

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

RESERVED ON : 17th APRIL, 2014

DECIDED ON : 28th MAY, 2014

+ CRL.A. 392/2012

NARENDER KUMAR @ NARESH Appellant

Through : Mr.Anirudh K.Mudgal, Advocate.

versus

THE STATE (GOVT. NCT OF DELHI) Respondent

Through : Mr.Lovkesh Sawhney, APP.

AND

+ CRL.A. 394/2012

NARENDER KUMAR @ NARESH Appellant

Through : Mr.Anirudh K.Mudgal, Advocate.

versus

THE STATE (GOVT. NCT OF DELHI) Respondent

Through : Mr.Lovkesh Sawhney, APP.

**CORAM:
HON'BLE MR. JUSTICE S.P.GARG**

S.P.GARG, J.

1. Narender Kumar @ Naresh (the appellant) impugns judgments dated 02.02.2012 and 03.02.2012 in Sessions Case No. 80/2011 arising out of FIR No. 71/2005 PS Narela and Sessions Case No.

84/2011 arising out of FIR No. 187/2005 PS Sultanpuri by which he was convicted under Section 392 read with Section 411 IPC and under Sections 186/353 IPC and 25 Arms Act, respectively, and awarded various prison terms.

2. Briefly stated, the prosecution case in FIR No. 71/2005 PS Narela was that on 30.01.2005 at about 02.30 P.M. on a road, in front of Gurudwara Dera Baba Resham Singh, Krishan Nagar, the appellant and his associates – Satish Kumar (A-2) and Shyam Sunder (A-3) sharing common intention robbed complainant – Raj Kumar @ Raju of Toyota Corolla bearing No. DL 7CE 3953 using ‘deadly’ weapons. Daily Diary (DD) No. 12A (Ex.PW-4/A) was recorded at 02.48 P.M. at PS Narela regarding the incident. SI Suraj Bhan to whom the investigation was assigned lodged First Information Report after recording complainant – Raj Kumar @ Raju’s statement (Ex.PW-1/A). Efforts were made to find out the assailants but to no effect.

Prosecution case as unfolded in charge-sheet FIR No. 187/2005 PS Sultanpuri was that on 01.02.2005 at about 06.30 P.M. at T point, Pahaladpur, Pooth Kalan road, near Sector 23, Rohini, Narender (A-1) and his associates – Satish Kumar (A-2) and Shyam Sunder (A-3) voluntarily obstructed police officials ASI Ram Kumar, HC Vijender and

Const.Dilawar Singh, etc. in the discharge of the public duties and used criminal force to prevent or deter them from performing their lawful / public duties. The appellant also fired at ASI Ram Kumar in an attempt to murder. They all were apprehended at the spot. Country-made pistols from each of the appellant (A-1) and Satish Kumar (A-2); and a dagger from Shyam Sunder (A-3) were recovered. The vehicle in which they were travelling at the time of apprehension was found subject matter of case FIR No. 71/2005 PS Narela. Necessary intimation was given to the concerned Investigating Officer. Statements of the witnesses conversant with the facts were recorded. After completion of investigation, charge-sheets were submitted against the appellant and his associates in both the cases. Various witnesses were examined by the prosecution to establish their guilt. In 313 statements, the appellant and his companions denied their involvement in the crime and pleaded false implication. The trial resulted in their conviction under Section 392 IPC read with Section 411 IPC (in case FIR No. 71/2005); under Sections 186/353 IPC and 25 Arms Act (in case FIR No.187/2005). Being aggrieved and dissatisfied, the appellant has challenged the conviction in both the cases.

3. I have heard the learned counsel for the parties and have examined the record. It is relevant to note that State did not file any appeal

to challenge the impugned judgments. Satish Kumar (co-convict) (A-2) had filed Crl.A.Nos. 318/2012 & 321/2012 which were disposed of by this Court on 28.02.2013. A-2 was found juvenile on the day of incident and the matter was remitted to the Juvenile Justice Board for inquiry in accordance with law. Co-convict Shyam Sunder (A-3) was acquitted in case FIR No. 71/05 but was convicted under Section 411 IPC only in case FIR No.187/05. It appears that he has not challenged his conviction. Since conviction in FIR No. 71/2005 PS Narela and FIR No. 187/2005 PS Sultanpuri were intrinsically connected, with the consent of the parties, both the appeals were heard together for disposal by a common judgment.

4. Appellant's counsel urged that the Trial Court did not appreciate the evidence in its true and proper perspective and fell in grave error in relying upon the testimonies of police officials without independent corroboration. The prosecution did not offer plausible explanation for not associating independent public witnesses despite their availability. The complainant Raj Kumar @ Raju improved his initial version in a supplementary statement recorded after a considerable delay on 16.02.2005. The Investigating Officer erred in not holding Test Identification Proceedings and identification by the complainant for the first time in Court had no value as he had no occasion to see the covered

faces of the assailants. Initially, the complainant had alleged that there were two assailants, but in the subsequent statement, the number increased to three on 16.02.2005. The assailants were shown to the complainant when they were produced in un-muffled faces before the Trial Court. The recovery of the weapons from the possession of the appellant and his associates is suspect. The fired bullet was not recovered from the spot. Inordinate delay of six months in sending the weapons to Forensic Science Laboratory has remained unexplained. No fingerprints of any of the assailants were found on the weapons. No gun powder residue analysis was done either on the interior of the vehicle or of the hands of the appellant. Learned Addl. Public Prosecutor urged that the impugned judgments are based upon fair appraisal of the evidence and there are no cogent and valid reasons to disbelieve the complainant who had no prior ill-will or animosity against the appellant and his associates to falsely implicate them.

5. The robbery incident (FIR No. 71/2005 PS Narela) took place on 30.01.2005 at about 02.30 P.M. The information about the incident was conveyed in promptitude and Daily Diary (DD) No. 12A (Ex.PW-4/A) was recorded at PS Narela at 02.48 P.M. It records about the robbery of Toyota Corolla bearing No. DL 7CE 3953 by two boys armed

with a pistol who fled the spot. After recording complainant's statement (Ex.PW-1/A), the Investigating Officer lodged First Information Report without delay by sending rukka (Ex.PW-11/A) at 04.25 P.M. The complainant disclosed to the police at the first instance in detail as to how and under what circumstances, he was robbed of his vehicle No. DL 7CE 3953 at pistol point by two individuals at 02.30 P.M. near a Gurudwara where he had gone with his employer. He gave elaborate description of the assailants and claimed to recognise and identify them. In Court statement, the complainant Raj Kumar proved the version given to the police without major variations or improvements and identified in categorical terms A-1 who was one of the individuals / assailants in the crime. He testified that at about 02.30 P.M., two boys (identified as A-1 and A-2) came to him. A-1 abused and pressed his neck with his hand. A-2 sat on the back seat of the car; A-1 pushed him towards the left side seat of the car and put a knife on his neck. When he tried to open the door to run away, A-2 took out a katta and again pushed him inside the car. He succeeded to run from the spot. A-1 and A-2 fled with the car as its keys were inside it. He immediately went to inform his owner Umesh Gupta inside the Gurudwara. Someone informed the police and PCR arrived at the spot. It is true that this witness implicated A-3 and stated that he too

sat in the car at some distance. The reason for omission to disclose the presence of the third assailant was due to perturbation at that time. In the cross-examination, he disclosed that the occurrence took place on Sunday. Explaining slight injuries on his neck, he deposed that he was not aware if it was due to knife or rubbing of his shirt. He further elaborated that before committing robbery, A-1 and A-2 had taken several rounds in their car and their faces were partly covered by a silk cloth. He recalled that when they scuffled with him, the piece of cloth had come off and he could see their faces. Scanning the testimony of the victim, it reveals that no material discrepancies could be extracted or elicited in the cross-examination to shatter his version. The witness had no axe to grind to fake the incident of robbery in which he was deprived of the vehicle forcibly. The incident was reported without wasting any time and it led to the recording of Daily Diary (DD) No. 12A (Ex.PW-4/A) at 02.48 P.M. itself. The FIR was lodged in promptitude. The victim had not named the assailants. He had no animosity or acquaintance with them to falsely implicate. So far as A-1 is concerned, the witness in his Court statement attributed a specific and definite role to him in the incident. Since the complainant had direct confrontation with the assailants for sufficient duration during day-time, he had reasonable and fair opportunity to

observe their broad features to recognise them in the Court. For the lapse of the Investigating Officer not to move application for conducting Test Identification Proceedings before showing him in Tis Hazari Courts, the identification in the Court in the absence of any infirmity cannot be faulted or discredited. The primary object of TIP is to enable the witnesses to identify the persons involved in the commission of offence, if the offenders are not personally known to them. The whole object behind the TIP is really to find whether or not the suspect is the real offender. Failure to hold the TIP does not make the evidence of identification at the trial inadmissible. The evidence of identification of an accused in Court is the substantive evidence. The complainant had given detailed features of the assailants and had participated in the preparation of sketches or portraits of the suspects. In the absence of any prior animosity or ill-will, the complainant was not expected to wrongly identify and implicate A-1 at the instance of the police.

6. The vehicle in question was recovered by Special Staff on 01.02.2005 from the possession of the appellant and his associates. The secret information was received by ASI Ram Kumar in the office of Special Team, Crime Branch, Preshant Vihar about the arrival of the suspects. A raiding team was organised and at around 05.30 P.M. after

making Daily Diary (DD) No. 11 (Mark PW-7/A), the police team left for the spot. Request was made to some passersby to join the investigation but none agreed. At about 06.30 P.M. one Toyota Corolla bearing No. DL 7CE 3953 came from Prahladpur side and the appellant and his associates were found sitting therein. At the instance of secret informer, the said car was signalled to stop. The prosecution examined various witnesses, PW-1 (HC Vijender), PW-5 (HC Dilawar Singh), PW-7 (ASI Ram Kumar), PW-10 (HC Veer Pal) and PW-11 (Insp.Hoshiyar Singh) who narrated consistent version on all material aspects about the recovery of the vehicle and weapons from the possession of the appellant and his associates. Despite in-depth cross-examination, nothing emerged to suspect their version. It is true that no independent public witness was associated at the time of apprehension of the appellant. However, plausible explanation has been given by the police officials that some passersby were requested to join the proceedings but they declined to do so for various reasons. Many a times, public witnesses exhibit reluctance to join the police proceedings. It is settled legal preposition that where the evidence of the police officials, after careful scrutiny, inspires confidence and is found to be trustworthy and reliable, it can form the basis of conviction and the absence of some independent witness of the locality to lend corroboration

to their evidence, does not in any way affect the creditworthiness of the prosecution case (AIR 1966 SC 3079). In the instant case, recovery of the vehicle of substantial value was effected from the appellant and his associates. The police officials are not expected to plant it on their own. They were not aware if the vehicle in question was required in case FIR No. 71/2005. The appellant's involvement in the said case emerged in the disclosure statements recorded by them. The Special Team of Crime Branch, Prashant Vihar had no concern with FIR No. 71/2005 PS Narela at that time to falsely implicate the appellant and his associates. The appellant and his companions did not offer plausible explanation as to how and in what manner, they got possession of the vehicle which did not belong to them. Recovery of the robbed vehicle from the possession of the appellant on 01.02.2005 soon after the incident in case FIR No. 71/05 PS Narela is a vital incriminating piece of evidence to connect him with the crime. Presumption under Section 114 (a) of Evidence Act stands attracted. Certain lapses pointed out by the appellant's counsel in investigation do not shake the basic structure of the prosecution case. Delay in sending fire-arms to FSL is inconsequential as the Investigating Officer was not questioned to explain it. Moreover, A-1 was given benefit of doubt for the commission of offence under Sections 307 IPC. Other

minor discrepancies, improvements and contradictions highlighted by the appellant's counsel do not affect the core of the prosecution case to disbelieve the prosecution witnesses and to discard their testimonies in entirety. The appellant did not examine any witness in defence to substantiate as to from where and at what time, he was taken to custody on 31.01.2005 as claimed in 313 statement. None of the police official was having any animosity against the appellant to falsely rope him in both the cases. The Trial Court has dealt with all the relevant contentions of the appellant in both the judgments. The findings of the Trial Court are based upon fair appreciation of the evidence and warrant no interference.

7. In FIR No. 71/2005, the appellant was awarded RI for three years with fine ₹ 2,000/- under Section 392 IPC read with Section 411 IPC. In case FIR No. 187/2005, he was sentenced to undergo RI for three months under Section 186 IPC read with Section 353 IPC; RI for one year with fine ₹ 1,000/- under Section 25 Arms Act. All the sentences were to operate concurrently. Sentence awarded in FIR No. 187/2005 was to run concurrently with the sentence in case FIR No. 71/2005. Nominal roll dated 22.4.2014 reveals that the appellant remained in custody for two months and fifteen days in all before release on bail on 11.04.2012. He is not involved in any other criminal case and is a first time offender. His

overall jail conduct was satisfactory. Nothing has been brought on record to infer if after his release on bail, A-1 indulged in any such criminal activity. The appellant suffered agony of trial / appeal for about 9 years. Sentence order records that the appellant was aged about 29 years; was a driver by profession and had a family comprising of aged parents, three sisters, wife and two sons. Considering these mitigating circumstances, sentence order is modified and the substantive sentence of the appellant under Sections 392/411 IPC is altered to RI for one year. Other terms and conditions of the sentence orders are left undisturbed.

8. The appeals stand disposed of in the above terms. The appellant shall surrender before the Trial Court on 04.06.2014 to serve the remaining period of sentence. Trial Court record be sent back forthwith with the copy of the order. A copy of the order be sent to the Superintendent jail for information.

(S.P.GARG)
JUDGE

MAY 28, 2014 / tr