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

% *Date of Decision : May 23, 2016*

+ **CRL.A. 108/2015**

MOHD. SABIR @ SONU & ANR. Appellants

Represented by: Mr.Imran Khan, Advocate

versus

STATE Respondent

Represented by: Mr.Varun Goswami, APP
Insp.Anand Swarup with ASI Om
Prakash, PS Hauz Khas

CRL.A. 272/2015

VIJAY SHUKLA & ANR. Appellants

Represented by: Mr.Jivesh Tiwari, Advocate

versus

STATE Respondent

Represented by: Mr.Varun Goswami, APP
Insp.Anand Swarup with ASI Om
Prakash, PS Hauz Khas

CRL.A. 623/2015

VICKY @ RAJ KUMAR @ MUKESH @ VAQIL Appellant

Represented by: Mr.Saurabh Kansal, Advocate for
Ms.Pallavi S.Kansal, Advocate

versus

STATE Respondent

Represented by: Mr.Varun Goswami, APP
Insp.Anand Swarup with ASI Om
Prakash, PS Hauz Khas

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

PRADEEP NANDRAJOG, J. (Oral)

1. Vicky @ Raj Kumar @ Mukesh @ Vaqil, Mohd.Sabir @ Sonu, Vijay Shukla, Chandan Kumar and Raju Singh @ Sunny, the appellants of the three captioned appeals; in which Mohd.Sabir and Raju Singh have joined hands as appellants of Crl.A.No.108/2015 and Vijay Shukla with Chandan Kumar have joined hands as appellants of Crl.A.No.272/2015, question the verdict of guilt against the five returned vide impugned judgment dated December 18, 2014.

2. The conviction of the five is as under:-

Vicky @ Raj Kumar : Section 395/34 and 412 IPC.

Mohd.Sabir : Section 397 & 412 IPC and 27 Arms Act.

Vijay Shukla : Section 395/34 IPC.

Chandan Singh : Section 395/34 IPC.

Raju Singh : Section 395/34 and 412 IPC.

3. The sentence imposed for the offence of dacoity, and its aggravated form concerning Mohd.Sabir, is to undergo RI for 7 years. For other offences lesser sentences have been imposed with a direction that they would run concurrent. The focus therefore is for the offence of dacoity.

4. Early hours of the night : 8:15 PM of July 17, 2012, were a traumatic moment for Ritu Singhal PW-1 and her son Mehul Singhal aged about 11

years then. Cocooned in the comfort of their house the two could not even imagine the trauma they would be soon facing. The door bell rang. The family servant : appellant Chandan, opened the door. Three men barged in : Vicky, Mohd.Sabir and Raju (claims the prosecution). The mother and son were pounced upon. One put a knife on the throat of Ritu. The other put a gun on the temple of Mehul. The third had a saw like weapon in his hand. They were threatened with death if they shrieked. The two were tied with nylon and cloth ropes and so was Chandan. Pieces of cloth were thrust inside their mouth and they were gagged. The house was ransacked. Cash, jewellery, electronic item, laptop, mobile phones, i-pods etc. were stolen. The three armed robbers fled. Ritu Singhal managed to free herself and helped her son. Chandan also managed to free himself. Ritu called the neighbour and her husband from the landline number.

5. Information was conveyed to the police control room and relayed to PS Hauz Khas because the incident took place at D-30, Gulmohar Park, New Delhi, within the jurisdiction of the police station. DD No.39A Ex.PW-2/A was recorded at PS Hauz Khas by HC Sushil Sharma and investigation entrusted to SI Nihal Chand PW-10 who, along with Ct.Ram Rattan PW-5 proceeded to the house and recorded Ritu's statement Ex.PW-1/A in which she narrated the incident as noted by me in paragraph 4 above. Making an endorsement Ex.PW-10/A beneath Ritu's statement, FIR Ex.PW-3/A was registered at the police station by ASI Kashmiri Lal for an offence punishable under Section 397/34 IPC. The case was registered as one for robbery because there were three participants.

6. The needle of suspicion pointed towards the family servant Chandan who was introduced to the family about two months by co-accused Vijay

Shukla, because contrary to the instructions not to open the door when the bell rang and only to allow entry to a stranger after peeping outside and seeking permission from the family members, Chandan had opened the door at the ringing of the bell to facilitate entry of the three armed hoodlums.

7. Chandan was arrested at 6:15 AM on July 18, 2012 as recorded in the arrest memo Ex.PW-4/B by SI Sanjay Sharma PW-8 who had joined the investigation late night of July 17, 2012. His disclosure statement Ex.PW-4/A disclosed the names of the three who had entered the house as also the involvement of Vijay Shukla. All four being arrested on July 18, 2012, as per their respective arrest memos Ex.PW-4/D (Vijay Shukla), Ex.PW-4/H (Vicky), Ex.PW-4/I (Raju Singh) and Ex.PW-4/R (Mohd.Sabir).

8. Disclosure statements Ex.PW-4/G of Vijay Shukla, Ex.PW-4/L of Vicky, Ex.PW-4/M of Raju and Ex.PW-4/Q of Mohd.Sabir were recorded. Vijay Shukla's disclosure statement is a confession sans any recovery. Pursuant to the disclosure statements of the other three, and at the pointing out of the three, following recoveries were effected:-

A. Vicky. As recorded in the recovery memo Ex.PW-4/N : (i) Two watches (one of Titan make with leather strip and other of Tissot 1853 with steel chain), (ii) One canon Camera, colour Silver, (iii) One Samsun Phone, colour Black, (iv) One mobile phone I-pod, colour silver and black, (v) One artificial bracelet, colour golden, (vi) One artificial earring colour red and golden (vii) One bracelet studded with white colour stone (viii) One pair of ear ring studded with red-green colour stone, (ix) One hair clip studded with white colour hair clip, (x) 70 coins some Indian and some foreign currency, (xi) Two Bangles colour golden (xii) One chain colour golden (xiii) One cuff link studded with blue colour stone, (xiv) One hair clip colour golden

and (xv) one steel like chain.

B. Mohd.Sabir. As recorded in the recovery memo Ex.PW-4/T and Ex.PW-4/V : (i) Sony make notepad of pink and silver colour, (ii) The blade of a saw, (iii) A knife, (iv) Two blades of hexa saw, (v) one screwdriver, (vi) an iron rod, and (vii) A desi katta.

C. Raju. As recorded in the recovery memo Ex.PW-4/O : (i) ₹14,200/-, (ii) two wrist watches one of Titan make and the other Espirit, (iii) A black and silver coloured handcam of Sony make, (iv) one hard disk of Seagate make, (v) one black coloured videogame of Sony Make, (vi) One Five K-26 Red Coloured mobile phone, (vii) one black coloured Map my India, (viii) one black coloured mobile phone Nokia, (ix) Four artificial bangles, (x) Two purses, (xi) 26 coins of Indian and foreign currency in a red coloured purse, and (xii) Three gold rings and one silver ring having red stones and gold colour thereon.

9. Noting that at the TIP conducted on August 03, 2012 before Rajender Singh MM Delhi PW-9, Ritu Singhal failed to identify Vicky, Mohd.Sabir and Raju Singh, as per TIP proceedings Ex.PW-9/B, Ex.PW-9/C and Ex.PW-9/D, but she successfully identified the recovered property at the TIP conducted on August 13, 2012 by the same learned Metropolitan Magistrate, as recorded in the proceedings Ex.PW-9/H, I hasten to fast forward my judgment by highlighting that the impugned judgment does not list the incriminating circumstances against the five accused and therefore as regards Vijay Shukla it appears that the verdict of guilt has been returned on the basis of the confessional statements of all the five accused. There is no recovery attributed to him. He did not enter the house. As regards Chandan Singh, there is no recovery attributed to him. His presence in the house is

natural because he was the servant. The incriminating evidence is his contemporaneous conduct of opening the door, contrary to the instructions given to peep outside and see who the visitor was; report to the family member and seek permission before allowing entry. Against the other three the incriminating evidence is the recoveries effected.

10. At the trial, Ritu Singhal PW-1 deposed about the undue haste shown by the servant to open the door the moment the bell rang. She identified the stolen but recovered properties as : *two ladies wrist watches – one make Tissot and another one is make ESPIRIT (Ex.PW-1/P-18 colly), one canon digital camera of silver colour (Ex.PW-1/P-19), one mobile phone make Samsung Galaxy S-2 of black colour (Ex.PW-1/P-20), one Apple i-pod of silver and black colour (Ex.PW-1/P-21), one artificial kadaa of golden colour (Ex.PW-1/P-22), one artificial jhummar of red and golden colour (Ex.PW-1/P-23), one artificial silver kadaa having white stone in butterfly pattern (Ex.PW-1/P-24), one pair ear studs having stones (Ex.PW-1/P-25), one hair clip having white stones (Ex.PW-1/P-26), 96 coins including some Indian coins and some are foreign coins (Ex.PW-1/P-27 colly), one pair of gold bangles (Ex.PW-1/P-28), one gold chain (Ex.PW-1/P-29), one pair silver colour cuff-links having blue stone (Ex.PW-1/P-30), one hair clutcher of golden colour (Ex.PW-1/P-31), one steel colour long chain of golden colour (Ex.PW-1/P-31), one steel colour long chain (Ex.PW-1/P-32), cash ₹14,200/- in the denomination of ₹1000/- x1; ₹500 x 26; ₹100 x 2 (Ex.PW-1/P-33), one ladies wrist watch having golden chain of Titan make (Ex.PW-1/P-34), one Sony Handycam of black and silver colour (Ex.PW-1/P-35), one external hard-disk of Seagate make (Ex.PW-1/P-36), one Sony PSP of black Colour (Ex.PW-1/P-37), one mobile phone of red colour of make*

'FIVE' (Ex.PW-1/P-38), one black colour 'MAPMYINDIA' visual device (Ex.PW-1/P-39), one black colour mobile phone make Nokia N-82 (Ex.PW-1/P-40), four artificial kadaa having pink and other colour stones (Ex.PW-1/P-41), two gents wallets – one yellow colour and one brown colour (Ex.PW-1/P-42 colly), four ladies rings – two diamond studded and one gold ring and one artificial ring of silver colour having a red stone (Ex.PW-1/P-43 colly), and one Sony Vaio Notepad of pink colour with charger (Ex.PW-1/P-44 colly).

11. Ritu Singhal said in the Court during her deposition that being nervous and perplexed she could not identify Vicky, Mohd.Sabir and Raju Singh at the TIP proceedings, but identified them in the Court and said that Mohd.Sabir was the one who was carrying the desi katta which she identified as Ex.PW-1/P-15.

12. Being a lady, it is conceivable that Ritu Singhal was perplexed and thoroughly confused when she participated in the TIP proceedings conducted by Sh.Rajender Singh PW-9 on August 03, 2012. But I give the benefit of doubt of identification by her to the three accused Vicky, Mohd.Sabir and Raju Singh, notwithstanding that it is possible, and especially in a case of armed robbery, that a victim is so terrified that at a TIP, which is held soon after the traumatic incident, identification fails because of trauma continuing. But with the passage of time, as the trauma recedes and the victim gains strength, the tormentor is identified.

13. But what about the recoveries effected from the three?

14. The robbery took place at around 8:30 PM on July 17, 2012. The three were arrested the next day on July 18, 2012 and recoveries made pursuant to their disclosure statements.

15. Ritu Singhal has told in her statement recorded by the Investigating Officer that the stolen property comprised cash, jewellery, electronic item, laptop, mobile phones, i-pods etc. She has successfully identified the recovered property at the TIP conducted by Rajender Singh on August 13, 2012. She has identified the stolen property in the Court.

16. So soon after the crime are the recoveries that the possibility of either one of the three acquiring the same from somebody else is remote. The recoveries are huge. That three men participated in the robbery has been told by Ritu Singhal to the Investigating Officer soon after the incident. The recoveries are sufficient evidence to hold against the three regarding their participation in the crime. I ignore that Mohd.Sabir was the one who used the desi katta because I ignore the three being identified by the victims as the perpetrators of the crime because at the TIP Ritu failed to identify anyone of them. But this would mean only one thing. Mohd.Sabir's conviction for the offence punishable under Section 397 IPC would mutate to he being convicted for the offence punishable under Section 392 IPC for the reason there being no evidence whatsoever against Vijay Shukla and he being acquitted, it would be less than 5 person and thus not a case of dacoity but one of robbery. The conviction of Mohd.Sabir, Vicky and Raju Singh would also need to be altered, which I do so by holding them guilty of the offence punishable under Section 392 IPC. As regards Chandan Singh, his conduct, though seemingly trivial at first blush, assumes a very incriminating nature keeping in view that contrary to instructions not to let any stranger inside the house and if an unknown person rang the bell he was to peep through the door - which I presume had a magic eye - and that the witness has only said that Chandan Singh was instructed to peep through the

door – and disclose and seek the name and identity of the unknown visitor and thereafter seek permission from a family member to allow entry into the house, he permitted Mohd.Sabir, Vicky and Raju Singh to enter the house by simply opening the door, as if to welcome them inside. I therefore also hold him guilty for the offence punishable under Section 392 IPC.

17. The three captioned appeals are accordingly disposed of as under:-

(i) CrI.A.No.272/2015 is allowed only qua appellant No.1 : Vijay Shukla and is dismissed qua co-appellant Chandan Singh.

(ii) CrI.A.No.623/2015 and CrI.A.No.108/2015 are dismissed.

18. TCR be returned.

19. Five copies of this judgment be sent to the Superintendent Central Jail Tihar for updation of the jail record and thereafter to be supplied to the five appellants with further direction that appellant Vijay Shukla be released forthwith unless required in custody in some other case.

(PRADEEP NANDRAJOG)
JUDGE

MAY 23, 2016

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