

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

RESERVED ON : 25th November, 2013

DECIDED ON : 13th January, 2014

+ **CRL.A. 574/2001**

KHALID Appellant

Through : Mr.Izhar Ahmad, Advocate for the
appellant.

Versus

STATE N.C.T. GOVT. OF DELHI Respondent

Through : Mr.M.N.Dudeja, APP for the State.

+ **CRL.A. 869/2001**

HAQIKAT ALI Appellant

Through : Mr.Izhar Ahmad, Advocate for the
appellant.

Versus

STATE N.C.T. GOVT. OF DELHI Respondent

Through : Mr.M.N.Dudeja, APP for the State.

+ **CRL.A. 641/2001**

ROHTAS KUMAR & ORS. Appellants

Through : Mr.Izhar Ahmad, Advocate for the
appellants.

Versus

STATE N.C.T. GOVT. OF DELHI Respondent

Through : Mr.M.N.Dudeja, APP for the State.

CORAM:

MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Zakir Hussain (A-1), Rohtash Kumar (A-2), Khalid (A-3), Karan Kapoor @ Karan Singh (A-4), Haqiqat Ali (A-5) and Nayum (A-6) were arrested in case FIR No.275/97 by the police of Malviya Nagar and sent for trial on the allegations that in the night intervening 11/12.03.1997 at T-456f, Chirag Delhi, at around 1.30 A.M. (night) they committed decoity and deprived complainant-Joginder Singh and his family members of cash ₹19,000/- and jewellery items consisting of three gold necklaces, three gents rings, one ladies ring, three pairs of ear tops (gold), one chain (gold) and four pairs of Paijeb (silver) and one hath-phool (silver). The assailants used deadly weapons at the time of committing the crime. First Information Report was lodged at 04.40 A.M. on 12th March, 1997 after recording Joginder Singh's statement (Ex.PW-2/A). On 13.03.1997 at about 04.20 P.M. A-1, A-2, A-3 and A-5 were arrested from DDA Park, Sector 7, Pushp Vihar, New Delhi. Country made pistol from A-3's possession and knives from the other accused persons were recovered. A-3 was found in possession of a country made pistol whereas A-1, A-2 and A-5 were having knives at the time of their arrest. A-3 was also found in possession of one necklace and ₹6,000/- and A-1 was having

₹7,000/-. A-3 led the police to get arrest A-4 and from his possession one gold chain and ₹5,000/- were recovered. Subsequently, pursuant to the disclosure statement of A-1, two pairs of ear tops, two gold necklaces, one gold ring, one hath phool (silver) were recovered from his village in U.P. Statements of witnesses conversant with the facts were recorded. After completion of investigation, a charge-sheet was filed against the accused persons for committing offences punishable under Sections 395/397/412/120B IPC. The prosecution examined 14 witnesses to establish their guilt. In their 313 statements, the accused persons pleaded false implication. They examined DW-1 (Afrooz Ali), DW-2 (Zakir Hussain), DW-3 (Mustahassan) and DW-4 (Pandit Budhi Sagar) in their defence. On appreciating the evidence and after considering the rival contentions of the parties, the Trial Court by the impugned judgment dated 11.07.2001 in Sessions Case No.80/1997 convicted A-1, A-2, A-3, A-5 and A-6 guilty for committing offences under Sections 395/34 IPC. A-4 was convicted under Section 411 IPC only. By an order on sentence dated 30.07.2001 A-1, A-2, A-3, A-5 and A-6 were awarded rigorous imprisonment for seven years with fine ₹500/- each. A-4 was awarded rigorous imprisonment for three years. It is relevant to note that the State

did not challenge the judgment. It appears that A-4 has not preferred appeal.

2. I have heard the learned counsel for the parties and have examined the record. During the course of arguments, appellants' counsel on instructions stated at Bar that the appellants have given up their challenge to conviction. However, they prayed to take lenient view as the appellants have suffered incarceration for about five years and have no previous criminal record. Learned Additional Public Prosecutor has no objection to consider the mitigating circumstances to modify the sentence order.

3. Since the appellants have opted not to challenge their conviction under Section 395/34 IPC and there is overwhelming evidence on record, their conviction under Section 395/34 IPC is affirmed. The incident of decoity took place in the night intervening 11/12.03.1997 at about 01.45 A.M. at house No. T-456f, Chirag Delhi. The inmates were threatened with deadly weapons and directed to hand over the keys of the almirah. The assailants deprived the inmates of ₹19,000/- and gold/silver ornaments. After the decoity, the assailants tied hands of the inmates with clothes and fled the spot. The police machinery was set into motion and First Information Report was lodged without any delay at 04.40 A.M.

after recording Joginder Singh's statement (Ex.PW2/A). In the complaint PW-2 (Joginder Singh) gave detailed account of the occurrence and described the broad features of the intruders. Detail of articles robbed was also given to the police. The police was able to arrest A-1, A-2, A-3 and A-5 on 13.03.1997 at about 04.20 P.M. from DDA park, Sector 7, Pushp Vihar, New Delhi. The Investigating Officer moved applications on 17.03.1997 for holding Test Identification Proceedings. The accused persons declined to participate in the TIP proceedings. A-6 was arrested on 16.09.1997 as he absconded at the initial stage of investigation. Application was moved for conducting his Test Identification Proceedings on 23.09.1997 and he also declined to participate in it. There was, thus, no delay in holding Test Identification Proceedings in which the accused persons refused to participate. They did not give cogent reasons for declining to participate in the TIP proceedings. The Trial Court has dealt with this aspect minutely in the impugned judgment and plea of the accused persons that they were shown to the witnesses was outrightly rejected. In their Court statements, PW-1 (Jaswanti), PW-2 (Joginder Singh), PW-3 (Kamla) and PW-5 (Sunita) recognized and identified all the assailants without any hesitation. There are no sound reasons to discard their statements implicating the accused persons as none of them

was acquainted with them prior to the occurrence and they had no ulterior motive to falsely rope in them and to let the real culprits go scot free. The assailants had remained inside the house for about 45 minutes and had direct confrontation with the inmates. They had clear and sufficient opportunity to recognize and observe the broad features of the assailants with whom they had direct confrontation. They also gave plausible explanation that there was street light coming inside the house and they were able to observe the faces of the assailants. It has also come on record that the assailants had removed the bulb when it was switched on. The accused persons did not specifically state as to when and to whom they were shown at the time they were in custody of the police. Moreover, robbed articles were recovered from their possession and it corroborated the testimony of the prosecution witnesses referred above. The impugned judgment is based upon fair appraisal of the evidence and requires no intervention. Their conviction under Section 395/34 IPC thus cannot be faulted.

4. A-1's nominal roll dated 10.04.2002 reveals that he has suffered incarceration for five years and twenty five days as on 09.04.2002 besides earning remission for three months and twenty two days. The unexpired portion of sentence was one year, seven months and

thirteen days. He was not involved in any criminal case and was not a previous convict. A-2's nominal roll dated 10.04.2002 reveals that he has suffered custody for five years and twenty five days as on 09.04.2002 besides earning remission for three months and twenty days. The unexpired portion of sentence was one year, seven months and fifteen days. He was also not involved in any criminal case and had clean antecedents. A-3's nominal roll dated 23.11.2002 shows that he is in custody for four years, six months and seven days as on 29.04.2002 besides earning remission for two months and ten days. The unexpired portion of sentence was two years, three months and thirteen days. He had no history of criminal case and was not a previous convict. A-5's nominal roll dated 05.12.2001 reveals that he remained in custody for four years, eight months and three days as on 30.11.2001 besides earning remission for one month and four days. The unexpired portion of sentence was two years, two months and twenty three days. He was not involved in any criminal case and his overall jail conduct was satisfactory. Nayum (A-6) nominal roll dated 10.04.2002 reveals that he suffered incarceration for four years and six months and twenty three days as on 09.04.2002 besides earning remission for three months and twenty two days. The unexpired portion of sentence was two year, one month and

fifteen days. He was not a previous convict and his overall jail conduct was satisfactory.

5. Apparently none of the accused persons had criminal antecedents and all were involved for the first time in the crime. Nothing has emerged if after suspension of sentence and enlargement on bail in 2002 any of the accused persons indulged in any criminal activity or misused the liberty granted. They have suffered ordeal of trial/appeal for about 16 years. Though they were armed with deadly weapons, no injury was inflicted to any inmate of the house. Another reason to take lenient view is that the original record was untraceable. Attempts were made to reconstruct the record, however, the entire original record could not be reconstructed and statements of some witnesses recorded before the Trial Court could not be brought on record to appreciate the prosecution case in its entirety. Considering these mitigating circumstances, the sentence order requires modification and the assailants who have suffered substantial period of substantive sentence awarded to them require to be released for the period already remained in custody by them. Accordingly, while maintaining their conviction under Section 395/34 IPC their sentence is modified and the period already undergone by them in this case is taken as their substantive sentence.

6. The appeals stand disposed of in the above terms. Trial Court record be sent back immediately. Copy of the order be sent to Superintendent Jail for information. Bail bonds and surety bonds stand discharged.

(S.P.GARG)
JUDGE

JANUARY 13, 2014
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