

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

RESERVED ON : February 12, 2014

DECIDED ON : March 31, 2014

+ **CRL.A. 1196/2012**

PREM SINGH @ PREM Appellant
Through : Mr.Ravi P.Shukla, Advocate with
Mr.Dananjay Singh, Advocate.

versus

STATE OF NCT OF DELHI Respondent
Through : Mr.Lovkesh Sawhney, APP.
SI Sudeep Punia, PS Karol Bagh.

+ **CRL.A. 1373/2012**

SACHIN VERMA @ ASHU Appellant
Through : Mr.Vimal Puggal, Advocate.

versus

THE STATE Respondent
Through : Mr.Lovkesh Sawhney, APP.
SI Sudeep Punia, PS Karol Bagh.

+ **CRL.A. 1206/2012**

RAVI GUPTA @ RAVI Appellant
Through : Mr.Ved Prakash, Advocate with
Mr.Amit Chaudhary, Advocate.

versus

THE STATE Respondent
Through : Mr.Lovkesh Sawhney, APP.
SI Sudeep Punia, PS Karol Bagh.

+ **CRL.A. 1169/2012**

GOPAL

..... Appellant

Through : Mr.R.K.Tarun, Advocate with
Mr.Anand Kumar, Advocate.

versus

STATE

..... Respondent

Through : Mr.Lovkesh Sawhney, APP.
SI Sudeep Punia, PS Karol Bagh.

+ **CRL.A. 1291/2012**

BHARAT

..... Appellant

Through : Mr.R.Chander Verma, Advocate.

versus

STATE

..... Respondent

Through : Mr.Lovkesh Sawhney, APP.
SI Sudeep Punia, PS Karol Bagh.

+ **CRL.A. 280/2013**

RAM SINGH

..... Appellant

Through : Mr.Gautam Khazanchi, counsel for
Mr.Siddharth Aggarwal, Advocate.

versus

STATE (GOVT. OF NCT) DELHI

..... Respondent

Through : Mr.Lovkesh Sawhney, APP.
SI Sudeep Punia, PS Karol Bagh.

**CORAM:
MR. JUSTICE S.P.GARG**

S.P.GARG, J.

1. Prem Singh @ Prem (A-1), Sachin Verma @ Ashu (A-2), Tarkeshwar @ Bittoo (A-3), Ravi Gupta @ Ravi (A-4), Gopal (A-5), Bharat (A-6), Ravinder Singh (A-7), Rambishan @ Vishnu (A-8), Ram Singh (A-9) and Bhim @ Sagar (A-10) were arrested by the police of PS Karol Bagh in case FIR No.72/05 for committing offences under Sections 395/412/397/34 IPC. FIR Nos.84/2005, 85/05 and 86/05 were registered in police station Karol Bagh against A-1, A-4 and A-9 respectively for committing offences under Section 25 Arms Act.

2. On 03.02.2005, Daily Dairy (DD) No.40A was recorded at 08.45 p.m. at police station Karol Bagh on getting information about the commission of robbery at Shop No. 36/3089, Karol Bagh. The investigation was assigned to SI Baljeet Singh who with Const.Kundan Singh went to the spot. After recording complainant-Saroop Santra's statement (Ex.PW1/A), he lodged First Information Report. The complainant disclosed that at about 8.15-8.30 p.m. when he was present in the shop along with his worker Anant Bera and partner's brother Ram Krishan, two individuals entered into his shop. One of them slapped him as a result of which he fell down. The other assailant slapped Anant Bera.

In the meantime, their two associates entered into the shop; opened the

iron safe; and robbed the jewellery articles. The complainant further disclosed that the assailant who was 'tall' in height and had an iron rod inflicted injuries to him. After the robbery, the assailants sped the spot. On 04.02.2005, Gopi Kishan Patra, complainant's partner, discovered that 3993 grams of gold jewellery was robbed from the shop. The police swung into action to find out the culprits and succeeded to apprehend A-1 on the basis of secret information on 10.02.2005. A country made pistol was recovered from his possession and FIR bearing No.84/05 was registered against him. Pursuant to A-1's disclosure statement (Ex.PW-9/C), involvement of his associates emerged and lead to the arrest of A-4 and A-9 with recoveries of weapon from their possession for which FIR Nos.85/05 and 86/05 under Section 25 Arms Act were lodged. A-2, A-3, A-5, A-6 and A-7 were also arrested. They all recovered robbed jewellery articles. (A-1) recovered a gold chain and a kara from under the mattress of the bed in a room of his house at House No.57/1726, Naiwalan, Karol Bagh; at A-2's instance, one gold kara weighing 60 grams was recovered from underneath the mattress of his house at A-32, Majlis Park, Adarsh Nagar; gold jewellery weighing 120 grams was recovered from A-3's possession; A-4 recovered gold jewellery weighing 187 grams; A-5 recovered 55 grams of robbed jewellery from the drawer of his shop at

3154, Gali No.34, Beadon Pura; and, similarly A-6, A-7 and A-8 recovered the jewellery articles on their apprehension. A-9 recovered jewellery weighing 364 grams. A-10 was declared Proclaimed Offender. Subsequently, he was arrested but nothing was recovered at his instance. During the course of investigation, statements of witnesses conversant with the facts were recorded. A-4 and A-9 declined to participate in the TIP proceedings whereas A-1 was identified by PW-7 (Manu Karan). The complainant recognized and identified the recovered articles in Test Identification Proceedings in the court. The exhibits were sent to Forensic Science Laboratory for examination. After completion of investigation, a charge-sheet was filed against all the accused persons; they were duly charged; and brought to trial. By an order dated 22.07.2005, they were charged under Section 394/395 read with Section 397 IPC. Charges under Section 411 IPC were framed against A-1 to A-9. The prosecution examined 28 witnesses to substantiate the charges. In 313 statements, the accused persons denied their complicity in the crime and alleged false implication. They examined nine witnesses in defence. After appreciating the evidence and considering the rival contentions of the parties, the trial court by the impugned common judgment dated 25.08.2012 in FIRs Nos.72/05, 84/05, 85/05 and 86/05 (Sessions cases

Nos. 150/09 to 154/09), acquitted A-10 of all the charges. A-1, A-4 and A-9 were convicted under Section 394/411/34 IPC and 25 Arms Act. A-2, A-3, A-5, A-6, A-7 and A-8 were held guilty under Section 411 IPC. It is relevant to note that the State did not challenge the said judgment. By an order dated 14.09.2012 A-1, A-4 and A-9 were sentenced to undergo RI for 07 years with fine ₹5,000/- each under Section 394 IPC; RI for six months with fine ₹3,000/- each under Section 411 IPC and RI for 3 years with fine ₹3,000/- each under Section 25 Arms Act. A-2, A-3, A-5, A-6, A-7 and A-8 were sentenced to undergo RI for six months with fine ₹3,000/- each under Section 411 IPC. Being aggrieved and dissatisfied, A-1, A-2, A-4, A-5, A-6 and A-9 have preferred the appeals. It appears that A-3, A-7 and A-8 have not challenged their conviction.

3. I have heard the learned counsel for the parties and have examined the file. Appellants' counsel urged that the trial court did not appreciate the evidence in its true and proper perspective and vital discrepancies emerging in the statements of prosecution witnesses regarding the identity of the appellants were ignored without cogent and valid reasons. No independent public witness was associated at any stage of investigation. The recoveries are suspect. The Investigating Officer did not ascertain/assess the purity of the gold articles recovered. The

prosecution witnesses have given inconsistent and conflicting version of the incident. Alternative plea to release the appellants for the period already undergone by them has been made as the convicts have clean antecedents and are not involved in any other criminal proceedings. Learned APP urged that the impugned judgment is based upon the fair appraisal of the evidence and needs no interference.

4. The incident of robbery at Shop No. 36/3089, Karol Bagh, 1st Floor being run under the name and style of Vishavkarma Jewellers is not under challenge. The complainant had no ulterior motive to fake the incident in his shop where various jewellery articles weighing about 3993 grams gold were looted in a daring robbery. The occurrence took place at about 08.30 p.m. and the police machinery was set in motion soon thereafter by recording DD No.40A at around 08.45 p.m. The Investigating Officer after recording complainant's statement (Ex.PW-1/A) lodged First Information Report at 10.15 p.m. by sending rukka (Ex.PW-8/A). The very fact that the complainant had not named the suspects shows that he had no extraneous motive to fake robbery at his shop and to falsely implicate the appellants. In the complaint (Ex.PW-1/A), the complainant disclosed that firstly two individuals/assailants entered into the shop. Subsequently, two of their associates came there

and they all committed robbery. The complainant did not describe the broad features of the assailants. He merely stated that one of them was a tall man of 5'9-10" and the other was a little short in height. He, however, claimed to identify the assailants. On 10.02.2005 and 11.02.2005 applications Ex.PW-20/A & Ex.PW20/B respectively for holding Test Identification Proceedings were moved and on 24.02.2005, Test Identification Proceedings (Ex.PW-20/C & Ex.PW-20/D) were conducted. A-4 and A-9 declined to participate in TIP.

5. A-1 volunteered to participate in the TIP and was correctly identified by PW-7 (Manu Karan) whereas complainant-Swaroop Santra could not recognize him. PW-3 (Ram Kishan) and PW-4 (Som Nath) in their Court statements did not identify any of the assailants. Identification of the culprits by PW-5 (Anant Bera) was not believed by the trial court due to contradictory statements given on two different dates. PW-7 (Manu Karan) was not a witness to the occurrence. None of the assailants had entered inside the shop in his presence. He did not report the occurrence to the police and the Investigating Officer did not record his statement on the day of occurrence i.e.03.02.2005. PW-22 (SI Yashwant) in the examination-in-chief disclosed that PW-7 Manu Karan's statement under Section 161 Cr.P.C. was recorded on 06.02.2005 during local

enquiry. PW-7 (Manu Karan) deposed that at around 08.00 or 08.30 p.m. on 03.02.2005, when he was coming down from the shop after finishing his job, he noticed four persons going up in the stairs. When he returned to the shop after 10 or 15 minutes, he came to know that the robbery had taken place in the shop. He disclosed to the police that he could identify those persons who were climbing the stairs. The testimony of this witness inspires no confidence as his statement under Section 161 Cr.P.C. was recorded after a considerable delay on 06.02.2005. No acceptable reasons or explanation has been offered as to why PW-7 (Manu Karan) did not come forward to record his statement or to describe the broad features of the assailants allegedly seen by him in the stairs in promptitude. He had no direct confrontation with any of the four assailants and had no reasonable opportunity to recognize their faces in the stairs. A-1's identification by him in TIP proceedings when the complainant himself could not identify him cannot be believed. The Investigating Officer did not explain as to why PW-7 was not joined for identification of the other three assailants in the TIP proceedings. The complainant-Swaroop Santra (PW-1), admittedly, did not identify A-1 in the Test Identification Proceedings conducted soon after the occurrence. It is strange that when he was examined in the court on 09.09.2005 after a gap of about seven

months, he was able to recognize A-1 as one of the assailants who had entered inside the shop. The witness did not give any explanation as to why he was unable to identify A-1 during Test Identification Proceedings. In the cross-examination, he admitted that he had seen the accused persons in the police station and had identified them before their TIP was held in Tihar Jail. The trial court did not believe PW-7 Manu Karan's testimony to prove the presence of A-5 as one of the assailants and he was acquitted of the charges under Section 394/395 IPC. A-5 was acquainted with the complainant prior to the incident and as per his deposition, he used to come to meet him at the shop. Despite that, in his statement (Ex.PW-1/A), he was not named as one of the assailants. Since none of the prosecution witnesses was able to identify A-1 with cogent and clinching evidence, he too deserves benefit of doubt and cannot be held guilty under Section 394 IPC. No specific role was attributed to him. The trial court did not agree with the prosecution that any one of them was armed with a deadly weapon or it was used at the time of crime.

Regarding A-1's conviction under Section 411 IPC and 25 Arms Act, the prosecution examined various witnesses i.e. PW-9 (SI Lekh Singh), PW-11 (HC Shashi Kumar) and PW-22 (Insp.Yashwant). PW-9 (SI Lekh Singh) deposed that on 10.02.20015, A-1 was arrested on

Crl.A.No.1196/2012 & connected appeals *Page 10 of 23*

the basis of secret information and from his pant a country made kata loaded with a cartridge was recovered. Pursuant to disclosure statement (Ex.PW-9/C), he recovered bunch of chains (Ex.P-1E) and a gold kara (Ex.P-1D) from the room of his house No.57/1726, Naiwalan, Karol Bagh. He also divulged the name of his accomplices as Tarkeshwar @ Bittoo, Ravi Gupta, Ram Singh, Vishnu, Ravinder, Bharat etc. The chain and kara had identification mark G-S and 22C and were seized vide seizure memos Ex.PW-9/D and Ex.PW-9/E respectively. A-1 did not cross-examine the witness despite an opportunity given and his testimony remained unchallenged and unrebutted. PW-11 (HC Shashi Kumar) corroborated his version in its entirety and proved the recovery of a country made pistol from his possession at the time of arrest. He also deposed that A-1 recovered a chain about 119 grams and a bracelet about 122 grams from his house No.1726, Gali No.57, Naiwalan. In the cross-examination, he explained that at the time of recovery from his house, his parents and sister were present. Despite lengthy cross-examination, nothing material emerged to disbelieve the version given by the witness. A-1 did not examine any of his family members to falsify the plea of the prosecution regarding recovery of these incriminating articles at his instance. A-1 did not give plausible explanation as to how and under what

circumstances, he came into possession of the robbed articles. The findings of the trial court in this regard are based upon fair appraisal of the evidence and no deviation is called for. A-1's conviction under Section 25 Arms Act and 411 IPC stands affirmed.

6. A-4 and A-9 were identified by the complainant in his Court statement without hesitation. He disclosed that A-4 and A-9 had entered into the shop at the first instance. In the cross-examination, he disclosed that the assailants faces were not muffled. He identified A-9 who was 'tall' in height and had a pistol. No ulterior motive was assigned to the complainant for implicating A-4 and A-9. Nothing has come on record that complainant had any prior animosity with them. In the absence of previous animosity or ill-will, the complainant had no occasion to identify an innocent one. The accused persons did not put any suggestions as to where else they were present on the relevant date. Recovery of the robbed articles at their instance pursuant to disclosure statements further connects them with the crime. The police officials are not expected to plant huge recovery of substantial value on their own. These articles which had distinct features and identification marks were identified by the complainant in Test Identification Proceedings in the court. The accused persons failed to explain how and in what manner, they received or

retained these gold ornaments belonging to the complainant. The trial court has dealt with all these aspects minutely and has given cogent reasons to arrive at the findings of conviction of A-4 and A-9. I find no valid reasons to deviate from the said findings. SI Baljeet Singh (PW-8) and PW-18 (HC Kamal Singh) categorically proved A-4's apprehension on 10.02.2005 at 12.00 noon and recovery of a country made pistol with a cartridge from him. PW-11 (HC Shashi Kumar) proved recovery of one bracelet weighing about 187 grams from A-4 after his arrest at about 01.30 p.m. which remained unchallenged in the cross-examination. PW-22 (SI Yaswant) corroborated PW-11's statement and deposed that A-4 produced a gold 'kara' from the pocket on which words GS, 22C were written. The said 'kara' was seized vide seizure memo (Ex.PW-9/L) In the cross-examination, he revealed that A-4 had tried to flee but was apprehended by SI Baljeet Singh (PW-8) and HC Kamal Singh (PW-18) after some chase. A-4 handed over the 'kara' to him voluntarily after taking it out from the pocket of his pant. He denied the suggestion that no recovery was effected from A-4. Apparently, despite lengthy cross-examination, no material inconsistencies could be extracted to disbelieve the version of this witness who had no prior enmity with the appellant.

7. PW-10 (ASI Ratan Kumar) proved A-9's apprehension on 11.02.2005 at around 06.20 a.m. and recovery of a country made pistol from his right side pocket. On checking, it was found loaded with a cartridge and FIR 86/05 was registered. He further disclosed that pursuant to the disclosure statement (Ex.PW-10/D), A-9 recovered two gold karas and 10 Chains (of gold) weighing 364 grams from the basement of Stuti Building, Bank Street. A wooden box was lying there and from that wooden box, the articles were taken out by A-9 and seized vide seizure memo (Ex.PW-10/E). In the cross-examination, the witness denied the suggestion that A-9 was apprehended when he had visited the police station from his village Azamgarh to make an enquiry. Nothing material could be elicited in the cross-examination except to put bald suggestions to disbelieve the recovery of huge jewellery articles. PW-22 (SI Yashwant) in the cross-examination, disclosed that on 11.02.2005 when he along with his team left for investigation at 05.00 a.m., A-9 was arrested around 06.30 a.m. The recovery was effected from the basement at around 10.00 or 10.15 a.m. Site plan of the place of recovery (Ex.PW22/G) was prepared. Mere suggestions were put to the witness that no such article was recovered at his instance. No motive was attributed to the witness to make false deposition.

Adducing the positive evidence discussed above, the prosecution was able to establish beyond reasonable doubt that A-4 and A-9 were among the assailants who committed robbery and in the process caused hurt to the complainant. The conviction under Section 394 IPC and under Section 25 Arms Act recorded by the trial court cannot be faulted and is sustained. Since the articles recovered from the possession of A-4 and A-9 were part of the robbed property for which they were held perpetrators of crime under Section 394 IPC, their conviction under Section 411 IPC for recovering or retaining those robbed articles is not permissible; and is set aside.

8. A-2, A-5 and A-6 were charged along with A-1, A-4 and A-9 for committing offences under Sections 395/394/34 read with Section 397 IPC. However, the prosecution was unable to collect any evidence and the trial court acquitted them of all these charges.

Further allegations against A-2 were that on 10.02.2005, he recovered one gold kara belonging to the complainant from his House No.A-32, Manjlis Park, Adarsh Nagar, Delhi. No independent public witness was associated at the stage of A-2's apprehension and recovery effected at his instance. PW-22 (SI Yashwant) Investigating Officer deposed that on 10.02.2005, he had called A-2 in the police station by a

notice under Section 160 Cr.P.C. A-2 was interrogated and his disclosure statement (Ex.PW-9/H) was recorded after his arrest. He did not elaborate as to what was the incriminating material against A-2 at that time to arrest him. It is alleged that pursuant to disclosure statement, A-2 recovered one golden kara from his house at A-32, Majlis Park, Adarsh Nagar, Delhi, lying underneath the mattress and was seized by seizure memo (Ex.PW-11/A). In the cross-examination, the Investigating Officer admitted that notice under Section 160 Cr.P.C. was given to A-2 for the first time on 06.02.2005. Subsequently on 7/02/2005, 8/02/2005 and 9/02/2005 notices under Section 160 Cr.P.C. were also given to him. He denied the suggestion that A-2 was detained illegally on 5/6.02.2005 and was released on 08.02.2005. It is unbelievable that A-2 would retain the gold kara belonging to the complainant at his residence after coming to know about his involvement on 05.02.2005. On 10.02.2005, A-2 had appeared in the police station on his own. He did not abscond though the police had suspected him as one of the assailants. No evidence was collected if A-2 was in exclusive possession of the house. It is also not clear as to when and from whom A-2 had come into possession of the stolen article. The robbed article was not recovered at the instance or pursuant to the disclosure statement of the assailants who had committed robbery. Earlier

the case of the prosecution was that this gold kara came into A-2's possession as his share in the robbery which it failed to establish during trial. The recovery is suspect and discrepant and cannot be believed to base conviction under Section 411 IPC. A-2 deserves benefit of doubt and is acquitted.

9. A-6 was charged along with co-accused persons for committing robbery under Sections 394/395/397 IPC. PW-22 (SI Yashwant) deposed that on 10.02.2005, A-6 was arrested vide arrest memo Ex.PW-11/O on the basis of secret information, at the pointing out of secret informer at Ajmal Khan Road. Again, it was not explained as to what was the incriminating material against A-6 at that time to apprehend and arrest him. It is alleged that pursuant to disclosure statement (Ex.PW11/N), A-6 led the police team to his workshop at 2nd floor, Beadon Pura, Karol Bagh and from the drawer of the table in the shop, A-6 took out a golden 'kara' which was seized by seizure memo (Ex.PW-11/M). In the cross-examination, the Investigating Officer admitted that the adjoining shopkeepers were not joined at the time of alleged recovery of the 'kara'. No documents were collected to show that A-6 was the owner of the said shop. Nothing has come on record to show if the said shop was close or open at that time or who else was present in the shop. It

is also not clear if A-6 was having the keys of the shop to open it. PW-11 (HC Shahi Kumar) deposed that after his apprehension from Ajmal Khan Road near Gali No.5, Beadon Pura, A-6 led the police to his shop No.2600, Gali No.5 and recovered one bracelet of about 172 grams. He made a disclosure statement (Ex.PW-11/N) and was arrested vide memo (Ex.PW-11/O). In the cross-examination, he stated that there was over-writing in the arrest memo (Ex.PW-11/O) at point 'C' regarding the time of arrest. There was no occasion for A-6 to remain standing alone in gali at odd hours when he was alleged arrested at 11.30 p.m. He denied the suggestion that the workshop in question was on the third floor and not on the second floor. The Investigating Officer did not give plausible explanation as to why the complainant or his partner were not associated when they had a specific information about the golden jewellery lying at A-6's workshop. The prosecution witnesses have given conflicting statement whether A-6 was arrested at the first instance and pursuant to his disclosure statement a golden kara (Ex.P-1K) was recovered or he was arrested after its recovery. PW-12 (HC Hari Bhushan) in the examination-in-chief disclosed that after his arrest, A-6 led the police to his shop at 34/3154, Beadon Pura, Karol Bagh and recovered one kara of 172 grams from the drawer of the table. In response to the Court question, he

changed his version and stated that the recovery was effected from 2600/5, Beadon Pura, Karol Bagh at A-6's instance. The prosecution did not collect cogent evidence as to when and from where A-6 had received the stolen article and if so from whom and for what consideration. The golden kara was not recovered at the instance of the robbers/assailants. There is no evidence that anyone of them sold the gold kara to A-6 on any specific date or that A-6 was aware that it was a robbed article. He also deserves benefit of doubt and is acquitted under Section 411 IPC.

10. Prosecution case was that A-5 was one of the assailants who had committed dacoity. PW-2 even identified him in his deposition and attributed specific role that he had entered into the shop and had beaten him. The trial court did not believe the prosecution in this regard and A-5 was acquitted of all the charges under Section 394/395/397 IPC. A-5 was known to the complainant prior to the incident. Conflicting statements have been given whether he had worked with A-1 as an employee or he used to visit his partner Gopi Kishan. Despite having acquaintance with A-5, in the statement (Ex.PW-1/A), he was not implicated and named by the complainant. PW-22 (SI Yaswant) deposed that on 11.02.2005, A-5 was arrested on the pointing out of the informer at Sarswati Marg, near Bank Street Crossing and his disclosure statement (Ex.PW-11/R) was

recorded. He did not disclose as to what were the grounds of his arrest at that time. He was not in possession of any incriminating article. It is alleged that he led the police to Gali No.34, Beadon Pura and recovered one golden kara from the drawer in the shop which was seized by seizure memo (Ex.PW-11/Q). In the cross-examination, he disclosed that A-5 was arrested on the night intervening 10/11.02.2005 at around 01.00 a.m. when he was moving in the street. Again, there was no reasonable explanation about the presence of A-5 at night time without any specific purpose at Saraswati Marg, Bank Street Crossing. No independent witness from the locality was joined at any stage of the investigation. Personal search memo (Ex.PW-11/T) records the date 10.02.2005 at point 'C'. It is not clear if the shop from where A-5 allegedly recovered gold kara belonged to him or who else was present at the shop at that time. It is not clear if the shop was in his exclusive possession or it was opened by him with the key in his possession.

PW-11(HC Shashi Kumar) in the cross-examination, deposed that earlier at Saraswati Marg, A-7 and A-8 were arrested and they were brought to police station. At around 11.30 p.m. or 12.00 night, they went to Gurudwara Road, Bank Street, Karol Bagh and came back to the police station. After some time when they went near Uttam Sweets, Bank Street,

Crl.A.No.1196/2012 & connected appeals *Page 20 of 23*

Karol Bagh, A-5 was apprehended at around 12.30 a.m./1.00 a.m. A-5 was standing near the shop. He was unable to tell the number of workshop of A-5. No proof about the ownership/possession of the said shop was collected. In the cross-examination, PW-12 (HC Hari Bhushan) disclosed that A-5 was arrested at about 11.45 p.m. They returned to the police station at 1.45 a.m. Again, it was not explained as to from where, when and for what consideration the robbed article came into the possession of A-5. No robbed property was recovered at the instance of the actual assailants. Earlier, the prosecution alleged that this robbed article was part of the robbed jewellery which came into the A-5's share. After coming to know about the involvement of his associates and their arrest on 10.02.2005, A-5 was not expected to retain the robbed article at his shop without taking proper precautions. The complainant or his partner was not joined to identify the recovered jewellery article. The apprehension of A-5 at odd hours from the street and its recovery pursuant to the disclosure statement seems doubtful and suspect in the absence of any independent corroboration. A-5 deserves benefit of doubt under Section 411 IPC and is acquitted.

11. A-1 was awarded RI for 07 years with fine ₹5,000/- under Section 394 IPC; RI for six months with fine ₹2,000/- under Section 411

IPC and RI for 3 years with fine ₹3,000/- under Section 25 Arms Act. Since A-1 has been given acquitted under Section 394 IPC after giving him benefit of doubt, the sentence order requires modification. As per nominal roll dated 28.10.2013 his detention period is three years, seven months and 12 days besides remission for four months and fourteen days as on 28.10.2013. Apparently, the sentence awarded under Section 411/25 Arms Act has been served out by the appellant in this case. He is ordered to be released forthwith, if not required to be detained in any other case.

12. A-2 has been given the benefit of doubt and is acquitted.

13. A-4 was convicted under Section 394/411 IPC and under Section 25 Arms Act. Nominal roll dated 10.01.2013 shows that he served sentence for two years, one month and twenty six days besides remission for 15 days as on 09.01.2013. He has clean antecedents and is not involved in any criminal case. His jail conduct is satisfactory. Sentence order is modified to the extent that instead of seven years RI under Section 394 IPC, it shall be RI for six years. Other terms and conditions of the sentence order are left undisturbed.

14. A-5 and A-6 are acquitted of the charges.

15. A-9 was also awarded RI for seven years under Section 394 IPC besides other prison terms under Sections 411 IPC and Section 25 Arms Act. Nominal roll dated 16.04.2013 reveals that he has served sentence for five years, six months and 22 days besides earning remission for two months and fifteen days as on 15.04.2013. The unexpired portion of sentence was one year, two months and 23 days. It appears that A-9 has almost served the substantive sentence awarded to him. He is involved in two FIRs i.e. FIR No.42/11 under Section 380/411/34 IPC registered at PS Karol Bagh; and FIR No. 23/11 under Section 379/411/34 IPC registered at PS Karol Bagh. Considering the role attributed to him and his participation in the crime, he deserves no leniency. His conviction and sentence under Section 394 IPC and 25 Arms Act are maintained. Sentence awarded under Section 411 IPC is set aside.

16. The appeals stand disposed of in the above terms. 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 31, 2014/sa