

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

RESERVED ON : 25th November, 2013

DECIDED ON : 08th January, 2014

+ CRL.A. 791/2002

SANJAY KUMAR @ DOCTOR & ANR. Appellants

**Through : Mr.Neeraj Yadav, Proxy Counsel
for Mr.Anurag Jain, Advocate.**

VERSUS

STATE

.... Respondent

Through : Mr.Lovkesh Sawhney, APP.

AND

+ CRL.A. 71/2003

NARPENDER @ PAPPU Appellant

**Through : Mr.Neeraj Yadav, Proxy Counsel
for Mr.Anurag Jain, Advocate.**

VERSUS

STATE

.... Respondent

Through : Mr.Lovkesh Sawhney, APP.

CORAM:

MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Sanjay Kumar @ Doctor (A-1), Zakir Hussain (A-2), Shahzad @ Shamshad (A-3) and Narpender @ Pappu (A-4) were arrested in case FIR No.297/2000 registered at Police Station, Vasant Kunj and sent for trial on the allegations that on 08.05.2000 at about 09.30 A.M.,

they all in pursuant to criminal conspiracy robbed complainant-Krishan Chand and deprived him of cash ₹40,000/- at the point of deadly weapons. The police machinery was set into motion when Daily Diary (DD) No.5 (Ex.PW2/D) was recorded and the investigation was assigned to SI Sanjay Sharma who with Const.Shyam Lal went to the spot. After recording complainant-Krishan Chand's statement (Ex.PW-1/A) he lodged First Information Report under Section 394 IPC. In the complaint Krishan Chand disclosed as to how and under what circumstances he was robbed of ₹40,000/- which he was carrying to deposit in the bank by two assailants at the point of country made pistols after intimidating him. Thereafter both fled the spot in a TSR. He was able to read and note the digits 3899 of the TSR in which the assailants had fled the spot. Efforts were made to find out the assailants but in vain. On 15.02.2001 police of Special Staff succeeded to apprehend all the assailants at about 09.25 P.M. Their disclosure statements were recorded and pursuant to that, the country made pistols were recovered. The TSR used in the crime was seized. Statements of witnesses conversant with the facts were recorded. After completion of investigation, a charge-sheet was submitted in the court against the accused persons and they were duly charged and brought to trial. To prove the guilt of the accused persons, the prosecution

examined 10 witnesses. In their 313 statements, the accused persons denied their complicity in the crime and pleaded false implication. They examined five witnesses in defence. On appreciating the evidence and after considering the rival contentions of the parties, the Trial Court by the impugned judgment held A-1 and A-2 guilty for committing offence punishable under Section 392 read with Section 397 IPC whereas A-4 was convicted under Section 392 IPC. A-3 was acquitted of all the charges. It is significant to note that the State did not challenge his acquittal.

2. I have heard the learned counsel for the parties and have examined the record. Conviction of the appellants is based on the sole testimony of complainant-Krishan Chand who was robbed of cash ₹40,000/-. The police was unable to recover the robbed amount from the possession of any of the accused persons apprehended after a gap of about seven months. In the complaint (Ex.PW-1/A) the complainant had disclosed to the police that two assailants used country made pistols to snatch the bag containing cash ₹40,000/-. Thereafter they fled in the TSR in which an individual was already sitting. He was able to note down the digits 3899 of the TSR. The complainant gave description of the assailants with whom he had direct confrontation but he did not describe the features of the TSR driver and the person sitting on the rear seat of the

TSR. Nothing has come on record that after coming to know the use of TSR bearing registration No.3899, sincere efforts were made by the investigating officer to find out the registered owner of the said TSR after verifying the record from the transport authorities. The police of PS Vasant Kunj was unable to apprehend and arrest any of the assailants for about seven months. No attempts were made to find out as to who was in possession of the TSR bearing No.3899. Only on 15.02.2001 the Special Staff allegedly apprehended all the four assailants when they emerged in the TSR allegedly used in the crime and a two-wheeler scooter. Only from their disclosure statements recorded, they came to know their involvement in the instant case. However, no efforts were made by the police of special staff or Police Station Vasant Kunj to associate the complainant-Krishan Chand at the time of apprehension of the assailants or soon thereafter for identification. Applications for holding TIP proceedings of the assailants/accused persons were moved and the accused declined to participate in the TIP proceedings on 16.02.2001. The assailants were admittedly not acquainted with the complainant prior to the incident and he had fleeting glance of two of the assailants with whom he had direct confrontation. He was asked to identify the accused persons for the first time in Patiala House Court on 02.03.2001.

Statement of the complainant recorded before the court as PW-1 is wavering regarding identification and involvement of the accused persons in the incident. In his examination-in-chief, he stated that on 02.03.2001 he was called at Patiala House Court where he identified A-1, A-2 and A-3 to be the assailants. He revealed that A-2 had shown him a 'knife' at the time of occurrence. A-3 was the driver of the TSR. He did not recognize A-4. He was cross-examined by Additional Public Prosecutor after seeking court's permission. In the cross-examination, he denied the suggestion that in his statement (Ex.PW-1/A) he had stated that both the assailants had used the 'country made pistols' while committing robbery. On the suggestion of the learned Additional Public Prosecutor he admitted that A-4 was identified by him as the driver of the TSR. He denied the suggestion that A-3 was the individual who was sitting in the rear seat of the TSR at the time of occurrence. He refuted the suggestion that the matter was compromised by him with A-3 and for that reason he was not recognizing him. In the cross-examination on behalf of the accused persons, the complainant gave inconsistent version that A-2 had used country made pistol at the time of committing robbery. He further disclosed that he had seen the accused persons in the Police Station Daula Kuan. He identified A-3 who had robbed him. Apparently, the

complainant is not certain regarding the involvement of the accused persons in the crime. He has attributed inconsistent and contradictory roles to the assailants.

3. In the statement (Ex.PW-1/A) given to the police at the first instance the complainant gave the TSR No. as 3899. TSR No.DL 1RC 3898 was recovered from the possession of A-4 vide seizure memo (Ex.PW-5/E) on 15.02.2001. The prosecution came up with the plea that the last digit 9 was found to have been tempered with. PW-4 (Deepak), owner of the TSR No.DL 1RC 3898, however, denied if any infirmity regarding number plate was noticed by him any time. The prosecution was not able to collect cogent evidence to establish that on the day of occurrence this TSR was rented to A-4 and he was in possession of it. PW-4 (Deepak) in his examination-in-chief disclosed that he used to give this TSR on rent to different persons and did not remember their names. He admitted that he had given the TSR on hire basis to A-4 at the rate of ₹150/- per day but denied that on 08.05.2000 TSR was given to A-4. The investigating agency did not collect any credible evidence as to from which date to which date the TSR remained in possession of A-4 or that he had paid regular hire charges to PW-4 (Deepak) during this period. While appearing as PW-1 the complainant disclosed the number of the

TSR noted by him as 5899. In the cross-examination by learned Additional Public Prosecutor, he admitted the suggestion that the number of the scooter disclosed by him to the police was 3899. In the cross-examination on behalf of the accused persons, he again gave inconsistent statement that he could read the number of the scooter as 5899 and the TSR scooter identified by him during investigation was bearing No.5999. It reveals that complainant is not sure as to the number of TSR used in the crime and has given conflicting statements.

4. Since the statement of the complainant is wavering regarding the identity of the assailants, nature of the weapons used in the crime and number of the vehicle used and there is no corroboration to his testimony, the conviction of the appellants on the same set of evidence whereby A-3 was acquitted cannot be sustained. The prosecution was not able to establish its case beyond reasonable doubt. The appellants deserve benefit of doubt. Their appeals are accepted. Conviction and sentence awarded to them are set aside. Bail bonds and surety bonds stand discharged.

5. Trial Court record be sent back forthwith.

(S.P.GARG)
JUDGE

January 08, 2014/sa

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