

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

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Date of Decision: May 21, 2014

+1. CRL.A. 159/2000

JAI PRAKASH @ AJAY Appellant
Through: Ms. Charu Verma, Amicus Curiae.
versus
STATE Respondent
Through: Ms. Jasbir Kaur, APP for State.

AND

+2. CRL.A. 414/2000

OM PARKASH @ PONTY Appellant
Through: Ms. Charu Verma, Amicus Curiae.
Versus
STATE Respondent
Through: Ms. Jasbir Kaur, APP for State.

**CORAM:
HON'BLE MS. JUSTICE VEENA BIRBAL**

VEENA BIRBAL, J.

1. By this common judgment, Crl.A.159/2000 filed by appellant Jai Prakash @ Ajay and Crl.A.414/2000 filed by appellant Om Parkash @ Ponty are being decided. In the aforesaid two appeals, the appellants-Jai Prakash @ Ajay and Om Parkash @ Ponty Singh have challenged the judgment dated 25th February, 2000 passed in Sessions Case no.57/98 by the Id.ASJ, Delhi whereby the appellants along with one co-accused person namely Sanjay have been convicted under Section 392/34 IPC and the

order of sentence dated 26th February, 2000 whereby they have been sentenced to undergo RI for two years and to pay a fine of Rs.300/- and in default of payment of fine to further undergo SI for one month.

2. At the outset, it may be pointed out that co-accused Sanjay s/o Sh.Bihari Lal has not preferred an appeal against the judgment and order of sentence.

3. The case of the prosecution is based on statement Ex.PW4/1 of Ram Dulare, PW4, wherein it is alleged that on 11.1.1997 he had received salary of Rs.2500/- in the denomination of Rs.100/- each from the factory owner where he was working. While going home he had kept Rs.400/- in the pass book in the right side pocket of his *kurta* and remaining Rs.2100/- was kept in the front pocket of his *kurta*. When he was going towards Faridpuri via *kacha rasta*, three persons had met him. Out of them, one pointed out knife towards him and asked him not to raise alarm otherwise he would stab him. The other person had removed his wrist watch make HMT from his right arm and had also taken Rs.2100/- from the front pocket of the *kurta*. The third one had removed pass book containing Rs.400/-. Thereafter they told him to go and those three boys ran towards "Pahari". When he raised an alarm two boys i.e. Puran Singh PW2 and Rajesh PW3 came for his help. They ran after those three boys. With the help of Rajesh PW3, he had apprehended appellant Jai Prakash @ Ajay who was holding a knife in his hand. Puran Singh PW2 had apprehended Sanjay. The third boy managed to escape. They brought them to Baba Faridpuri and informed the police. Police came there and those two boys were handed over to the police along with knife.

4. ASI Vasudev Yadav PW6 recorded statement Ex.PW4/A of

complainant PW4 and had put his endorsement Ex.PW6/A and got registered the FIR Ex.PW 1/B against the appellants and co-accused. Thereafter, personal search of the two accused persons, namely, Ajay and Sanjay was conducted vide memo Ex.PW 2/E & F respectively. From the personal search of co-accused Sanjay one pass book of SBI along with four currency notes of Rs.100/- each were recovered which was taken into possession vide memo Ex.PW1/C. The sketch Ex.PW 2/A of “*buttondar chaku*” was prepared and was taken into possession vide Ex.PW2/B. The site plan Ex.PW6/C was prepared on the pointing out of Ram Dulare PW4. On interrogation, both the accused persons i.e. appellant Jai Prakash @ Ajay and co-accused Sanjay had made disclosure statements Ex.PW 4/B & C respectively and also stated that they could get arrested the third accused and they had disclosed his name as Ponty. The third accused Om Parkash @ Ponty was arrested in FIR No.248/1997 P.S. Anand Parbat on 27.8.1997 who also made disclosure statement Ex.PW6/E and also pointed out the place of occurrence vide Ex.PW6/E. After completion of investigation, a report under Section 173 Cr.P.C. was prepared and was filed in the concerned court.

5. A charge u/s 392/397 r/w 34 IPC was framed by the Id.ASJ against both the appellants as well as co-accused Sanjay to which they pleaded not guilty and claimed trial. A separate charge u/s 25/27 of Arms Act was also framed against appellant Jai Prakash @ Ajay.

6. To prove its case, prosecution in all had examined 8 witnesses before the trial court, i.e. Puran Singh PW2, Rajesh PW3 i.e. the witnesses who as per prosecution case had apprehended two accused persons, i.e., appellant Jai Prakash @ Ajay and co-accused Sanjay, Ram Dulare PW4 is the complainant, Manjeet Singh PW5, ASI Vasudev Yadav PW6, HC Ranbir Singh PW7 and Constable Krishan Avtar PW8.

7. The incriminating evidence was put to the appellants. They denied the same and stated that they were innocent persons and were falsely implicated in the present case. No evidence was led in defence by the appellants.

8. Learned ASJ after hearing the learned counsel appearing for the appellants, co-accused Sanjay as well as State convicted the appellants and co-accused Sanjay under Section 392/34 IPC and sentenced them to undergo RI for 2 years and to pay a fine of Rs.300/- each and in default of payment of fine to further undergo RI for one month. The benefit under Section 482 Cr.P.C. was given to them.

9. Aggrieved with the conviction and sentence order passed by the learned ASJ, present appeal is filed.

10. Learned counsel appearing for the appellant Jai Prakash @ Ajay has submitted that there are material variations in the statement of complainant, PW-4 made before the court as compared to his statements to the Police i.e. Ex.PW4/A on the basis of which FIR Ex.PW 1/B was recorded. It is further submitted that as per the evidence on record it was dark at the time of alleged incident as such it cannot be said that complainant, PW-4 could see the persons properly committing the alleged occurrence. It is submitted that in these circumstances, presence of appellants at the time of incident is not

established. It is further submitted that there are discrepancies of material nature in the statement of complainant PW4 as compared to the statement of the witnesses i.e. Rajesh PW 3 and Puran Singh PW2 as such it will not be safe to accept their evidence. It is submitted that aforesaid PWs have differently deposed as to who had apprehended Jai Prakash @ Ajay and the manner in which appellant Ajay and co-accused Sanjay were apprehended. There is also discrepancy about number of persons having gathered at the spot. ASI Vasudev Yadav PW6 has stated that 5-6 persons had come. Constable Krishan PW8 has stated that 15-20 people had collected whereas Rajesh, PW-3 PW has deposed that about 100 people had gathered at the spot. It is further submitted that the complainant PW4 could not identify the appellants by name. It is submitted that there is also inconsistency in the evidence of PWs as to the spot where writing work was done by ASI Vasudev Yadav PW6. In these circumstances, it can't be said that the prosecution has been able to establish its case.

11. Learned counsel for appellant Om Prakash @ Ponty has contended that the present appellant was not apprehended at the spot. It is stated that he was arrested in another FIR after 5 months of the alleged occurrence. Thereupon, he was falsely implicated in the present case on the basis of disclosure statement of co-accused persons. It is stated that no TIP of present appellant was conducted. There is recovery from him. It is stated that he has already undergone the sentence of 2 years which was awarded to him by the learned trial court. Learned counsel has submitted that to solve a dead case the present appellants have been implicated in the present case.

12. On the other hand, learned APP for State has argued that the discrepancies pointed out in the statements of P.Ws are inconsequential. It

is submitted that as per the evidence of complainant PW4 there was sufficient light at the place of occurrence. It is further submitted that the evidence of Ram Dulare PW4 stands corroborated by that of Rajesh, PW-3 and Puran Singh, PW-2. It is submitted that from their evidence it stands categorically established that they had apprehended the appellant Jai Prakash @ Ajay while running from the spot. It is further submitted that the recoveries made from appellant Ajay and co-accused Sanjay also stand established from the evidence of PW-2, PW-3 and PW-4. It is submitted that in statement under Section 313 Cr.P.C. the appellants have admitted their presence at the spot. It is further submitted that the learned trial court has rightly convicted them. The evidence on record establish that the appellants have committed offence under Section 392/34 IPC and as such have been rightly convicted by the learned ASJ.

13. I have heard counsel for the appellants as well as learned APP for State and perused the material on record.

14. Manjit Singh PW5 is the owner of the factory where Ram Dulare PW4 at the relevant time was working. He has deposed that on 11.1.1997 he had given Ram Dulare PW4 a sum of Rs.2500/- and had taken his signatures on the voucher of a factory, namely, Akal Printers i.e., Ex.PW 5/A. In cross-examination, he has stated that Rs.2500/- was given on account of his salary.

15. The star witness to the alleged occurrence is Ram Dulare, PW4. He has categorically deposed that on the day of occurrence at about 7.45 p.m. he was given Rs.2500/- in the factory by the owner of the factory as his salary. Out of said amount, he had kept Rs.400/- in a pass book in front pocket of his *kurta* and Rs.2100/- was kept in the right pocket of pant and

started walking towards his house at Faridpuri. When he had reached on the *kaccha rasta* towards Faridpuri, 3 boys met him on the way. Out of those, one had pointed out knife to him and had asked that in case he would raise an alarm, they would stab him. He was also wearing wrist watch in his left hand. Out of remaining two boys, one had removed wrist watch from his hand and the other had taken out pass book containing Rs.400/- from the front pocket of his *kurta* and Rs.2100/- from the right pocket of his pant and they ran away from there. At that time, i.e., Rajesh, PW-3 and Puran Singh, PW-2 were going to ease themselves. He had told the story to them. They ran after these boys. He had also run after them. Rajesh, PW-3 had caught hold of appellant Ajay who was carrying knife while the other boy i.e., co-accused Sanjay was caught hold by the public. The third boy managed to escape. After apprehending those boys, they were brought to Baba Faridpuri. Police was informed on telephone. Police had reached there and they handed over those boys to the Police. From one boy, his pass book and a sum of Rs.400/- was recovered. A knife was recovered from accused Jai Prakash @ Ajay which was seized by IO, PW-6. He has proved on record memo in this regard i.e. Ex.PW2/B. He has proved his signatures on the same. He has proved his signatures on Ex.PW2/A i.e. sketch of knife, seizure memo of knife Ex.PW2/B and the memo Ex.PW2/C by which pass book and Rs.400/- were seized. He has deposed having made statement Ex.PW4/A to the Police. He has identified the appellants/accused persons in court also and deposed that the accused present in court had looted him at the time of incident. He has also proved on record his signatures on personal search of accused persons Ex.PW E and F. He had identified his pass book as Ex.P2 and knife as Ex.P1. He had identified the accused

persons by face but could not identify them by giving their names.

16. Ram Dulare, PW4 was cross-examined by learned APP and he had stated that due to lapse of time he was not remembering the names of accused persons correctly. However, he has stated that they were the same persons who had committed the occurrence with him.

17. On being cross-examined, he has stated that there was no light but there was moonlight. He has also deposed that the appellants were wearing pant and shirt at the time of incident. On being further cross-examined, he has stated that he and Rajesh PW3 had caught hold of Jai Prakash @ Ajay who was carrying knife. They had brought them to Faridpuri. Police had also reached there. He has denied that the appellants and co-accused had not looted him at the time of incident at the point of knife. He has denied that the recoveries were planted upon them. He has further denied that the appellants Jai Prakash @ Ajay and Sanjay were apprehended on suspicion.

18. The evidence of aforesaid witness on material points is in consonance with his statement to Police Ex.PW4/A on the basis of which FIR Ex.PW 1/3 was registered. He has identified the appellants in court. He has described the role played by the appellants at the time of incident. In cross-examination also, he has deposed the presence of the appellants and co-accused Sanjay at the spot and the manner in which they had looted him at the point of knife. He could not give their names correctly in examination-in-chief. However, on being cross-examined by learned APP he has stated that due to lapse of time he could not give their names correctly. On being asked by learned APP he had given their names correctly. Even in cross-examination, his material deposition as regards identification of appellants and the role played by them at the time of incident is not shaken.

19. Rajesh, PW-3 has also supported the case of the prosecution by deposing that on 11.1.1997 at about 8 pm, he along with Puran Singh, PW-2 was going to ease themselves at “*Pahari*” (Hill side) near their house. When they were going towards “*Pahari*”, they heard noise of “*Bachao Bachao*” and when they reached the place from where voice was coming, Ram Dulare, PW4 met them. On inquiry, he told that as to what had happened to him. They both along with complainant, PW-4 ran away after those boys. They saw those boys running towards ‘*pahari*’ side. He has deposed having Jai Prakash @ Ajay who was carrying knife in his hand. Ram Dulare, PW4 had snatched knife and Puran Singh, PW-2 had apprehended co-accused Sanjay. They brought them near the electrical pole and telephoned the police. On arrival of police, from co-accused Sanjay pass book of complainant, PW-4 and Rs.400/- were recovered. Thereafter, appellant Jai Prakash @ Ajay and co-accused Sanjay were handed over to the police. He has identified Knife Ex.P-1, pass book Ex.P-2 and currency notes Ex.P-3 to P-6. His material deposition as regards apprehension of appellant Jai Prakash @ Ajay and co-accused Sanjay and respective recoveries was not demolished in cross-examination.

20. Puran Singh, PW-2 has also deposed as to how complainant PW-4 had met him and PW-3 on the date of incident at about 8 pm and had told them about robbery being committed upon him. He has also deposed that he along with PW-3 and complainant PW-4 ran away in the direction where those boys ran. He has also identified appellant Jai Prakash @ Ajay in court. However, he could not tell as to who was carrying knife. He has deposed that one more boy was apprehended by Rajesh, PW-3. He has further deposed that after those boys were apprehended, they were brought

to the nearby colony and handed over to the police. He has also deposed about recovery of pass book from one of those boys along with sum of Rs.2500/-. He was cross-examined by Id.APP wherein he has stated that Rs.400/- and pass book was recovered from co-accused Sanjay. In examination-in-chief he could not tell properly about the money recovered from accused Sanjay. However, on being cross-examined he has clarified that due to lapse of time, he could not depose about the amount properly.

21. The evidence of complainant Ram Dulare PW4 establishes that the appellant i.e. Jai Prakash @ Ajay and co-accused Sanjay were apprehended while running from the spot. Reading the evidence of Puran Singh PW2 along with that of Rajesh PW3, their version supports the statement of Ram Dulare, PW4 having apprehended both the appellant i.e., Jai Prakash @ Ajay and co-accused Sanjay while they were running from the spot while the third one i.e., appellant Om Parkash managed to escape.

22. There is some discrepancy in the evidence of Ram Dulare, PW4 and that of Puran Singh, PW-2 and Rajesh, PW-3 about the manner in which the appellant Ajay and co-accused Sanjay were apprehended. Ram Dulare, PW4 has stated in cross-examination that when he and Rajesh PW3 had gone towards the direction where accused persons had gone, the *badmash* were found standing whereas Rajesh PW3 has deposed that they were all running towards *pahari* side. The other discrepancies pointed out in the evidence is about the number of persons gathered at the spot and the place where writing work was done.

23. I have gone through the discrepancies pointed out. Considering the overall evidence on record, the same are not material in nature. Further discrepancies pointed out do not go to the root of the matter so as to make

the evidence of PWs unbelievable.

24. ASI Vasudev Yadav PW6 has categorically deposed that on 11.1.1997 DD No.12A was marked to him for investigation and at about 8.30 p.m. he had gone with Krishan Avtar PW8 to Baba Faridpuri the complainant Ram Dulare, PW4, Rajesh, PW2 and Puran Singh, PW3 had met them and they had produced appellant Jai Prakash @ Ajay and co-accused Sanjay along with knife and he had recorded the statement of Ram Dulare Ex.PW4/A. The recovery of four currency notes of Rs.100/- each along with pass book from co-accused Sanjay which was taken into possession vide memo Ex.PW2/C also corroborates the case of the prosecution. The recovery of knife Ex.P1 which was produced by Ram Dulare, PW4 to the IO ASI Vasudev Yadav PW6 in the presence of Puran Singh PW2, Rajesh PW3 and Constable Krishan Avtar PW8 vide memo Ex.PW2/B also stands proved from the statement of aforesaid witnesses. The PWs Puran Singh and Rajesh have also deposed about seizure of knife Ex.P-1, pass book Ex.P-2 and currency notes Ex.P-3 to 6.

25. There is clear evidence on record which establishes that both the appellants as well as co-accused Sanjay were present at the spot and had committed robbery upon Ram Dulare, PW4. The appellant Jai Prakash @ Ajay having been apprehended from the spot is established from the evidence of Ram Dulare, PW4 and that of Puran Singh PW2 and Rajesh PW3. The evidence of ASI Vasudev Yadav PW6 and that of Constable Krishan Avtar PW8 also clearly establishes that appellant Jai Prakash @ Ajay and co-accused Sanjay were handed over to them by the complainant Ram Dulare, PW4. Even both the appellants also admit their presence at the spot in their statement under Section 313 Cr.P.C. The recovery of Rs.400/-

Ex.P3-P6 and pass book Ex.P2 from Jai Prakash @ Ajay also supports the case of the prosecution.

26. The contention of the appellant Om Prakash @ Ponty is that no TIP was conducted, as such, his identity is not established. Considering the evidence on record, the same is not fatal to the case of the prosecution. The complainant Ram Dulara, PW-4 and Rajesh, PW-3 have identified him in court. The appellant has also admitted his presence at the spot in his statement u/s 313 Cr.P.C. However, as per him, he had gone to ease himself and was falsely implicated. It is not his stand that complainant PW4 had animosity with him and had falsely implicated him. In view of evidence on record it can't be said that appellant is falsely implicated. It has also come in the evidence that there was sufficient light at the time of alleged occurrence. Further, TIP is only a corroborative piece of evidence. The material witnesses has identified the appellant Om Parkash in court. In the facts and circumstances of the case, TIP was not essential.

27. In view of above discussion, the learned ASJ has rightly convicted the appellants under Section 392/34 IPC. Accordingly, the conviction of the appellants under Section 392/34 IPC is upheld.

28. On the point of sentence, it is stated that appellant Om Prakash @ Ponty has already undergone the sentence. About appellant Jai Prakash @ Ajay it is stated that he has already undergone sentence of 7 months and 23 days. His age was 22 years at the time of incident. The prayer is made for reducing his sentence to the period already undergone by him. The submissions made are considered.

29. The learned ASJ has already taken a lenient view while sentencing the appellants. Keeping in view the nature of offence, the appellant Jai Prakash

@ Ajay does not deserve any leniency in sentence. The order of sentence is upheld. The appellant Jai Prakash @ Ajay is on bail. His bail bonds stands cancelled. The appellant be arrested for undergoing the remaining sentence.

Both the appeals stand dismissed.

A copy of the judgment be sent to the ld.trial court.

VEENA BIRBAL, J

MAY 21, 2014

kks/ssb