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

+ **CRL.APPEAL No. 451/2001**

RAJBIR SINGH

..... Appellant

Through: Mr. C.L. Gupta & Mr. Akashdeep
Verma, Advocates

Versus

STATE

..... Respondent

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

+ **CRL.APPEAL No.452/2001**

SEHDEV SINGH

..... Appellant

Through: Mr. C.L. Gupta & Mr. Akashdeep
Verma, Advocates

Versus

STATE

..... Respondent

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

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

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ORDER
21.01.2014

Appellants in the above captioned two appeals stand convicted for offences under Sections 399/ 402 of IPC in FIR No. 100/1990, registered at police station *Vinay Nagar*, Delhi. Both appellants have been also convicted for offence under Section 25 of *The Arms Act* in two separate FIRs i.e. FIR No. 102/1990 and FIR No. 103/1990. Vide impugned judgment of 27th April, 2001 appellants have been sentenced to rigorous imprisonment for a period of three years each with fine and to rigorous imprisonment of one year each for offence under Section 25 of *The Arms Act*.

Since the common impugned judgment of 27th April, 2001 is under challenge in these two appeals, therefore, with the consent of learned counsel representing both sides, these two appeals are heard together and are being disposed of by this common order.

The prosecution version, as noticed in the impugned judgment is as under:-

‘The case of the prosecution in brief is that on 24th March, 1990 at about 6:30 P.M. SI Ram Swaroop got secret information that Raju, Sehdev who are known as Badmaash of the area are available in Safdarjung Enclave along with their group and are planning to commit dacoity in the house of some Mr. Grover and it was further informed that about 8.30 p.m. they will assemble near Kamal Cinema in gypsy No. DAE 3297 of blue colour. On the basis of this information, SI Bhasin prepared the raiding party consisting of Inspec. Ajay Sharma, Insp. S.K. Giri, ASI Bani Singh and some constable under the

leadership of Insp. Rajinder Bakshi. They reached near cinema at about 7.45 P.M. and requested 4-5 public persons to join the raiding party. One Om Prakash, public witness, agreed to join the raiding party. At about 8.45 P.M., one gypsy of blue colour stopped at the gate of Kamal Cinema and SI Bhasin sent Om Prakash to listen to the talks of the accused persons as to what they were talking. At about 10 minutes, thereafter, Om prakash came and informed the police that the persons who is sitting on the driver's seat was giving instructions to the other companions sitting inside the gypsy that Vinay will remain outside the house and remaining people will go inside the house and they have to take only cash and jewellery. Then, SI Bhasin gave the indication and those persons were gharrowed by the police. SI Bhasin took out his revolver but two persons sitting inside the gypsy opened the door and ran away. Person who was sitting on the driver's seat was apprehended and on enquiry he disclosed his name as Rajender Singh. He was holding revolver but he was controlled by SI Ajay Sharma and HC Chander Kant. They took the loaded pistol from his hand and on checking it was found to contain 7 bullets. In the meantime, one person tried to come out from the left door of gypsy but he was apprehended and on enquiry he disclosed his name as Sehdev and he was holding a pistol and was aiming at the police officials, he was apprehended by Yogender Dutt and Ashok Kumar and the loaded pistol was taken from him. SI S.K. Giri checked the same and found five cartridges inside the pistol. Another person who was sitting on the left hand side tried to ran away but was apprehended by Rajvir and ASI Bani Singh alongwith Const. Krishna. He was also holding one revolver of .455 bore and he was apprehended and revolver was taken from him and it was found to contain 4 cartridges. He disclosed his name as Vijay Kumar. Hence, a case under Section 399/402 IPC was registered alongwith case under Section 25/54/59 of The Arms Act."

On the strength of deposition of thirteen witnesses, who are police officials, appellants have been convicted while rejecting evidence of

defence witnesses. The stand of appellants before trial court was of denial and false implication. It was asserted by appellants before trial court that they were illegally detained on suspicion and when nothing was found against them, then to avoid any allegation of illegal detention, they have been falsely implicated in this case. After trial, appellants stand convicted and sentenced, as noticed above.

Learned counsel for appellants to assail the impugned judgment has drawn the attention of this Court to Sections 399/402 of IPC to point out that for an accused to be prosecuted under the aforesaid provisions of law, there has to be five persons whereas in the instant case, there were four persons. It was contended on behalf of appellants that one *Om Prakash*, who had joined the raiding police party and had heard the conversation between appellants and their co-accused and the said information so heard by *Om Prakash* was purportedly passed on to the police party, which led to the prosecution of appellants in this case. It was submitted by learned counsel for appellants that in the absence of deposition of said *Om Prakash*, the basic case of prosecution is demolished and what was told by *Om Prakash* to the raiding party, is hear say evidence.

Regarding recovery of pistol from appellant- *Rajbir Singh*, it was contended that his conviction for offence under Sections 25 of *The Arms Act* is unsustainable, as sanction granted for prosecution of *Rajbir Singh* was not proved. As regards appellant- *Sehdev Singh*, it was contended that the alleged recovery of pistol from him is rendered doubtful in view of the fact that the pistol recovered from co-accused- *Rajinder Singh* was

deposited on 23rd March, 1990 whereas the alleged apprehension of appellants was on 24th March, 1990. Attention of this Court was drawn to deposition of MHC (M) –*Vijender Pal Singh (PW-1)* and SI *Jagdish Chander (PW-4)* to point out that although MHC(M)- *PW-1* has deposed that recovered pistol was deposited with him on 24th March, 1990 but SI-*Jagdish Chander (PW-4)* had deposed that the sealed parcels containing the recovered pistols were received by him on 23rd March, 1990. According to learned counsel for appellants, this causes reasonable doubt about the veracity of the entire prosecution case. Thus, acquittal of both the appellants is sought in these two appeals.

Learned Additional Public Prosecutor for respondent-State supports the impugned judgment and submits that offence under Sections 399/402 of IPC is clearly proved as the raiding party had found that five persons were at the spot and out of them, two had managed to run away and three of them were apprehended. It was submitted by learned Additional Public Prosecutor for respondent-State that from evidence on record, prosecution case stands conclusively proved and there is no substance in these two appeals.

Upon hearing both sides and on scrutiny of evidence on record and impugned judgment, I find that prosecution could not produce the said *Om Prakash* in evidence because he was not traceable. However, the absence of deposition of said *Om Prakash* who had heard the conversation of accused persons is of utmost importance in cases like the instant one. Prosecution is seriously handicapped due to inability to get said *Om Prakash* examined at trial.

In the light of discrepant evidence on record, I find that it is a fit case to extend benefit of doubt to appellants for the main offence i.e. under Sections 399/402 of IPC.

Since sanction for prosecution of appellant – *Rajbir Singh* for offence under Section 25 of *The Arms Act* does not stand proved, therefore, benefit of doubt is extended to him and he is acquitted of the aforesaid offence. Regarding appellant- *Sehdev Singh*, the contradiction in the deposition *inter se* MHC(M)- *PW-1* and *PW-4* regarding receiving of sealed parcels containing fire arms a day before the alleged recovery, renders the entire prosecution case doubtful. Extending benefit of doubt to appellant- *Sehdev Singh*, he is also acquitted of the offence under Section 25 of *The Arms Act*.

In view of the aforesaid, both these appeals are allowed. While extending benefit of doubt to appellants, they are acquitted of the charges framed.

(SUNIL GAUR)
JUDGE

JANUARY 21, 2014

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