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

Date of Decision: 29.04.2014

\+ CRL.A. 1019/2010
SALEEM @ PINNI

..... Appellant

Through: Mr. Parvez A. Siddiqui, Adv.

versus

STATE

..... Respondent

Through: Mr. Feroz Khan Ghazi, APP for State

\+ CRL.A. 1020/2010
NAUSHAD

..... Appellant

Through: Mr. Riaz Mohd., Adv.

versus

STATE GOVT. OF NCT OF DELHI

..... Respondent

Through: Mr. Feroz Khan Ghazi, APP for State

\+ CRL.A. 1022/2010
HARSH KUMAR @ HONEY

..... Appellant

Through: Mr. Riaz Mohd., Adv.

versus

STATE GOVT. OF NCT OF DELHI

..... Respondent

Through: Mr. Feroz Khan Ghazi, APP for State

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

JUDGEMENT

V.K. JAIN, J. (Oral)

On 28.08.2001, Sub Inspector Viresh Kumar of Police Station – Lahori Gate, on receipt of information with respect to an armed dacoity reached Gandhi Gali where Mr. Rakesh Kumar Gupta met him and told him that three boys had snatched an *attachi* (briefcase) containing Rs.17.35 lac from his employee – Mr. Vasudev, who was present in Nai Basti. Thereupon, the police officers reached near House No.2578, Nai Basti where the complainant – Mr. Vasudev was found present and his statement was recorded by the police officer. Mr. Vasudev told him that on that day, at about 12 noon, his employer Mr. Rakesh Kumar Gupta along with another employee Mr. Sunil Kumar withdrew cash from the bank which were counted by him and Mr. Sunil Kumar and found it Rs.17.35 lac. They then put the seal of their firm on the bundle of currency notes. Keeping the currency notes in a suitcase, he and Sunil left for Punjab and Sind Bank for depositing the cash in that bank. Three vouchers duly filled were also handed over to him by Mr. Rakesh Gupta. The suitcase was in the hands of Mr. Sunil Kumar and he was following Sunil. When they reached in front of a house at about 12.50 pm, three boys, aged about 25-26 years, two of whom were carrying revolvers in their hands abused them, put the revolvers on their temples and snatched the suitcase. One of the boys left with the

suitcase containing the cash whereas two boys shut him and Sunil in a staircase. After they had been confined in the staircase for about two minutes, they raised alarm, hearing which the labourers opened the door. He asked Mr. Sunil to inform the employer and ran in the street in which the boys had run. On the way, he also informed his employer Mr. Rakesh Gupta. When he reached the shop in Gandhi Gali, and rang up Mr. Rakesh Gupta on his mobile, he asked him to reach the place of incident. He also claimed that he could identify the boys if brought before him. An FIR under Section 392/397/34 of IPC was registered on the aforesaid statement of Mr. Vasudev.

2. The case of the prosecution is that during the course of investigation, a secret information was received that Salim @ Pinni and Harsh Kumar @ Honey were involved in the aforesaid incident. Both of them were interrogated on 22.11.2001, but nothing came out in the interrogation. On the same day, they were arrested while going towards Old Delhi Railway Station and pursuant to a disclosure statement made by him, accused Salim @ Pinni got recovered Rs.15,000/- from his house whereas accused Harsh Kumar @ Honey got recovered Rs.5,000/- from his house on the same day. On the basis of disclosure statement made by the aforesaid two persons,

accused Naushad and Salim Roti @ Dilshad were arrested. It is also the case of the prosecution that Salim Roti got recovered Rs.10,000/- from his house on 25.11.2001 where Naushad got recovered Rs.90,000/- from his house. Accused Pappu Teli is also alleged to have got recovered Rs.20,000/- from his house on 12.02.2002. As many as nine persons namely – Saleem @ Pinni, Harsh Kumar @ Honey, Naushad, Pappu Teli @ Ishtqar, Shadjad @ Ballu, Shakeel, Saleem Roti @ Dilshad, Ibrahim @ Baddu and Abid were charge sheeted. Abid was declared proclaimed offender whereas Salim Roti and Ibrahim expired during trial. The accused Naushad and Pappu Teli were charged were charged under Section 395/34 of IPC read with Section 120B /397/411 thereof. The accused Salim @ Pinni and Harsh Kumar were charged under Section 395/120B/412 of IPC whereas Shahjad and Shakeel were charged under Section 395/34/120B/397 of IPC. They having pleaded not guilty, as many as 29 witnesses were examined by the prosecution. Three witnesses were examined in defence.

3. The complainant – Mr. Vasudev came in the witness box as PW2 and stated that on the day this incident took place, his employer Mr. Rakesh Kumar and another employee Mr. Sunil came to the shop of Mr. Rakesh Gupta where he was working, along with the cash kept in a suitcase. On the

instructions of Mr. Rakesh Gupta, he put the stamp of the shop on the currency notes amounting to Rs.17,39,000/- and kept the cash in a suitcase. Mr. Rakesh Kumar filled 3-4 bank slips and asked him and Sunil to take the cash to Punjab and Sind Bank, Nai Basti, for depositing with the said bank. When he and Sunil reached Nai Basti, 8-10 people came in front of them. Out of them, two persons ran towards them, carrying revolvers in their hands. One of them abused Sunil, slapped him and asked him to drop the suitcase. Then one more person out of 8-10 persons came running and tried to snatch the suitcase from Sunil. When he (witness) tried to protest, he also was slapped by the person who had come earlier. The third person after snatching the suitcase containing cash from Sunil, started running away whereas two persons, who were carrying revolvers with them, forced them to retreat. They were led to a narrow lane and forced to enter a staircase, which the robbers bolted from outside. One of them also threatened to shoot them if they shout or tried to open the door. He and Sunil tried to open the door, whereupon someone came there and opened the door. They informed their employer about the incident and searched the offenders. When they again reached the place of occurrence on the instructions of his employer, they found police having reached there. His statement Ex.PW2/A was then

recorded by the police officers. However, the witness could not identify any of the accused persons and expressed his inability to identify the culprits on the ground that he was very much sacred and, therefore, he did not remember their faces. The witness was cross examined by learned APP, but nothing came out in the cross examination which would connect the appellants with the commission of offence.

4. Mr. Sunil came in the witness box as PW19 and corroborated the deposition of the complainant. He deposed about putting stamps on the bundle of currency notes and snatching of suit case from his hands. He also deposed with respect to he and the complainant having been shut in a staircase. He further stated that after the door of the staircase was opened, they informed Mr. Rakesh Gupta and went in the street to look for the culprits. He claimed that when he was going towards the shop, Mr. Rakesh Gupta met him in the street. He and Mr Rakesh Gupta had hardly walked for two paces when two persons out of those who had looted the money, were seen coming from the front side. One of them was carrying the suitcase which had been used for carrying the money. When Mr. Rakesh Gupta inquired from him as to whether it was the same suitcase in which the money had been taken and he identified the suitcase, one of those persons

put a revolver and threatened to shoot. Being scared, Mr. Rakesh Gupta asked them to go away and informed the police. However, he also expressed his inability to identify the person who had robbed them at gun point.

5. Mr. Rakesh Gupta, the employer of the complainant, came in the witness box as PW10 and *inter alia* stated that on 21.08.2001, he withdrew Rs.4 lac from the account with Canara Bank, Rs.13.5 lac from Tamil Nadu Mercantile Bank. The cash was brought to his office, where the stamp of Durga Sales Company was put on the packets of currency notes. The cash was then kept in a sky coloured suitcase and handed over to Mr. Sunil and Mr. Vasudev who were deputed to deposit the same in the bank. After 10-15 minutes, he received a telephonic call from Vasudev informing him that the suitcase had been snatched by 2-3 persons. He rang up his brother in law Deepak Kumar and rushed to the place intimated by Mr. Vasudev. He saw one person going with his suitcase with 2-3 persons were in front of him and 2-3 persons behind him. When he tried to catch hold of his briefcase, one of the persons who was going ahead of the person carrying the suit case threatened him with a pistol. A number of persons gathered there and the police was informed from his mobile. Those persons fled away from the spot before the police could reach there. However, this witness also did not

identify any of the accused persons.

6. PW6 Constable Daman Singh *inter alia* stated that on 22.11.2001 he along with SI Viresh Kumar and Constable Virender went to Gali Kasim Jaan, Balli Maran in connection with the investigation of this case. They were searching Salim @ Pinni and Harsh Kumar @ Honey at House No.1344, Gali Kasimjaan. They reached at T Point, Fatehpuri Red Light, where both of them were apprehended at the instance of the secret informer. Both were brought to police booth. The disclosure statement of both of them was recorded. Accused Salim @ Pinni took them to his house and got recovered Rs.15,000/- which had the mark of Tamil Nadu Mercantile Bank with red ink. The bundle of currency notes also had slip of Durga Sales on them. The currency notes were seized after they were sealed with the seal of BK. Thereafter, accused Harsh Kumar took them to his house and got recovered Rs.5,000/- which also had the seal of Durga Sales and Tamil Nadu Mercantile Bank. Those currency notes were seized.

PW29 – Inspector V.K. Singh *inter alia* stated that the accused Saleem @ Pinni and Harsh were arrested at Church Mission Road on the basis of a secret information and were interrogated. Their disclosure statements Ex.PW10/A and PW10/B were recorded. Pursuant the said

disclosure statement accused Salim @ Pinni led them to house No.968 from where he got recovered Rs.15,000/- kept in an almirah. The bundle of currency notes having the stamp of Tamil Nadu Mercantile Bank and Durga Sales Corp on them. The currency notes were seized after they were sealed with the seal of BK. He further stated that thereafter Harsh led them to the house number 1344 where he got recovered Rs.5,000/- kept in an almirah in the second floor. The said currency notes were seized after they were sealed with the seal of BK.

PW22 – SI I.P. Singh *inter alia* stated that on 23.11.2001, the accused Naushad and Salim Roti were arrested while they were moving towards urinal situated near western side wall of MCD Park, Baghdewar. On being exhorted by Naushad, Salim took out a country made pistol and fired at him, but he escaped by chance. Both of them overpowered and were arrested. He further stated that Naushad was interrogated and he made a disclosure statement regarding his involvement in the robbery. In the night intervening 24/25.11.2001, they reached Meerut for recovery of looted money. The accused Naushad led them to his house and Rs.90,000/- were recovered from an iron box kept in that house. All the bundles of the currency notes with stamp of Durga Sales Company Account No.348475 on them as well as

the stamp of Tamil Nadu Mercantile Bank. The currency notes were seized after they were sealed with the seal of BK.

PW29 S.I. V.K. Singh has also corroborated the deposition of PW22 with respect to arrest of the appellant Naushad, the disclosure statement made by him and the recovery of cash of Rs.90,000/- from his house.

PW28 S.I. Joginder Singh has also corroborated their deposition with respect to recovery of Rs.90,000/- from the house of the appellant Naushad.

7. PW3 is the Branch Manager of Tamil Nadu Mercantile Bank. He *inter alia* stated that M/s. Narayan International which had an account with them had withdrawn Rs.16.70 lakh from their account on 21.8.2001 whereas M/s. Om Prakash Deepak Kumar had withdrawn Rs.2.00 lakh on the same day. He also stated that Rs.75,000/- were deposited in the account of Anil Kumar Mahesh Kumar on the same day and Rs.3,000/- were deposited in the account of Narayan International and the balance cash was taken away by the customer. He also stated that M/s. Narayan International was a Proprietorship concern of Shri Shish Narayan.

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

9. Since none of the eye-witnesses has identified the appellants nor was

any of them apprehended on the spot, the case of the prosecution against them rests solely on the alleged recovery of cash from their respective houses. A sum of Rs 20,000/- is alleged to have been recovered from the house of the appellant Saleem alias Pinni and a sum of Rs 5000/- from the house of the appellant Harsh Kumar on 22.11.2001, whereas a sum of Rs 90,000/- is alleged to have been recovered from the house of the appellant Naushad on 25.11.2001.

10. It has come in evidence that on 21.08.2001, Rs 4 lakh were withdrawn from Canara Bank, Chandni Chowk and Rs 16,17,000/- were drawn from Tamil Nadu Mercantile Bank. No currency note withdrawn from Canara Bank has been recovered and the case of the prosecution is that the currency notes recovered from the appellants Saleem @ Pinni, Harsh Kumar and Naushad had the stamps of Tamil Nadu Mercantile Bank and M/s. Durga Sales Company on them. It has come in the deposition of PW3 the official of Tamil Nadu Mercantile Bank, that cash amounting to Rs.16,17,000/- were withdrawn from the account of M/s Narain International, which was a proprietorship concern of Mr. Sheesh Narain. No evidence has been produced by the prosecution to explain how the cash withdrawn from the account of M/s Narain International came in the hands of Shri Rakesh

Kumar, employer of the complainant. He does not say that the money was withdrawn by him from the bank account of Narain International, nor does he say that Mr. Sheesh Narain had issued him a bearer cheque and the cash was withdrawn by him, utilizing the said cheque. The account holder Mr. Sheesh Narain has not been produced in the witness box to prove that it was Rakesh Kumar who had withdrawn the money from his bank account on 21.08.2001. More importantly, I fail to appreciate why Shri Rakesh Kumar would ask his employees to affix the stamp of Durga Sales Company on the bundles of currency notes when the said currency notes were to be immediately deposited with Punjab & Sind Bank and were not to be kept in the business premises of Shri Rakesh Kumar. In the normal course of business no one would take the trouble of putting such stamps on the bundles of the currency notes withdrawn from one bank and sought to be deposited in another bank, since the bank official in any case would check and count the currency notes before the same are accepted by him. I also find that in the FIR lodged by Shri Vasudev, he did not claim that the stamp of 'Durga Sales Company', was put by them on the bundles of notes, before taking them to the Punjab and Sind Bank. He stated in the FIR that he was employed with M/s. Kumar Overseas and that he had put the stamp of the

firm on the bundles of the currency notes, which would ordinarily mean that the stamp of Kumar Overseas was put on them.

Admittedly, none of the notes alleged to have been recovered from the appellants had the stamp of Kumar Overseas on them. There is no documentary evidence of Shri Rakesh Kumar being the partner/proprietor of M/s. Durga Sales Company. However, even if his oral deposition in this regard is taken as correct, there would be no occasion for him or his employees to put the stamp of Durga Sales Company on the bundles of currency notes, even for the sake of convenience, when the said currency notes were to be deposited in the account of S.S. Enterprises, Jai Govind Trading Company and Tirupati Trading Company as would be evident from the seizure memo Ex.PW29/B and the deposit slips Ex.P1 to Ex.P3. In my view in the facts & circumstances of the case the possibility of the story of putting stamps on the bundles of the currency notes having been introduced in the FIR only with a view to claim the currency notes in case of their recovery cannot be altogether ruled out.

Another important aspect in this regard is that in the FIR, there was no averment that the currency notes snatched from the complainant had the stamps of Tamil Nadu Mercantile Bank or any other Bank on each bundle.

Had there been any such stamp on the currency notes snatched from the complainant, such an important aspect could not have been missed by him in the FIR particularly when he specifically referred to putting the stamps of the firm on the bundles of the currency notes. Even PW3 does not say that the currency notes withdrawn from the bank had the stamp of the bank on the bundles.

Therefore, it would be difficult to say that the currency notes stolen from the possession of the complainant and Sunil Kumar on 21.08.2001 were those which were withdrawn from Tamil Nadu Mercantile bank on that date.

11. As far as the appellant Saleem and Harsh Kumar are concerned, the case of the prosecution, as disclosed in the charge-sheet, is that a notice under Section 160 of Cr.P.C. was issued to them and they were interrogated with respect to their suspected involvement in the robbery. According to PW-29 Inspector V.K. Singh, the notice was issued on 21.08.2001. Thus, the aforesaid appellants were interrogated for the first time on 21.08.2001 and since they did not admit their involvement in the case, they were allowed to leave and thereafter they were arrested on 22.11.2001 when the cash is alleged to have been recovered from their respective houses.

Assuming that the stolen cash had been kept by the appellants Saleem @ Pinni and Harsh Kumar in their respective houses, once they were interrogated on 21.11.2001 on the suspicion that they were involved in the robbery, they were unlikely to continue to retain the said currency in their house. Considering the normal course of human conduct, once they were allowed to leave the police station, the first thing they would have done would be to remove the stolen money, if kept in their house. On being interrogated, they came to know that the police was suspecting them to be involved in the robbery. Therefore, they were unlikely to continue keeping the cash bearing stamp of Tamil Nadu Mercantile Bank as well as of the firm of Shri Rakesh Kumar in their house, since they knew that their house could be searched by the police and in the event of the currency notes bearing the stamp of Tamil Nadu Mercantile Bank and the firm of Shri Rakesh Kumar being found in their house, they would certainly be arrested for their involvement in the robbery. In these circumstances, the alleged recovery of the cash from their respective houses on 22.11.2001 becomes highly doubtful.

12. The incident of robbery took place on 21.08.2001, whereas the cash is alleged to have been recovered from the appellant Saleem @ Pinni and

Harsh Kumar on 22.08.2011 and from the appellant on 25.11.2001, i.e., more than three months after the robbery.

The first thing the robbers would have done would be to remove the paper slips on the currency notes bearing the stamp of Tamil Nadu Mercantile Bank and the firm of Shri Rakesh Kumar. In case the stamps were on the first and/or last note of the bundle and not on a separate paper slip attached to the currency notes, they would easily have taken out the notes bearing the aforesaid stamps or incurred some expenditure, utilizing the currency notes bearing the stamps of the Tamil Nadu Mercantile Bank and the firm of Rakesh Kumar. In fact, the person who commits robbery of currency notes is unlikely to retain the paper slips bearing the stamp of the bank and/or of a firm, if attached on the currency notes which is of no use to him, and his first attempt would be to destroy such slips so that the currency notes if recovered from them cannot be connected with the robbery. In case the seals were found affixed on the first and last note of the bundle and not on a paper slip, they would take out the currency notes bearing those stamps and use them in the market so that they are not caught with currency notes, possession of which they cannot explain. It is not as if the appellants had no time to remove the paper slip or the currency notes bearing the stamp of the

bank and/or the firm. They had more than three months at their disposal for the purpose. Therefore, in my view, the prosecution has failed to prove beyond reasonable doubt that the currency notes alleged to have been recovered from the house of the appellants were the same which were stolen from the possession of the complainant on 21.08.2001.

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

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

APRIL 29, 2014 V.K. JAIN, J.
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