

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

+ **CRIMINAL APPEAL NO. 180 OF 2006**

% **Date of Decision: 12th January, 2010**

PARKASH ...Appellant
! **Through: Mr. Sumeet Verma, Advocate**

versus

\$ **STATE** ...Respondent
^ **Through: Mr. Sanjay Lau, APP**

AND

+ **CRIMINAL APPEAL NO. 154 OF 2007**

RAHUL ...Appellant
! **Through: Mr. Sumeet Verma, Advocate**

versus

\$ **STATE** ...Respondent
^ **Through: Mr. Sanjay Lau, APP**

CORAM:
* **HON'BLE MR. JUSTICE P.K.BHASIN**

1. Whether Reporters of local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the digest?

JUDGMENT

P.K.BHASIN, J(ORAL)

These two appeals arise out of a judgment dated 1st June, 2005 passed by the Additional Sessions Judge whereby the two appellants have been held guilty of the offence of dacoity punishable under Section 397 of The Indian Penal Code and the order dated 2nd June, 2005 whereby both of them were awarded sentence of rigorous imprisonment of seven years and fine of Rs.10,000/- each.

2. The prosecution case is that on 19.8.2004 at about 12 noon the two appellants along with three other persons, who could not be arrested by the police, robbed PW-2 Parmanand and PW-3 Pradeep at their work-place which was in the basement of property C-8/28, Sector-7, Rohini, Delhi. While robbing them one of the appellants had used a pistol and the other one had used a knife. PW-3 had sustained grievous injury also in that incident. Immediately after committing the robbery all the five dacoits had run away from the place of incident. On hearing the shouts of the two victims 'chor-chor', the appellants were apprehended while running away by public persons while other three robbers managed to escape. From the possession of the appellants, the looted cash and some other articles belonging to the above named two victims were recovered at the time of their apprehension. From accused Parkash a knife was also recovered while from accused Rahul one air-pistol was recovered. The two appellants were beaten by the public and when the police reached the spot they were handed over to the police and then were taken to a hospital and got admitted there for treatment. The complainant handed over to the investigating officer the knife and the air-pistol recovered from the two accused-appellants. On the complaint(Ex. PW-2/A) of PW-2 Parmanand, FIR No. 703/2004 was registered under Sections 394/395/397 IPC and Sections 25 and 27 of Arms Act. The air-pistol was sent to CFSL where on being tested the same was found to be in working order and capable of firing 0.22

caliber pellets vide report Ex.PW-10/C. During investigation the other associates of the appellants could not be arrested and so only the two appellants were charge-sheeted.

3. The two appellants were jointly charged by the trial Court under Sections 395/34/397 IPC and were separately also charged under Section 412 IPC. Against accused Rahul a charge under Sections 25/27 of the Arms Act was also framed. The prosecution had sought to establish its case on the basis of evidence of the two victims of the incident and PW-5 Arvinder Singh and PW-8 Avinash Puri who had also chased the robbers when they were running away after robbing PWs 2 and 3. Accused Rahul when examined under Section 313 Cr.P.C. took the plea that he had done the job of white washing in the house and office of Parmanand Aggarwal(PW-2) but his dues had not been cleared and when he was called in the office to settle the accounts he was falsely implicated in this case. Accused Prakash also claimed that he had been falsely implicated and that Parmanand Aggarwal had told Prakash to beat Rahul and to detain him in his office so that police could be called and Rahul could be framed in this case. Both the accused examined their respective fathers as defence witnesses. DW-1 Karan Singh is the father of accused Prakash who had simply deposed that in the year 2004 his son Prakash had come to Delhi(from Bulland Shahar where they were living) before *Raksha Bandhan* and that on 20th August, 2004 he had come to know that Prakash had been apprehended. DW-2

Shri Dal Chand is the father of accused Rahul and he deposed that his son Rahul had white washed the house and office of Parmanand Aggarwal and there was a quarrel between Parmanand Aggarwal and his son on the point of wages. On 19-08-2004 his son was called by Parmanand Aggarwal at his office at Rohini and falsely implicated him in this case.

4. The learned trial Court accepted the evidence of PWs 2,3,5 and 8 and vide judgment dated 1.6.2005 held the appellants guilty for the commission of offence punishable under Section 397 IPC and vide order dated 2nd June, 2005 both of them were sentenced to rigorous imprisonment for seven years and fine of Rs. 10,000/-. In default of payment of fine, the appellants were ordered to undergo further rigorous imprisonment for two years. Feeling aggrieved, both the convicted accused filed separate appeals but since both the appeals arose out of the same judgment of the trial Court, they were heard together and now are being disposed of by this common judgment.

5. Mr. Sumeet Verma, learned counsel for the appellants challenged the findings of the trial Court mainly on the ground that the evidence of all the four material prosecution witnesses referred to above was contradictory on material aspects and so could not be relied upon. That was, however, a half-hearted challenge. The main thrust was to get the order on sentence modified because out of the

total sentence of seven years the appellants had already served substantial part thereof. It was submitted that considering the fact that robbery was of a very small amount the sentence of fine of Rs. 10,000/- was very harsh and more harsh was the period of rigorous imprisonment fixed in case of default of payment of fine because the appellants, who are poor persons, under no circumstances could pay such a huge amount of fine and, thus, because of their poverty they would have to remain in jail for two years even after serving out full period of substantive sentence of imprisonment. Mr. Verma prayed for reducing the amount of fine as well as the period of imprisonment in default of payment of fine.

6. Mr. Sanjay Lau, learned Additional Public Prosecutor, on the other hand, supported the judgment of the trial court and submitted that there is no infirmity whatsoever in the judgment of conviction and even in the order on sentence considering the fact that a serious crime has been committed by the appellants and the trial court has very rightly imposed harsher punishment on them.

7. Although the learned counsel for the appellants did not seriously dispute the appreciation of evidence of the four material prosecution witnesses, referred to already, done by the learned trial Judge, I have also gone through their evidence to satisfy myself about the reliability of their evidence.

8. PW-2 Parmanand is one of the two persons robbed. He has
deposed as under:

“On 19.8.04 I was employed in Vardhman Electricals as Manager and had office at C 8/28 Sect. 7 Rohini in the basement. At about 12 noon I was present in the office and one salesman of office Pradeep was also present. At about 5 boys came downstairs in the basement. Out of those five boys two boys kept standing in the stair and other three came in the office after opening the door. One of those three boys was armed with knife. The second boy had pistol in his hand and the third boy had iron rod in his hand about one foot long. The boy holding knife placed knife on my neck and asked me for the keys of almirah. The boy holding pistol aimed pistol on the chest of Pradeep Yadav and asked him also to hand over the keys of almirah. I told those boys that keys of the safe were with the owner and the boys who were armed with knife and pistol started hurling abuses and started beating us. Both those boys asked their third accomplice to open break the almirah. The boy having iron rod tried to break open almirah but could not succeed. Then the boys holding knife and pistol started beating me and asked me to hand over the money which I had. Then the boy armed with knife took out purse from pocket of my pant. In that purse I had kept copy of driving license, visiting cards of the firm and Rs.3100/-. Then the boy holding pistol took out one driving license and 1500/1600 rupees from pocket of Pradeep.....Then the boy armed with pistol checked drawers of table. There were around Rs.550/- in one drawer and that boy took that money.....Then those three boys threatened us that if we tried to come out and chase them we would be killed. Then all the five boys left closing the main door of the basement. In a few seconds I and Pradeep ran upstairs. After coming out of main door Pradeep fell down but I continued shouting Chor Chor. On the ground floor one Aninash Puri Property Dealer had his office, one Arvinder Singh was also present in the office of Avinash Puri with some more persons. On seeing me shouting and running all those persons came out of the office of Avinash Puri. Many public persons joined them. I with other persons chased those boys but three boys managed to escape but two boys were apprehended by people near Shiva Chowk. Those boys were beaten up by the public and brought to our office. PCR was informed from office of Avinash Puri. PCR Van came and those two persons were handed over to police. Those two boys who were apprehended in Court by police are accused. The two accused present in Court were among the three boys who had entered the office first and accd. (Rahul) was armed with pistol and accd. (Prakash) was armed with knife. My purse with its contents was recovered from accd.(Prakash). The knife and pistol which both accd. Had used at the time of incident was also recovered from them and police took away both accd.

Persons to hospital and I reached PS after about one and a half hour. There my statement was recorded Ex.PW2/A which bears my signatures at point A. The pistol and knife were seized by police vide memos Ex.PW2/B and C which bears my signatures. My purse with its contents were vide memo Ex.PW2/D.....Rs.550/- which were removed from drawer by the accd. was also recovered from accd.(Rahul) and were seized vide memo Ex.PW2/E.....”

9. PW-3 Pradeep Yadav is the other robbed person. He deposited as under:-

“On 19.8.04 I was working as salesman in Vardhman Electricals at its office C 8/28 Sec. 7 Rohini in the basement. Parmanand was manager of the firm. On 19.8.04 I and Parmanand were sitting in the office. At about 12 noon five boys came to the basement out of whom two boys stayed on the staircase and three boys entered in the office. One of these three boys was armed with revolver, the other boy had knife and the third boy was armed with an iron rod. The boy holding knife placed knife on the body of Parmanand and the boy holding revolver aimed it at me and he demanded keys of almirah. Parmanand told these boys that keys of almirah were with owner. Then the boy holding knife tried to open the almirah with knife took out purse from pocket of Parmanand the person armed with pistol took Rs.300 from my pocket along with my driving license. Then the boy armed with rod took Rs.550 which were kept in the drawer.....Then those four boys gave beatings to me and Parmanand and the scuffle the boy armed with pistol hauled me and I fell on the glass door of the office as a result of which glass door broke and I sustained injury on my right foot. Then those boys escaped threatening that if he chase them we would be killed. After two seconds of those boys leaving office I and Parmanand leave the office and tried to chase them raising alarm. Since I was injured I sat down at the end of staircase. One Avinash Puri and some more persons who were sitting in the office of Avinash also came. Parmanand along with Avinash Puri and other persons chased those boys. I can identify those boys if shown to me. I can identify the boy who had entered the office accd. (Rahul) present in court is the boy and the boy who had armed with knife but I do not know their names.....”

10. PW-5 Arvinder Singh has deposited as under:-

“ I am doing the business of property builder and dealer. I had my office near my residence having the same address. On 19.8.04, at about 12 noon I was sitting in the office of

Avinash Puri which was near my office. Suddenly I heard shouts of 'Chor Chor, Pakro Pakro'. By the time I came out of the office, I saw 4-5 boys running towards gate of Pocket C-7, Mr. Avinash Puri was also with me. We chased those 4-5 boys. Many people had collected and we all chased those boys. Both the accused present in the court were apprehended by the public whereas other boys managed to escape.

Both the accused were given beatings by the police. From one accused an air gun was recovered and from another accused one knife was recovered. Today I cannot specify as to what weapon was recovered from who of the accused. So far as I remember, one purse was also recovered from one of the accused. The PCR van also reached there.”

11. PW-8 Avinash Puri deposed as under:

I am a property dealer having my office at the above said address. On 19.5.2004 I was present in my office alongwith one Sardarji Harvinder Singh. On that day at about 12.00 noon in the basement of my office there is a office of Parmanand Aggarwal who deals in plaza cable. We heard the sound of Parmanand Aggarwal ' CHOR-CHOR DAKU-DAKU. I opened the door and found five boys running out from the basement. I saw people running after them. Again said I am an old man, so I did not run. Two of the persons who were running out from the basement. I saw people running after them. Again said I am an old man, so I did not run. Two of the persons who were running were apprehended. Both the persons who were apprehended by the public are the accused present in the Court. Name of those persons were given as Rahul and Parkash, but I cannot identify them by name. From one accused knife was recovered and from the other a pistol like weapon was recovered. I cannot tell which of the weapon was recovered from who of the accused. Some money and a purse was also recovered from the accused persons. But I cannot tell from whom the money was recovered and from whom the purse was recovered. Police had come there and seized those articles.”

12. No material infirmity was found in their evidence by the trial Court and I also do not find any infirmity in the same. All the four witnesses have corroborated each other's version on material aspects of the prosecution case. PWs 3 & 4 who were the victims of the incident had claimed the appellants as being the persons who along with their associates had robbed them. The testimony and the

statement of the two victims could not be demolished in their cross-examination. In cases of robbery or dacoity, if a culprit is arrested at the spot itself, like in the present case, then the evidence of the apprehension of the culprits and their identification by the victims is the best evidence and based on that evidence alone conviction can be ordered. Here the evidence of the two victims of the dacoity, though did not require any corroboration is in any event corroborated also by the recovery of robbed articles from the possession of the accused-appellants as also the knife and the air pistol. Since I am in general agreement with the acceptance of evidence of PWs 2, 3, 5 and 8 done by the learned trial Court I need not re-appraise their evidence in detail in view of the decisions of the Supreme Court in State of Karnataka v. Hemareddy Alias Vemereddy and Anr. reported as AIR 1981 SC 1417 and Girja Nandini Devi and Ors. v. Bijendra Narain Choudhury reported as AIR 1967 SC 1124. The evidence of these witnesses gets further strengthened also from the fact that accused Rahul during his examination under Section 313 Cr.P.C. took a plea that he had done the job of white-washing at the residence of office of PW-2 Parmanand Aggarwal who had got him falsely implicated in this case when the money for the job of white washing was demanded from him. However, no attempt was made by this accused to even probabalise this plea. This stand is clearly an afterthought also because when Parmanand Aggarwal was cross-examined no such suggestion was put to him on behalf of the accused.

13. As per the prosecution case both the accused-appellants were given beatings by the public after they were apprehended and because of those beatings both of them had to be hospitalized. That part of the prosecution case was also not challenged by the two accused – appellants during the cross-examination of PWs 2,3,5 and 8 and even in the cross-examination of the investigating officer PW-10 SI Narender Singh, who had deposed that on coming to know that two injured had been removed to Baba Saheb Ambedkar Hospital by officials of police control room(PCR) he had gone to that hospital where the two accused were found admitted and then they were arrested on 20th August, 2004. Both the accused – appellants in their statement under Section 313 Cr.P.C. had denied the fact that they were admitted in hospital, as had been claimed by the investigating officer. However, to none of the prosecution witnesses a suggestion was put that they were not got admitted in the hospital by the police because of their having been beaten by the public at the time of their apprehension or that they were hospitalized for some other reason. Therefore, the denial by the two accused – appellants of the fact that they were beaten by the public after their apprehension and they were hospitalized because of the injuries sustained by them also lends credence to the evidence given by PWs 2, 3, 5 and 8.

14. As far as the two defence witnesses are concerned, whatever they stated in their evidence has also been noticed and their statements do not in any way help the two accused – appellants.

15. The evidence of PWs 2,3,5 and 8 clearly establishes that the two accused-appellants robbed PWs 2 and 3 and while committing dacoity they had used deadly weapons also which were recovered from them at the time of their apprehension and PW-3 Pradeep had sustained grievous injury also in the incident which is evident from the evidence of PW-1 Dr. Bhupender Kaur and which evidence had remained totally unchallenged. Thus, the accused-appellants have been rightly convicted and Section 397 IPC has also been rightly invoked by the trial Court while sentencing them and awarding the minimum punishment of seven years' imprisonment prescribed under Section 397 IPC.

16. There is no doubt that, as pointed out by the learned counsel for the appellants, that the trial Court has not held appellant Rahul guilty under Arms Act though he was charged for that offence also and appellant Parkash was not even charged under the Arms Act. That, however, appears to be a mistake committed by the concerned trial Judges at different stages of the trial, initially in not charging accused Parkash under the Arms Act and subsequently not holding accused Rahul guilty under the Arms Act even after accepting the prosecution case of recovery of the deadly weapon from his

possession but because of that mistake on the part of the trial Court the appellants cannot avoid the consequences of Section 397 IPC.

17. Therefore, I do not find any merit in any of the two appeals as far as the challenge to the judgment of conviction is concerned. The conviction of both the appellants, as recorded by the trial Court, is affirmed. However, as far as the sentence of fine is concerned, considering all the facts and circumstances of the case the trial Court's order dated 2nd June, 2005 is modified to the extent that the fine to be paid by the two appellants shall be Rs. 1,000/- each and in default of payment they will have to undergo further imprisonment for a period of three months. With the aforesaid modification in the order on sentence only, these appeals are disposed of.

January 12, 2010/pg

P.K.BHASIN, J