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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: September 21, 2010

Date of Order: November 11, 2010

+ Crl. Appeal No.21 of 2004

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Ram Murti

11.11.2010

...Appellant

Versus

State (NCT of Delhi)

...Respondent

Counsels:

Mr. R.K. Tewari for appellant

Mr. Sunil Sharma, APP for State/respondent.

AND

+ Crl. Appeal No.796 of 2003

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Kulwant Singh

...Appellant

Versus

State of Delhi

...Respondent

Counsels:

Mr. Rajiv Thukral for appellant

Mr. Sunil Sharma, APP for State/respondent.

JUSTICE SHIV NARAYAN DHINGRA

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| 1. | Whether reporters of local papers may be allowed to see the judgment? | Yes. |
| 2. | To be referred to the reporter or not? | Yes. |
| 3. | Whether judgment should be reported in Digest? | Yes. |

JUDGMENT

1. These two appeals under Section 374 of Criminal Procedure Code have been preferred by the appellants against a common judgment dated 12th November 2003 and order of sentence dated 15th November 2003 passed by learned Additional Sessions Judge, Delhi whereby the appellants were convicted under Section 392 read with section

34 IPC and sentenced to undergo imprisonment for five years with fine of Rs.1000/-. Appellant Ram Murti was also convicted under Section 411 and was sentenced to undergo imprisonment for a period of one year.

2. Brief facts relevant for the purpose of deciding these appeals are that one Shahana lodged a report with police on 28th August, 1997 that she was a divorcee and was living at house no.6, East Azad Nagar, Delhi with her family. She was a housewife having one daughter. On the day of incident, her sister Shahnaz, who lived in Gali No.15, West Azad Nagar, Delhi, had come with her son Shanu. While they were at the house, at about 10.30 pm a tall boy aged around 20-25 years entered their house since the door of the house was lying open. Behind him, there were three more persons, one of them was a Sikh aged around 30/35 years. One was having beard and was wearing a cap. The Sikh person took out a pistol and threatened that whatever was there in the house should be handed over. They searched the house and took from them one chain with Sai Baba pendent, four bangles, seven rings and Rs.5,000/- cash. While leaving, they also took away one VCP Panasonic, one two in one make Sony, three phone instruments, two watches and one camera make Minolta, two gold bangles of her sister and left at around 12.30 am in the night. Her sister's son Shanu had also seen them at the time of incident.

3. The incident of this robbery had allegedly taken place on 28th August, 1997. It is the case of the prosecution that a call was received about a robbery on wireless at police station Krishna Nagar. The statement by the complainant Shana was also made on the same night. Surprisingly, no FIR was registered on the basis of statement of Shana on 28th August, 1997. The testimony of investigating officer shows that though Shana had made a statement but it was kept pending and no FIR was registered. He has not clarified as to why FIR was not registered on 28th August 1997 itself despite a report was made regarding commission of a heinous offence of robbery to the police. DD No.4A

placed on record and proved as Ex.PW10/A is in respect of a PCR report received at the police station at 2.20 am in the night which shows that the wireless operator had given an information that at Gali No.6, House No.107/64, East Azad Nagar, Delhi, a dacoity had taken place and SI Gagan Deep was sent to the spot. SI Gagandeep is examined as PW-10. He had testified that he received DD No.4A through duty officer and proceeded to house no.107/64, Gali No.6 where the complainant gave him a statement Ex.PW1/A regarding a dacoity. He stated that he kept the statement pending and did not get an FIR registered. This is despite the fact that SHO and ACP had also arrived at the spot and he had narrated all the facts to them. He further submitted that an inquiry was made and it was opined that the incident did take place so an FIR should be registered. Thus on 9th September 1997, he made endorsement on the statement made by the complainant and got an FIR registered. There is no explanation as to what inquiry was made between 28th August, 1997 and 9th September 1997 and why the case was considered worth registering an FIR on 9th September 1997 and not before that. The arrest of accused persons was done in this case in a very strange manner. Inspector Rakesh Dixit PW-9 deposed that on 1st October 1997 he was posted at Special Staff as SI, South District. Krishna Nagar, falls in East District while he was posted in South District and he received a secret information about two persons standing at the bus stand with stolen property which they were trying to sell. So he went to the spot and apprehended the two persons - one was Ram Murty and other was Parvinder Singh and he found that Ram Murty was having two telephone instruments in a polythene bag and Parminder was having one camera make Minolta in the right pocket of his pant and both of them disclosed that these were stolen properties. He apprehended them and got a case registered against them at police station Malviya Nagar. He recorded disclosure statements and learnt from their disclosure that these persons were involved in a dacoity and he informed police of police station Krishna Nagar. Both were asked to undergo TIP but they took a stand that they had been shown to the complainant and they refused to undergo TIP. The third

accused was arrested in this case by PW-7 SI Veer Singh. He also received information from Special Staff, West District about arrest of one person wanted in this dacoity case viz Kulwant Singh, so he moved an application for his production warrants and arrested him in this case also. No recovery was affected from accused Kulwant Singh despite his police remand. TIP was refused by Kulwant Singh also on the ground that he had been shown to the witness. The fourth accused Amardeep was arrested by special staff East District in some other case and he made a disclosure statement about his involvement in this case and he was thereafter arrested by the investigating officer in this case. However, testimony of PW-10 is silent about arrest of accused Amardeep. He stated that the remaining investigation was handed over to SI Veer Singh. However, PW-7 SI Veer Singh has not stated anything about arrest of this fourth accused Amardeep by him and he states that investigation was handed over to him on 24th October 1997.

4. These accused persons were convicted by trial court on the basis of identification by the complainant in the court and on the basis of recovery of telephone instruments and camera from two of the accused persons.

5. It is noteworthy that in this case, the police acted from the day one as if no dacoity had taken place. The police did not register a case of dacoity/ robbery for about 12 days. It is stated that an inquiry was being made. However, the result of that inquiry has not been disclosed as to what inquiry was made from whom it was made and what was the conclusion of this inquiry made between 28th August 1997 and 9th September 1997. The testimony of PW-10 Inspector Gagandeep would show that he had even come to know as to who were the robbers /dacoits but how he came to know is not known. His testimony shows that he started conducting raids after coming to know the identity of dacoits but the accused persons could not be traced. He also came to know one accused in this case was in Punjab but who was this person is not disclosed. He raided some place at Punjab along with HC Gurtej Singh but that person could not be found

there. It is not understood what was the source of information of PW-10 and as to who was the accused person. The complainant had not given name of any of the accused person. The description given by the complainant in her report was a very vague description which could fit in for any tall Sikh person. On the basis of such descriptions as given by complainant, no person could be identified. No sketch was got prepared in this case. No finger prints were lifted from the spot. Still the investigating officer PW-10 came to know as to who were the accused persons and he started conducting raid at place in Punjab.

6. I consider that the whole effort of the IO had been to find a scapegoat and it is the reason that the actual statement made by complainant had not seen the light of the day. If the complainant had made a statement on 28th August, 1997, there was no reason why this statement was not brought on record of the police station in any manner. No FIR was recorded on the basis of statement of complainant. That seems to be the reason that in the statement apart from recording what the complainant told she had been robbed of valuables, three telephone instruments seemed to have been added later on to make the recoveries. A robber who robbed ornaments, cash, wrist watches, would not carry with him telephone instruments in a polythene bag and camera in his pant pocket right from day of robbery, till arrest and would stand at a bus stand so that he could be arrested by the police. What is more surprising is that there is no investigation in this case in respect of disposal of the ornaments allegedly robbed by these accused persons. It can be imagined that the robbers had spent cash of Rs.5000/- but they must have disposed of the ornaments, wrist watches etc they robbed from the house of complainant, if they had actually committed robbery. Since the recovery of no valuable was affected, it can be safely presumed that they were disposed of. The investigating officer had sought remand of each of the accused person for the purpose of interrogation and there is not an iota of evidence if any interrogation was done on this aspect, neither the IO speaks of any interrogation having been done from the accused persons; as to

where they had disposed of the ornaments and other valuables allegedly robbed from the house of complainant.

7. The identification of accused persons by complainant in this case is quite suspicious. It is admitted by the complainant in her cross examination that she had been shown photograph of accused Amardeep Singh before TIP and that is how she was able to identify accused Amardeep Singh. Her sister had also participated in the TIP of Amardeep Singh but she was not able to identify accused Amardeep Singh.

8. Except identification of accused persons in the court and recovery of telephone instruments and camera from one of the accused persons, there is no evidence against the accused persons in this case. The testimony of IO shows that IO had learnt about accused persons perhaps before registration of FIR and before start of investigation in this case and that seems to be the reason that the statement of PW-1 allegedly made on 28th August 1997 was not converted into an FIR for 12 good days and was kept pending. It seems that a robbery did take place at the house of complainant (PW1) but it also appears that implication of accused persons in this robbery seems to have been done by the investigating officer on the basis of his private inquiries and not on the basis of any cogent evidence. I consider that the accused persons/appellants are entitled for benefit of doubt as the case against them was not proved beyond reasonable doubt.

9. I accept these appeals. Both the appellants are acquitted.

November 11, 2010
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SHIV NARAYAN DHINGRA,J