$~R-9 to 12

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

+ (i) **CRL.A.948/2001**

RAM JANAM ..... Appellant

Through: Mr. S.D. S. Rathore and Mr. M.P.Singh, Advocates

versus

STATE .....Respondent

Through: Mr. Mukesh Gupta, Additional Public Prosecutor for respondent-State

+ (ii) **CRL.A.957/2001**

RAM NAYAN ..... Appellant

Through: Mr. S.D. S. Rathore and Mr. M.P.Singh, Advocates

versus

STATE .....Respondent

Through: Mr. Mukesh Gupta, Additional Public Prosecutor for respondent-State

+ (iii) **CRL.A.25/2002**

RAM PARVESH ..... Appellant

Through: Mr. S.D. S. Rathore and Mr. M.P.Singh, Advocates

versus

STATE .....Respondent

Through: Mr. Mukesh Gupta, Additional Public Prosecutor for respondent-State

+ (iv) **CRL.A.221/2001**

AVDHESH ..... Appellant

Through: Mr. S.D. S. Rathore and Mr. M.P.Singh, Advocates

versus

STATE .....Respondent

Through: Mr. Vinod Diwakar, Additional Public Prosecutor for respondent-State

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

O R D E R

% **04.03.2014**

In the above-captioned four appeals, challenge is to common impugned judgment of 13th September, 2001 vide which these four appellants have been held guilty of the offence under Sections 392/397 of IPC read with Section 25 of the Arms Act in FIRs No.454/1999 to 458/1999 registered at P.S. Patel Nagar, Delhi.

At the final hearing of these appeals, with the consent of both the sides, these four appeals were heard together and by this common order, they are being disposed of together.

The facts giving rise to these four appeals as noted in the impugned judgment are as under: -

> *"SI R.S. Meena recorded the statement of complainant Kapil Suneja which when translate into English will inter alia read as under: -*
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> *"I am residing on the above said address with my*

parents and I am working in Loha Mandi, Narayana as a Commission Agent. Today on 26.6.1999 after doing wok in Narayana Loha Mandi, I was present opposite X-32, Narayana Loha Mandi where my motor cycle No.DL-4SF-5455, make "Yamha" was parked. At about 7.50 p.m. while I was about to start my motor cycle and had kept a leather bag hanging on my shoulder which contained Rs.40,000/- in four bundles of currency notes of the denomination of Rs.100/- each, a diary and some papers, four boys, namely, Ram Janam s/o Rudal, Ram Nayan s/o Ram Milan, Avdhesh s/o Nageshwar and Ram Parvesh s/o Prabhu Nath, whose names and addresses I have learnt now, arrived there. Accused Ram Parvesh took out a countrymade pistol and pointed it out towards me. Accused Avdhesh brandished a knife at me and stood opposite me. Accused Ram Janam came to my left with an open knife and accused Ram Nayan came to my right having an open knife. They told me to hand over the money containing in the bag. Ram Par Parvesh snatched away the bag kept by me on my shoulder forcibly and they started running away from that place after giving me threats. I raised a noise and chased these persons. On hearing my cries, three police personnels also ran after these four boys. Near A-43, Narayana Phase-II, the three police personnels Gheraoed these boys, who brandished the countrymade pistols and knives at them also but the police personnels were able to overpower them. Accused Ram

Parvesh was having a countrymade pistol in his hand and my bag; the other three were having open knives. In the meanwhile, somebody rang up the police, whereafter you have arrived. Accused Ram Parvesh, Avdhesh, Ram Janam and Ram Nayan have been produced before you along with my leather bag containing money. All these boys had snatched away my bag after brandishing a Desi Katta and knives on me. Action be taken against these four boys according to law. My statement is correct.

Sd/-
Kapil Suneja."

Apart from deposition of complainant/first-informant-*Kapil Suneja (PW-2),* there is evidence of patrolling team comprising of Constable-*Girdhari Lal (PW-4),* Head-constable-*Ramesh (PW-5),* Constable-*Ranjeet (PW-6)* and that of the Investigating Officer (*PW-7*) of this case, which has been relied upon by trial court to convict these four appellants while discarding their plea of sitting in a park and of being apprehended therefrom and of being falsely implicated in this case.

At the final hearing of these appeals, it was contended by Mr. S.D.S. Rathore, Advocate, that he is representing all the four appellants and except appellant-*Ram Janam,* remaining three appellants are rickshaw pullers whereas appellant-*Ram Janam* is a labourer and they used to work in Loha Mandi in Naraina, Delhi and that they are innocent and have been falsely implicated in this case.

On merits, it was contended on behalf of appellants that the solitary evidence of complainant-first informant *(PW-2)* does not establish the

prosecution case beyond reasonable doubt as the complainant-first informant *(PW-2)* is unable to identify as to from which accused the leather bag was recovered. It was pointed out by learned counsel for appellants that complainant-first informant *(PW-2)* even does not disclose in his evidence as from which of the accused persons, knives *(Ex.P-9, P-10 and P-11)* were recovered. Lastly, it was submitted by learned counsel for appellants that in view of aforesaid major discrepancy in the prosecution version, its corroboration was essential and despite availability of public witness, no public witness has been joined in this case, which renders the prosecution case doubtful and entitles appellants to acquittal.

Learned Additional Public Prosecutor for respondent-State had supported that impugned judgment and had submitted that appellants were arrested at the spot and so, the question of their false implication does not arise at all and the discrepancy pointed out in the evidence of complainant-first informant *(PW-2)* is of no consequence for the reason that on aforesaid aspects, there is evidence of patrolling team comprising of Constable-*Girdhari Lal (PW-4),* Head-constable-*Ramesh (PW-5),* Constable-*Ranjeet (PW-6)* and that of the Investigating Officer (*PW-7*) of this case. Thus, it was submitted that the prosecution case stands firmly proved and there is no substance in these appeals.

Upon hearing both the sides and on perusal of the evidence on record, impugned judgment and the material on record, I find that it stands firmly established from the evidence of Constable-*Girdhari Lal (PW-4),* Head-constable-*Ramesh (PW-5),* Constable-*Ranjeet (PW-6)* and that of the Investigating Officer *(PW-7)* of this case that appellants were

chased by the aforesaid patrolling team and they had managed to overpower appellants and in the spot proceedings, a country-made pistol was recovered from the possession of appellant-*Ram Parvesh* alongwith bag *(Ex.P-1)* containing bundles of currency notes *(Ex.P-2 to P-5)* totalling to ₹40,000/- and from remaining three appellants-*Avdhesh, Ram Janam* and *Ram Niwas,* three *button-dar* knives were recovered which were seized by police.

During the course of the hearing, learned counsel for appellants could not point out any infirmity or lacuna in the deposition of aforesaid three witnesses i.e. Constable-*Girdhari Lal (PW-4),* Head-constable-*Ramesh (PW-5)* and Constable-*Ranjeet (PW-6)* which establishes prosecution case and so inability of complainant-first informant *(PW-2)* to point out from which of accused persons the knives in question were recovered, becomes inconsequential. Since it is a case of spot arrest and recovery of the incriminating articles, therefore, appellants have to probablise their defence of their being falsely implicated in this case, which they have failed to do.

The deposition of complainant-first informant *(PW-2)* establishes the charge under Section 397 of IPC against appellant-accused persons as this witness has deposed in no uncertain terms of appellant-accused persons had aimed their respective weapons i.e. country-made pistol and the knives at him while robbing him. Recovery of the weapons of offence and the looted amount of ₹40,000/- stands firmly proved from the evidence on record. The conviction of appellant-accused persons for the offence in question is well deserved as impugned judgment does not suffer from any fatal lacuna.

In view of the aforesaid, finding no substance in these appeals, they are dismissed. Conviction and sentence of appellants is hereby affirmed. During the pendency of these four appeals, the substantive sentence awarded to appellants was suspended. Trial court is directed to ensure that appellants undergo the unserved sentence in this case.

These four appeals stand disposed of accordingly.

(SUNIL GAUR)
JUDGE

MARCH 04, 2014
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