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

+ **CRL.REV.P. 48/2015**

Date of decision: 03.12.2015

SHIV KUMAR & ANR. Petitioners

Through: Mr.Vikas Padora and
Mr.Vaibhav Aggarwal,
Advocates.

versus

STATE Respondent

Through: Mr. M.P. Singh, APP.
SI Ravi Shankar, P.S. Saket

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR, J. (ORAL)

1. Shiv Kumar and Sanjay Kumar who are own brothers stand convicted and sentenced for the offence under Section 454/34 of the IPC to undergo RI for five years and fine of Rs.20,000/- by judgment and order 17.12.2014 passed in Crl.Appeal No.18/2014 by the Additional Sessions Judge/Saket District Courts, New Delhi in connection with FIR No.118/2014 (P.S.Saket).
2. The petitioners were tried by the Court of Additional Chief Metropolitan Magistrate for the offences under Sections 454/380/411 read with Section 34 of the IPC. The Trial Court acquitted the petitioners of the offence under Sections 380/411 IPC but convicted both of them under Section 454 read with Section 34 of the IPC and

sentenced them to undergo RI for seven years by judgment and order dated 2.9.2014/10.9.2014.

3. The petitioners preferred an appeal against the aforesaid conviction and sentence before the Additional Sessions Judge, Saket Courts vide Crl.Appeal No.118/14. The Appellate Court while maintaining the conviction under Sections 454/34 of the IPC modified the sentence and reduced the same from RI for seven years to RI for five years and also directed the petitioners to pay a compensation of Rs.20,000/- each to the complainant.

4. The judgment of conviction by both the Courts below and the sentence by the Appellate Court are under challenge in the present revision petition.

5. Smt.Yash Laxmi Sharma (PW-2) had gone to temple on 24.02.2014. She returned to her house in Pushp Vihar after about half an hour, only to find the main door of the house open. Shortly thereafter, one person jumped from the balcony of her house and as a result of that he was injured. The aforesaid person was identified as petitioner No.2. Petitioner No.1 was found inside the house. He was found to be carrying two iron rods. The house of Yash Laxmi Sharma (PW-2) was found to have been completely ransacked. Valuables and currency notes were found missing from the house. From the possession of petitioner No.1, one note of Rs.1000/- denomination and five notes of Rs.10/- denomination were found which he had concealed in his right shoe.

6. An FIR (FIR No.118/14) was lodged under Sections 454/380/411 and 34 of the IPC against the petitioners in Saket police station.

7. The prosecution has examined seven witnesses in order to bring home charges against the petitioners for lurking house trespass, theft and for being in possession of stolen property, knowing it to be stolen.

8. Smt.D.Anantha Lakshmi (PW-1) a neighbour of Smt.Yash Laxmi Sharma (PW-2) has deposed before the Trial Court that on 24.02.2014, the house of PW-2 was ransacked. One of the miscreants jumped from the balcony and after sometime police came there. She has identified petitioner No.2 as the person who was found inside the house. She could not, however, identify the other accused person.

9. Smt.Yash Laxmi Sharma (PW-2) has completely supported the prosecution version and has stated that the person who was found inside her house was carrying an iron rod. Broken lock of the house was also found lying on the bed. Her personal belongings were found to be missing. Some of the currency notes were found in the possession of one of the accused persons and she has testified to the fact that the police seized five currency notes of Rs.10/- denomination (Ex.PW-2/C). She has proved the complaint (Ex.PW-2/D). She correctly identified the petitioners in the dock. She has categorically denied the suggestion that she has deposed before the Court falsely.

10. Constable Garib Ram (PW-3) was posted on emergency duty on 24.02.2014. He has stated that on receiving DD No.20A, he along with Head Constable Mukesh Kumar (PW-7) went to the house of PW-2 and found that many persons had assembled there. Petitioner Sanjay

was surrounded by the members of the public. He has testified to the fact that in a short while, PCR van came and Sanjay, petitioner No.2 was taken to AIIMS Trauma Centre. After medical examination, both the petitioners were sent to the lock up. The aforesaid witness has also stated that petitioner Sanjay had jumped from the balcony whereas petitioner Shiv Kumar was found inside the house.

11. Lal Bahadur (PW-4), Head Constable Praveen (PW-5) and Constable Jitender Singh (PW-6) have supported the prosecution version and there is nothing in their deposition to discredit the prosecution version.

12. Head Constable Mukesh Kumar (PW-7) has testified to the fact that he along with Constable Garib Ram (PW-3) had gone to the house of Smt. Yash Laxmi Sharma (PW-2). He has confirmed the fact that the stolen currency notes were recovered from the possession of one of the petitioners (Shiv Kumar).

13. In their 313 statements, the petitioners have only denied the occurrence and have not offered any explanation as to why one of them jumped from the balcony and the other was found in the house of PW-2. The petitioners have miserably failed to explain the reason of their presence in the house of petitioner No.2.

14. Learned counsel appearing on behalf of the petitioners has assailed the judgments of conviction and sentence on the ground that the version of witnesses are contradictory; there is delay in lodging of the first information report; the photographs of the place of occurrence have not been brought on record and that the seizure of iron rod and broken lock is clouded in suspicion. Alternatively, it has been argued

that there is nothing on record to warrant conviction under Section 454 of the IPC. It has further been pointed out that the petitioners have not been convicted under Section 380 of the Indian Penal Code and, therefore, sentence of five years under Section 454 was not mandated.

15. The incident took place on 24.02.2014 between 10 and 11 AM. Shortly thereafter, police reached the spot and the FIR was registered on the same day at 3.20 PM. The contention of the petitioners that there was a delay in lodging the FIR is not acceptable.

16. Minor contradictions in the deposition of PWs-1 & 2 will not affect or discredit the foundation of the prosecution version.

17. The petitioners were caught at the spot.

18. The crime team ought to have been summoned but on that score alone the prosecution case cannot be thrown aside. The Appellate Court, though, is justified in observing that the investigation was extremely lacklustre.

19. Learned counsel for the petitioners thereafter drew the attention of the Court to the provisions of Section 454 of the IPC. Section 454 of the IPC reads as hereunder:-

“454. Whoever commits lurking house-trespass or house breaking, in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of imprisonment may be extended to ten years.”

20. A plain reading of Section 454 would make it clear that in case of lurking house trespass or house breaking in order to commit any

offence is punishable with an imprisonment for a term which may extend to three years and fine and if the offence which is intended to be committed is theft, the imprisonment may extend to ten years.

21. In the absence of any conviction under Section 380 of the IPC, it is difficult to presume that the petitioners had entered the house of PW-2 for the purposes of committing theft. Though the presence of an outsider in the house of somebody does raise a suspicion about the intention of those persons; nonetheless acquittal under Section 380 of the IPC impresses upon this Court for reduction in the sentence imposed upon the petitioners by the Appellate Court.

22. Considering the fact that the petitioners were found in the house of petitioner No.2 after breaking the lock of the main door, their conviction under Section 454 of the IPC is justified. No interference is required with the judgment of conviction by both the Courts below.

23. Since the petitioners have been acquitted for the charge under Section 380 IPC, the sentence of RI for five years awarded by the Appellate Court is reduced to RI for a period of three years.

24. The quantum of fine imposed by the Appellate Court is not required to be interfered with. The petitioners are required to pay the fine which has been imposed on them by the Appellate Court.

25. Thus the revision petition is partly allowed. While maintaining the conviction of the petitioners, the sentence has been reduced from RI for five years to RI for three years.

26. Trial Court record be returned.

27. Two copies of the judgment be sent to the Superintendent of the concerned jail for information, compliance and record.

Crl.M.B Nos.160-161/2015

1. In view of the petition having been partly allowed, no orders are required to be passed in the instant applications.
2. Dismissed as infructuous.

DECEMBER 03, 2015
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ASHUTOSH KUMAR, J