

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

**RESERVED ON : 5th MAY, 2014
DECIDED ON : 11th JULY, 2014**

+ CRL.A.No.1404/2012 & CRL.M.B.No.1376/2013

SAFEEQ Appellant

Through : Mr.Vivek Sood, Advocate.

VERSUS

STATE OF NCT OF DELHI Respondent

Through : Mr.M.N.Dudeja, APP.

AND

+ CRL.A.No.957/2012 & CRL.M.B.No.520/2014

JAVED Appellant

Through : Mr.Afroz Ahmad, Advocate.

VERSUS

STATE Respondent

Through : Mr.M.N.Dudeja, APP.

**CORAM:
HON'BLE MR. JUSTICE S.P.GARG**

S.P.GARG, J.

1. Ramesh @ Safeeq (A-1) and Javed (A-2) challenge the legality and correctness of a judgment dated 23.02.2012 of learned Addl. Sessions Judge in Sessions Case No. 72/10 arising out of FIR No. 167/10 PS Karawal Nagar, by which A-1 was convicted under Sections 392/397/34 IPC and 25 Arms Act; A-2 was held guilty under Section 392/34 IPC. By an order dated 29.02.2012, A-1 was sentenced to undergo RI for eight years with fine ₹ 40,000/- under Sections 392/397 IPC and RI for two years with fine ₹ 10,000/- under Section 25 Arms Act; A-2 was awarded RI for seven years with fine ₹ 25,000/-. The sentences were to operate concurrently.

2. Shorn of details, the prosecution case as reflected in the charge-sheet was that on 02.07.2010 at about 07.00 A.M. at Rama Garden, Karawal Nagar, the appellants in furtherance of common intention robbed Ramu after administering stupefying substance of 113 bags of almonds belonging to complainant Matadin, loaded for transportation to Khari Baoli in a tempo bearing No.HR-38E-3500 at pistol point. Ramu was a driver and A-1 a helper in the tempo. When the tempo did not reach its destination, Madadin lodged complaint (Ex.PW-

1/A). The Investigating Officer lodged First Information Report for commission of offence under Section 407 IPC. The investigation was taken over by SI Chetan Singh. On 03.07.2010, Ramu was found lying unconscious at Sahibabad and was brought at PS Karawal Nagar and taken for medical examination. After recording Ramu's statement under Section 161 Cr.P.C. Sections 392/397/34 IPC were added.

On 18.08.2010, on receipt of secret information vide Daily Diary (DD) No.20 (Ex.PW-16/A), A-2 was arrested from Dusra Pusta, Usmanpur and pursuant to his disclosure statement, 65 bags of almonds were recovered from his rented accommodation. He recovered seven more bags of almonds on 20.08.2010 from the house of his landlord Rohtas. Recovery of ₹ 48,000/- being sale proceeds of robbed almonds was effected. On 23.08.2010 at 04.30 P.M. on the basis of secret information vide Daily Diary (DD) No.12 (Ex.PW-16/E), A-1 was arrested from Khajuri Khas and he recovered 50 kg bags of almonds from the house of his landlord Dheeraj at Khajuri Khas. A country-made pistol and two live cartridges were also seized from his residence. During investigation, statements of the witnesses conversant with the facts were recorded. The exhibits were sent to Forensic Science Laboratory. After completion of investigation, a charge-sheet under Sections 407/328/392/397/411/34 IPC

and 25 Arms Act was submitted in the Court against the accused; they were duly charged and brought to trial. The prosecution examined nineteen witnesses in all. In 313 statements, the accused persons pleaded false implication and denied their complicity in the crime without examining any witness in defence. The trial resulted in their conviction as aforesaid. Being aggrieved, the appellants have challenged the conviction. It is pertinent to note that State did not challenge the appellants' acquittal under Sections 407/328 IPC.

3. I have heard the learned counsel for the parties and have examined the record. It is not in dispute that on 02.07.2010, 113 bags of almonds were loaded in a tempo bearing No.HR-38E-3500 driven by PW-8 (Ramu); A-1 was a helper / conductor in the tempo. PW-6 (Matadin), the complainant, deposed that on 02.07.2010 Ramu informed him after loading the goods in the tempo that he had started from Karawal Nagar for Khari Baoli. When the tempo did not reach Khari Baoli, he lodged First Information Report (Ex.PW-1/A) at PS Karawal Nagar. PW-12 (Akshay Kumar Bhatia), PW-13 (Raju Bhatia) and PW-17 (Rakesh Bhatia) have given consistent version that on 02.07.2010, PW-11 (Sheetal) made a telephone call to them and apprised that the tempo containing cracked almonds was missing on the way to Khari Baoli.

4. PW-8 (Ramu), driver in the tempo, deposed that at the time of loading of the almonds in the truck on 02.07.2010, A-1 was with him as conductor. At Zero Pusta, Usmanpur, after A-2 sat in the tempo, A-1 directed him to get down at pistol point and pulled him out from the tempo. Since he was feeling giddiness due to administration of some poisonous substance, he became unconscious and was not aware as to what had happened. He further deposed that on the next day, on regaining senses at the shop of one auto mechanic at Sahibabad, he contacted his employer Matadin. PW-14 (Mobin) supported his version and stated that while working at the auto mobile service station, he found Ramu under intoxicated condition. On his asking, he made a telephone call on his mobile to the owner of the vehicle, who arrived and took Ramu with him.

5. The prosecution examined PW-2 (Rajesh) who had rented his accommodation to A-1 and A-2 about one and a half year before their arrest. He deposed that on 18.08.2010, A-2 was in police custody and 65 bags of almonds already recovered by him were loaded in a tempo parked outside his house. PW-5 (Rohtas) testified that on 03.08.2010 A-2 took a room on rent from him in his house No.D-325, Bhim Gali, Vijay Colony, New Usmanpur, Delhi and kept his goods in the room on 04.08.2010.

After four or five days, the room started remaining locked. On

20.08.2010, A-2 in police custody recovered 7 bags of almonds from the said room seized vide seizure memo (Ex.PW-5/A). PW-6 (Matadin) also corroborated their version without major variations. PW-6 (Matadin) further deposed that on 20.08.2010, A-2 recovered ₹ 48,000/- from near Transport Nagar, Samaypur Badli, seized vide seizure memo (Ex.PW-6/C). PW-10 (Mohd.Moosa) revealed that ₹ 48,000/- were handed over to him by A-2 in the month of August to keep it as he did not have a safe place. After 10 - 15 days, he handed over the cash to the police at A-2's instance. A-2 did not give any explanation why cash ₹ 48,000/- was kept with PW-10 (Mohd.Moosa) and from where he had arranged it. He did not deny that the cash was sale proceeds of the robbed articles. The police is not expected to plant a huge amount on his own. PW-6 (Matadin), PW-8 (Ramu), PW-9 (HC Surender Kumar) and PW-16 (ASI Amreek Singh) gave consistent version that on 23.08.2010, A-1 pursuant to his disclosure statement (Ex.PW-6/B) recovered one plastic bag containing almonds from B-block, Khajuri from the house of Dheeraj. They also proved the recovery of a country-made loaded katta and two live cartridges from under the mattress at his house. Despite lengthy and in-depth cross-examination, no material discrepancies could be elicited to discredit their version. No ulterior motive was assigned to them for making false

statements. In 313 statements, the appellants did not offer plausible explanation to the incriminating circumstances. All the relevant contentions of the accused persons have been dealt with in the impugned judgment which is based upon fair appraisal of the evidence and benefit under Sections 328/407 IPC has been given to them. There are no good reasons to disbelieve the statement of the complainant Matadin and victim Ramu whereby the accused persons robbed 113 bags of almonds forcibly using deadly weapon i.e. pistol in possession of A-1 that time. The findings recorded by the Trial Court warrant no interference. The independent public witnesses had no extraneous consideration to falsely implicate the accused persons in the absence of any prior animosity.

6. A-1's nominal roll dated 13.11.2013 reveals that he has suffered incarceration for three years, two months and fifteen days besides remission for six months and seven days as on 11.11.2013; is not involved in any other criminal activities; has clean antecedents; and, his overall jail conduct is satisfactory. Sentence order dated 29.02.2012 records that he was the sole bread earner of the family to take care of his seven younger brothers and sisters besides parents. Considering all these circumstances, sentence order is modified to the extent that A-1 shall undergo RI for seven years with fine ₹ 2,000/- and default sentence would be SI for two

months under Section 392 read with Section 397 IPC. The sentence under Section 25 Arms Act will be RI for two years with fine ₹ 1,000/- and the default sentence would be SI for one month. The substantive sentences shall run concurrently.

7. A-2's nominal roll dated 15.04.2014 shows that he has suffered incarceration for three years, seven months and twenty five days besides remission for eight months and seventeen days as on 15.04.2014; has also clean antecedents; and, is not a previous convict. He is not involved in any other criminal activities and is not a habitual offender; his overall jail conduct is satisfactory. Taking into consideration the mitigating circumstances, the sentence order is modified to the extent that A-2 would undergo RI for five years with fine ₹ 2,000/- and non-payment of fine would attract SI for two months under Sections 392/34 IPC.

8. The appeals stand disposed of in the above terms. Pending applications also stand disposed of as infructuous. Trial Court record be sent back forthwith with the copy of the order. A copy of the order be sent to the Superintendent Jail for information.

(S.P.GARG)
JUDGE

JULY 11, 2014 / tr