

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

+ **CRL.A. 406/2000**

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Reserved on: 13th April, 2012
Decided on: 22nd May, 2012

DEEPAK Appellant

Through: Mr. Tanmaya Mehta, Advocate.

versus

STATE Respondent

Through: Mr. Manoj Ohri, APP for State.

+ **CRL.A. 415/2000**

VIJENDER Appellant

Through: Mr. O.P. Malviya and Ms. Gitanjali
Malviya, Advocates

versus

STATE Respondent

Through: Mr. Manoj Ohri, APP for State.

+ **CRL.A. 511/2000**

WILSON DANIAL Appellant

Through: Mr. Tanmaya Mehta, Advocate.

versus

STATE Respondent

Through: Mr. Manoj Ohri, APP for State.

+ **CRL.A. 282/2001**

RAJU Appellant

Through: Mr. O.P. Malviya and Ms. Gitanjali
Malviya, Advocates.

versus

STATE

..... Respondent

Through: Mr. Manoj Ohri, APP for State.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. The Appellants in the present appeals lay challenge to judgment dated 15th May, 2000 convicting them for offences punishable under Section 395/34 IPC and order on sentence dated 24th May, 2000 whereby they were directed to undergo rigorous imprisonment for 8 years and fine of Rs. 5000/- each and in default of payment of fine to further undergo simple imprisonment for six months.

2. Briefly the prosecution case is that on 21st October, 1995 one Varinder Lal Khanna along with his wife Sanjogita Khanna was coming in his Maruti Van No. DDA 2005 from Railways club to their house and at about 1.30 AM when they reached at Africa Avenue Road near Railways Bridge, Chanakya Puri, New Delhi, three-four people stopped their Van. They stated that one of their colleagues has met with an accident and asked for a lift. When Varinder Lal Khanna and Smt. Sanjogita Khanna told them that they are just going nearby, all of them surrounded them, opened the door of the maruti car and thereafter snatched one gold chain, two gold kadas (Bangles), one pair gold ear ring, one ring, Rs.5000/- in cash, a purse containing Rs. 800/- and ran away from the spot. Out of the accused persons, one of them was having a knife. On the basis of this statement of Varinder Lal Khanna, FIR No. 544/1995 under Section 392/34 IPC was registered at PS Sarojini Nagar. During investigation it was found that 6-7 persons were involved in the

incident, and thus Section 395 IPC was added. S.I. Ranbir Singh investigated the case and searched for the accused persons. On 3rd November, 1995 he received secret information that 3-4 persons, who used to indulge in the dacoity, were sitting in Sanjay Park. He reached Sanjay Park and apprehended them. On enquiry, their names were revealed as Vajinder, Siya Ram, Raju @ Mamraj and Deepak Rawat. During the course of investigation, the aforesaid accused persons made disclosure statements about this offence and that Wilson Danial, Sanjay @ Tilakdhari and Pawan @ Rahul were also involved in the said dacoity case. Thereafter they reached Netaji Nagar in search of other accused persons where mother of accused Wilson Danial namely Smt. Bimla met them. On enquiry, Smt. Bimla Devi told that on 21st October, 1995 six-seven persons on the aforesaid date came to her house at Mayur Vihar, and they gave her a gold chain including some articles. On further investigation Smt. Bimla made disclosure that she had given gold chain at the shop of Mehra Sons Jewellers, South Extension II, New Delhi for repairing. Thereafter, the said gold chain was got recovered and some other articles were also taken into possession from the house of accused Bimla. All the four accused persons refused to join the TIP. Thereafter on 13.12.95, other accused Pawan @ Rahul was arrested in FIR No. 688/95. During the investigation he made disclosure statement with regard to his involvement in the present case. Accused Pawan also refused to join the TIP. On 3rd January, 1995 accused Sanjay @ Tilakdhari was also arrested on secret information who too refused to join the TIP. Accused Wilson Danial was also arrested and he also refused to join the TIP. During interrogation, disclosure statements were recorded and recovery of the articles were got effected at the instance of the accused

persons. After completion of the investigation, charge-sheet under Section 395/34 and 412 IPC was filed in the Court. After recording the statements of prosecution witnesses and statement of accused persons under Section 313 Cr.P.C., learned Trial Court convicted the accused persons as mentioned above. The Petitioners and accused Bimla filed appeals against the conviction and sentenced awarded. However, the appeal of Bimla being CrI.A.337/2000 stood abated as she expired during the pendency of the appeal.

3. Learned counsel for the Appellants contends that the impugned judgment is based upon conjectures and surmises. Learned Trial Court has overlooked the factual matrix of the case and ignored the vital principles of law. Learned Trial Court has failed to appreciate the fact that there are material improvements in the testimony of PW1 & PW2. Furthermore there are contradictions in the testimony of prosecution witnesses. The recoveries of alleged stolen articles from Bimla cannot be relied upon. There is no independent witness to the said recovery also. There is no evidence placed on record to show that the seal after use was deposited in the Malkhana. Thus the recovery is doubtful and cannot be used against the Appellants. Learned counsels further state that there are contradictions in regard to the identification of accused persons. PW-1 has stated that he appeared in Court on two dates for TIP of case property and the second time was after the charge-sheet was filed. However, in his cross-examination he has stated that he was never called in Court to identify any of the accused persons. In his examination-in-chief he has stated that he along with IO was present before the Magistrate and had identified accused Deepak and in month of January,

1996 he identified the remaining 3 accused persons. The statements of accused persons recorded under Section 313 Cr.P.C. are perfunctory in nature as almost a common questionnaire had been prepared for all the Appellants and no specific incriminating questions were put to each accused. In absence of any clear and cogent evidence the impugned judgment of conviction and order on sentence are liable to be set aside.

4. Per contra Learned APP for State contends that there are no contradictions in the testimony of witnesses as contended by the learned counsel for Appellants. PW1 & PW2 have clearly deposed that there were 6 to 7 persons involved in the crime committed. There were some light on the road and the headlights of the Car were on and hence they could clearly see the accused persons and identify them. There are no suggestions put to either PW1 or PW2 that the accused Wilson Danial was shown to them prior to TIP. It is stated that the recovery of articles is also cogently proved in the case. The gold chain, gold karas were duly identified by PW2. Thus, the prosecution has proved its case beyond reasonable doubt against the Appellants. The present appeals have no merit and are liable to be dismissed.

5. I have heard learned counsel for parties and perused the record.

6. PW-1 Varinder Lal Khanna has deposed that on 21st October, 1995 at about 1.30 AM he was coming back from Railway club along with his wife Sanjogita Khanna in Maruti Van No. DDA 2005. When he crossed the Chanakya Cinema and just after the under bridge 3/4 people came in front of the van. He stopped the van. One of those persons told him that one of

them, who was sitting on the side patri, had got hurt and requested him to take the said person to the hospital. PW1 stated that they were going nearby only and they should approach another vehicle. In the mean time the said persons opened the door of the van and put a knife on his neck. In the meantime, some of them snatched the chain of his wife from the other side of the door. In fact they were seven in number, some of them on his side, 1-2 standing in front of van, one towards the left side door and 1-2 standing on left side pavement. They also took the purse of his wife which was containing cash about Rs.5000/-. They also removed gold karas from the hands of his wife along with one gold ring and ear rings. They also took the spectacle case from front pocket of his shirt. PW1 requested them to return his driving license at least but they refused and asked him to go away. PW1 drove to police station Sarojini Nagar, where he reported the case. He identified the accused persons present in the Court as the same persons who had removed their belongings on that night. PW1 pointed out at Deepak Rawat as the person who put knife on his neck. He further stated that he could not scribe specific roles to the other accused persons as it was night but all of them were present there. After about one week or ten days the Investigating Officer told him that they had arrested some persons and asked me to identify a gold chain. He along with his wife went to police station and there they identified the gold chain which belonged to his wife. After few days the Investigating Officer told him that they have to identify the accused persons. Accordingly he along with the Investigating Officer went to Central Jail. The exact date he did not remember. As the accused refused to participate in TIP, therefore, he was not given any opportunity to identify them on that day. After a few days he was told by Investigating Officer that

they had got recovered Karas and asked them to identify said jewellery. Accordingly, he along with his wife went to police station and identified those karas which were removed on the date of incident and which belonged to his wife. Again after a few days he was told by the Investigating Officer that they had apprehended two more accused so he was asked to go to Tihar Jail and identify them. PW1 alone went to Tihar Jail along with Investigating Officer. It was about the end of November 1995. As on that day also accused refused to participate in the TIP therefore he could not get any opportunity to identify them. Thereafter after a few days when he was present with the Investigating officer outside the Court of the Magistrate whose particulars he did not remember, he identified four persons out of which one was Deepak Rawat by telling the Investigating Officer that they were the same persons who took part on the date of incident. Thereafter in the month of January, 1996 he identified the remaining three accused outside the court room of the Magistrate at Patiala house Court. He did not remember the names of those persons and their names were told to him by the Investigating Officer. On his application, the jewellery was returned on superdari, after the same was duly identified by his wife in the identification parade held by the Metropolitan Magistrate. This witness further stated that his purse which was containing about Rs. 800/- was also taken forcibly. The said purse was also containing the driving license.

7. PW-2 Sanjogita Khanna has deposed that on 20th October, 1995 she along with her husband was coming from railway club at about 1.15 AM in their van DDA 2005. When they reached Chanakya Puri area and after crossing the railway under bridge and ascending towards Sarojni Nagar they

saw one person was giving signal to stop the car. Her husband blew horn and tried to pass him by taking the car towards right but the person jumped in front of the car and just touched the bonnet. Her husband stopped the car. That person wanted lift. Her husband told him that they were going just nearby so they should try in some other vehicle. That person further stated that his friend was injured and there was an emergency to remove him to hospital. But her husband again refused upon which he called another person asking him to get knife and sword. There were some more boys who surrounded the van. They could neither take the van forward nor backward. Then one of them opened the right front door of the van. In the meantime somebody pulled her chain from behind after opening the window panes. She could not tell the manner in which they opened the window panes. When she looked back she saw the boy snatching the chain. When she saw towards her right side one of them had put a big knife on the neck of her husband and she became choked. Another boy snatched her gold bangles from both her hands. Thereafter he asked her whether she had something else and he pulled out both ear rings from her ears. When he further asked if she was having something else she handed over one of her rings to him. He also took away her purse lying in the van which was containing approx. Rs. 5000/- to Rs. 6000/-. The house keys were also in her purse. One of them had also removed spectacle case of her husband. They made inquiry from her husband whether he was having anything else and tried to search her husband. She asked her husband to hand over his purse if he has. Those persons took the purse of her husband upon which her husband requested them to give back his driving license on which they told him to better go away otherwise 'Mara jayega'. This witness has identified accused Wilson,

Deepak Rawat, Sanjay @ Tilakdhari. She further stated that accused Wilson removed the chain, accused Deepak Rawat put the knife on the neck of her husband, while the accused Sanjay @ Tilakdhari had removed her Kara, ring and ear rings. Then she along with her husband went to Police Station and got recorded the complaint. Thereafter on 22nd November, 1995 the police people asked her and her husband to identify the accused as they had apprehended some persons. Accordingly, she along with her husband went to Tis Hazari Courts. There they were told that the accused does not want their identification parade. Further she came to Patiala House and identified her jewellery i.e. kara and chain.

8. PW-13 SI Ranbir Singh deposed that on 21st October, 1995 he was posted in PS Sarojini Nagar. After the registration of the case, the investigation of the case was entrusted to him on 22nd October, 1995. He again examined complainant and Smt. Sanjogita Khanna during investigation. They had informed him that in fact 6/7 persons were involved in the incident. He added Section 395 IPC in this case. He searched for the persons involved in the incident. On 3rd November, 1995 he along with H.C. Ram Niwas Const. Gulzar, Const. Chittar and Const. Mohanan started from the police station in connection with the investigation of this case. On that day at about 3.00 PM when they were present near Barat Ghar Laxmi Bai Nagar he received an information that 3-4 persons were sitting in Sanjay Park and they indulged in the looting, extortion, dacoity etc. in the area. He requested 2-3 passersby to join the investigation but they did not join the same and showed their inability. At about 3.10 PM he reached at Sanjay Park and at the instance of the informer apprehended four boys who were

sitting in Sanjay Park. Later, on inquiry he came to know that their names were Vajinder, Siya Ram, Raju @ Mamraj and Deepak Rawat. All the four were arrested by him and their personal search was taken vide memos Ex.PW12/A to 12/D respectively. He interrogated them separately and during the course of interrogation they made disclosure statements Ex.PW12/E to 12/H admitting the incident of this case. Thereafter, all the four accused persons pointed out the place of incident vide memos Ex.12/J, 12/H and 5/A separately. During the course of interrogation the accused persons disclosed that Wilson Danial, Sanjay @ Tilakdhari and Pawan @ Rabyl were also involved in the incident. It is stated that thereafter, he along with the accused persons and police staff went to Netaji Nagar in search of the aforesaid persons. The sister of accused Danial was residing at Netaji Nagar, so they reached there. At her house mother of accused Wilson Danial, Bimla met them. He made enquiries from her but when she did not tell them anything, a lady constable was summoned from the Police Station. In presence of lady head Constable he again interrogated Bimla upon which she told that she was living in Mayur Vihar and on 21st October, 1995, 6/7 persons including the four persons who were in his custody had come to her house at Mayur Vihar. She further told him that they had given her a gold chain including some other articles which she had given for repairing.

9. PW-13 further deposed that on 3rd January, 1996 he was on patrol duty in the area along with constable Dalbir when at about 7.00 PM he received a secret information that Sanjay @ Tilakdhari who was wanted in this case was standing near Cement godown Netaji Nagar. He requested some

passerby to join the investigation but none came forward. Thereafter with the help of Const. Dalbir, he arrested accused Sanjay @ Tilakdhari.

10. PW1 Varinder Lal Khanna and PW2 Sanjogita Khanna have deposed that while coming back from Railway Club to their house near Chankya Cinema accused persons snatched chain, gold karas, ear rings of PW2 and his purse containing Rs. 5,000/- and his driving license. While committing the offence accused Deepak put a knife on the neck of PW1. The discrepancies in the statement of PW1 and PW2 as pointed out by the learned counsel for the Appellants are minor in nature. The contradictions as pointed out are not material.

11. The contention of the learned counsel that the recovery effected from the accused persons is of no use holds no ground as accused Vajinder, Siya Ram, Raju @ Mam Raj and Deepak were arrested on 3rd November, 1995 and on their pointing out, at the instance of Bimla recovery of gold chain was effected from Mehra Sons Jewellers. To prove the recovery of gold chain from Mehra Sons, PW3 Manjit Kaur has been examined who has deposed that accused Bimla came to their shop and had given a broken gold chain for repairing. The repairing memo slip Ex. PW3/A which was issued to the accused on 3rd November, 1995 has been placed on record. Despite lengthy cross-examination, nothing material could be elicited from the testimony of this witness. As regards the recovery of gold karas, which were allegedly pledged with one Ranjit @ Bhule, it is stated that the memo Ex. PW5/A was signed by him which proves that the gold karas were pledged by the accused persons. The case property has been recovered pursuant to the disclosure statements of the Appellants.

12. Learned counsels for the Appellants have strenuously argued that the TIP in the present case has no value as the accused persons were already shown to the witnesses and their photographs were taken. Accused Wilson Daniel was produced in the Court in unmuffled face thus his TIP is also value less. The refusal of the Appellants to take part in the TIP is justified. It may be noted that accused Vajinder, Siya Ram, Raju and Deepak were arrested on 3rd November, 1995 and were produced before PW8 Shri V. K. Bansal, Metropolitan Magistrate for conducting TIP of the accused persons. Learned Metropolitan Magistrate in his testimony has deposed that on 10th November, 1995 accused Vajinder, Siya Ram, Raju and Deepak were produced before him but they refused to take part in the TIP as their photographs had been shown to the witnesses. On 16th December, 1995 accused Pawan Kumar was produced before Shri M.K. Gupta, Metropolitan Magistrate when he refused to participate in the TIP as his photographs were shown to the witnesses. Similarly accused Wilson Daniel and Sanjay @ Tilak Dhari also refused to participate in the TIP proceedings. There is only a bald statement made by the accused persons that their photographs were taken and no suggestion in this regard has been put to any witness nor any witness has been cross-examined on this aspect. PW10 Constable Jalbir Singh has stated that accused Wilson Daniel had surrendered before the Court and from there he was formally arrested. Thereafter SI Ranbir Singh had moved an application for conducting TIP of the accused in which the accused refused to participate. No suggestion has been put to this witness also in regard to the fact that before refusal of TIP, PW1 and PW2 were shown the accused persons. Thus the contention of learned counsel that the TIP in the present case is valueless has no merit.

13. In the present case the arrest, seizure of stolen articles and TIP of accused person have been clearly proved. Learned counsel for Wilson Daniel and Deepak has stressed that there is improvement in the statements of the complainant as in the FIR he stated that 3-4 boys were involved, however in his supplementary statement and the statement of his wife recorded on the next day it is stated that 6/7 boys were present. This is the version of PW1 and PW2 in the Court. FIR is not a complete antithesis of the prosecution case. PW1 has clearly stated that two three boys surrounded the van and two three boys were standing near the patri. The minor contradictions in the testimony of PW1 and PW2 do not go to the root of the prosecution case. PW1 has clearly identified the Appellants as the same persons who had removed their belongings on that night. He further identified the Appellant Deepak Rawat as the person who put a knife on his neck. PW2 has also identified Appellants Wilson Daniel and Deepak Rawat, besides Sanjay @ Tilakdhari. She stated that Wilson Daniel removed her chain, Deepak Rawat put knife on the neck of her husband and Sanjay @ Tilakdhari removed her karas, ring and earrings. Thus, as regards identification of Appellants Wilson Daniel and Deepak are concerned, they are identical by both the prosecution witnesses and specific roles have been ascribed to them. Despite extensive cross-examination nothing material has been elicited from the witnesses. The chain of events in the present case is complete and clearly implicates the Appellants herein.

14. As regards the contention of the learned counsel for the Appellants that the questions put under Section 313 Cr.P.C. are identical and thus likely to cause confusion, it may be noted that under Section 313 Cr.P.C. it is the

duty of the Learned Trial Court to put to the accused the entire evidence. Thus the same circumstances which are incriminating to the accused are required to be put to all.

15. In view of the above, I find no merit in the present appeals. The appeals are accordingly dismissed. Appellants Deepak, Wilson Daniel, Raju are in custody. They will undergo the remaining sentence. Appellant Vajinder is on bail. He be taken into custody for serving the remaining sentence. The bail bonds and the surety bonds of Appellant Vajinder are cancelled. Trial Court record be sent back forthwith.

(MUKTA GUPTA)
JUDGE

MAY 22, 2012
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