

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

RESERVED ON : March 13, 2014

DECIDED ON : March 19, 2014

+ **CRL.A. 743/2011 & CRL.M.B.No. 467/2014**

JUBER KHAN @ GUDDU Appellant

Through : Mr.Harihar Guin, Advocate.

versus

STATE Respondent

Through : Mr.Lovkesh Sawhney, APP.

+ **CRL.A. 833/2011**

SHRAVAN @ SONU Appellant

Through : Mr.Vivek Sood, Advocate.

versus

STATE NCT OF DELHI Respondent

Through : Mr.Lovkesh Sawhney, APP.

+ **CRL.A. 851/2011 & CRL.M.B.No. 292/2014**

GURMEET SINGH @ SITU Appellant

Through : Mr.Rajpal Rai Dua, Advocate.

versus

STATE Respondent

Through : Mr.Lovkesh Sawhney, APP.

+ **CRL.A. 622/2011 & CRL.M.B.No. 216/2014**

SONU @ RANJHA

..... Appellant

Through : Ms.Rakhi Dubey, Advocate.

versus

STATE

..... Respondent

Through : Mr.Lovkesh Sawhney, APP.

CORAM:

MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Juber Khan @ Guddu (A-1), Shravan @ Sonu (A-2), Gurmeet Singh @ Sitoo (A-3) and Sonu @ Ranjha (A-4) challenge the correctness and legality of a judgment dated 25.04.2011 in Sessions Case No.26/10 arising out of FIR No.255/05 registered at Police Station Timarpur by which they were held guilty for committing offences under Sections 392/397 IPC. By an order on sentence dated 28.04.2011, they were awarded RI for five years with fine ₹5,000/- each under Section 392 IPC and RI for seven years each under Section 397 IPC. The substantive sentences were to operate concurrently.

2. Allegations against the appellants as projected in the charge-sheet were that on 27.5.2005 at about 02.00 a.m. at House No.123/2, First

Floor, Sant Nagar, Burari, they committed robbery and deprived complainant-Sandeep Kumar of various jewellery articles, cash, wrist watch, cameras, mobile phone make Samsung while armed with deadly weapons. Daily Diary (DD) No.8 (Ex.PW-14/A) was recorded at 05.15 hours at Police Post Jharoda, Police Station Timarpur regarding the incident. The investigation was assigned to ASI Rajender Singh. SI Sunil Shrivastava and Const.Satish Pal also went to the spot. After recording complainant-Sandeep Kumar's statement (Ex.PW-3/A), he lodged First Information Report. Efforts were made to find out the culprits but in vain. On 31.05.2005 A-2, A-3 and A-4 were arrested in case FIR No.210/05 under Section 399/402 IPC registered at Police Station Sarai Rohilla. Pursuant to disclosure statements, their involvement in the present case surfaced and some recoveries were effected at their instance. On 07.09.2005, A-1 surrendered in the court in FIR No.210/05. Applications were moved for holding Test Identification Proceedings and the accused persons declined to participate in it. Statements of witnesses conversant with the facts were recorded. After completion of investigation, a charge-sheet was filed against all of them; they were duly charged and brought to trial. The prosecution examined 20 witnesses to bring home their guilt.

In 313 statements, the accused persons pleaded false implication. The

trial resulted in their conviction as aforesaid. Being aggrieved and dissatisfied, they have preferred the appeals.

3. I have heard the learned counsel for the parties. During arguments, learned counsel for A-1, A-3 and A-4, on instructions, did not challenge the findings of the trial court on conviction under Section 392 IPC. Their only grievance was that the offence under Section 397 IPC was not attracted and proved. No crime weapon allegedly used during the incident was recovered from the possession of the accused or at their instance. Prayer was made to modify the sentence order and to release the appellants for the period already undergone in custody by them. Learned counsel for A-2 urged that he was not named in the FIR despite the fact that he was known to the complainant. No crime weapon was recovered from his possession.

4. Crucial testimony to infer the guilt of the appellants is that of PW-1 (Rashmi), who gave detailed account of the incident and deposed that on the night intervening 27/28.05.05 at about 02.00 a.m. four assailants, one of which was armed with a pistol and the others were having 'big' churras entered forcibly in their house. She also disclosed as to how they were threatened to part with the jewellery articles and cash at the point of weapons. She clarified that she was caught hold by A-2 and

A-4 whereas her husband was caught hold by A-1 and A-3. A-1 was armed with a pistol and A-2 to A-4 were having big knives. She attributed specific role to A-4 who had threatened to stab her husband if they did not hand-over the articles on his counting upto six. She gave the complete description of the articles robbed. The assailants left after tying their hands and legs. She identified gold necklace (Ex.P-1), four gold bangles (Ex.P-2/A-1 to A-4), three pairs silver pajabs along with two pairs of bichaus (Ex.P-3/A-1 to A-6), mobile phone make Samsung (Ex.P-4) and wrist watch (Ex.P-5) recovered subsequently. PW-3 (Sandeep Kumar) corroborated her version in its entirety without any deviation. He also identified all the accused persons who had robbed them at the point of pistol/knives. He also assigned specific role to each of the assailants in committing robbery. Despite their cross-examination at length, no material discrepancy or contradiction emerged to disbelieve their version. These witnesses had no extraneous consideration to fake the incident of robbery at odd hours at their residence. They suffered injuries during robbery at the hands of the assailants. They were taken to Aruna Asaf Ali Government hospital and were medically examined by PW-16 (Dr.Kumud Bharti) by MLCs (Ex.PW-16/A and Ex.PW-16/B). The injuries were opined as 'simple caused by blunt object.'

5. The appellants were arrested in case FIR No.210/05 under Section 399/402 IPC registered at Police Station Sarai Rohilla and their disclosure statements were recorded. A-2 pursuant to his disclosure statement (Ex.PW-11/C) recovered three pairs of 'pajabs' and two pairs of 'bichhuas' from his house at Nathu Pura. A-4 pursuant to his disclosure statement (Ex.PW-4/D) recovered wrist watch (Ex.P-5) from his house No. J-532, Sector-16, Rohini. A-3 recovered a mobile phone make Samsung R-220 from his house and seized vide seizure memo (Ex.PW-11/E). PW-5 (SI Sanjay Sharma) moved an application for production of A-1 before the learned Metropolitan Magistrate and he appeared in muffled face on 12.09.2005. With the permission of the court, SI Sanjay Sharma interrogated him and recorded his disclosure statement (Ex.PW-5/A). He declined to participate in the Test Identification Proceedings. During police custody remand, he recovered jewellery articles from his house at Delhi. All these articles recovered by the accused persons during investigation were identified by the complainant in Test Identification Proceedings before the Metropolitan Magistrate. The accused persons could not give reasonable explanation to decline to participate in the Test Identification Proceedings. Nothing has come in evidence to show that they were shown to the prosecution witnesses before conducting Test

Identification Proceedings. The police of PS Timar Pur was not aware of their arrest. Pursuant to the disclosure statement made in case FIR No.210/05 registered at Police Station Sarai Rohilla their involvement in the present case emerged. The police of Sarai Rohilla was able to effect recovery of robbed articles from A-2 to A-4. There are no allegations that they had shown the accused persons to the witnesses. In Court statements, PW-2 and PW-3 categorically identified the accused persons without hesitation.

6. Undisputedly, A-2 was known to the complainant prior to the incident. PW-3 (Sandeep Kumar) admitted in the cross-examination that A-2 worked in a factory near their house and he was known to him prior to the occurrence. He further admitted that A-2 was not named in the statement given to the police. Similarly, PW-1 (Rashmi) admitted in the cross-examination that A-2 used to visit their house to get ice and cold water. PW-1 and PW-3 did not give reasonable explanation as to why A-2 was not named at the first instance in their statements given to the police. The complainant had given detail description of the assailants but omitted to disclose A-2's name. It is not the prosecution case that A-2 had covered his face and PWs 1 and 3 were not in a position to observe his broad features. It appears that recovery of some stolen articles

subsequently at his instance convinced the complainant and his wife about his involvement in the incident. A-2 was, however, not charged for offence under Section 411 IPC. Since A-2 was known to the complainant and his wife prior to the incident, he had reasonable justification to decline to participate in the Test Identification Proceedings and no adverse inference can be drawn against him. He deserves benefit of doubt.

7. Regarding Section 397 IPC, from the very inception, the complainant's case was that the assailants were armed with deadly weapons. One of them was having a pistol and the other three had 'big' knives. In Court statement, the complainant identified A-1, who was armed with a pistol and the others who were armed with 'big' knives. Complainant (PW-3) and PW-1 (Rashmi) were not cross-examined regarding the size of knives in possession of the assailants. When they were arrested in FIR No.210/05 under Section 399/402 IPC registered at Police Station Sarai Rohilla, they were found in possession of various weapons. Merely because the crime weapons used in the incident were not recovered, it does not discredit the testimony of PW-1 and PW-3 that none of the assailants was armed with deadly weapons. Conviction of A-1, A-3 and A-4 with the aid of Section 397 IPC recorded by the trial court stands affirmed.

8. In the light of the above discussion, the appeals filed by A-1, A-3 and A-4 are unmerited and are dismissed. A-2 given the benefit of doubt and his appeal is accepted. The conviction and sentence of A-2 are set aside. His bail bond and surety bond stand discharged. All pending applications also stand disposed of.

9. Trial Court record along with a copy of this order be sent back forthwith. A copy of the order be sent to Jail Superintendent, Tihar Jail for intimation.

(S.P.GARG)
JUDGE

March 19, 2014
sa