

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

Date of Decision: 11th July, 2016

+ **CRL.A. 1548/2014**

RAJ KUMAR @ KALU

..... Appellant

Through: Mr Sitab Ali Chaudhary, Advocate
versus

STATE

..... Respondent

Through: Mr Mukesh Kumar, Additional Public
Prosecutor for the State alongwith
Sub Inspector Kali Charan Police
Station Ashok Vihar, Delhi

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CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. The challenge in this appeal under S.374 of Code of Criminal Procedure is to the impugned judgment dated 15.04.2014 and the order on the point of sentence dated 26.04.2014 passed by learned Additional Sessions Judge (Special Fast Track Court), Delhi in Sessions Case No. 113/2012 arising from FIR No.166/2012 Police Station Ashok Vihar, Delhi under Ss. 395/397/412//34/120B IPC whereby the appellant was convicted under S. 120-B read with S. 392 IPC and was sentenced to undergo rigorous imprisonment for one year, nine months and eight days and fine of Rs.2,000/-, in default to undergo simple imprisonment for a period of one week; and for offence under S. 392 read with S. 397 Indian Penal Code, he was sentenced to undergo rigorous imprisonment for a period of seven years and fine of Rs.2,000/-; in default to undergo simple imprisonment for a period of one week. Both the sentences were ordered to run concurrently. Benefit of S. 428 Cr.PC was granted to the appellant.

2. The prosecution case emanates from the fact that on 14.07.2012 on receipt of PCR Call vide DD No.14 PP Ex.PW5/A regarding robbery of Rs.3 lacs and gold

items by four five robbers at A-32, Group WPIA, Second Floor, Ashok Vihar, Sub Inspector Ved Prakash (PW19) alongwith Ct. Babu Lal reached at the spot where they met the complainant Suresh Chand Aggarwal. He disclosed that on the point of knife he was robbed of Rs.3.35 lacs, two gold rings and a chain. On the basis of this statement, the FIR was got registered. During the course of investigation, the visuals of CCTV footage installed at the adjoining factory were seen on the basis of which the suspects were shortlisted and they were arrested. After completion of investigation, charge-sheet was filed in the Court.

3. The charges for offences under Ss. 120B/395/412 IPC were framed against accused Hardesh Kumar, Samant Mandal @ Raju @ Bangali and Raj Kumar @ Kalu. Accused Raj Kumar @ Kalu was additionally charged for offence under Ss. 397 IPC.

4. In order to substantiate its case, prosecution in all examined 19 witnesses. The case of accused was one of denial simplicitor. He pleaded innocence and alleged false implication in the case.

5. After scrutinizing the testimony of prosecution witnesses coupled with the circumstantial evidence, vide impugned judgment, learned Additional Sessions Judge convicted the accused Hardesh Kumar for offence under Ss. 411 and 201 IPC whereas accused Samant Mandal was convicted for offence under S.120B read with S. 392 and S. 411 IPC. Accused Raj Kumar (appellant herein) was convicted for offence under S. 120B read with Ss. 392 Ss. 392 and 397 IPC. It was further held that the appellant is also guilty of offence under S. 411 IPC. However, since the ingredients of S.411 IPC are covered within the offence of robbery as defined under S. 390 IPC as such no separate sentence was required to be awarded for the said offence. He was sentenced as mentioned herein above. Feeling aggrieved, the present appeal has been preferred by one of the convicts – Raj Kumar @ Kalu.

6. I have heard learned counsel for the appellant as well as learned Additional Public Prosecutor for the State and have carefully perused the record.

7. The most material witness is the complainant – Suresh Chand Aggarwal

(PW15), who unfolded that he is running the business of steel trading under the name and style of “Shri Durga Steel” from A-32, Group, 2nd Floor, WPIA, Ashok Vihar. On 14.7.2012 at about 10:15 AM he came to his factory and kept a sum of Rs.3.35 lacs which he had brought from his house in the drawer of his table. While he was performing pooja in the factory, his servant came and started cleaning the factory. At about 10:45 AM, somebody knocked the door which was opened by his staff. Three boys entered inside the factory and compelled the staff to sit on the chairs and came in front of him. He inquired from them as to what was the matter, then one of them aged about 28-30 years told him that “*Apke naam ki supari hai mere pass*”. He asked the assailant “*supari kya hoti hain*” and as soon as he uttered these words, he took out a knife from his pocket and put the same on his (complainant's) chest. The second boy who also entered along with him simultaneously opened the drawer of the table and removed the cash from the drawer while the boy who had put a knife on him also removed both the gold rings from his hands and also removed the chain from his neck which he was wearing. The third boy kept on standing outside. The second boy who had removed the cash from the drawer and appeared to be 22-25 years of age also tied his servant Raj Kumar with the help of sulti (rope) which was lying in the office itself. They also removed all the cash kept in his pocket as well as in the office. The boy who had kept the knife on him then tied him with the rope / sulti and covered his face by gamcha which was kept in the office. Before that, that boy had also removed the sim of his mobile phone and broke the same and left the mobile phone on the table and cut the wire of landline phone. Thereafter, these boys ran away. On hearing the alarm, large number of people gathered and freed him from the ropes with which he was tied and thereafter he freed his servant Raj Kumar and then made a call at 100 number to the police after taking the phone from one of the persons who had gathered there. After police came, his statement Ex.PW15/A was recorded. At that time when his statement was recorded by the police he was under the impression that a sum of Rs.3.35 lacs had been taken but later on when he checked the same he came to know that the amount was lesser i.e. Rs.1.70 lacs and hence on the next

day he clarified the same to the police. Crime team came at the spot; took photographs of the spot of the incident and took chance prints in his presence. The police also picked up the bundle of sutli/rassi/rope including the rope with which he was tied, pillow cover with which face of servant had been covered; the gamcha with which his face was covered and seized the same vide memo Ex.PW15/B.

8. He further deposed that on 15.07.2012, he received a telephonic call from the Investigating Officer of the case and he was called at A-59 group, WPIA, Wazirpur where he was shown CCTV footage. He pointed to three boys who were seen in CCTV footage at the time recorded at 10.53 am and raised his suspicion on those boys who had committed armed robbery with him at the factory.

9. On 18.07.2012, he was called by the Investigating Officer of the case at SSI jhuggies, Wazirpur and came to know that the said jhuggi belonged to co-accused – Hardesh. He found the police alongwith the photographer and one boy namely Hardesh. A knife was got recovered by the police from under some articles kept inside the jhuggi. He identified the knife to be the same which was put on his chest by the assailants. He also identified the chain during test identification proceedings. He also identified the accused Raj Kumar to be the person who had put knife on his chest; accused Hardesh from whose jhuggi the knife was recovered, accused Samant Mandal as the person who was engaged in the factory of some other person to do the work of polishing. Despite cross examination nothing material could be elicited to discard the testimony of the witness. His testimony is cogent, consistent and reliable. He had no axe to grind to falsely implicate any of the accused in this case. His testimony finds substantial corroboration from the testimony of his servant Raj Kumar (PW16) who also deposed on the same lines as that of PW15. He also identified accused Raj Kumar to be the person who had entered into the factory and pulled out a knife and put the same on the chest of complainant – Suresh Aggarwal and thereafter he was robbed of the cash, gold rings and chain.

10. The ocular testimony of both these witnesses found due corroboration from CCTV footage installed at the adjoining factory of Mr Aditya Singhal (PW10) at

A-59 group, WPIA, Delhi which was shown to the complainant wherein he identified the assailants including the appellant. PW19 – Sub Inspector Ved Prakash thereupon called the beat officer and secret informers at the said place. One of the secret informers disclosed name of the said person of the image as Raj Kumar @ Kalu, Sonu @ Jaggi, Ann Kumar @ Anu.

11. On 17.07.2012, on receipt of information that Sonu @ Jaggi is going to surrender before the JJB, Delhi Gate, Sub Inspector Ved Prakash alongwith Sub Inspector Parmod Juvenile Welfare Officer reached at JJB, Delhi Gate where Sonu @ Jaggi was interrogated and his statement Ex. PW19/C was recorded. He was arrested. He disclosed about his involvement in the crime and got recovered Rs.14,620/- out of the robbed amount. On the same day, pursuant to secret information, accused Hardesh and Samant Mandal @ Raju @ Bengali were apprehended and they disclosed their involvement in the crime with accused Raj Kumar and two juveniles, namely, Sonu and Ann Kumar. Pursuant to the disclosure statement, accused Samant Mandal took the police to his jhuggi near factory at A-24, Group WPIA and got recovered Rs.5,000/- from the pocket of jeans pant from the first floor of the jhuggi which was received by him out of the robbed amount from accused Raj Kumar for keeping recee and passing of information. Accused Samant Mandal alongwith his brother was doing the work of steel polishing on contract basis in the factory of Praveen Jain (PW8) situated on the third floor of the premises A-32 group, WPIA, Delhi. He kept on a watch / recee on the second floor premises and passed on the information to his associates. He disclosed that he was involved in the offence alongwith Raj Kumar and Samant Mandal. Thereafter, accused Hardesh Kumar took the police party to jhuggi E-225, SS Nagar, WPIA and produced one black colour bag from the slab on the first floor of the jhuggi and Rs.5,000/- was recovered from the bag which he received as the robbed amount. He also produced two jeans pants, one capri and one white T-shirt and disclosed that these clothes were worn by the co-accused at the time of incident. Recovery proceedings were got photographed.

12. On 18.07.2012, he also got recovered the knife which he had concealed under the Badarpur (building material) bag kept near his jhuggi which was used by the appellant – Raj Kumar at the time of incident. The complainant was called by the Investigating Officer of the case to the jhuggi of Hardesh Kumar and he identified the knife which was used by the appellant Raj Kumar at the time of committing robbery. He, however, deposed that this accused – Hardesh Kumar was not present at the time of committing robbery.

13. It is further the case of prosecution that at the instance of accused Samant Mandal and Hardesh Kumar accused Raj Kumar was arrested while he was coming at Ara Machine Chowk, B block, WPIA, Ashok Vihar, Delhi and was duly identified by accused Samant Mandal and Hardesh. The accused disclosed about his involvement in the present case and also disclosed that out of robbed amount, Rs.55,000/- was his share out of which he has spent some money and the remaining amount of Rs.43,405/- was kept by him at his jhuggi. Pursuant to that, he took the police party to his jhuggi at A-130, WPIA and got recovered Rs. 43,405/-, one polythene bag on which the word 'Reebok' was written.

14. On 20.07.2012, pursuant to the secret information, juvenile accused Ann Kumar was arrested at the instance of accused Hardesh and Samant Mandal from Krish Motors B Block, WPIA who got recovered Rs.10,000/- and gold chain in two pieces from the house at District Rampur District Gorakhpur, U.P. The complainant identified his gold chain. During the personal search of accused Ann Kumar Rs.15,000/- alongwith mobile phone was also recovered.

15. During the course of investigation, it transpired that at the time of incident accused Samant Mandal was using the mobile phone number 9999151382; accused Hardesh Kumar was using two mobile phone numbers 8130736971 and 8377968061; accused Raj Kumar was using mobile phone number 7503492911 and juvenile accused Ann Kumar was using mobile number 9850456080. In this regard the prosecution has examined Anuj Bhatia (PW13) Nodal Officer, Vodafone Mobile Services Ltd. who proved the call detail records of the aforesaid

mobile numbers from 10.07.2012 till 17.07.2012 vide Ex.PW13/C. He also proved that mobile No. 8377968061 has been issued in the name of Hardesh Kumar and proved the call details of this mobile number Ex.PW13/G. Sh. Vishal Gaurav (PW14) Nodal Officer from Bharti Airtel Ltd. has proved that mobile number 8130736971 was issued in the name of Raj Kumar and the call details Ex.PW14/C were proved. The call details of the accused persons were extensively analyzed by learned Trial Court for arriving at the conclusion that the electronic evidence on record proves that all the accused were in contact with each other not only during the time of incident but also prior to that and thereafter the entire evidence in the shape of ocular testimony of complainant duly corroborated by his employee – Raj Kumar, CCTV footage, call detail records, recovery of weapon of offence, clothes of accused, currency notes and gold chain in two pieces was summarized by learned Trial Court as under:

“(164) Applying the above principles of law to the facts of present case, it is evident that the investigation conducted including the documents prepared in the present case have been substantially proved by the police witnesses including Investigating Officers. On the basis of the evidence on record the following aspects stand established:

- That the accused Samant Mandal @ Raju Bengali along with his brother was doing the job work of steel polishing on contract on 80%-20% basis in the factory of Parveen Jain situated on the third floor of premises No. A-32 Group WPIA ,Ashok Vihar, Delhi.
- That Suresh Chand Aggarwal is into business of stainless Steel trading and is running his business under the name and style of Shri Durga Steel at A-32 Group WPIA Second Floor, AshokVihar, Delhi.

- That a criminal conspiracy was hatched between accused Samant Mandal @ Raju Bengali and Raj Kumar and his coaccused (both juveniles) to commit robbery in the factory of Suresh Chand Aggarwal.
- That in pursuance to the said conspiracy which the accused Samant Mandal kept a watch/ recce on the second floor premises of Suresh Chand Aggarwal and passed on the information to his other associates (i.e. mainly to the juvenile accused Ann Kumar).
- That on 14.07.2012 at about 10:15 AM Suresh Chand Aggarwal came to his factory and kept the sum of Rs. 1,70,000/- in the drawer of his table which amount he had brought from his house.
- That while Suresh Chand Aggarwal got busy in his Pooja in the factory, his servant/ worker of the factory also came and started cleaning the factory.
- That at about 10:45 AM somebody knocked the door and the staff of Suresh Chand Aggarwal opened the door and three boys (i.e. accused Raj Kumar and his juvenile associates) entered inside the factory and compelled the workers of Suresh to sit on the chairs and came in front of him.
- That Suresh Aggarwal inquired from the accused Raj Kumar and the juvenile accused the purpose of their coming into the premises on which accused Raj Kumar told him that he had been paid to kill him and threatened him saying “aapki naamke supari hai mere paas”.

- That Suresh Chand Aggarwal asked accused Raj Kumar what is meant by Supari on which accused pulled out a knife and put the same on the chest of Suresh Chand Aggarwal and the second boy simultaneously opened the drawer of the table and removed the cash from the drawer and the accused Raj Kumar also removed both the gold rings from the hand of Suresh Chand Aggarwal and also removed chain from his neck.
- That the third boy kept on standing outside while the second boy who had removed the cash from the drawer, tied the servant of Subhash Chand Aggarwal namely Raj Kumar with the help of rope/ sutli which was lying in the office itself.
- That the assailants also removed all the cash kept in the pocket and office of Suresh Chand Aggarwal and the accused Raj Kumar who had kept the knife on him then also tied him with the rope/ sutli and covered his face with gamcha which was kept in his office.
- That before the assailants tied Suresh Aggarwal the accused Raj Kumar removed the SIM of the mobile phone and broke the same and left the mobile phone on the table and cut the wire of the land line phone and thereafter all the boys ran away.
- That after about less than five minutes because of the alarm which had been raised in the room a large number of gathered and freed Suresh Chand Aggarwal from the ropes with which he was tied and thereafter Suresh Chand freed his servant Raj Kumar.
- That Suresh Chand Aggarwal then made a call on 100 number to the police after taking the phone from one of the persons who had gathered there.

- That police reached the spot and recorded the statement of Suresh Chand Aggarwal on the basis of which the present FIR was recorded.
- That on the same day i.e. 14.7.2012 during investigations the Investigating Agency checked the CCTV Cameras installed in the adjoining factory of Aditya Singhal i.e. factory at A-59 Group, Wazirpur Industrial Area and the presence of three boys was seen at 10:53:12 AM.
- That the complainant Suresh Chand Aggarwal was called to the said factory of Aditya Singhal and he identified the assailants from the CCTV Footage.
- That the apprehension and arrest of the accused persons has been duly proved and established by the police witnesses in accordance with law.
- That pursuant to his disclosure statement, on 17.7.2012 at Jhuggi E-225, S. S. Nagar, WPIA, Ashok Vihar, the accused Hardesh Kumar got recovered Rs.5,000/- out of the robbed amount, the weapon of offence i.e. knife and the clothes which were worn by the accused Raj Kumar, Ann Kumar (juvenile) and Sonu @ Jaggi (juvenile) at the time of commission of robbery.
- That pursuant to his disclosure statement, on 18.7.2012 from Jhuggi No. A-451, S. S. Nagar, WPIA, the accused Raj Kumar @ Kalu got recovered Rs.43,405/- out of the stolen property.
- That pursuant to his disclosure statement, on 17.7.2012 from Jhuggi A-24, Group, WPIA, Ashok Vihar, the accused

Samant Mandal @ Raju @ Bengali got recovered Rs.5,000/-out of the stolen property.

- That the complainant Suresh Chand Aggarwal identified his gold chain robbed during the incident which was allegedly recovered from the juvenile accused in two pieces.

(165)Both Suresh Chand Aggarwal and his employee Raj Kumar have duly identified the accused Raj Kumar as the person who on 14.7.2012 at around 10:45 AM had entered the factory of Suresh Chand Aggarwal at A-32, Group WPIA on 14.7.2012 and had put a knife on his chest and committed an armed robbery after issuing threats to Suresh Chand of being a Paid Killer (Supari Killer)and of having for a Suprari/ payment for killing him. Further, the witness Suresh Chand Aggarwal has also identified the accused Hardesh as the person who was not actually involved in the robbery but from whose jhuggi the knife used in the offence was recovered in his presence along with the clothes which the accused persons were wearing at the time of the incident which had been allegedly concealed by Hardesh in his Jhuggi to save the accused from penal consequences. It therefore stands conclusively establishes that the accused Raj Kumar had entered the factory of the complainant Suresh Aggarwal situated on second floor of premises No. A-32Group, Wazirpur Industrial Area, Delhi where the accused Samant Mandal was employed with Praveen Jain as contract worker on third floor of the same premises. It further stands established that the accused Raj Kumar is the person who had used the knife a dangerous weapon while committing the robbery.”

16. The aforesaid findings of the learned Trial Court stands substantiated from

the material available on record which does not call for any interference. The appellant was not known to the complainant or his servant prior to the incident nor they had any axe to grind against the appellant so as to falsely implicate him in such a serious offence. Rather, the truthfulness of complainant is reflected from the fact that although recovery of clothes, weapon of offence was effected from the house of Samant Mandal yet he did not involved him in the commission of robbery. Moreover, the ocular testimony of both these witnesses finds substantial corroboration from the electronic evidence coupled with the recovery at the instance of this accused as well the co-accused. Under the circumstances, learned Trial Court rightly convicted the appellant for the offence as alleged against him. The findings of Trial Court do not warrant any interference.

17. Coming to the quantum of sentence, the appellant has been convicted for offence under S. 397 and has been sentenced to undergo rigorous imprisonment of seven years which is the minimum sentence prescribed under this Section. Moreover, as per the nominal roll dated 23.05.2016, the appellant's conduct has been reported to be unsatisfactory.

18. That being so, there is no merit in this appeal and the same is accordingly dismissed.

Trial Court record be returned forthwith.

The appellant be informed through Superintendent Jail.

(SUNITA GUPTA)
JUDGE

JULY 11, 2016/rd