

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

Date of Decision: 02.04.2014

+ **CRL. A.399 of 2013**

PAWAN Appellant

Through: Mr. Man Mohan Goel &
Mr. Dinesh Sharma, Adv.

versus

STATE Respondent

Through: Mr. Feroz Khan Ghazi, APP.

+ **CRL. A.408 of 2013**

MANDEEP RANA @ TIGER Appellant

Through: Mr. Pawan Kumar & Mr. Yogesh Vashisht,
Adv.

versus

STATE Respondent

Through: Mr. Feroz Khan Ghazi, APP.

+ **CRL. A.421 of 2013**

ANIL Appellant

Through: Mr. Salil Kumar Jha, Adv.

versus

STATE Respondent

Through: Mr. Feroz Khan Ghazi, APP.

+ **CRL. A.1202 of 2013**

CHARAN SINGH Appellant

Through: Mr. Vikas Padora, Adv.

STATE Respondent
Through: Mr. Feroz Khan Ghazi, APP.

+ **CRL. A. 1256 of 2013**

SUBHASH TYAGI Appellant
Through: Ms. Arundhati Katju, Adv.

STATE Respondent
Through: Mr. Feroz Khan Ghazi, APP.

CORAM:
HON'BLE MR. JUSTICE V.K. JAIN

JUDGEMENT

V.K. JAIN, J. (Oral)

On 12.6.2001 at about 5:05 a.m., S.I. Umesh Malik informed Police Station Badli that a rice loaded in truck bearing No.MP07G3611 had been stolen and the truck along with driver and owner had been left in the fields. The information was recorded vide DD No.38A a copy of which was given to S.I. Rajiv Kumar for investigation. The aforesaid police officer reached the place of incident near Vishal Bagh, Narela-Bawana Road. Truck No.MP07G3611 was found parked there. The truck owner Ram Babu Sharma as well as driver Mahender Singh and Shivbeer Singh were also present there along with S.I. Umesh Malik. The statement of Shri Ram

Babu Sharma was recorded by the Sub-Inspector. The complainant told him that on 10.6.2001, he along with his driver Mahender Singh and Shivbeer Singh had come to Delhi on truck No.MP07G3611 loaded with plastic dust which he had off-loaded in Mundka, Nangloi. Collecting Rs.11,000/- as the truck fare, they reached Majnu Ka Tila where Ravinder, owner of Delhi Gwalior Andhra Road Lines sent them to Delhi MP Freight Carrier, Gurudwara Road, Siraspur for loading the goods for Akola. From there they went to Alipur and loaded 127 bags of Bablu brand rice. Thereafter they loaded 333 bags of rice from Gali No.17, Libaspur. Out of them 94 bags were of the brand Mahabharat whereas the remaining were of the brand Hanuman. At about 10 p.m. they reached Gurudwara Road, opposite Satyam Properties and off Siraspur Village the truck was got stopped by six (6) boys who were standing in a deserted street. Saying that they have to search the truck, the aforesaid persons entered the truck and showed country made pistol to them. One of them gave beating to the driver, removed him from the driver seat and took charge of the said seat. The other persons tied their hands and legs using string for the purpose. Their eyes were covered with cloth and they were made to sit with their face towards the rear of the truck and blanket was put on them. After driving for about 45-60 minutes

the truck was stopped and the rice was unloaded. Thereafter the truck was again started and after driving for about 15-20 minutes, it was stopped. One of the above-referred persons took out Rs.17,000/- which he (the complainant) had in his pocket along with his wrist watch make Titan. They were threatened to be shot dead in case they came out of the truck. For about 30 minutes, they remained in the truck. When they did not notice any sound, they opened the strings using their mouth, released themselves and came on the road. Boarding a bus they reached police booth Narela and apprised the police officials of the incident which had taken place with them. The complainant further stated that the person who was driving the truck was aged about 20-25 years. He had fair complexion with a height of about 5.6 feet and had no moustache. Remaining persons were aged between 20-25 years and two (2) of them were of dark complexion with height of about 5.2 feet whereas the remaining three (3) were of fair complexion and had a height of about 5.6-5.7 feet. An FIR under Sections 365/395/397 of IPC was registered on the basis of the aforesaid statement of the complainant.

2. On 20.6.2001, information with respect to arrest of Mandeep, Subhash Tyagi, Jagbeer @ Raju, Charan Singh and Pawan was received. This is also the case of the prosecution that at the instance of the accused

Pawan 67 bags of rice were recovered whereas 116 bags of rice were recovered at the instance of remaining four (4) accused, namely, Mandeep, Subhash Tyagi, Jagbeer and Charan Singh. The accused Anil was arrested on being pointed out by Pawan and fifteen (15) bags of rice were allegedly recovered from him. After completing investigation, initially seven (7) persons, namely Pawan, Anil, Subhash Tyagi, Jagbeer, Mandeep, Charan Singh and Renu Khatri were prosecuted. Later Joginder @ Bachchi was also arrested and chargesheeted.

On 9.9.2003, the accused Subhash Tyagi, Jagbeer, Mandeep, Charan Singh, Renu Khatri and Joginder were charged under Sections 365/34 and 395 of IPC; Pawan was charged under Section 412 of IPC; Charan Singh was separately charged under Section 397 of IPC for using a fire arm during commission of dacoity. The accused Subhash, Jagbeer, Charan Singh were separately charged under Section 412/34 of IPC. Anil was also charged under Section 412 of IPC. Since the accused persons pleaded not guilty to the charges as many as twenty-two (22) witnesses were examined by the prosecution. Two (2) witnesses were examined in defence.

3. The complainant Ram Babu Sharma came in the witness box as PW6 and *inter alia* stated that truck bearing No.MP07G3611 was owned by him

and his partner Shri Kendra Singh. He further stated that on 10.6.2001, he along with Mahender Singh and Shivbeer Singh drivers loaded plastic scrap in the truck from Gwalior and came to Delhi where the scrap was unloaded at Mudrika Village and he collected Rs.15,000/- for transporting the said scrap from Gwalior to Delhi. Thereafter he reached MP Transport at Sanjay Gandhi Transport Nagar where he was instructed to load rice from Siraspur to transport the same to Bombay. The rice weighing 14.5 tonne was loaded from different godowns. The truck was weighed at a *dharamkata* at Siraspur. After they left Siraspur Village they were stopped by 5-6 persons who asked them to show the papers of the material saying that they (the witnesses) were taking illegal material. Within fraction of a second all of them entered the cabin of the truck. They (the witnesses) were tied with small pieces of ropes which the boys were carrying with them. Thereafter they were blindfolded by covering them with a cloth. The driver of the truck was shifted to the backseat and one of the aforesaid boys occupied the driver seat. After driving for about 1-1:30 hours the truck was stopped at an isolated place and the rice was unloaded. After unloading the material, the truck was again driven for about 30-45 minutes and then left at an unknown place. Those persons also threatened to shoot them in case they made noise.

He alleged that the cash amounting to Rs.17,000/- was taken from him besides the watch of the driver. Being afraid they did not raise any alarm for about 40-45 minutes. Thereafter they untied themselves with the help of each other and got down from the truck. They found the truck to be empty and came on the main road. Taking a lift in a Roadways bus they reached police chowki from where police officials came with them. S.I. Rajiv then reached the spot and recorded his statement Ex.PW6/A. The witness identified the accused Subhash Tyagi, Joginder, Renu Khatri, Mandeep and Charan Singh as the persons who had boarded the truck and removed their material. He also stated that almost everyone was carrying some weapon with him. He also alleged that the accused Renu Katri was driving the truck whereas Charan Singh was the person who was carrying a fire arm with him. He also claimed that the rice was seized by the police from a number of places in his presence and one such place was a godown in Begumpur, Narela. He also alleged that some recovery was also effected from the shop of accused Anil and Pawan both of whom had *kirana* shop and godown at the back of the said shops. He also claimed that the brand of the rice were Bablu, which had a photo of a child, Mahabharat and Kurukshetra which had a photo of Hanuman.

4. PW20 Mahender Singh *inter alia* stated that on 10.6.2001, he was a driver on truck No.MP07G3611 owned by Shri Ram Babu Sharma and Shivbeer was his co-driver. He along with Shivbeer and Ram Babu Sharma brought plastic scrap to Delhi from another site which they unloaded in the area of Nangloi. The fare was received by them @ 130/- per quintal and the load was about 14-15 tonne. After unloading the plastic scrap they reached Manju Ka Tila from where they were asked to load the goods from Delhi MP Freight Carrier, Siraspur for Akola in Maharashtra. They collected the goods from 2-3 places. At about 10-10:30 p.m. on 11.6.2001, 7-8 boys who were standing on the side of RS Dharamkata stopped the truck. 2-3 boys searched the truck and told them that the truck was being used for carrying liquor. When he told them that rice had been loaded on the truck one of the boys made a call on telephone and insisted on taking the truck to a police station. Thereafter he (the witness) was removed from driver seat and was beaten. Black colour cloth band was tied on their eyes. Their hands and legs were also tied and they were covered with blankets. He further stated that under the blankets they were slapped and next day morning when they woke up they untied themselves with the help of each other and found themselves in the truck in a field in Vishal Bagh, Delhi. The truck was

found empty. The owner Ram Babu Sharma who was carrying about Rs.30,000/- of cash with him had also been robbed by those boys. Taking a bus they reached police booth and the matter was reported to the police. However, this witness did not identify any of the accused persons and claimed that none of the boys was present in the Court. He claimed that those boys were quite young between the age group 25-28 years. During cross-examination by the learned Additional PP, he admitted that they had received Rs.11,000/- as charges for transporting plastic scrap to Delhi and that at Alipur they had loaded 127 bags of Bablu brand rice and from Gali No.17, Libaspur they had loaded 334 bags of rice out of which 95 bags were of the brand Mahabharat whereas 239 bags of the brand Kurukshetra on which photo of Hanuman was printed. He also admitted during the cross-examination by the learned Additional PP that when they reached opposite Satyam Property on Gurudwara Road and off Siraspur Village six (6) boys made the truck to stop and entered the truck. He also admitted that one of them was having a country made pistol which he showed to them. He further admitted that the other boys gave beating to them, pulled him from driver's seat and occupied the said seat whereas the rest of the persons tied them using string for the purpose. He also admitted that thereafter, those

persons unloaded the truck at a place where they could hear noise of ladies and children and then the truck was stopped after they had travelled for 15-20 minutes. He also admitted that Rs.17,000/- were stolen from Ram Babu. He, however, maintained that he could not identify the boys, if shown to him, since it was night time and ten (10) years since the incident took place.

5. PW14 S.I. R. Srinivasan is the Investigating Officer of this case. He *inter alia* stated that in the night intervening 20/21.6.2001, at about 12:12:30 a.m., when they were searching the accused persons involved in this case secret information was received by him that the persons who had committed robbery of rice and gram were residing on the second floor of a house situated near Lokesh Cinema, Nangloi. He requested 2-3 persons to join the investigation but they refused, whereupon without wasting time he reached house No.50, which was the house of one Ramphal in Rajinder Nagar Enclave, Nangloi, along with other police officials. The house was pointed out by the informer, who thereafter left the place. When they reached the second floor of the house four (4) persons were found sitting on the floor outside the room. When they tried to apprehend those persons on the identification of the complainant, they scattered in different directions. Three (3) of them, whose names later came to be known as Subhash Tyagi,

Mandeep Rana @ Tiger and Jagbeer @ Raju were apprehended whereas accused Charan Singh jumped from the second floor. He along with Constable Rajesh went downstairs and apprehended Charan Singh from there. He further stated that disclosure statement of accused persons Ex.PW5/A to Ex.PW5/D were recorded by him and thereafter the accused persons led the police party to Begumpur Road, near Kale Ki Dukaan, Rajiv Nagar, Begumpur. They opened the lock of the rented godown and 116 sacks of rice were recovered out of which ten (10) bags were Kshetra brand and ten (10) sacks were Bablu brand. Thereafter the accused led them to the shop of the accused Pawan situated at Begumpur Barwala Road, Near Shiv Mandir and Pawan was arrested from there. The disclosure statement of Pawan Ex.PW5/X was then recorded by him. He further stated that after they had taken police remand of the accused Charan Singh and Pawan Kumar, Pawan Kumar took them to Sector 20 of Rohini and on his pointing out accused Anil was apprehended from his shop-cum-residence. He recorded disclosure statement of Anil Ex.PW10/E. Anil got recovered fifteen (15) bags of Kshetra brand Basmati rice which were seized vide memo Ex.PW10/B. He also got recovered ten (10) bags of white gram which were seized vide memo Ex.PW14/D. According to the witness on

22.6.2001, accused Pawan led the police party to a room constructed in an agricultural field situated at Barwala-Karala Road and got recovered 67 bags of rice on which picture of God Hanuman in green colour was printed. The aforesaid bags of rice were seized vide memo Ex.PW5/Y. The witness also identified the photographs of the case property which he had seized during the course of investigation.

6. PW5 Head Constable Roop Kishore *inter alia* stated that on 20.6.2001, they went to House No.50, Rajinder Park, Nangloi belonging to Ramphal which was pointed out by the informer. When they reached the second floor of the house, four (4) persons were found sitting. One of them on seeing the police officials jumped in the *gali* from the back side but was apprehended. He identified the appellant Subhash, Mandeep, Jagbeer @ Raju, Charan Singh who were apprehended by them on the aforesaid date. He further stated that thereafter the aforesaid accused persons led the police party to a godown in Begumpur and 116 bags of rice were recovered from the said godown. He also claimed that Ram Babu Sharma was with them at the time the bags of rice were recovered. He further stated that thereafter the accused led them to Pawan Store, Begumpur from where the accused Pawan was apprehended in the presence of the complainant Ram Babu and his

disclosure statement Ex.PW5/X was recorded. He claimed that at the instance of Pawan, 67 bags of rice were recovered from a shop at Barwala-Karala Road.

PW7 S.I. Ranjeet Singh is the third police official who went to second floor of House No.50, Rajinder Park, Nangloi on 20.6.2001. He also corroborated the deposition of PW5 and PW14 regarding the appellants Subhash, Mandeep, Charan Singh and Jagbeer being apprehended from the said house. He also stated that on 24.9.2001, he received a secret information that the accused Bachchi @ Joginder wanted in this case would come from Siraspur side and go towards G.T. Road. At about 6:40 p.m., the accused Joginder was seen coming from Siraspur side and was apprehended on being pointed out by the secret informer.

PW10 Head Constable Joginder Singh also deposed with respect to arrest of the accused Subhash, Mandeep, Jagbeer @ Raju, Charan Singh from the second floor of House No.50 in Rajinder Park Enclave, Nangloi and recovery of 106 bags of rice from a godown at Rajiv Nagar, Begumpur Road, at their instance. He also deposed with respect to the arrest of the accused Pawan and recovery of fifteen (15) bags of rice and twelve (12) bags of gram at the instance of accused Anil. He also deposed with respect

to 67 bags of rice from a shop in the fields at Barwala-Karala Road on 22.6.2001.

7. PW16 Head Constable Rajesh also deposed with respect to the arrest of the appellants Subhash, Mandeep, Jagbeer @ Raju, Charan Singh from house No.50, Rajinder Park Enclave, Nangloi on 20.6.2001 and recovery of 106 bags of rice at their instance from Begumpur Road, Rajiv Nagar.

PW1 Shri Sandeep Arora stated that he had sold 461 bags of rice vide bill Ex.PX1 and the said rice was to be sent to Akola in Maharashtra through Delhi M.P. Freight Carrier. He also stated that the aforesaid goods were to be transported on 11.6.2001.

PW2 Shri N.K. Sharma is the Expert from the Finger Print Bureau who proved his report Ex.PW2/A to PW2/C.

PW15 Shri Paramjit Singh is the Judicial Officer before whom the appellant Renu Khatri refused to join TIP on 7.9.2001.

PW19 Dr. Shahbuddin is the Judicial Officer before whom the accused Joginder refused to join TIP on 25.9.2001.

8. In their statements under Section 313 Cr.PC, all the appellants denied the allegations against them and claimed to be innocent.

DW1 Dr. A.K. Singh from Indian Agriculture Research Institute,

Delhi, inter alia, stated that the basic difference between Sharbati Rice and Basmati Rice is aroma and the length of basmati rice. He admitted that the length of basmati rice is usually of more than 6.61 cm and it can go up to 8 to 10 mm and its breadth is less than 2 mm. According to him, Sharbati rice though looks like basmati rice, is a different variety, the same being without aroma.

DW2 – Veerpal stated that on 20.06.2001, he was working on the shop of Pawan and on that date when he reached the shop, he came to know from one Panditji at the nearby temple that Pawan had been taken by the police in the previous night. He further stated that father of Pawan handed over the keys of the shop to him and went to the police station. He also stated that Pawan did not own any godown.

9. Vide impugned judgment dated 26.02.2013, the appellants – Pawan and Anil were convicted under Section 411 of IPC whereas the remaining appellants were convicted under Section 412 thereof. The appellants Pawan and Anil were sentenced to undergo S.I. for three years each and to pay fine of Rs.25,000/- each or to undergo S.I. for 9 months each in default. The remaining appellants were sentenced to undergo R.I. for 5 years each and to pay fine of Rs.50,000/- each or to undergo 2 ½ years each in default. Being

aggrieved from their conviction and sentence awarded to them, the appellants are before this Court by way of these appeals.

10. The impugned judgment has been assailed by the learned counsel for the appellants on the following grounds:

- (i) The alleged recovery from the appellants has not been proved;
- (ii) The goods alleged to have been recovered from the appellants were different from the goods alleged to have been stolen from the possession of the complainant.
- (iii) The prosecution has failed to show that the property alleged to have been recovered from the appellants was received or retained by them having reason to believe to the stolen property or the property possession whereof had been transferred by commission of a dacoity, nor has the prosecution proved that they know or had reasons to believe that the same was acquired from a person whom they knew or had reasons to believe to belong to or have belonged to a gang of dacoits knowing or having reasons to believe the same to be a stolen property.

11. In order to succeed in the charge under Section 411 of the IPC, the prosecution was required to prove that the property alleged to have been recovered from the accused was the same property which was stolen and

that he had received or retained the same having or having reason to believe the same to be stolen property. In order to succeed in a charge under Section 412 of IPC, the prosecution was required to prove either that the property alleged to have been recovered from the accused was the same, which the accused knew or had reasons to believe was transferred by the commission of dacoity or that he dishonestly received from a person whom he knew or had reason to believe belonged or to have belonged to a gang of dacoits. In such a case the prosecution was further required to prove that he knew or had reason to believe that it was a stolen property.

12. A perusal of the invoice Ex.PX1 would show that 461 bags of Sharbati rice were handed over to the complainant for being transported to Akola in Maharashtra. It has come in the deposition of DW1 Dr. A.K. Singh, Senior Scientist from Indian Agriculture Research Institute that Sharbati rice was a variety of rice different from Basmati rice which is another variety of rice, the primary difference being that Sharbati rice has no aroma and has smaller grains whereas Basmati rice has extra long grain besides aroma. There is no material on record to indicate that the deposition of Dr. A.K.Singh with respect to Sharbati rice being different from Basmati rice is incorrect in any manner. In fact, in the FIR also, it was clearly

alleged that the rice stolen from the possession of the complainant was Sharbati rice. As per the FIR lodged by PW6(Ex.PW6/A), out of 461 bags of rice loaded on his truck for being transported to Akola, 127 bags were Bablu brand, 95 bags were Mahabharat brand and 239 bags were Kurukshetra brand. The picture of Hanuman was printed on the bags containing Kurukshetra brand rice.

A perusal of seizure memos Ex.PW5/Y, PW10/B and PW5/N would show that the rice alleged to have recovered from at the instance of each of the appellant was Basmati rice and the bags contained rice of brand Kshetra. Though it is possible that there was a mistake in noting the brand printed on the bags containing rice at the time the seizure memos were prepared, this is also equally possible that the rice alleged to have been recovered from/at the instance of the appellants was of a different brand namely Kshetra. It would be pertinent to note here that the brand mentioned on all the three seizure memos is Kshetra. The possibility of an identical similar mistake creeping in every time the bags containing rice would be rather very remote. Moreover, no such mistake was claimed by the IO during his deposition.

13. Thus, considering the fact that no rice of the brand Kshetra was stolen and the rice which was handed over to the complainant was Sharbati rice

whereas the rice alleged to have been recovered from the appellant/at the instance of the appellant was Basmati rice, it would be difficult to dispute that the prosecution has failed to prove beyond reasonable doubt that the rice recovered by the I.O. was the same rice which was stolen from the possession of the complainant in the night intervening 10/11-6-2001.

The learned APP submits that being a lay man, the investigating officer may not be aware of the quality of rice. I could appreciate the contention had the investigating officer not recorded the quality of rice in the seizure memo, but, since he had specifically recorded that the rice seized by him was Basmati rice, it would be difficult to say that he was not aware as to whether the rice being seized by him was Basmati rice or Sharbati rice.

14. Yet another circumstance which, to my mind, creates serious doubt with respect to the identity of the stolen property is that PW6 Ram Babu Sharma alleged in the FIR itself that out of 461 bags given to him for being transported to Akola, 127 bags were of Bablu brand Sharbati rice, 95 bags of Mahabharat brand Sharbati rice and 239 bags were of Kurukshetra brand Basmati rice with picture of Hanuman printed on the bags. The transporter, who is given hundreds of bags containing rice at the same time for transportation, in the normal course of human conduct, is not likely to notice

the brand printed on each and every bag particularly when the number of bags given to him for transportation runs into hundreds. It would be pertinent to note here that the invoices of rice Ex.PX1 does not bear any brand name of the bags of rice sold vide the said invoice. Therefore, it cannot be said that the number of bags of a particular brand of rice was noted by the complainant from the invoice, a copy of which may possibly have been handed over to him for the purpose of being shown at inter-State border check post. Even the Goods Receipt Ex.PX2 and PX3 do not bear any brand name of the rice which was sought to be transported from Delhi to Akola. Similarly, even the insurance receipt Ex.PX4 also does not bear any brand of rice insured by National Insurance Company.

15. For the reasons stated hereinabove, all the appellants are given benefit of doubt and are hereby acquitted.

One copy of this order be sent to the concerned Jail Superintendent for information and necessary action.

LCR be sent back along with a copy of this order.

APRIL 02, 2014
b'nesh/rd

V.K. JAIN, J.