



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

Reserved on : 19.02.2024
% Pronounced on : 28.02.2024

+ **CRL.A. 208/2002 and CRL.M.A. 33870/2019**

TEK CHAND

..... Appellant

Through: Mr. S.D. Singh, Mr. K. Prasad, Ms. Shweta Sinha and Mr. Siddharth Singh, Advocates with appellant in person

Versus

STATE N.C.T. OF DELHI

..... Respondent

Through: Mr. Laksh Khanna, APP for State with SI Ashish Kumar, P.S. OIA

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. By way of present appeal filed under Section 374 Cr.P.C., the appellant seeks setting aside of the judgment and order dated 08.03.2002 passed by the learned ASJ in Session Case Nos.50 & 51 of 1998 arising out of FIR Nos.42/1998 & 812/1997 registered under Sections 395/397/412 IPC at P.S. Okhla Industrial Area, New Delhi.
2. The trial in the aforesaid two FIRs was clubbed together as the accused persons were alleged to have committed two different incidents of robbery at the factory premises of the complainant.
3. The first incident is alleged to have taken place on the intervening



night of 11th/12th December, 1997 whereas the second incident is alleged to have taken place on the intervening night of 18th /19th January, 1998. Vide judgement and order on sentence dated 08.03.2002, the trial court convicted the accused persons for the offence punishable under Section 398 IPC and sentenced them to undergo rigorous imprisonment for a period of 7 years.

4. The brief facts, as noted by the trial court, are as under:-

“By this judgement I shall dispose of two cases against the same accused persons. FIR No. 42/98 and FIR No. 812/97 both of PS Okhla Industrial Area (in short O.I.A.). Two robberies were committed in O.I.A. Phase I and Phase II and the robbers adopted same modus operandi and they brought a tempo looted the leather factory and took away leather bales. First robbery has taken place on the night intervening 11th and 12th Dec. 1997 at factory premises No. B6/3 O.I.A. Phase-II and the second robbery had taken place on night intervening 18th and 19th Jan 98 at factory premises F 89/9 O.I.A. Phase I, New Delhi. On 11th Dec., 1997 robbers had succeeded in running away with the robbed property. Manager Kumar Gupta of the factory received information at about 2 a.m. from the security guard Pushkar Singh Bhandari about robbery having been committed in the factory. He went to factory. Police had already come in the factory. Anand Singh Guard told him and to the police that four persons had came in tempo and took away bales of leather. He lodged a complaint with the police. His complaint is Ext. PW2/A (FIR No. 812/97). He assured of giving full details of the goods taken away by the robbers after checking the stock. He later on produced before the police all documents concerning the ownership of the leather stolen from his factory, While police was still investigating this 08 case, second robbery took place and one of the robber was caught by the patrolling police when the robbers were still in the factory with tempo. On seeing police they ran away with tempo leaving behind two of their accomplices at the line of second robbery. Out of two one only could be caught by police. Local police was



immediately informed and police reached at the spot and the robber apprehended by the police was handed over to the I.O. Police O arrested this robber vide arrest memo Ext. PW 5 / A. Case was registered on the basis of statement of guard Shiv Bahadur Singh who in his statement to the police told that he alongwith other security guard was on duty at F 89/9 I.O.A Phase-1 He was on the back side of the factory, the other guard was on the front gate. Around 12 mid night suddenly 4-5 persons jumped from the wall of the factory and came inside and started beating both of them. One of them was having iron rod and he hit him on his head and other took out knife and threatened them. They took away key of the factory from him and opened the main gate of the factory and brought tempo inside and with them 5-6 more persona also came inside. Both guards were taken on back side and threatened to keep silent. They broke open the lock of the basement with the help of Iron road. They took other guard in the basement and he was made to stand outside. They cut telephone wire and switched off the light and with the help of emergency light they went to godown (basement) and look away leather bales and loaded the tempo with leather bales. After they had loaded the tempo some one cried police had come, police had come. They started tempo loaded with bales and ran away. However out of the robbers two could not board the tempo. One of them whose name was later on revealed as Ram Bilas was apprehended by H.C. Sukhbir Singh and home Guard D.P. Yadav and Chokey Lal and other ran away. He stated that all the robbers were looking like Biharies and were speaking same dialect and were between the age of 20 and 30 years. PW 1/B is FIR registered on the statement of this guard in which entire statement of the guard has been reproduced. Ram Bilas dacoit who was caught on the spot lead to the arrest of other accused persons and recovery of leather bales robbed at the time of robbery at F 89/9 O.I.A. The leather bales robbed from factory B 6/3 O.I.A. were also recovered at the instance of same robbers.”

5. Notably, during the investigation, only accused persons namely Ram



Bilas, Prakash, and Tek Chand came to be arrested whereas the remaining two accused namely *Suresh* and *Juggi* could never be arrested and resultantly, the chargesheet came to be filed only against the present appellant and *Prakash*, as *Ram Bilas* absconded after obtaining bail and could not be arrested. For both the incidents, the trial court framed separate charge under Section 395 and under Sections 412/34 IPC. It is noteworthy that the appeal preferred by co-accused *Prakash* being Crl. Appeal No. 345/2002 was disposed of by a Coordinate Bench of this Court vide order dated 22.05.2019. It was observed in the said appeal that an appeal filed by the present appellant had been dismissed in default for non-prosecution. In these circumstances, the appeal of the co-accused came to be considered and his conviction was modified from one under Section 398 IPC to one under Section 392 IPC. The sentence of the appellant was also reduced to the period already undergone by him. It is also pertinent to note that the Coordinate Bench of this Court considered the appeal of co-accused *Prakash* only on the basis of the impugned judgment as the trial court record was untraceable.

However, in the present matter, the certified copy of the trial court record is available on record.

6. In support of its case, the prosecution cited as many as 10 witnesses. The star witness namely *Shiv Bahadur Singh*, the guard however, was not examined. *Rajender Singh*, the owner of the factory premises, where the incident of alleged robbery occurred, appeared as PW-3. He deposed that on the intervening night of 18/19.01.1998, he received a telephonic call stating that a robbery had been committed in his factory. He, alongwith one *Surjit*



Singh, reached the factory and found his guard *Shiv Bahadur* tied up and beaten. He also found that some bales of leather were robbed and taken in a tempo by the robbers. *Ram Bilas* (who later absconded), one of the accused had already been apprehended by the police and was identified by the guard *Shiv Bahadur*.

7. The present appellant and *Prakash* were apprehended from near their houses. Further, from the house of *Prakash*, the leather bales were also recovered. Two witnesses, in their cross-examination, clarified that no recovery was made from the house of present appellant.

8. *Girish Chander*, another security guard employed at the said factory premises was examined as PW-4. He deposed that on the intervening night of 18/19.01.1998, he was posted on the front gate of the factory whereas *Shiv Bahadur* was on duty on the back gate. On that night, 2-3 persons jumped over the side wall and entered into the factory premises. They gave beatings to him and tied him in the basement. In cross-examination by the learned APP, the witness identified *Ram Bilas* as the person who was apprehended at the spot. He also stated that he had been threatened with a knife stating that in case he raised any alarm, he would be killed. He did not identify any of the other accused i.e., including the present appellant. The remaining witnesses were formal in nature and only deposed about various steps taken during the investigation and recovery of articles on the apprehension of the co-accused *Ram Bilas* as well as recovery from the house of *Prakash*. The appellant's statement was recorded under Section 313 Cr.P.C., wherein he denied the prosecution case.

9. In the considered opinion of this Court, the appellant's case stands on



a different footing as compared to the co-accused *Prakash*. From the evidence placed on record, it has been proved that the recovery of the leather bales was from the house of co-accused *Prakash*. Concededly, no recovery of leather bales was affected from the house of the present appellant. The only witness of the incident examined namely, *Girish Chander*, has not even identified the appellant.

10. The trial court failed to appreciate that except for *Ram Bilas*, the present appellant has not been identified by anyone else. He is not even alleged to have carried any weapon, let alone using the same. It is no longer *res integra* that the offence under Section 398 IPC cannot be invoked with the aid of Section 34 IPC on the basis of constructive liability. The trial court in one swipe has convicted both the accused persons under Section 398 IPC.¹

11. Considering that the appellant has neither been identified nor has it come in the evidence that he carried any dangerous weapon, the appeal is allowed and the appellant's conviction under Section 398 IPC is set aside. His bail bonds are cancelled and surety is discharged. Pending application is disposed of as infructuous.

12. A copy of this order be communicated to the concerned trial court as well as the concerned Jail Superintendent for information and necessary compliance.

MANOJ KUMAR OHRI
(JUDGE)

FEBRUARY 28, 2024

¹ Ganesan v. State represented by Station House Officer, (2022) 15 SCC 634



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Signature Not Verified

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By:NIJAMUDDIN ANSARI
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