

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

RESERVED ON : April 04, 2013

DECIDED ON : July 12, 2013

+ CRL.A. 445/2004

AHMED SAYYAD @ NANHU @ NANHE & ANR.

..... Appellants

Through : Mr.Sunil Tiwari, Advocate.

versus

STATE

..... Respondent

Through : Ms.Fizani Husain, APP for the State.

CORAM:

MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. The appellants-Ahmed Sayyad @ Nanhu @ Nanhe (A-1) and Ameen Alou (A-2) challenge judgment dated 19.05.2004 of learned Additional Sessions Judge in Sessions Case No.50/2001 arising out of FIR No.366/2000 by which they were held guilty for committing offence punishable under Section 412 IPC. By an order on 20.05.2004, they were sentenced to undergo RI for three years with fine ₹1,000/- each.

2. On 09.09.2000 Rama Shanker working with Aggrelliolo & Co., 11-B, Netaji Subhash Marg, Darya Ganj, Delhi took five washing machines make Videocon on the cycle rickshaw of the company for

delivery to Ladi Electronics, Dakshin Puri. When he reached behind Indira Gandhi Indoor Stadium, cycle-rickshaw punctured. Four boys in the age group of 25-30 years robbed washing machines and caused injuries to him. SI Mahender Pal Singh lodged First Information Report after recording Ram Shankar's statement (Ex.PW9/A). He was medically examined. During investigation, it revealed that Nuresh, Qutubddin, Zakir, Jamshed and Amrul were perpetrators of the crime. On 17.09.2000, on receipt of secret information, Qutubddin, Jamshed and Zakir were arrested from the jhuggies in Moolchand Basti, Yamuna Pushta and identified by the complainant. Pursuant to disclosure statements, they led the police to shop No.17, DDA Market, Turkman Gate and recovered two washing machines bearing Nos.49247 and 49249 from A-2's possession. A-2 was arrested and interrogated. At his instance, the police recovered three more washing machines bearing Nos. 49229, 49257 and 49253 from A-1's flat No.A-1, DDA flats, Turkman Gate. On surrender in the court on 11.10.2000, A-1 after police remand was taken to Meerut for recovery of the documents but nothing could be recovered. Thereafter, A-1 allegedly recovered documents i.e. letter pad and visiting cards from underneath a pillow in his flat. The investigating officer recorded statements of the witnesses conversant with facts. The

prosecution examined 13 witnesses. On appreciating the evidence and after considering the rival contentions of the parties, the Trial Court, by the impugned judgment convicted Qutubddin @ Ganja, Mohd.Jamshed @ Jamil, Mohd.Zakir @ Rakesh Gupta, for committing offences punishable under Section 392/394/34 IPC. A-1 and A-2 were convicted under Section 412/34 IPC. Benefit of doubt was given to Abdul Rashid. It appears that the convicts who robbed Ram Shankar have not preferred appeals against their conviction.

3. Appellants' counsel urged that the prosecution could not establish recovery of washing machines beyond doubt from appellants' possession. The defence witnesses categorically elaborated that the premises from where recoveries were made did not belong to A-1 and A-2. Recovery of Videocon machines after one month of incident is doubtful. Nothing could be recovered pursuant to A-1's disclosure statement from Meerut. No independent public witnesses were associated during investigation. The investigation officer did not collect documentary evidence to show that the premises from where the recoveries were effected belonged to the appellants. Learned APP has urged that the judgment is based on fair appraisal of the evidence and no interference is called for.

4. I have considered the submissions of the parties and have examined the record. Allegations against the appellants are that they received or retained five washing machines make Videocon knowing or having reasons to believe that it was robbed property. The assailants were convicted under Sections 392/394/34 IPC for robbing washing machines (Ex.P-1 to P-5) from Ram Shanker. After arrest, they were interrogated and their disclosure statements (Ex.PW-2/A, 2/B and 2/C) were recorded. They led the police to shop No.17, DDA Market, Turkman Gate and recovered two washing machines which were seized vide seizure memo (Ex.PW-2/D). It led to A-2's arrest. He was interrogated and his disclosure statement (Ex.PW-2/E) was recorded. He took the police to House No.A-1, DDA flats, Turkman Gate and recovered three washing machines which were seized vide seizure memo (Ex.PW-2/F). The recoveries were effected by the Investigating Officer PW-11 SI Mahender Pal Singh on 17.09.2000 who identified A-2 to be the person found present at shop No.17 DDA Market, Turkman Gate when the assailants recovered two washing machines bearing 49247 and 49249 make Videocon seized by seizure memo (Ex.PW2/D). A-2 also put his signatures on various memos prepared there. Pursuant to his disclosure statement (Ex.PW2/E) three more washing machines make Videocon

No.49229, 49257 and 49253 were recovered at his instance. PW-2 (Constable Subhash), PW-4 (Head Constable Birpal Singh) and PW-7 (Constable Ghure Singh) were witnesses to the recovery. All these witnesses were cross-examined at length but no vital discrepancies emerged in their cross-examination to disbelieve recovery of the washing machines from A-2's possession. A-2 was not acquainted with the complainant or the prosecution witnesses to be falsely implicated. The police witnesses had no ulterior motive to plant five washing machines of substantial value in the year 2000 to rope in A-2. A-2's involvement surfaced only when the assailants/robbers disclosed the police that they had sold the robbed property to him. PW-1 (Rajeev Aggarwal), partner, M/s Aggrellios and Co. identified the washing machines (Ex.P-1 to P-5) handed over to PW-9 (Ram Shankar), rickshaw-puller, for supplying at Khanpur. PW-9 (Ram Shankar) had informed the police about the robbery of washing machines from his possession on 09.09.2000. Apparently, these washing machines did not belong to A-2. He did not explain as to how and under what circumstances, he got possession of these washing machines. He did not produce any document to show that he was bona fide purchaser of these articles. The assailants who had sold the washing machines were not dealers/shop-keepers. In the ordinary

course of business, A-2 was not expected to obtain possession of the washing machines without any apparent reason from the strangers with whom he had no regular business/dealings. A-2 himself had no such avocation. He also did not explain as to for what consideration washing machines were received. The recovery of two washing machines from A-2's possession, at shop No.17, DDA Market, Turkman Gate and three washing machines at his instance from flat No. A-1, DDA flats, Turkman Gate establishes beyond doubt that he received and retained the washing machines knowing or having reasons to believe that it was a stolen property. A-2 did not produce any evidence that reception of property were innocent. The circumstances in which A-2 received the property were such that any reasonable man must have felt convinced that the property with which he was dealing must be a stolen property. The prosecution, has, however, failed to establish that A-1 was found in physical or constructive possession of the stolen articles any time. All the five washing machines were recovered on 17.09.2000. Three washing machines lying at flat No. A-1, DDA flats, Turkman Gate were recovered in pursuance of A-2's disclosure statement. A-1 was not present at either place at the time of recovery of the washing machines. He surrendered in the court on 11.10.2000 and his disclosure statement was recorded. He

was taken to Meerut to recover the documents but no recovery could be effected at his instance. Subsequently, documents i.e. visiting card (Ex.P-6) and letter pad of M/s Aggrellios & Co. were recovered and seized vide seizure memo Ex.PW-4/A at his instance from his flat. It appears that the stolen articles had already been recovered before recording A-1's disclosure statement. No incriminating document was recovered from flat No. A-1, DDA flats, Turkman Gate at that time. There was no occasion for A-1 to retain these documents of insignificant value for such a long duration after A-2's arrest. Since nothing incriminating i.e. washing machine was recovered from A-1's possession or at his instance, it cannot be inferred with certainty that he received or retained any robbed/stolen article from the assailants. He deserves benefit of doubt.

5. The prosecution could not establish beyond doubt that A-2 was aware or had reasons to believe that the articles were a robbed property at the time of its reception. It did not surface in evidence that A-2 had hatched conspiracy with the assailants to rob the complainant and to deliver the robbed articles to him. The assailants in their disclosure statements claimed to have got ₹15,000/- for sale of five washing machines which is highly low as compared to their value/price. Inference

can be drawn that A-2 was aware that the articles delivered to him were 'stolen' property. He was real beneficiary on purchase at cheap rates.

6. In the light of the above discussion, A-2 is guilty of committing offence under Section 411 IPC only. He has already spent two and a half months in custody and has suffered trial for about ten years. He is not a previous convict. Considering the mitigating circumstances, A-2's substantive sentence is modified and reduced to one year under Section 411 IPC. Other terms of sentence order are left undisturbed. A-1 is given benefit of doubt and is acquitted.

7. A-2 is directed to surrender and serve the remainder of his sentence. For this purpose, he shall appear before the Trial court on 19.07.2013, The Registry shall transmit the Trial Court records forthwith to ensure compliance with the judgment.

8. The appeal stands disposed of in the above terms.

(S.P.GARG)
JUDGE

July 12, 2013/sa