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IN THE HIGH COURT OF DELHI AT NEW DELHI

RESERVED ON : MAY 27, 2016

DECIDED ON : JULY 12, 2016

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CRL.A.1404/2014 & CrI.M.B.635/2016

AJAY KUMAR SHARMA

..... Appellant

Through : Mr.R.K.Singh, Advocate.

versus

STATE

..... Respondent

Through : Mr.Amit Gupta, APP.

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CRL.A.1299/2014

PRADEEP AGGARWAL

..... Appellant

Through : Mr.Sunil Tiwari, Advocate.

versus

STATE

..... Respondent

Through : Mr.Amit Gupta, APP.

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CRL.A.1577/2014

NEERAJ @ KASHI

..... Appellant

Through : Mr.R.K.Singh, Advocate.

versus

STATE

..... Respondent

Through : Mr.Amit Gupta, APP.

**CORAM:
HON'BLE MR. JUSTICE S.P.GARG**

S.P.GARG, J.

1. Challenge in these appeals is a judgment dated 30.07.2014 of learned Additional Sessions Judge in Sessions Case no.22/13 arising out of FIR No.310/12 registered at Police Station Mukherjee Nagar by which the appellants Ajay Kumar Sharma (A-1), Pradeep Aggarwal (A-2) and Neeraj @ Kashi(A-3) were convicted under Section 452/392/34 IPC. A-1 in addition was convicted under Section 397 IPC. By an order dated 08.08.2014, they were awarded various prison terms with fine. Sentences qua A-1 were to operate concurrently.

2. Briefly stated, the prosecution case as stated in the charge-sheet was that on 04.10.2012 at about 2.30 p.m. at H.No.800, Second Floor, Dr.Mukherji Nagar, Delhi, the appellants in furtherance of common intention robbed complainant Aruna Thakar and deprived her of gold chain and two bangles after committing lurking trespass. A-1 used a knife at the time of committing robbery. The incident was reported to the police vide Daily Diary (DD) No.24 A (Ex.PW1/C) at 2.45 p.m. The investigation was assigned to SI Ranbir Singh who with Ct.Amar Nath went to the spot. After recording victim- Aruna Thakkar's statement (Ex.PW-2/A), he lodged First Information Report. Since all the accused persons were apprehended at the spot, their custody was handed over to the Investigating Officer. The robbed articles were seized vide seizure memos (Ex.PW2/C) and (Ex.PW-2/D). Statements of witnesses conversant with the facts were recorded. Upon completion of investigation, a charge-sheet was filed against the appellants

in the court. In order to establish its case, the prosecution examined nine witnesses. In 313 statement, the accused denied their involvement in the crime and pleaded false implication. A-1 examined DW-1 (Sukhnandan Verma), DW-2 (Yogesh Sharma), DW-3 (Meera Devi) besides appearing himself as DW-4. 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 A-1 and A-3 urged that the Trial Court did not appreciate the evidence in its true and proper perspective and ignored vital infirmities in the statements of the prosecution witnesses. No independent public witness was associated at any stage of the investigation. The complainant did not sustain any injury on her neck when the alleged golden chain which she was wearing was snatched/removed forcibly. Recovery of the knife is doubtful. The chain recovered during investigation was an unbroken golden chain and possibility of its being falsely planted cannot be ruled out.

4. Learned counsel for A-2 giving up challenge to the findings on conviction prayed for modification of the sentence order considering the mitigating circumstances.

5. The occurrence took place on 04.10.2012 at about 2.30 p.m. The accused persons were apprehended after some chase near the spot by the complainant with the assistance of public persons. DD No.24A (Ex.PW1/C) came into existence promptly at 2.45 p.m. after the information was conveyed to the police about apprehension of 3/4 individuals near Batra cinema. In her statement (Ex.PW-2/A), the complainant gave detailed account as to how and in what manner, the accused persons gained entry

inside the house on the pretext to deliver a greeting card. A-1 was known to her being in employment with them earlier at their shop. She gave graphic account as to how the accused persons snatched her wearing golden chain and removed her bangles. When her mother-in-law, present in the balcony, on hearing commotion raised alarm, the accused persons fled the spot. However, on being chased, they were apprehended. In her court statement, she fully proved the version given to the police at first instance without any variation. She identified all the accused persons to be the perpetrators of the crime. Specific and definite role was assigned to each of them. She deposed that on 4.10.2012 at about 2.30 p.m. when she was taking lunch in the house, A-1 rang the bell. A-1 who used to work earlier at her husband's shop told "Babuji ne apke liye card bheja hai." Believing A-1, she opened the door partially. In the meantime, A-1 pushed himself inside the house and two more individuals identified as A-2 and A-3 followed him and entered the house. A-1 took out a knife and put it on her neck. He exhorted his associates 'Is ghar me bahut maal hai, sab loot lete hai.' On that, A-3 removed her wearing chain and A-2 caught hold both of her hands and A-3 removed her bangles also. When she resisted, A-1 pressed the knife on her neck due to which she screamed. She further deposed that her mother-in-law Kamlesh Takkar sitting in the next room heard her noise and saw the incident from her room. She went towards the balcony and raised alarm 'chor-chor' 'pakdo pakdo'. The accused persons tried to run away through the staircase. Some public persons chased the assailants and apprehend them. One police official also reached there. The jewellery was recovered from A-3. Her statement (Ex.PW-2/A) was recorded. She identified the case property seized in this case. In the cross-examination, she elaborated

that the accused persons after snatching the robbed articles had run away from the second floor and were apprehended subsequently on the road outside the house. The crowd had gathered at the spot and soon the PCR van also reached. Her husband was not present at the spot and her father-in-law was there at the shop. She explained that A-1 was acquainted with her as her husband had deputed him to supervise the renovation work at her residence. She denied that there was a dispute between A-1 and her husband over payment of salary for two or three months. She further explained that her husband had gone to Nepal two-three days before the incident and had returned on the day of occurrence i.e.4.10.2012 at about 10.30-11.00 p.m. She fairly admitted that call at 100 was not made by her.

6. On scanning the testimony of the victim, it reveals that despite lengthy and searching cross-examination, nothing material could be extracted to discredit her version. No ulterior motive was assigned to this witness for falsely implicating the accused persons. All the accused persons were apprehended at the spot; they did not furnish any plausible explanation about their presence at the spot without any specific motive/purpose. A-2 and A-3 were not familiar with the complainant. In the absence of prior animosity or previous enmity, she was not expected to level false allegations of robbery against them. A-1 was acquainted with her as he had worked at her husband's shop about 7/8 years before the incident. Nothing has emerged on record if the complainant or her husband were to pay any dues/salary to A-1 and to avoid the said payment, fake incident of robbery was concocted. For a petty amount of 2/3 months' salary, the complainant was not expected to fake the incident of robbery in the absence of her husband who had gone to Nepal. It seems that A-1 taking advantage of his

previous acquaintance and knowing about the economic condition of his previous employer, along with his associates planned to rob the complainant when no other male member was present in the house. A-1 after gaining the complainant's trust due to previous familiarity, got entry in the house on the pretext to deliver a greeting card. Unsuspecting, the complainant opened the door and subsequently by force, the accused persons entered inside the house.

7. PW-4 is Smt.Kamlesh, aged around 65 years, victim's mother-in-law. She fully corroborated the version given by the complainant and deposed that on hearing screams (chillane ki awaz) she came out of her room and saw A-1 to whom she knew earlier to have put knife on the neck of her daughter-in-law and two of his associates were removing her jewellery. On seeing the incident, she went to the balcony and raised alarm 'chor-chor' 'pakdo pakdo'. The accused persons were apprehended by the public and the robbed articles and knife were recovered from their possession. In the cross-examination, she also revealed that her son had gone to Nepal. Their house was renovated in 2005 and at that time A-1 was working in their shop. She denied that she was not present inside the house that time or that the accused persons were falsely implicated. The senior citizen had no extraneous consideration to falsely implicate the accused persons. PW-5 (Suresh) had arrived at the spot on hearing the alarm. He also deposed about apprehension of accused persons and the recovery of jewellery articles from them. He stated that the accused persons present in the court were apprehended by them on 04.10.2012.

8. Another crucial witness is PW-7 (HC Harkesh) who was on patrolling duty being beat constable. He deposed that at about 2.40 p.m.

when he reached House No.804, Mukherjee Nagar, he saw that the public persons had surrounded three individuals. After parking his motorcycle, he went towards that spot and saw that all the accused persons had been apprehended by the crowd. They had already recovered the jewellery and knife from their possession. He further informed that the accused persons were arrested vide arrest memos (Ex.PW-2/G), (Ex.PW-2/H) and (Ex.PW-2/J). Pursuant to their disclosure statements (Ex.PW-7/A), (Ex.PW-7/B) and (Ex.PW-7/C) two motorcycles bearing Nos.DL-7S-BL-6823 and HR-51-U9671 were seized vide seizure memo Ex.PW-7/D and Ex.PW-7/E. He also identified the case property recovered in this case. This official witness had no prior animosity/enmity with the accused persons to make a false statement. In 313 statements, the accused persons did not furnish any plausible explanation to the incriminating circumstances proved against them. A-1 examined various witnesses to prove that he was lifted from his house on 4.10.2012 at around 5.30 to 6.00 p.m. and was subsequently apprehended in the case. This defence version deserves outright rejection as prosecution has proved beyond doubt that all the accused persons were apprehended at the spot soon after the incident. A-1 did not produce on record any document to show if any proceedings were ever initiated by him to recover the alleged outstanding dues. No complaint lodged with the Labour Department was placed on record.

9. Minor discrepancies and inconsistencies highlighted by the appellants' counsel are not material as they do not affect the core of the prosecution case. The fact remains that the appellants were identified by the complainant/victim to be the authors of the crime. Specific and definite role was assigned/attributed to each of them in the commission of the crime. A-2

did not even opt to challenge the findings on conviction. The conviction based upon fair and proper appreciation of evidence recorded by the Trial court warrants no interference.

10. The sentence order is based on fair reasoning. The appellants in furtherance of their common intention had committed lurking house trespass with the intention to rob the complainant. The court can well understand the trauma suffered by the complainant and her family members when in the absence of any male member, they were confronted by three assailants; one of them armed with a deadly weapon i.e. knife. It was their good luck that victim's mother-in-law present in the balcony raised alarm and was able to prevent the commission of more serious offence. It was a planned act of the accused persons. A-1 taking advantage of his previous acquaintance with the family betrayed the trust and attempted to rob them. Sentence to undergo Rigorous Imprisonment for seven years with the aid of Section 397 IPC which is minimum one cannot be modified or altered.

11. The appeals lack merit and are dismissed. A-2 and A-3 are directed to surrender and serve the remainder of their sentence. For this purpose, they shall appear before the Trial Court on 19th July, 2016.

12. Trial Court record along with the copy of the order be sent back forthwith. Information be also sent to Superintendent Jail.

(S.P.GARG)
JUDGE

JULY 12, 2016/sa