the house of Allahanoor and was kept in a sealed *pulanda*. A part of the case property was also recovered from the house of Naresh Kumar which was also kept in a sealed *pulanda* with the seal of MLR. After completion of investigation, the challan was filed in the court and the case was committed to the Court of Sessions. Charges under Section 397 IPC were framed against appellant Kishan Kumar Pandit and the other co-accused Vikram @ Ram Pal, Raju and Gautam. A separate charge under Section 411 IPC was framed against Allahanoor and Naresh.

6. K.L. Chopra from whose house the articles were stolen, was examined as PW1. PW2 was Pushpa Chopra, the wife of K.L. Chopra. The complainant Shanti Parshad working as domestic help at D-50, Defence

Colony was PW3. PW4 was Mohan Lal Sarin who had medically examined PW3 Shanti Parshad. PWs 5 to 10 were police officials involved at the various stages of the investigation. On behalf of the defence, Ms. Sangita Dhingra Sehgal, Chief Metropolitan Magistrate (CMM) was examined as DW1. Sabir Ahmad was DW2. The owner of House No.17, Chirag Delhi Parkash Singh was DW3. DW4 was ASI Kishan Kumar.

7. The trial court held that the accused persons had not been identified by K.L.Chopra or his wife or his servant. The most important piece of evidence was the disclosure statement pursuant to which the recoveries of stolen property had been effected. The trial court held that since the recovery was made soon after the occurrence and no satisfactory explanation was given by the accused persons relating to the possession of the stolen property, the presumption under Section 114 Evidence Act (EA) would get attracted. The presence of the finger prints of Vikram Rampal on the door and steel almirah in the complainant's house was also not explained. It was also held that merely because K.L. Chopra who had accompanied the persons at the time of recovery turned hostile, the recovery could not be doubted. There was nothing to show that the police had any enmity with the accused for falsely implicating them in the case.

8. This Court has heard the submissions of Mr. K.B. Andley, the learned Senior Counsel, Mr. Manjit Singh Ahluwalia and Mr. K.J. Khan, the

learned Advocates appearing for the appellants and Mr. Pawan Bahl, the learned APP appearing for the State.

9. The evidence of PW1 K.L. Chopra is very significant. It was in his house that the robbery took place. In his examination-in-chief, he stated that three young persons climbed the stairs entered the dining room along with the servant Shanti Parshad and asked the witness and his wife to get into the bed room. They demanded and were handed over the keys of almirah and they took away all the jewellery. Soon after the incident, the police was called. Thereafter the witness stated that “a few days later I was told by the police that accused have been arrested and property have been recovered on 6.9.1989. We were asked to go to the court of Ms. Sangita Dhingra Sehgal. In her presence we identified the jewellery and thereafter it was handed over to us on superdari.” He further stated that he had submitted a list of articles as Ex. PW1/A which bore his signature. The witness then stated “I cannot identify the accused persons as interaction was for a period of short span of 25 minutes that also four years (ago). I have brought the jewellery. None of the accused persons in the court made any disclosure statement before me.”

10. At the above stage, the learned APP appearing for the prosecution in the trial court sought permission to cross-examine K.L. Chopra. In this cross-examination K.L. Chopra denied that the disclosure statements by

the accused were made in his presence. He further stated that “I was asked to sign these papers as the IO told me that the recovery of jewellery was effected from these four persons. I do not know Hindi. All the 4 documents bear my signatures.....” He maintained that none of the articles had been recovered in his presence or that any of the accused persons made disclosure statements in his presence or that they had pointed out the place of incident in his presence.

11. PW2 Smt. Pushpa Chopra also stated “I am not in a position to identify those boys.” She categorically stated in her cross-examination by the APP that “my statement was not recorded by the police. It is wrong to suggest that accused persons present in the court are the same persons who committed robbery in our house.” PW3 Shanti Parshad also maintained that he was unable to identify the accused persons present in court. He also denied that his statement was recorded by the police.

12. To this Court, it is apparent therefore that the most crucial piece of evidence regarding the presence of the accused at the place of occurrence has not been proved by the three persons who were definitely present at that time in the house. The incident stated to have taken place at around 9 p.m., it is not the case of the prosecution that the house was not properly lit as a result of which the complainant and the residents of the house could not identify the three persons who had committed the robbery. As

long as the appellants were unable to be identified in court by PWs 1, 2 and 3, the most crucial evidence to link them with the crime in question is missing.

13. The learned trial judge has proceeded essentially on the basis of the recoveries made from the accused. The story of the prosecution is that Kishan Pandit was arrested from the house at D-311, Sarvodaya Enclave on 9<sup>th</sup> August 1989. PW8 Inspector Ashutosh Chatterjee who was posted as SHO of PS Lodhi Colony was called by the SHO (Raj Laxmi) of PS Defence Colony asking him to join the raiding party. It is stated that they raided the house at D-311 Sarvodaya Enclave and arrested appellant Kishan Kumar Pandit and upon his interrogation he made a disclosure statement and got recovered a watch. He led the police to arrest Vikram Ram Pal, Raju and Gautam. Vikram Ram Pal is supposed to have produced a golden chain which was looted from the house of K.L. Chopra. Gautam produced one wrist watch. All the four accused then took the raiding party to the place opposite to 46, Lodhi Estate and got recovered two daggers and a *katta*. On 12<sup>th</sup> August 1989 PW8 again accompanied SHO Raj Laxmi to Chirag Delhi accompanied by accused Vikram and Raju who took them to the house of accused Allahnoor at 21 Chirag Delhi. The accused Vikram pointed out the house of the accused Allahnoor who produced a gold chain, one old chain with pendant, one gold Mohar, one wrist watch with seven diamonds, one pendant with diamond, seven

necklaces of artificial moti, one diamond ring and a host of other articles. Raju then took them to 17 Chirag Delhi was the house of Constable Naresh. Naresh then produced four golden karas, one watch, a pair of tops and other articles.

14. It is significant that in their respective statements under Section 311 CrPC each of the accused denied their involvement and stated that they had been falsely implicated in the case. Accused Kishan Pandit stated that he had been arrested from his house on 3<sup>rd</sup> August 1989. Allahnoor in his statement stated that he was sitting in his shop on 3<sup>rd</sup> August 1989 when he was called to the police station. His signatures were taken on blank papers and nothing was recovered from him. Naresh stated that on 4<sup>th</sup> August 1989 when he was posted in PS Malviya Nagar, the SHO of PS Defence Colony asked the SHO of PS Malviya Nagar that Naresh should be handed over to him for joining investigation. He was subjected to torture and his signatures were obtained on blank papers. He was falsely implicated in the case on 12<sup>th</sup> August 1989. He further pleaded that he never resided at Chirag Delhi and was residing at the barracks of PS Malviya Nagar.

15. It is significant that DW2 Sabir Ahmad stated that on 3<sup>rd</sup> August 1989 the police of PS Lodhi Colony took him to the PS Lodhi Colony where he saw Kishan Pandit in the lock-up. Later his brother Allahnoor was also

brought to the police station. On 4<sup>th</sup> August 1989 some blank papers were got signed from him, he was let off. After his release he used to meet his brother Allahnoor in the police station till 9<sup>th</sup> August 1989 and during this period Kishan Pandit was also in the police station. Thereafter Kishan Pandit with Allahnoor were transferred to PS Defence Colony and the police stated that they would be producing accused persons before the court of Ms. Sangita Dhingra Sehgal on 10<sup>th</sup> August 1989. They were not so produced. Sabir Ahmad then came to the court of Ms. Sangita Dhingra Sehgal on 11<sup>th</sup> August 1989 and his statement was recorded by the learned MM. Ms. Sangita Dhingra Sehgal has herself been examined as DW1 and she affirmed that she recorded the statement of Sabir Ahmad on 11<sup>th</sup> August 1989. The significance of this evidence is that the story of the prosecution that they arrested Kishan Pandit from the house at D-311 Sarvodaya Enclave on 9<sup>th</sup> August 1989 stands completely falsified. If Allahnoor was already present in the police station on 4<sup>th</sup> August 1989, the story that he was arrested on the showing of Vikram and Raju from a house at 21 Chirag Delhi on 12<sup>th</sup> August 1989 also stands completely falsified.

16. The story of the recoveries is also totally demolished by the evidence of DW3 Parkash Singh who is the owner of House No.17, Chirag Delhi. He has stated that the entire premises is in the occupation of Rana Enterprises since August 1988 “and no one has been residing in any

portion of the house at any point of time.” He also denied knowing accused Naresh Kumar and stated “he never resided as tenant in the aforesaid house at any time.” In his cross-examination he denied the suggestion that Naresh Kumar was residing in that house. He also denied that eight stolen articles were recovered from the possession of Naresh Kumar on 12<sup>th</sup> August 1989.

17. It is surprising that the learned trial court has chosen to completely give a go by to the evidence of DWs 2 and 3 which completely demolishes the story of the recoveries of having been effected from the house at Chirag Delhi allegedly at the instance of Naresh. This evidence also demolishes the story of the arrest of accused Allahnoor and Kishan Pandit.

18. In his cross-examination, PW10 Mawasi Lal admitted that he was ill on 12<sup>th</sup> August 1989 and suffering from high fever. He admitted that he was unable to move of his own and that he was unable to come out of the car to go to house of anybody on that date. The story of his accompanying the raiding party therefore gets completely demolished. He speaks of Mawasi Lal accompanying the raiding party during the recoveries. KL Chopra has denied point blank that he accompanied the raiding party for effecting the recoveries.

19. To this Court, it appears that there are too many unexplained

inconsistencies in the above evidence and it would be wholly unsafe to rely upon the above evidence of recoveries to implicate any of the accused. There is considerable doubt not only about their presence at the place of occurrence but about their arrest and the recoveries. The only fact that appears to be not in dispute is that the complainant K.L. Chopra identified the jewellery recovered as being his when it was shown to him at the police station. There is no credible evidence to show that any of the accused in fact handed over the stolen items in the presence of any independent witness. With the prosecution's story being riddled with inconsistencies and contradictions it was unsafe for the trial court to have convicted any of the appellants for the aforementioned offences.

20. Accordingly, the appeals are allowed. The impugned judgment 18<sup>th</sup> February 2002 and orders dated 18<sup>th</sup> March 2002 passed by the learned ASJ convicting and sentencing the appellants respectively are hereby set aside. The appellants shall be set at liberty forthwith. Their bail bonds and the surety bonds will stand discharged.

**S. MURALIDHAR, J.**

**19<sup>th</sup> MAY, 2009**

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