

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

Date of Decision: 15th December, 2014

+ CRL.A. 1063/2011

RAVI SEIKHAR Appellant

Through: Mr. K. K. Manan, Adv.
versus

STATE

Through: Respondent
Mr. M.N. Dudeja, Additional Public
Prosecutor for the State along with SI
Jitender Police Station Kalkaji

+ CRL.A. 1274/2011

MOHD.TARIQULLAH Appellant

Through: Mr. Abdul Sattar, Adv.
versus

STATE NCT OF DELHI

Through: Respondent
Mr. M.N. Dudeja, Additional Public
Prosecutor for the State along with SI
Jitender Police Station Kalkaji

+ CRL.A. 1078/2011

MOHD.RIZWAN Appellant

Through: Mr. Abdul Sattar, Adv.
versus

STATE NCT OF DELHI

Through: Respondent
Mr. M.N. Dudeja, Additional Public
Prosecutor for the State along with SI
Jitender Police Station Kalkaji

+ CRL.A. 1081/2011

AFZAL HUSSAIN Appellant

Through: Mr. Abdul Sattar, Adv.
versus

STATE NCT OF DELHI

Through: Respondent
Mr. M.N. Dudeja, Additional Public
Prosecutor for the State along with SI
Jitender Police Station Kalkaji.

+ **CRL.A. 1010/2012**

NAUSHAD KHAN

..... Appellant

Through: Mr. Abdul Sattar, Adv.

versus

STATE

..... Respondent

Through: Mr. M.N. Dudeja, Additional Public
Prosecutor for the State along with SI
Jitender Police Station Kalkaji

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. On 16.03.2009 at about 11.30/11.45 am, PW2 – Mridula Mukherjee along with her daughter-in-law PW1 – Aparajita Mukherji was present in her house bearing number 40/42, C.R. Park, New Delhi. Accused – Naushad, who was earlier known to PW2, alongwith one more person approached her for purchasing old garments. He asked her to give old garments and introduced other person who had come with him as his brother. After sometime, Naushad went away. As soon as she started talking to that person who had come with Naushad, few other persons entered forcibly in her house and bolted the door from inside. Those persons took away the ornaments of the complainant and her daughter-in-law as well as cash of about Rs.14,000/- and one mobile phone make Nokia. One of them was carrying a country-made fire arm with which he assaulted on the head of Aparajita Mukherjee. One of them was armed with a knife. After committing robbery, they all went away. The complainant and her daughter-in-law raised hue

and cry. The police was informed and a complaint was made which led to registration of the FIR. The investigation was conducted and the complainant informed that accused Naushad was sent to her by one Ansar, who was joined in the investigation and at the instance of Ansar Ali, accused Naushad alongwith co-accused, namely, Mohd. Tariqullah, Mohd. Rizwan and Mohd. Afzal Hussain were apprehended from near the Community Centre, New Friends Colony, New Delhi. At the time of their apprehension, accused Mohd. Rizwan was found in possession of a country made pistol with one live cartridge and accused Mohd. Afzal was found in possession of a knife which were seized by the police. They made disclosure statements stating therein that Rs.5,000/- and one pair of ear tops out of the robbed articles were given to accused Naushad. Nine bangles and one gold chain was sold to a jeweller in Uttam Nagar, New Delhi by accused Rizwan and Afzal Hussain. One ring and one gold chain came to the share of Mohd. Afzal and Mohd. Rizwan respectively. Accused Mohd. Tariqullah got a share of Rs.5,000/- and one gold chain. Pursuant to the disclosure statements, accused Mohd. Rizwan got recovered Rs.10,000/- and one gold chain from his house at 91, Gali No.15, Noor Nagar, Jamia Nagar, New Delhi. He also got recovered one shirt having blood stains. Accused Naushad got recovered Rs.5,000/- and one pair of gold ear ring and Mohd. Afzal got recovered Rs.10,000/- and one ring from his residence whereas accused Mohd. Tariqullah got recovered Rs.5,000/- from his house.

2. It is further the case of the prosecution that accused Mohd. Afzal and Rizwan pointed out the shop of M/s Sonam Jewellers, Jain Road, Near Satyam Public School, Uttam Nagar, New Delhi where they had sold the nine gold bangles and one gold chain. Accused Ravi Seikhar was found sitting on the counter of the said shop and got recovered five gold bangles from the locker of the shop, which were seized by the police. Accused Mohd. Tariqullah, Mohd. Rizwan and Afzal Hussain were also identified by the witnesses during the Test Identification Parade.

3. The country made pistol recovered from the accused Mohd. Rizwan was sent to the FSL and as per the report of FSL, it was a 'firearm' as defined in the Arms Act. Thereafter, the sanction for prosecution of the accused Mohd. Rizwan under Section 39 of the Arms Act was obtained which was granted by the DCP, South East District. The shirt of accused Mohd. Rizwan, which was having blood stains on it alongwith blood sample of Mrs. Aparajita Mukherjee was sent to the FSL for comparison, but no significant result could be obtained as the blood stained cotton gave no reaction on examination.

4. After completing investigation, the charge-sheet was submitted against accused Mohd. Naushad, Mohd. Tariqullah, Mohd. Afzal and Mohd. Rizwan for offences under Section 452/394/397 read with Section 34 of Indian Penal Code and Section 25/27 Arms Act. Accused Ravi Sheikhar was sent for trial for the offence under Section 412 IPC.

5. The accused persons denied the charges and thereupon the trial was conducted. Apart from prosecution witnesses examined and the exhibits marked, four witnesses were also examined in defence. After considering the material on record, learned Additional Sessions Judge came to the conclusion that the charges against the accused persons stood sufficiently proved and established and convicted them under Section 120B IPC and Section 452/394 read with Section 120B IPC. Accused Mohd. Rizwan and Mohd. Afzal were further convicted under Section 25 of the Arms Act. Accused Ravi Seikhar was convicted under Section 411 IPC. Accused Mohd. Rizwan and Mohd. Afzal Hussain were acquitted of the charge under Section 397 IPC. Two years rigorous imprisonment for offence under Section 120B IPC with fine of Rs.500/- each was imposed upon accused Naushad Khan, Mohd. Rizwan, Mohd. Afzal Hussain and Mohd. Tariqullah. They were further sentenced to five years rigorous imprisonment and fine of Rs.1,000/- for offence under Section 394 IPC read with Section 120B IPC with default clause. They were also sentenced to undergo rigorous imprisonment for three years and fine of Rs.500/- with default clause under Section 452 read with Section 120B IPC. Accused Mohd. Rizwan and Afzal Hussain were further sentenced to undergo rigorous imprisonment for a period of three years for offence under Section 25 of Arms Act and a fine of Rs.500/- with default clause. Accused Ravi Seikhar was sentenced to rigorous imprisonment for a period of two years under Section 411 IPC and fine of Rs.500/- with default clause. All the sentences were

ordered to run concurrently with further benefit of Section 428 Cr.PC.

6. Feeling aggrieved appellant – Ravi Seikhar preferred Crl. A. No. 1063/2011; appellant – Mohd. Tariqullah preferred Crl. A. No. 1274/2011; appellant – Mohd. Rizwan preferred Crl. A. No. 1078/2011; appellant – Afzal Hussain preferred Crl. A. No. 1081/2011; appellant – Naushad Khan preferred Crl. A. No. 1010/2012 respectively.

7. Since all the five appeals arise out of the common judgment as such all are taken up together.

8. Learned counsel for the appellants strenuously contended that the identification of the case property as well as of the appellants has no evidentiary value as both PW1 and PW2 have admitted in their cross examination that the accused persons were shown to them in the Police Station on the next day. Furthermore, they also admitted that the jewellery was also shown to them in the Police Station as such no reliance whatsoever could be placed on the testimony of the witnesses in question to indict the appellants. Mr. K.K. Manan, learned counsel for the appellant – Ravi Seikhar further urged that there is no evidence that the appellant – Ravi Seikhar received or retained the gold bangles dishonestly; recovery from this appellant is otherwise doubtful as PW2 in her cross examination deposed that she was shown the case property on the next day at about 10 am while as per the case of prosecution, this recovery was effected on 17.03.2009 in the evening; no public witness was joined at the time of alleged

recovery despite the fact that shop of the appellant – Ravi Seikhar was located in the market and public persons were available at the spot. The shop was situated in Uttam Nagar, however, neither before conducting search nor thereafter any information was given to Police Station Uttam Nagar nor any police official from Police Station Uttam Nagar was joined in the proceedings nor after the recovery the case property was deposited at Police Station Uttam Nagar. Thus, it was submitted that the appellant – Ravi Seikhar has been falsely implicated in this case.

9. Mr. Abdul Sattar, learned counsel for the remaining appellants besides attacking the identification of the appellants as well as the case property submitted that PW7 – Ansar Ahmed who is supposed to be an independent witness of the prosecution is not a witness to the recovery of any article from the accused persons or at their instance. No doctor from Maple Nursing Home was examined as such it was submitted that the prosecution has failed to bring home the guilt of the appellants beyond shadow of doubt and as such they are entitled to be acquitted.

10. Mr. M.N. Dudeja, learned Additional Public Prosecutor for the State while inviting the attention of the Court to the reasoning of the learned Trial Court, with equal force, contended that the evidence on record sufficiently established the guilt of the appellants and the reasons assigned by the learned Trial Court are fortified by sufficient material and consequently no interference is called for. It

was further submitted that the test identification proceedings are not substantive piece of evidence. They are only corroborative piece of evidence and, therefore, even if in his zeal to make the case full-proof, the Investigating Officer got the appellants and jewellery articles identified in the Police Station from PW1 and PW2, that does not make the identification by the witnesses in the Court doubtful. The appellants remained in close proximity of PW1 and PW2 for a considerable time and as such their identification in the Court by these witnesses cannot be held to be doubtful. Even as regards the recovery at the instance of the appellant – Ravi Seikhar, it was submitted that the appellant was neither known to the complainant from earlier nor was he having any ill-will or grudge against the police officials for which reason after leaving all the jewellers in Delhi, he in particular would be falsely implicated in this case. The appellant – Ravi Seikhar has neither disputed the fact that M/s Sonam Jewellers belongs to him nor is he claiming the case property as such it was submitted that the appeals are liable to be dismissed.

11. I have carefully considered the submissions made by learned counsel for either side in the light of material on record.

12. As regards the incident in question is concerned, the star witnesses were PW1 - Aparajita Mukherji and PW2 - Mridula Mukherjee. PW1 has deposed about the visit of accused – Naushad in the house of complainant on the pretext of purchasing old garments from her mother-in-law alongwith one more person.

PW2 has also deposed that accused Naushad came to her house when her daughter-in-law (PW1) was present in the house. He was accompanied with a boy and they sought entry in the house on the pretext of buying old clothes. After sometime, they asked for water and when PW1 went to get water from the kitchen, accused Naushad left the house and two more persons entered inside. These three persons caught hold of PW2 and robbed her. At the same time, PW1 was also hit with the fire arm on her back and the head. PW1 deposed that accused Afzal and Tariqullah had also entered her house. She specifically pointed out towards accused Rizwan as the person who had hit her with the fire arm. She further pointed out towards accused Naushad who had first came to the house. PW2 also deposed that accused Tariqulla and Rizwan had put cloth on their mouth and thereafter tied them and they took five chains from the locker, one from her neck, her earrings and her bangles which she was wearing and they also took away money from her purse and two wrist watches. Thus, from the statements of both these witnesses, the incident of robbery of cash and jewellery articles on 16.03.2009 belonging to PW2 stands proved. It is further proved that PW1 was hit by a fire arm on her head as well as on her back.

13. In the complaint Ex.PW1/A, the complainant had mentioned the name of Naushad and as such taking a lead from the same, PW7 – Ansar Ahmed, who had sent accused Naushad at the house of the complainant for doing some wooden work, was joined in the investigation and at the instance of Ansar Ahmed, accused

Naushad alongwith remaining accused persons was arrested and jewellery articles and money were recovered at their instance. Pursuant to the disclosure statement of accused Mohd. Rizwan and Mohd. Afzal Hussain, five gold bangles and one gold chain were recovered from the shop of the appellant – Ravi Seikhar.

14. During the course of investigation, test identification proceedings of accused persons was got conducted from learned Metropolitan Magistrate. The TIP of accused Mohd. Rizwan was conducted vide Ex.PW4/E and PW2 – Smt. Mridula Mukherjee correctly identified him. The TIP of accused Mohd. Afzal Hussain was conducted vide Ex.PW4/F and PW2 correctly identified him. However, PW1 could not identify Mohd. Rizwan during his TIP proceedings Ex.PW4/G. Accused – Tariqullah refused to join the TIP proceedings on the ground that his photograph was taken by the Investigating Officer in his mobile phone. Accused Mohd. Afzal was also identified by PW1 in TIP proceedings Ex.PW4/I.

15. Similarly, TIP proceedings of jewellery articles was also conducted by PW4 – Ms. Surya Malik Grover, Metropolitan Magistrate on 30.03.2009 and complainant correctly identified the jewellery articles as per proceedings Ex.PW4/A.

16. The sanctity of TIP proceedings of accused persons as well as jewellery articles have been severely criticized by learned counsel for the appellants on the ground that PW1 and PW2 both have admitted in their cross examination that the

jewellery articles as well as accused persons were shown to them in the Police Station and, therefore, no sanctity can be attached to these TIP proceedings.

17. An identification parade is not mandatory nor can it be claimed by the suspect as matter of right (*Ravi Kapur v State of Rajasthan*, (2012) 9 SCC 284). The purpose of pre-trial identification evidence is to assure the investigating agency that the investigation is going on in the right direction and to provide corroboration of the evidence to be given by the witness or victim later in court at the trial (*Rameshwar Singh v State of J&K* (1971) 2 SCC 715). If the suspect is a complete stranger to the witness or victim, then an identification parade is desirable [*Mulla v State of HP*, (2010) 3 SCC 508] unless the suspect has been seen by the witness or victim for some length of time. In *Malkhan Singh v. State of M.P.* (2003) 5 SCC 746, it was held:

"The identification parades belong to the stage of investigation, and there is no provision in the Code of Criminal Procedure which obliges the investigating agency to hold, or confers a right upon the accused to claim a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by Section 162 of the Code of Criminal Procedure. Failure to hold a test identification parade would not make inadmissible the evidence of identification in court. The weight to be attached to such identification should be a matter for the courts of fact."

18. In *Visveswaran v State*[(2003) 6 SCC 73] it was held:

"The identification of the accused either in test identification parade or in Court is not a sine qua non in every case if from the circumstances the guilt is otherwise established. Many a time, crimes are committed under the cover of darkness when none is able to identify the accused. The commission of a crime can be proved also by circumstantial evidence."

19. The legal position with respect to identification of an accused was summarized by the Hon^{ble} Supreme Court in ***Dana Yadav @ Dahu and Ors. v State of Bihar*** (2002) 7 SCC 295 inter alia as under:

“(c) Evidence of identification of an accused in court by a witness is substantive evidence whereas that of identification in test identification parade is, though a primary evidence but not substantive one, and the same can be used only to corroborate identification of accused by a witness in court.

Xxx

(e) Failure to hold test identification parade does not make the evidence of identification in court inadmissible rather the same is very much admissible in law, but ordinarily identification of an accused by a witness for the first time in court should not form basis of conviction, the same being from its very nature inherently of a weak character unless it is corroborated by his previous identification in the test identification parade or any other evidence. The previous identification in the test identification parade is a check value to the evidence of identification in court of an accused by a witness and the same is a rule of prudence and not law.

(f) In exceptional circumstances only, as discussed above, evidence of identification for the first time in court, without the same being corroborated by previous identification in the test identification parade or any other evidence, can form the basis of conviction.

(g) Ordinarily, if an accused is not named in the first information report, his identification by witnesses in court, should not be relied upon, especially when they did not disclose name of the accused before the police, but to this general rule there may be exceptions as enumerated above.”

20. In ***Budhsen and another v State of U.P.***[1970 CrL. L.J 1149], the Apex Court, inter alia, observed that though as a general rule, identification of the accused for the first time in the Court without there being any corroboration

whatsoever cannot form the sole basis for conviction, there may be exceptions to the said general rule when for example the Court is impressed by a particular witness, on whose testimony it can safely rely, without corroboration.

21. In *Ronny @ Ronald James Alwaris Etc v State Of Maharashtra* AIR 1998 SC 1251 also, the Hon'ble Supreme Court observed that the identification of the accused by a witness if he had an opportunity to interact with him or to notice his distinctive features lends assurance to his testimony in court and that the absence of corroborative evidence by way of test identification parade would not be material.

22. As a legal principle, the substantive evidence of a witness is the statement made by him in the Court. The identification for the first time in the Court, by its very nature, is of a weak character and, therefore, the Court normally looks for corroboration of such evidence by way of some other evidence which may, inter alia, include identification in a Test Identification Proceeding. Identification in a Test Identification Parade is not a substantive piece of evidence, though it can be used as a piece of corroborative evidence if the witness identifies the accused while deposing in the Court.

23. The power to identify also varies in terms of power of observation and memory of the identifying person. Another relevant circumstance in this regard is as to for how much time the witness had seen the accused. If, for instance, he had only a glimpse of the accused, he may not be in a position to firmly recall his

identity, but if he had interacted with the accused for a substantial time and had ample opportunity to observe him, he may face no difficulty in identifying him at a later date.

24. In *Raman Bhai Naran Bhai Patel and others v State of Gujarat* [(2000) 1 SCC 358], the two injured eye witnesses PW2 and PW14 identified the accused only in the Court and they were not knowing them earlier. No identification parade was held during the course of investigation. It was held by the Apex Court that though their evidence is to be treated to be one of a weak nature, but it cannot be said to be totally irrelevant or inadmissible. The Court was of the view that since the aforesaid witnesses were seriously injured in the incident and could have easily seen the faces of the persons assaulting them and their appearance and identity would well remain imprinted in their minds especially when they were assaulted in broad day light, they could not be said to be interested in roping any innocent person by shielding the real accused who had assaulted them.

25. In *Ashfaq v State (Govt. Of NCT of Delhi)*, 2004(3) SCC 116 also the accused had entered the house of the complainant on the pretext that they were sent by one *Thekedar* for white washing of the house and thereafter robbery was committed. No TIP was conducted yet the Hon'ble Supreme Court observed that though as a matter of general principle, TIP should be conducted, but the question as to whether there is any violation of the same in a given case would very much depend on the facts and circumstances of each case and there cannot be any

abstract general formula for universal and ready application in all cases. On facts it was found that one of the accused was already known and the accused persons remained for quite some time in the house and one of the accused whose identity was known was initially traced and the said trail led the investigating authorities to arrest others as such there was no merit in the challenge made by the appellant regarding non-conduct of TIP before their identification in the Court.

26. Things are substantially the same in the instant case with the difference that in the present case, TIP proceedings were conducted wherein the accused were correctly identified by the witnesses, but the sanctity of TIP proceedings is under challenge on the ground that accused were shown to the witnesses in the Police Station. So far as accused Naushad is concerned, he was known to PW2 from earlier as he had worked in her house prior to the incident. As regards the ability of the complainant and PW1 to identify the robbers, according to the complainant, the intruders were in the house for about 25-30 minutes. The incident of robbery took place in a broad day light. Since the robbers were not masked, remained in the house of the complainant for substantial period and also came face to face with the complainant and removed her jewellery and also hit PW1 with a fire arm on her back and then hit her head, the witnesses had ample time and opportunity to notice and retain in their mind the features of robbers which at later date enabled them to identify them in TIP or during the course of trial. PW1 has assigned specific role to Mohd. Rizwan by stating that he was acting as the leader

of the group and passing the directions. As regards accused Afzal Hussian and Mohd. Tariquallah, she stated that they were trying to tie her mother-in-law and put her in the wooden box. PW2 identified accused Mohd. Rizwan, Mohd. Tariqqulah and Mohd. Afzal Hussain who had entered the house.

27. A perusal of the FIR goes to show that the complainant described the first intruder, namely, Naushad approaching her for purchasing garments and he was known to her from earlier as he had earlier worked at her house for cleaning fans/exhausts etc. The FIR further gives details that he was sent to her by one Ansar Ahmed whose telephone number was 9810443491. When she faced Naushad, he asked for old garments and also introduced one person as his brother and went away. As soon as she started talking to that person, two other persons entered forcibly and bolted the door from inside. She further gave description of those three persons by stating that they were between the age group of 25-27 years. They forced her and her daughter-in-law physically to her bedroom and tied them up and forcibly took away the ornaments (nine gold bangles, six gold chains, one ring) from her almirach and person. They also took cash of Rs.14,000/-, which included her pension and her mobile phone (Nokia). The FIR further states that one of these three persons was carrying a country made firearm with which he assaulted on the top of head of her daughter-in-law and injured her. That person was of fair complexion having height of about 5'6". He was wearing spectacles. Two other boys were between 5' and of 5'6". One was round faced and another

had sharp features. One of them threatened them with a knife which they carried with them. They were forced to sit when the room and almirah was ransacked. The whole episode of this threatening and robbery lasted for about 25-30 minutes. The FIR further states that they will be able to recognize the persons. These details leave no reasonable doubt that the complainant had adequate time and opportunity at her disposal to see the intruders carefully and note down their personal particulars. Moreover, there was not much time lag between the date of robbery and the date of their deposition in the Court as the incident took place on 16.03.2009 and the witnesses came to be examined on 23.11.2009. Therefore, I seen no reason why the identification of the appellants by the complainant and PW1 during the course of trial and even prior thereto in the Police Station should be rejected. During the cross examination of the witnesses, it was not the case of the appellants that their age or height did not match with the particulars given in the FIR. Substantially, similar view was taken by this Court in ***Mohd. Israr Qureshi v State*** 2014 III AD (Delhi) 89.

28. Furthermore, after the appellants – Naushad Khan, Mohd. Tariqullah, Mohd. Rizwan and Mohd. Afzal Hussain were arrested, they made disclosure statements Ex.PW6/I, PW6/K, PW6/L and PW6/J respectively. Pursuant to the disclosure statements, they got recovered jewellery and currency which is admissible in evidence under Section 27 of the Evidence Act. Three possibilities arise from the disclosure statements made by the appellants. The first possibility is

that they themselves kept the jewellery and currency in their house from where it was recovered by the police; the second possibility is that they had seen someone keeping the aforesaid items in their house where it was found by the police; and the third possibility is that someone had told them that the jewellery and currency was lying in their house. However, none of the appellants told either the police or the court as to how they came to know about the jewellery being available in their house; the inevitable inference is that they themselves kept the jewellery and currency in their houses from where it was later recovered by the police.

29. Identification of the appellants by the complainant coupled with the recovery of stolen articles from their possession is sufficient to establish their identity as robbers involved in the incident of robbery.

30. As per prosecution case, after the arrest of accused Mohd. Afzal and Mohd. Rizwan, they made disclosure statements Ex.PW6/J and Ex.PW6/L that they can get recovered 9 gold bangles and a chain from a jeweller Ravi of Sonam Jeweller, Uttam Nagar. In pursuance thereof, they led the police party to Sonam Jeweller at Uttam Nagar and accused Ravi of Sonam Jeweller produced 5 gold bangles and one chain which were seized vide Ex.PW6/U. The recovery of this jewellery from accused Ravi has been challenged primarily on the ground:

- (i) No independent witness was joined at the time of recovery;
- (ii) No police official of Police Station Uttam Nagar joined in the proceedings;
- (iii) The recovery is alleged to have been effected in the evening on 17.03.2009

whereas prosecution witness had seen the jewellery in the morning of 17.03.2009;

- (iv) Although identification of the jewellery was conducted, but the same has no evidentiary value as the same was already shown to the complainant in the Police Station;
- (v) There is nothing to show that the appellant – Ravi Seikhar was having knowledge that it was a stolen property.

31. As regards, the first submission that despite availability, no public witness was joined by the police, as such recovery is doubtful, same is devoid of any merit. The recovery has been effected pursuant to the disclosure statement made by the appellants – Mohd. Rizwan and Afzal Hussain. In *State (Govt. of NCT of Delhi) v Sunil* AIR 2001 CrL LJ 506, the Hon'ble Apex Court took the view that recovery of an object pursuant to the information supplied by the accused in custody is different from the searching endeavour envisaged in Chapter VII of the Code. Moreover, the mere fact that no independent witness was joined in the proceedings itself is not sufficient to render the recovery doubtful. The recovery of jewellery from accused Ravi from his shop stands proved from the testimony of PW6 HC – Mangal Ram and PW9 – SI Naresh Kumar. Despite cross examination nothing material could be elicited to discard their testimony. The testimony of police personnel have to be treated in the same manner as testimony of any other witnesses and there is no principle of law that without corroboration by

independent witnesses their testimony cannot be relied upon. The presumption that a person acts honestly applies, as much in favour of police personnel as of other person and it is not a proper judicial approach to distrust and suspect them without good ground. It will all depend upon the facts and circumstances of each case and no principle of general application can be laid down as held in ***Karanjit Singh Vs. State (Delhi Admn.)*** 2003 5 SCC 291, ***C. Ronald & Anr. Vs. Union Territory of Andaman & Nicobar Islands***, (2001) 1 SCC (Crl.) 596. In ***Sunil Clifford Daniel vs. State of Punjab***, 2012 11 SCC 205, Apex Court referred to ***State Govt. of NCT of Delhi v. Sunil and Anr.***, (2001) 1 SCC 652, wherein Court held as under:-

“20. ... But if no witness was present or if no person had agreed to affix his signature on the document, it is difficult to lay down, as a proposition of law, that the document so prepared by the police officer must be treated as tainted and the recovery evidence unreliable. The court has to consider the evidence of the investigating officer who deposed to the fact of recovery based on the statement elicited from the accused on its own worth.

21. We feel that it is an archaic notion that actions of the police officer should be approached with initial distrust.....At any rate, the court cannot start with the presumption that the police records are untrustworthy. As a proposition of law the presumption should be the other way round. That official acts of the police have been regularly performed is a wise principle of presumption and recognised even by the legislature. Hence when a police officer gives evidence in court that a certain article was recovered by him on the strength of the statement made by the accused it is open to the court to believe the version to be correct if it is not otherwise shown to be unreliable. It is for the accused, through cross-examination of witnesses or through any other materials, to show that the evidence of the police officer is either unreliable or at least unsafe to be acted upon in

a particular case. If the court has any good reason to suspect the truthfulness of such records of the police the court could certainly take into account the fact that no other independent person was present at the time of recovery. But it is not a legally approvable procedure to presume the police action as unreliable to start with, nor to jettison such action merely for the reason that police did not collect signatures of independent persons in the documents made contemporaneous with such actions.”

32. There is absolutely no reason to disbelieve the testimony of police official as it is not the case of the appellant that any of the police personnel was known to him from earlier or they had any ill-will or grudge against him to falsely implicate in this case while leaving all the jewellers in Delhi.

33. The submission that no police personnel from Police Station Uttam Nagar was joined before conducting raid at M/s Sonam Jewellers or the recovered articles were not deposited in the Police Station Uttam Nagar, same deserves outright rejection as it was not obligatory on the part of the police officials to inform the Police Station Uttam Nagar or to join any police official from the said Police Station.

34. Although it is true that a discrepancy has appeared in the statement of PW2 that she may have seen the jewellery items in the Police Station at about 10 am, but it has to be kept in mind that she was an old lady aged around 78 years. Moreover, she was not certain whether she saw the jewellery articles at 10 am as she had used the expression “*maybe*”. Therefore, this discrepancy is not very material.

35. According to the prosecution, the complainant had identified the jewellery

articles in test identification proceedings conducted by, learned Metropolitan Magistrate. The sanctity of the proceedings is challenged on the ground that the jewellery items were shown to the complainant in the Police Station. The effect of the same at best can be that the judicial TIP conducted on 30.03.2009 had no evidentiary value. It has come in the statement of the complainant that she identified the jewellery as she got the same at the time of her marriage. It was held by Hon'ble Supreme Court in *Earabhadrappa Alias Krishnappa v State Of Karnataka* (1983) 2 SCC 330 where a lady witness identifies the stolen articles such as ornaments and sarees at the trial without prior TIP, the testimony of such a witness was not inadmissible in evidence for want of prior TIP, as ladies have uncanny sense of identifying their own belongings, particularly articles of personal use. A particular article may be identified by any particular mark on it or by its frequent use which casts an impression on the mind of the identifier that leads to recognition of article. The stolen articles recovered from the appellant being necklaces, chains, rings, were the articles which the complainant must be seeing and also using quite frequently. Therefore, the complainant was capable of identifying these articles during the course of TIP conducted by the Metropolitan Magistrate. Things are substantially the same in the instant case. Although PW2 admitted that she did not give any proof regarding ownership of the jewellery nor gave any identification mark, but she has deposed that the bangles etc were received by her at the time of marriage. The witness was about

78 years of age when the incident took place. As such, if the witness got the jewellery at the time of marriage, then she must be using the same for substantial period. Therefore, she was capable of identifying these articles during the course of TIP proceedings. Moreover, a perusal of TIP proceedings conducted by learned Metropolitan Magistrate would show that she had mixed up the jewellery articles produced before her with other articles brought by the Investigating Officer. It was only thereafter that the complainant appeared before her and identified the jewellery articles which were robbed from her person/her house. None of the appellants claimed the ownership of these articles. Therefore, the deposition of complainant in the court is sufficient to establish her ownership with respect to these articles particularly when the appellants do not claim that the aforesaid belong to them. The case of the appellants rather is that no such article was recovered from them or got recovered by them.

36. As regards the last limb of arguments of learned counsel for the appellant – Ravi Sheikhar that there is nothing on record to show that the appellant – Ravi Seikhar was aware of the fact that it was stolen property same is again devoid of any merit. It has come on record that pursuant to the disclosure statement made by the appellant – Rizwan and Afzal Hussain, they led the police party to the shop of the appellant – Ravi Seikhar at M/s Sonam Jewellers, Jain Road, Near Satyam Public School, Uttam Nagar, New Delhi where the appellant – Ravi Seikhar was found present and recovery of five gold bangles and chain was effected from his

shop. It is pertinent to note that the appellant has nowhere denied that said jewellery shop does not belong to him. His presence at the counter of the shop was also not denied. The recovery of stolen articles at his instance from the locker of shop shows his nexus with recovered jewellery articles. As per Section 114, Illustration (a) of the Evidence Act, a person who is in possession of stolen goods, is either the thief or receiver of stolen goods knowing them to be stolen unless he can account for his possession. Since the appellant – Ravi Seikhar was found in possession of five gold bangles and a gold chain belonging to the complainant, it was for him to explain as to how he came to possess them. He has not accounted for his possession of the jewellery articles which reflects his guilty mind.

37. The identification of the appellants by complainant coupled with the recovery of stolen articles from their possession and identification of the same by the complainant is sufficient to establish the identity of all the appellants except the appellant – Ravi Seikhar as the robbers involved in the incident of robbery. Further the recovery of stolen articles belonging to the complainant immediately after the incident also proved that the appellant - Ravi Seikhar received the stolen goods knowing them to be stolen one. All the appellants were, therefore, rightly convicted by the learned Additional Sessions Judge by a well reasoned judgment as such no interference is called for.

38. Under the circumstances, all the appeals are dismissed. Since sentence of all the appellants was suspended and they were on bail, their bail bonds stand

cancelled. They are directed to surrender forthwith, failing which the learned Trial Court to take appropriate action for getting them arrested for serving the remainder period of their sentence.

Trial Court record be returned along with a copy of this judgment.

(SUNITA GUPTA)
JUDGE

DECEMBER 15, 2014

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