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

% *Date of Decision: September 01, 2014*

+ **CRL.A. 629/2013**

MOHD.AZAD ALAM Appellant

Represented by: Mr.Bhupinder Mehtani,
Advocate

versus

STATE Respondent

Represented by: Ms.Aasha Tiwari, APP for the
State with Inspector Ram
Kanwar Dahiya, PS Subhash
Place.

+ **CRL.A. 888/2013**

MOHD.ARIF Appellant

Represented by: Mr.Rajat Sharma, Advocate.

versus

STATE GOVT. OF NCT OF DELHI & ORS. Respondents

Represented by: Ms.Aasha Tiwari, APP for the
State with Inspector Ram
Kanwar Dahiya, PS Subhash
Place.

+ **CRL.A. 1132/2013**

SHAHJAD Appellant

Represented by: Mr.Ajit Sharma, Advocate.

versus

STATE (NCT OF DELHI) Respondent

Represented by: Ms.Aasha Tiwari, APP for the
State with Inspector Ram

Kanwar Dahiya, PS Subhash
Place.

+ **CRL.A. 418/2014**

SARFARAJ @ SONU

..... Appellant

Represented by: Mr.K.Singhal, Advocate.

versus

STATE

..... Respondent

Represented by: Ms.Aasha Tiwari, APP for the
State with Inspector Ram
Kanwar Dahiya, PS Subhash
Place

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J. (ORAL)

Crl.M.B.No.2458/2013 in Crl.Appeal No.629/2013

Dismissed as infructuous since the appeals are being heard today and thus the question of suspending the sentence pending hearing of the appeal does not arise.

Crl.A.629/2013, CRL.A.888/2013, CRL.A.1132/2013 & CRL.A.418/2014

1. Co-convict Naeem has not filed any appeal challenging the impugned decision.
2. The irrefutable evidence capturing the movements of Sarfaraj, Shahjad, Mohd.Arif and Mohd.Azad Alam, the four appellants and the fifth co-convict Naeem when they committed an armed dacoity in the shop of Amar Nath Gupta PW-11 is captured in the CCTV footage Ex.PX1 and

Ex.PX2 seized by SI Umesh Rana the Investigating Officer. We have seen the two footages captured by the CCTV cameras and stored in the memory of the hard disk of the computer of the CCTV. The two footages have been seized by SI Umesh Rana on being handed over by Amar Nath Gupta. The first seizure is on February 05, 2011 and the seizure memo relatable thereto is Ex.PW-15/B. It relates to the CCTV footage stored in the memory for the period around 9.56 P.M. till 9.58 P.M. on February 04, 2011. The second footage seized vide memo Ex.PW-15/E is when Manoj Gupta s/o Amar Nath Gupta handed over on February 12, 2011 the footage pertaining to what was recorded between 7.33 P.M. to 7.45 P.M. on February 04, 2011.

3. No suggestions have been made either to Amar Nath Gupta PW-11 that there is tampering in the CCTV footage(s) neither is any such suggestion made to SI Umesh Rana.

4. A feeble argument has been made that the second CCTV footage was seized on February 12, 2011 and could not be authentic because the equipment installed was capable of storing CCTV footages for only two days.

5. Making the argument, counsel conceded when confronted with the question by us that if the equipment is switched off, would it not store CCTV footages for two days, in that in said eventuality the footage of any prior duration would remain for the obvious reason the system installed in the shop of PW-11 was such that storage of CCTV footage was continuous. As the cameras captured images beyond 48 hours, the previous footage stored in the hard disk would automatically wash out, to be replaced by the new footage. Learned counsel for the appellants concedes that the witnesses of the prosecution who could have thrown light, PW-11 and PW-15 have not been cross-examined on the issue. Thus, the purity of the two footages

remains intact.

6. What do the two footages show?

7. The first footage would show that at 19:33:00 hours i.e. at 7.33 P.M. on February 04, 2011, two boys, one wearing a blue shirt and the other wearing a black and white striped full sleeve T-shirt with a hood, have made a recce of the shop of Amar Nath Gupta PW-11 on the ground floor of WZ-621, Gali No.2, Shri Nagar, Rani Bagh, Delhi from where he was carrying on the business of sale of tobacco and gutka. The two boys are seen hanging around: on the road, casually looking inside. Amar Nath Gupta is at the counter which is 'L' shaped and is at the front of the shop. The two boys are seen strolling to and forth outside the shop, on the road, but with gaze fixed inside the shop. Hovering around, the two have vanished at around 19:34:53 hours i.e. at 53 seconds past 7.34 P.M. The two boys have thus remained in the gaze of Amar Nath Gupta for one minute and fifty three seconds. They have been captured in the CCTV footage for said duration.

8. In the second footage, between the period 21:56:41 hours and 21:57:03 hours i.e. for a duration of twenty two seconds, one can see as follows: Amar Nath Gupta is sitting on the chair at the counter. One servant, whose name is Vijay Bahadur is sitting on a stool at an arm's length distance. A boy wearing a white shirt and blue jeans with a piece of cloth masking his face just below the eyes enters the shop at 21:56:42 hours. The features of this boy above the eyes are clearly discernible. The boy has a knife in his hand. A second later, at 21:56:43 hours two boys, one wearing a pink shirt and a dark blue pant, with a white coloured shawl wrapped around the shoulders and covering the head: so as to form a hood, and the other wearing a striped black and white full sleeve T-shirt with the hood thereof

on his head enter the shop. The boy wearing the striped black and white T-shirt is the same who is captured in the CCTV footage recorded between 19:33:00 hours till 19:34:53 hours. The first boy has walked upto Amar Nath Gupta. His back has been captured by the CCTV camera. From his movements and the corresponding movements of Amar Nath Gupta it is clear that this boy is threatening Amar Nath Gupta with the knife he was carrying in his hand. Immediately thereafter the two servants, Vijay Bahadur PW-6 and Shyam Bahadur PW-10 who were present in the shop are seen challenging the three boys. One of them grapples with the boy wearing the pink shirt and is able to unmask his face by removing the shawl. At that time a fourth boy wearing a skull cap, with face masked with a cloth at the nose level, but with eyes and part of the forehead clearly discernible, wearing a blue shirt accompanied by a fifth boy behind him enters the scene. The boy wearing the skull cap is the second boy captured in the CCTV footage at 7.33 P.M. He enters the shop with a pistol or a revolver in his hand and brandishes the same at Amar Nath Gupta. The fifth boy stands guard outside. The fourth boy manages to pick up the cash from the cash box. At that time, the second boy wearing the pink shirt, is seen repeatedly trying to stab the servant of Amar Nath Gupta who challenged him but fortunately for the servant could not even strike once. The servants throw the chairs at the intruders who retreat and in the process some cash is seen falling down. They run away with the part booty which remained with them. We have taken out one still from the first CCTV footage and six from the second and would simply highlight that learned counsel concedes that Shahjad and Sarfaraj are the two boys seen in the first CCTV footage and the still frame, showing the two boys would be as under:-



9. The other three boys who came along with Shahjad and Sarfaraj at 9.56 P.M. are Naeem, Mohd.Arif and Mohd.Azad Alam.

10. With reference to the five boys whose role has been gleaned by us, learned counsel concedes that the first boy who entered the shop at 21:56:42 hours, wearing a white shirt and blue jeans and was masking his face just below the eyes with a piece of cloth is Naeem. It is he who brandished the knife at Amar Nath Gupta. The second boy wearing a pink shirt and had wrapped a shawl over his head and the shoulders, to mask himself, is Mohd.Arif. It is he who is seen repeatedly trying to stab a servant of Amar Nath Gupta. The third boy who entered the shop and was wearing a white and black striped full sleeve T-shirt with the hood thereof over his head is Shahjad. He remained unarmed. The fourth boy who entered the shop wearing a skull cap and who had masked his face just below the eyes with a piece of cloth is Sarfaraj, the boy who also came at the recce. He was armed with a pistol and is seen brandishing the same so as to reach the cash counter. It is he who picked up the cash. The fifth boy who stood outside

and was unarmed is Mohd.Azad Alam.

11. We note that Vijay Bahadur PW-6, Shyam Bahadur PW-10, the two servants of Amar Nath Gupta and Amar Nath Gupta PW-11 have deposed in sync and have identified the five accused in court during their testimony. We note that the *desi katta* got recovered by Sarfaraj was found to be not in a position to fire. We note that ₹2,300/- were got recovered by Mohd.Azad Alam from an almirah in the room of his house. We further note that pursuant to their disclosure statements, Shahjad, Mohd.Arif and Naeem got recovered the pant and the shirt/T-shirt which they were wearing at the time of the incident, and we simply note that they are the same which can be seen worn by them in the CCTV footages.

12. We have generated six still frames from the second CCTV footage, and the same would be as under:-









13. The first still captures the entry of Naeem. The second still captures the entry of Mohd.Arif and Shahjad. The third captures the entry of Sarfaraj. The fourth captures the entry of Mohd.Azad Alam. It also captures along with the fifth still the assault by Mohd.Arif with the knife. It also captures the pistol in the hand of Sarfaraj. The last captures the escape.

14. It is an open and shut case. Learned counsel for the four appellants concedes to said fact.

15. Vide judgment dated February 16, 2013 the learned trial judge has opined that the prosecution has successfully established as under:-

- *That Amar Nath Gupta along with his son Manoj Kumar Gupta are having the business of wholesale of Tobacco products at WZ-621, Gali No.2, Shri Nagar, Rani Bagh.*
- *That Shyam Bahadur and Vijay Bahadur are working on the said shop of Amar Nath Gupta.*

- *That four CCTV Cameras are installed in the shop out of which Camera 1 and 2 i.e. CH-1 & CH-2 are installed in the shop in the front portion of the building where the sale/purchase work is done. The camera 3 and 4 i.e. CH-3 & CH-4 are installed on the back portion of the building which is used as godown/store house.*
- *That on 4.2.2011 between 7:33 PM to 7:37 PM the accused Sarfaraz and Shahzad came to the shop of complainant Amar Nath Gupta and on the pretext of making purchases they conducted recce, observed the spot for some time and thereafter returned.*
- *That at about 9:45 PM the accused Sarfaraz and Shahzad returned along with Mohd.Azad Alam, Naeem @ Naimuddin and Mohd.Arif and committed dacoity.*
- *That first the accused Naeem entered the shop with his face covered with a small handkerchief (despite which he was unable to hide himself properly and can be identified) and a knife in his hand which he had put on the back of Amar Nath Gupta.*
- *That in the meanwhile the accused Arif entered the shop with a shawl wrapped around his face with a knife in his hand and inflicted knife blows on Amar Nath Gupta who was providentially saved on account of intervention of his employees who put up a stiff resistance.*
- *That during the scuffle the shawl of accused Arif fell down which was lifted by the police later.*
- *That due to stiff resistance put forth by Vijay Bahadur and Shyam Bahadur, the accused ran away from the shop and while running away the knife/money which the accused had looted, fell down.*
- *That the accused Sarfaraz entered the shop after having covered his face with a small handkerchief (despite which he was unable to hide himself properly and can be identified) and a country made pistol in his hand which he menacingly showed to the*

victims and removed the money from the galla/cash box and ran away.

- *That during this period the accused Shahzad and Mohd.Azad Alam remained outside the shop and were keeping a watch.*
- *That thereafter a PCR call was made pursuant to which the police reached the spot and lifted the knife and shawl from the spot of the incident.*
- *That on the basis of statement of Amar Nath Gupta the present case was got registered.*
- *That all the CCTV Cameras i.e. CH-1, CH-2, CH-3 and CH-4 have similar time settings (showing identical readings at a given point of time) and have a memory of two days and the Investigating Officer obtained the CCTV footage of the said four cameras of the relevant period.*
- *That on 13.02.2011 pursuant to a secret information the accused Shahzad was apprehended from House No.WZ 323, Village Shakurpur, Delhi and on his pointing out the accused Md.Azad Alam was also apprehended.*
- *That on 18.02.2011 pursuant to a secret information the accused Md.Arif was apprehended from House No.M-7, Sample quarters, JJ Colony, Shakur Pur.*
- *That on 21.02.2011 the accused Naeem @ Naimuddin was apprehended from near Kabristan, JJ Colony, H Block, Shakur Pur, Delhi pursuant to a secret information.*
- *That on 05.03.2011 an information was received from Police Station Moti Nagar about the arrest of the accused Sarfaraz after which the accused Sarfaraz was arrested in the present case.*
- *That on 17.03.2011 pursuant to the disclosure and pointing out of accused Sarfaraz @ Sonu a country made pistol was*

recovered from his rented accommodation at WZ-48, Village Shakur Pur, Delhi.

- *That during the Test Identification Parade proceedings Shyam Bahadur and Vijay Bahadur correctly identified accused Shahzad.*
- *That the accused persons Mohd.Azad Alam, Mohd.Arif, Naeem and Sarfaraz refused to take part in the TIP Proceedings.*
- *That on 28.02.2011 pursuant to refusal of Mohd.Azad Alam to participate in the TIP Proceedings the witness Shyam Bahadur identified him outside the Court during his production in the Court of Ld.Illaka Magistrate.*
- *That on 14.03.2011 pursuant to refusal to Mohd.Arif and Naeem to participate in the TIP Proceedings the witness Shyam Bahadur identified them outside the Court during their production in the Court of Ld.Illaka Magistrate.”*

16. The learned trial judge has held Naeem, Mohd.Arif and Sarfaraj guilty of the offence punishable under Section 395 read with Section 397 IPC. Sarfaraj has also been held guilty of the offence punishable under Section 25 of the Arms Act. Mohd.Azad Alam and Shahjad have been held guilty for the offence punishable under Section 395 IPC.

17. The reason is obvious. There were five persons who conjointly committed robbery. Thus it was a case of dacoity. Three used deadly weapons and attempted to cause, if not death, grievous hurt, as per the findings returned by the learned trial judge. Sarfaraj was armed with a pistol (*desi katta*). Mohd.Arif and Naeem were armed with a knife. Naeem brandished the same to overawe Amar Nath Gupta. Mohd.Arif not only brandished but even yielded the knife at the servant of Amar Nath Gupta who challenged him.

18. Noting that Naeem was a bad character and had involvement in 27 previous cases of robbery and housebreaking in night, Mohd.Arif had a criminal record of being involved in six previous cases including attempt to murder, housebreaking and theft and Sarfaraj had a previous involvement in two cases for theft and robbery, the learned trial judge has sentenced Mohd.Arif, Naeem and Sarfaraj to undergo RI for life. For the offence punishable under the Arms Act, Sarfaraj has been sentenced to undergo RI for three years. Concerning Mohd.Azad Alam and Shahjad noting that they had no previous criminal record and the two did not use any weapon, noting further that Mohd.Azad Alam kept on standing at a little distance on the road, the learned trial judge has sentenced the two to undergo RI for seven years.

19. Since Naeem has not filed any appeal challenging his conviction and the sentence imposed upon him, we do not discuss the sentence imposed upon him nor his being convicted. Regarding Sarfaraj the evidence is that he was armed with a *desi katta*. It may be true that the *desi katta* which he got recovered was opined as incapable of firing, but where is the guarantee that he got recovered the *desi katta* which he was carrying with him when the incident took place? In the CCTV footage he can be seen menacingly brandishing the *desi katta* to overawe Amar Nath Gupta and his two servants. He has two previous involvements for theft and robbery. We do not find the sentence to undergo imprisonment for life imposed upon him as excessive. Mohd.Arif had a knife which he not only brandished to overawe the three occupants of the shop. He even attempted to stab the servant of Amar Nath Gupta and in the CCTV footage one can make out that he tried to stab two to three times. The servant was fortunate not to be hit even once. The sentence to undergo life imprisonment inflicted upon him is not

excessive. The sentence imposed upon Mohd.Azad Alam and Shahjad is to undergo RI for seven years. The two were not armed. The difference in their role is that Shahjad played an active role in the dacoity by firstly making a recce of the shop and thereafter accompanying Naeem and Mohd.Arif to the shop and when the latter two entered the shop armed with a knife each, he stood at the passage between the wall of the shop and the sale counter, obviously to prevent any servant from the shop running out to summon rescue. Keeping in view his role, the sentence imposed upon him cannot be said to be excessive. As regards Mohd.Azad Alam, the CCTV footage shows his role to be the least. He is seen loitering outside the shop when dacoity was being committed. His obvious role was to intervene if need arose to facilitate the crime. He has no previous criminal record. We find that the learned trial judge has not kept the said aspect in mind. We are of the opinion that interest of justice would be served if he is sentenced to undergo RI for four years.

20. CrI.A.No.888/2013, CrI.A.No.1132/2013 and CrI.A.No.418/2014 filed by Mohd.Arif, Shahjad and Sarfaraj respectively are dismissed. CrI.A.No.629/2013 filed by Mohd.Azad Alam is disposed of reducing the sentence upon him to four years RI. Needless to state he shall be entitled to benefit of Section 438 Cr.PC.

21. Four copies of the decision be sent to the Superintendent, Central Jail, Tihar, one each to be supplied to the appellants.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

SEPTEMBER 01, 2014/rk