

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

RESERVED ON : 15th MARCH, 2016

DECIDED ON : 30th MARCH, 2016

+ CRL.A. 1147/2013

MOHD. SULTAN ALI Appellant

Through : Mr.Azhar Qayum, Advocate.

VERSUS

THE STATE (NCT OF DELHI) Respondent

Through : Mr.Tarang Srivastava, APP.

AND

+ CRL.A. 1603/2013

MOHD. AGAZ Appellant

Through : Mr.Krishan Gupta, Advocate.

VERSUS

THE STATE (GOVT. NCT OF DELHI) Respondent

Through : Mr.Tarang Srivastava, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Challenge in this appeal is a judgment dated 08.11.2012 of learned Addl. Sessions Judge in Sessions Case No. 80/11 arising out of

FIR No. 319/11 PS Govindpuri whereby Mohd.Sultan Ali (A-1) was held guilty for committing offence under Section 392 IPC read with Sections 397/34 IPC; and, Mohd.Agaz (A-2) was convicted under Sections 392/34 IPC. By an order dated 26.11.2012, A-1 was awarded RI for ten years with fine ₹10,000/- whereas A-2 was sentenced to undergo RI for five years with fine ₹10,000/-.

2. Briefly stated, the prosecution case as stated in the charge-sheet was that on 05.09.2011 at around 02.40 a.m. in front of pocket-10, Kohinoor Apartment, Navjeevan Camp Road, Govind Puri, New Delhi, the appellants committed robbery at the point of knife and deprived the complainant – Dalip Kumar of ₹470/- and driving licence. The appellants were apprehended at the spot. The Investigating Officer after recording victim's statement (Ex.PW-3/A) lodged First Information Report. The knife recovered from A-1's possession was seized vide seizure memo (Ex.PW-3/C) after preparing sketch (Ex.PW-3/B). The robbed articles were recovered and seized vide seizure memo (Ex.PW-3/D). Statements of the witnesses conversant with the facts were recorded. The accused persons were arrested. Upon completion of investigation, a charge-sheet was filed against both of them in the Court. The prosecution examined nine witnesses to prove its case. In 313 Cr.P.C. statements, the appellants

pleaded false implication and denied their complicity in the crime. The trial resulted in their conviction as aforesaid. Being aggrieved and dissatisfied, the instant appeals have been filed.

3. I have heard the learned counsel for the parties and have examined the file. Learned counsel for the appellants urged that the Trial Court did not appreciate the evidence in its true and proper perspective. Material discrepancies and contradictions emerging in the statements of the prosecution witnesses were overlooked on trivial grounds. No recovery was affected from A-2. The appellants have undergone substantial period of substantive sentence awarded to them.

4. The occurrence took place on the night intervening 04/05.09.2011 at around 02.40 a.m. The accused persons were apprehended at the spot by the complainant with the assistance of HC Shiv Singh who along with Const.Sandeep was on patrolling duty in the area at the relevant time. Daily Diary (DD) No.42A (Ex.PW-8/B) came into existence at 03.00 a.m. whereby information was conveyed to the police by HC Shiv Singh that he had apprehended two assailants along with knife and they had committed robbery upon a truck driver. The investigation was assigned to SI Sahi Ram who rushed the spot and after recording victim's statement (Ex.PW3/A) lodged the First Information

Report. Apparently, there was no delay in lodging the FIR. In the complaint (Ex.PW-3/A), Dalip Kumar gave detailed account as to how and in what manner, they were robbed by the appellants. Since FIR was lodged without any delay, there was least possibility of the complainant to concoct a false story in such a short interval.

5. In his Court statement, PW-3 (Dalip Kumar) fully supported the version given to the police at the first instance and deposed that he was employed as a driver in Raj Kumari Ice Factory at village Tilpat, Faridabad in vehicle Tata 709, No.DL 1LE 2519. They used to supply ice slabs in Delhi on the said truck. On 05.09.2011 when they were present at Govindpuri, the vehicle broke down and at around 02.40 a.m. he got down to find-out the fault. At that point of time, both the appellants arrived there; A-1 was armed with a dagger. A-2 caught hold of him from behind and A-1 took out a 'panni' out of his pocket which contained cash ₹470/- and driving licence. On his raising alarm, A-1 was apprehended at the spot; A-2 was overpowered at some distance. In the cross-examination, he fairly admitted that he was not stabbed and did not sustain any injury. The police arrived at the spot immediately on their raising alarm. Sketch of knife was prepared at the police station. Apparently, no material discrepancies could be elicited to disbelieve the version given by this

independent witness. No ulterior motive was assigned to him to falsely implicate the accused persons with whom he had no prior acquaintance or familiarity. In the absence of enmity or hostility, the victim is not expected to let the real offender to go scot free and to implicate an innocent one. The accused did not put any question to him in the cross-examination to deny their presence at the spot. They did not give any plausible explanation as to for what specific purpose they were present at odd hours at the crime spot. Material facts proved in examination-in-chief have remained unchallenged and uncontroverted.

6. PW-1 (Jasbir), PW-4 (Bablu Pal) and PW-5 (Rama Shankar), other occupants of the vehicle have corroborated complainant Dalip Kumar's version in its entirety without any inconsistency. They all have identified the assailants in the Court and have assigned specific and definite role to each of them in the incident. Again, no extraneous motive was imputed to all these independent witnesses. Despite searching cross-examination, their testimony could not be shattered.

7. Minor discrepancies or contradictions highlighted by the appellants' counsel are of no consequence as they do not affect the core of the prosecution case. The accused persons did not examine any witness to prove if they were lifted from their respective houses as alleged.

Impugned judgment is based upon the fair appraisal of evidence and deserves no intervention. Their conviction is affirmed.

8. Regarding sentence, A-1 was sentenced to undergo RI for ten years with fine ₹10,000/-. Nominal Roll dated 08.03.2016 reveals that he has undergone four years, five months and twenty-seven days incarceration besides remission for one year, three months and twenty-nine days. He is not a previous convict and has clean antecedents. His overall jail conduct is satisfactory. He was aged around 36 years on the day of incident. Considering the facts and circumstances of the case, the sentence order is modified to the extent that substantive sentence under Section 392 IPC read with Section 397 IPC shall be seven years with fine ₹10,000/- and default sentence for its non-payment would be two months.

9. A-2 was sentenced to undergo RI for five years with fine ₹10,000/-. Nominal Roll dated 05.03.2016 reveals that he has undergone three years, five months and five days incarceration besides remission for four months and thirteen days. Vide order dated 04.08.2015 his substantive sentence was suspended. He is involved in two other FIRs (FIR No.69/2012 under Sections 379/411 IPC PS G.Puri and FIR No.217/2014 under Section 324 IPC PS Hari Nagar). In FIR No.381/2013 under Section 309 IPC PS Hari Nagar, he has been convicted. His overall

jail conduct is unsatisfactory and he was awarded four punishments. Considering all these facts and circumstances, the imprisonment for five years awarded to him cannot be termed unreasonable or excessive. Default sentence for non-payment of fine ₹10,000/- is, however, modified and in case of its non-payment, A-2 shall undergo SI for two months.

10. The appeals stand disposed of in the above terms. 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.

11. A-2 shall surrender before the Trial Court on 06.04.2016 to serve out the remaining period of substantive sentence.

(S.P.GARG)
JUDGE

MARCH 30, 2016 / *tr*