$~R-16, 17, 18 & 19

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

(i) + <u>Crl. Appeal No.454/2002</u>

NASIRUDDIN ..... Appellant

Through: Ms. Sahila Lamba, Advocate *(Amicus Curiae)*

versus

N.C.T. OF DELHI ..... Respondent

Through: Mr. Mukesh Gupta, Additional Public Prosecutor for respondent-State

(ii)+ <u>Crl. Appeal No.488/2002</u>

SHAHID KHAN ..... Appellant

Through: Ms. Sahila Lamba, Advocate *(Amicus Curiae)*

versus

N.C.T. OF DELHI ..... Respondent

Through: Mr. Mukesh Gupta, Additional Public Prosecutor for respondent-State

(iii) + <u>Crl. Appeal No.152/2002</u>

AKHTAR ALI @ BABLOO ..... Appellant

Through: Ms. Sahila Lamba, Advocate *(Amicus Curiae)*

versus

N.C.T. OF DELHI ..... Respondent

Through: Mr. Mukesh Gupta, Additional Public Prosecutor for respondent-State

(iv) + <u>Crl. Appeal No.548/2002</u>

PAWAN ..... Appellant

Through: Ms. Sahila Lamba, Advocate *(Amicus Curiae)*

versus

N.C.T. OF DELHI ..... Respondent

Through: Mr. Mukesh Gupta, Additional Public Prosecutor for respondent-State

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

<u>O R D E R</u>

% 02.04.2014

Above captioned four appeals are directed against impugned judgment of 10th May, 2002 vide which appellant –*Nasiruddin* has been held guilty for offence under Section 412 IPC and appellants – *Shahid Khan, Akhtar Ali & Pawan* have been held guilty for offences under Sections 395/398 of IPC in FIR No. 669/1998, registered at police station Mandir Marg, New Delhi.

Vide impugned order of 13th May, 2002, appellant- *Nasiruddin* has been sentenced to rigorous imprisonment of five years and fine of ₹10,000/- with default clause for offence under Section 412 IPC and

appellants- *Shahid Khan, Akhtar Ali & Pawan* have been sentenced to rigorous imprisonment of ten years and fine of ₹25,000/- each with default clause for offences under Sections 395/398 of IPC.

The facts of this case are noted in detail in the opening paragraph of impugned judgment and needs no reproduction. Suffice it would be to note that the incident in question took place on 8th November, 1998 and on the basis of evidence recorded, the finding returned by trial court in the impugned judgment is as under:-

> *'11. The entire evidence placed on record shows that accused Shahid was involved along with his other associates in the dacoity of this truck. This accused after highjacking truck with the help of his associates had taken away and truck was left abandoned at Loni. Recovery of large quantity of looted articles proves his disclosure that he was involved in this dacoity.*
>
> *13. From the testimony of witnesses, it stands proved that truck No. KAO 1A 4465 which was coming from Banglore, loaded with grocery items like Agarbatties, filter cloth, plastic net, cycle parts, auto parts, aluminum scrap etc. was hijacked by the dacoits at Ridge Road just near Karol Bagh. Along with the dacoits were accused Shahid Khan, Akhtar Ali and Pawan. The driver and cleaner of the truck were forcibly taken-out from the truck and put in a jeep. These persons posed as if they were government officials and stopped the truck to check bilty*

etc. and made allegations against the driver and cleaner that they were taking contrabands. The driver and cleaner were taken in the jeep on different roads in Delhi and ultimately left in a jungle at about 2.30/3 a.m. in night and the truck was later found abandoned in the area of PS Loni.

17. Considering the entire evidence, I consider that all these three accused persons are guilty of offence u/S 395 IPC. Since the accused persons were armed with knife, as has been proved by PW-19 Suresh and they gave threat to both driver and cleaner of the truck of grievous hurt, they are also guilty of offence u/S 398 IPC.

18. Accused Nasiruddin was found in possession of large quantity of stolen articles. He in his confessional statement stated that he had purchased these articles from the godown of Shahid Khan. He also led the police to godown in Yamuna Vihar. This godown belonged to Shahid Khan and Rajrani was its owner. Huge recoveries were made from this godown. Although it has not been proved that Nasiruddin was involved in the dacoity but the recovery of one sack of stolen material from him at Shardhanand Narg and then goods of huge quantity from his godown in Gali Peepal Wali, Shahganj/ Masjid Wali Gali, shows that he was deeply involved with the dacoits in disposing of the looted articles and purchased the looted property at throw-away prices. Accused Nasiruddin is

thus guilty of offence u/S 412 IPC.'

During pendency of these appeals, substantive sentence awarded to appellants was suspended. At the final hearing of these appeals, learned Additional Public Prosecutor for respondent-State was requested to inform appellant's counsel. Mr. M.L.Yadav, Advocate for appellant-*Nasiruddin* and Mr. K.P. Navi, Advocate for appellant-*Shahid Khan* submit that they have no instructions. Learned Additional Public Prosecutor for respondent-State informs that Crl. Appeal No. 152/2003 of appellant- *Akhtar Ali* has been filed by *Amicus Curiae Counsel* through jail and counsel for appellant- *Pawan* in Crl. Appeal No. 548/2002 is not available.

In view of aforesaid, Ms. Sahila Lamba, Delhi High Court Legal Services Committee's Panel Counsel, present in the Court, is appointed as *Amicus Curiae* on behalf of appellants- *Nasiruddin, Shahid Khan, Akhtar Ali & Pawan*.

Both sides submit that these appeals are directed against common impugned judgment, therefore, they can be heard together. Accordingly, these appeals were heard together and are being disposed of by this common order.

With the assistance of learned *Amicus Curiae Counsel* and learned Additional Public Prosecutor for respondent-State, impugned judgment and material on record is perused.

Learned *Amicus Curiae Counsel* submits that as per nominal roll of

appellant- *Nasiruddin*, he has remained behind bars in this case for about eight months and appellant- *Shahid Khan* has remained behind bars for six years and eleven months whereas appellant-*Akhtar Ali* has remained behind bars for more than seven years and appellant- *Pawan* has remained behind bars for five years and four months. Learned *Amicus Curiae Counsel* submitted that so far as appellant- *Nasiruddin* is concerned, even if the prosecution case is taken proved still the offence committed by this appellant would come within the ambit of Section 411 IPC and not under Section 412 IPC. In support of this submission, learned *Amicus Curiae Counsel* placed reliance upon Apex Court's decision in *Sheonath Vs. The State of Uttar Pradesh* 1969 (3) SCC 116. The pertinent observations of Apex Court in *Sheonath (supra)* are as under:-

> *'On the facts of this case it seems to us that the only legitimate presumption to be drawn is that the appellant knew that the goods were stolen but he did not know that they were stolen in a dacoity. The appellants, therefore, can only be convicted under Section 411 I.P.C.'*

Learned *Amicus Curiae Counsel* for appellant- *Nasiruddin* also placed reliance upon the following passage in decision of Rajasthan High Court in *Jamil & ors. Vs. State of Rajasthan through P.P.* 2007 (2) ILR (Raj), which reads as under:-

> *'An accused-person cannot be convicted under Section 412 IPC only on the basis of possession of stolen articles. Section 412 IPC requires that the receiver should know or have*

reason to believe that the property had been transferred to him on account of commission of dacoity. If the prosecution is able to prove mere possession only, the proper section applicable is Section 411 IPC.'

Attention of this Court was also drawn by learned *Amicus Curiae Counsel* to decision of a Coordinate Bench of this Court in Crl. Appeal No. 574/2001, *Khalid Vs. State of N.C.T. of Govt. of Delhi*, rendered on 13th January, 2014 wherein sentence of seven years for offence under Section 395 IPC was reduced to three years. It was pointed out by learned *Amicus Curiae Counsel* that in Crl. Appeal No. 480/2012, *Ashok Vs. State,* rendered on 25th July, 2013 by another Coordinate Bench of this Court, sentence of five years for offence under Section 395 IPC was reduced to the period already undergone, which was a little more than three years.

It is submitted by learned *Amicus Curiae Counsel* for appellants that these four appellants have faced agony of trial and appeal proceedings in this case for more than sixteen years and the sentence awarded is clearly excessive and so, it deserves to be reduced to the period already undergone by the appellants.

Learned Additional Public Prosecutor for respondent-State submits that offence under Section 398 of IPC carries minimum sentence of seven years but there is no such minimum sentence for Section 395 IPC.

Upon hearing both the sides and on perusal of impugned judgment and material on record, I find that the offence committed by appellants-

Shahid Khan, Akhtar Ali & Pawan does not come within the ambit of Section 398 of IPC by any stretch of imagination. However, their conviction under Section 395 IPC is well merited. Accordingly, conviction of appellants- *Shahid Khan, Akhtar Ali & Pawan* under Section 398 IPC is set aside and their sentence under Section 395 IPC is maintained. Offence under Section 395 IPC does not carry any minimum sentence. Therefore, sentence awarded to these appellants is reduced to the period already undergone by them, as they have already served substantial sentence of about seven years. Such a view is being taken in view of the fact that these three appellants have already faced agony of trial and appeal proceedings for last more than sixteen years.

So far as conviction of appellant- *Nasiruddin* is concerned, merely because recovery of robbed articles is from three different places, it would not bring the offence within the ambit of Section 412 of IPC, as it is the necessary ingredient of this offence that a person accused of this offence should have the knowledge or reason to believe that he has received the stolen goods from dacoits. Since necessary ingredient of Section 412 of IPC is lacking in the instant case, therefore, conviction of appellant- *Nasiruddin* is altered from Section 412 IPC to Section 411 of IPC. Offence under Section 411 of IPC does not carry any minimum sentence and is punishable upto a term of three years or fine or both. Appellant- *Nasiruddin* has already remained behind bars in this case for more than eight months and has faced agony of trial and appeal proceedings in this case for more than sixteen years, therefore, the

substantive sentence awarded to appellant – *Nasiruddin* is suspended to the period already undergone by him.

In the facts and circumstances of this case, while maintaining the conviction of appellants- *Shahid Khan, Akhtar Ali & Pawan* for offence under Section 395 of IPC and while altering conviction of appellant- *Nasiruddin* to one under Section 411 IPC, the substantive sentence awarded to these appellants is reduced to the period already undergone by them, which would include the sentence in default of payment of fine imposed upon them.

To the aforesaid extent, the above captioned four appeals are allowed. Ms. Sahila Lamba, learned Amicus Curiae counsel, shall be entitled to the scheduled fee from *Delhi High Court Legal Services Committee* for rendering able assistance in disposal of these appeals.

(SUNIL GAUR)
JUDGE

APRIL 02, 2014
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