

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

RESERVED ON :10th September, 2013

DECIDED ON : 18th September, 2013

+ CRL.A. 190/2002

PREM PRAKASH @ TYAGI @ PREM PRAKASH UPADHYAY

..... Appellant

Through : Mr.M.L.Yadav, Advocate.

VERSUS

STATE OF DELHI

..... Respondent

Through : Mr.Firoz Khan Ghazi, APP.

AND

+ CRL.A. 266/2002

RENU

..... Appellant

Through : Mr.M.L.Yadav, Advocate.

versus

STATE

..... Respondent

Through : Mr.Firoz Khan Ghazi, APP.

CORAM:

MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Dilshad, Mukesh @ Chhotu, Prem Prakash @ Tyagi @ Prem Prakash Upadhyay (A-1) and Devender were arrested in case FIR No.18/1992 under Section 399/402 IPC registered at Police Station

Krishna Nagar on 16.01.1992. FIR Nos.19/1992, 20/1992 and 21/1992 were also registered under Section 25 Arms Act. Pursuant to disclosure statements recorded, their involvement surfaced in FIR No.444/1991 registered at Police Station Vivek Vihar and they were arrested in this case. The said FIR was lodged on 20.12.1991 under Section 395/412 IPC regarding decoity committed at House No.C-100, Vivek Vihar at about 5.45 P.M. on the statement of complainant-Madhu Jain. It is alleged that in pursuance of A-1's disclosure statement, robbed articles i.e. cash and gold jewellery were recovered from the possession of Rajpal Singh, Rajeshwari and Renu (A-2) which they received or retained knowing or having reasons to believe the same to be robbed property. During the course of investigation, statements of the witnesses conversant with the facts were recorded. The assailants did not participate in the Test Identification Proceedings. Complainant Madhu Jain identified cash ₹65,000/-, gold jewellery articles and wrist watch in Test Identification Proceedings. After completion of investigation, a charge-sheet was filed against all of them in the court. A-1, Dilshad, Mukesh @ Chhotu, Devender and Pritpal Singh @ Pehalwan were charged under Section 395 IPC. Rajpal Singh, Rajeshwari and Renu (A-2) were charged under Section 412 IPC. The prosecution examined six witnesses to establish

their guilt. In their 313 statements, the accused persons pleaded false implication. Rajpal claimed that ₹10,000/- recovered from his house in his absence belonged to him. He examined R.N.Gupta (DW-1) in his defence. After considering the rival contentions of the parties and after appreciating the evidence on record, the Trial Court by the impugned judgment dated 12.02.2012 in Sessions Case No.5/1997 acquitted Dilshad @ Salim, Mukesh, Devender and Pritpal Singh of all the charges. Rajpal Singh, A-2 and Rajeshwari Devi were convicted under Section 411 IPC. A-1 was held guilty for committing offence under Section 392/34 IPC. It is relevant to note that Rajpal Singh expired on 15.02.2012. His death was confirmed through SHO and the proceedings were dropped against him as abated. Rajeshwari was released on probation. She has not challenged her conviction. A-1 and A-2 have preferred the appeals.

2. Out of 21 witnesses relied upon by the prosecution, it could examine only six witnesses despite various opportunities granted. PW-1 (Madhu Jain) Complainant/informant, PW-2 (Ansul Jain) and PW-4 (Anuj) her sons did not implicate any of the accused and completely exonerated them in their court statements. None of them was able to identify the assailants. No role was attributed to the accused persons facing trial for committing robbery/decoity. The Test Identification

Proceedings in which the assailants refused to participate were not proved. The Trial Court for detail reasons in the judgment did not find it a case of decoity under Section 395 IPC. PW-3 (Constable Desraj) formal witness proved DD No.17 A regarding the incident. PW-5 (HC Rajendra Singh) and PW-6 (SI Sunil Kumar) were alleged witnesses to the recovery of stolen articles. Adverse inference is to be drawn against the prosecution for not producing and examining relevant witnesses.

3. A-1 was convicted under Section 392 solely on the ground that at his instance robbed articles were recovered from Rajpal, Rajeshwari and Renu (A-2). The prosecution did not examine and produced any cogent evidence that A-1 had participated in the commission of robbery/decoity and was one of the assailants. He was not identified by inmates of the house. No article robbed from the house was found in his possession. The recovery of articles from Rajpal, Rajeshwari and Renu was not effected pursuant to his disclosure statement. A-1 was arrested with others in case FIR No.18/1992. The court did not believe their apprehension on 16.01.1992 and they were acquitted in Sessions Case No.255/1996 by a judgment dated 28.03.1998. The disclosure statements made by the appellant and his associates in the said FIR were not proved. PW-6 recorded disclosure statement (Ex.PW-6/6) of the

appellant A-1 in this case on 16.01.1992. There is no mention that he could recover the stolen cash or jewellery articles from the possession of Rajeshwari, Rajpal or Renu. He merely disclosed the name of head of the gang i.e. Pritpal Singh @ Pahelwan who was the resident of Bebar, U.P. and to whom he could get arrested. He further disclosed that all the ornaments and cash were in his possession. When the police team went to Village Kushalpur, Bebar, U.P, Pritpal Singh @ Pahelwan could not found there. Rajeshwari (mother), Renu (wife) were at village Bebar (U.P.) available in the house. It is alleged that A-2 was wearing a mangal sutra and ring and was identified by A-1 to be the robbed articles. It were seized vide seizure memo (Ex.PW5/3). On A-2's disclosure, Rajeshwari was apprehended and she produced gold bangles, pair of ear tops, a watch and a ring which were seized vide seizure memo (Ex.PW-5/2). A-2 produced ₹10,000/- from Rajpal's room, which were seized vide seizure memo (Ex.PW5/1). Apparently, these articles were not recovered pursuant to A-1's disclosure statement and the recovery effected from A-2 and Rajeshwari cannot be taken as incriminating evidence under Section 27 Evidence Act. No independent public witness was associated at the time of recovery of these articles from the possession of Renu and Rajeshwari. Rajpal was even not present inside the house. He was

charged under Section 411 IPC to be in possession of ₹10,000/- which were handed over from his room to the police by Renu (A-2). PW-5 (HC Rajender Singh) admitted that two sisters and brother of Pritpal Singh were also present in the house. It cannot be said with certainty that Rajeshwari and Renu were in exclusive possession of premises from where the robbed articles recovered. It is unbelievable that A-2 would openly wear mangal sutra and ring even after coming to know about the arrest of the assailants in the case. On the same set of evidence, main accused Pritpal Singh was acquitted of all the charges and was not found guilty for committing robbery of any article allegedly recovered from the possession of Rajeshari and Renu (A-2). The prosecution version cannot be taken on its face value. Even the local police was not joined in the investigation. The prosecution could not prove recovery of any article from the possession of other assailants. No presumption under Section 114 (a) Evidence Act can be drawn as the recovery was effected after about 24 days of the incident and moreover it was not effected pursuant to the disclosure statement of the A-1. For the fault of committing robbery (if any) by Pritpal Singh for which he has already given the benefit of doubt, his wife, mother and father cannot be held responsible and it cannot be inferred with certainty and beyond doubt that they received or retained

these articles having reasons to believe it to be stolen or robbed property. On mere suspicion the appellants cannot be held guilty for the offences under Sections 392/411 IPC. They deserve benefit of doubt.

4. In the light of the above discussion, the appeals preferred by the appellants are accepted and their conviction and sentence are set aside. Bail bonds and surety bonds stand discharged. Trial Court record be sent back along with the copy of this order forthwith.

(S.P.GARG)
JUDGE

September 18, 2013

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