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

% *Date of Decision : May 24, 2016*

+ **CRL.A. 10/2014**

ARUN @ BHOOT Appellant
Represented by: Ms.Suman Chauhan, Advocate

versus

STATE Respondent
Represented by: Mr.Varun Goswami, APP

CRL.A. 397/2014

MOHAN PASWAN Appellant
Represented by: Mr.Sachin Dev Sharma, Advocate

versus

GOVT OF NCT OF DELHI Respondent
Represented by: Mr.Varun Goswami, APP

CRL.A. 232/2015

JITENDER @ PINKI Appellant
Represented by: Mr.Rishi Pal Singh, Advocate

versus

THE STATE (NCT OF DELHI) Respondent
Represented by: Mr.Varun Goswami, APP

CRL.A. 114/2016

ATUL @ CHAWAL Appellant
Represented by: Mr.Ankur Sood, Advocate

versus

STATE Respondent
Represented by: Mr.Varun Goswami, APP

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

PRADEEP NANDRAJOG, J. (Oral)

1. Arun @ Bhoot, Mohan Paswan, Jitender @ Pinki and Atul @ Chawal are alleged by the prosecution to be robbers. The prosecution claims that at 7:00 AM on September 22, 2012, three trucks : No.RJ 11 GA 5893, RJ 02G 6954 and HR 73 1066 were parked in front of Marry Makers Banquet Hall, Wazirpur Industrial Area and the drivers of the three trucks : Bijender, Lal Chand and Om Prakash respectively, were taking a siesta in their respective trucks when the four robbers struck. Jitender @ Pinki, upon entering the first truck, put a knife on the neck of Om Prakash and made him part with ₹4,700/- and to demobilize Om Prakash one boy caught his hands, the other his legs and the fourth probably stood by. The next person to be robbed was Bijender. Modus operandi was the same. Jitender @ Pinki put the knife on his neck and made him part with ₹47,000/-. The role of the other three being the same. The third driver, Lal Chand had no money with him and therefore two bags containing steel utensils were removed from his truck. So terror stricken was Om Prakash that he lay still inside his truck for some time because he was threatened that if he attempted to chase the robbers he

would be sent by the A train to heaven. After some time he came out of the truck and raised a hue and cry. Bijender also mustered courage and said that even he had been robbed. Lal Chand joined. The facts are a little blurred as to who communicated the distress call for the first time to the police control room, because I find two DD entries recorded at police post Wazirpur Industrial Area under jurisdiction of PS Ashok Vihar. The first DD No.7, Ex.PW-1/A records that at 7:25 AM police control room had flashed that a theft had taken place near Marry Maker Banquet Hall. The second DD No.8, Ex.PW-1/B records information received at the police post at 7:45 A.M. that a truck driver had been robbed of ₹47,000/-.

2. DD No.7 was entrusted for investigation to HC Ashok PW-8 who, reached the spot and met the three truck drivers, who informed that probably the robbers ran towards the fish market. As deposed to by HC Ashok Kumar PW-8, he parked his motorcycle in the market and went towards the fish market and under the Azadpur Bridge 4-5 boys were seen. The truck drivers informed that they are the robbers. A chase ensued. Three ran away, but Jitender @ Pinki was nabbed and in his pocket was found a button actuated knife. By this time DD No.8 had also been registered and investigation entrusted to SI Ved Prakash PW-10 who, accompanied by Ct.Sanjay PW-9 reached the place of the occurrence, and half his job had already been done by then. Jitender @ Pinki was in the custody of HC Ashok Kumar and so was the button actuated knife Ex.P-1. He seized the knife and drew the sketch Ex.PW-5/C thereof. Jitender @ Pinki disclosed the name of the three other co-accused. SI Ved Prakash thought it prudent to proceed on hot pursuit straightway and not waste time in first recording the statement of one of the three truck drivers and sending the rukka for FIR

to be registered; and in my opinion rightly so, because such kinds of crimes need prompt chase. Since Jitender @ Pinki disclosed the jhuggis of the three companions, Mohan's jhuggi was the first to be identified by him. He was apprehended with a booty of ₹10,000/-. The other two had managed to run away. Therefore SI Ved Prakash recorded statement Ex.PW-5/N of Om Prakash and made the endorsement Ex.PW-10/A thereunder and dispatched the tehrir at 12:00 noon for FIR Ex.PW-2/A to be registered.

3. Thus, as regards appellant Jitender @ Pinki and Mohan, the factum of their apprehension and recovery of a knife from the former and ₹10,000/- from the latter are recorded in the tehrir itself. The corresponding arrest memos show the arrest around same time. The recovery memos show the recoveries effected. The arrest memo of Jitender is Ex.PW-5/A and that of Mohan is Ex.PW-5/F. The recovery memo of the knife is Ex.PW-5/D and the sketch thereof is Ex.PW-5/C. The recovery memo concerning Mohan is Ex.PW-5/H.

4. Thereafter Atul @ Chawal was apprehended at around 8:45 PM the same night and ₹30,000/- was recovered from his pocket, a fact noted and recorded in the recovery memo prepared contemporaneously. Atul's arrest memo is Ex.PW-5/J and recovery memo is Ex.PW-5/L. The fourth accused Arun @ Bhoot was apprehended on September 24, 2012 at 11:05 PM and ₹2,000/- was recovered from him. Arun's arrest memo is Ex.PW-6/C and recovery memo is Ex.PW-6/F. The stolen utensils which were removed along with the two bags could not be recovered because Arun @ Bhoot said that he had already sold them.

5. The three victims : Om Prakash PW-5, Bijender Singh PW-6 and Lal Chand PW-7 respectively have deposed in sync and in conformity with the

facts recorded in Om Prakash's statement Ex.PW-5/N. The three have further deposed to the third accused being arrested same night i.e. Mohan. All have proved the recoveries. Bijender has additionally deposed that he was associated with the investigation on September 24, 2012 when Bhoot was apprehended. The three have deposed that they gave photocopies of the RCs of their respective vehicles to the investigation officer as also photocopies of their licenses and the good receipts of the goods they were transporting, which the three have exhibited at the trial and useless to note the same because none of the accused have challenged that the three were not truck drivers plying the respective trucks, numbers whereof have been recorded in paragraph 1 above and transporting goods.

6. The learned Trial Judge has returned a verdict of guilt convicting Jitender @ Pinki for the offence punishable under Section 397 IPC. The others have been convicted for the offence punishable under Section 392 IPC. Jitender @ Pinki has also been convicted for the offence punishable under Section 25/54/59 of the Arms Act, 1959, a conviction which has to be set aside because I find there is no sanction obtained and it has not been proved that the button actuated knife Ex.P-1 was a prohibited arm. Therefore, I acquit him of the charge framed under the Arms Act, 1959.

7. As regards the conviction of the four accused for the offence of robbery, I have perused the testimony of three victims and would observe that the three have withstood the test of cross-examination. The three police officers associated with the incident soon after the robbery was committed have also deposed in sync. We therefore have six witnesses to the recoveries. I only need to highlight that during their deposition in Court the three victims identified the appellants as the participants in the crime with

all deposing in unison that Jitender @ Pinki was the one who threatened them with the knife Ex.P-1.

8. Sentence imposed upon Mohan, Atul and Arun is to undergo RI for 5 years and pay fine in sum of ₹5,000/-, in default to undergo simple imprisonment for one month. Jitender @ Pinki has been sentenced to undergo RI for 10 years and pay fine in sum of ₹5,000/- and in default to under SI for one month.

9. All the appellants have been admitted to bail and the reason for Mohan, Atul and Arun was that by the time they were admitted to bail they had undergone a sentence of 3 years and 1 month and had earned remission of 7 months and 28 days. Their jail conduct was found to be satisfactory. If directed to undergo remaining sentence, the three would have to spend another year in jail.

10. Hoping that the three would have learnt that bad deeds catch up some day or the other and a piece of dry bread earned is better than a butter toast stolen, maintaining the conviction of the three, I reduce the sentence for the period already undergone and therefore discharge the bail bond and surety bond furnished by the three.

11. As regards Jitender @ Pinki, the minimum sentence of 7 years RI has to be imposed because he used the knife Ex.P-1, sketch whereof shows that it is a button actuated knife. It is a dangerous weapon. Maintaining his conviction I reduce the sentence imposed upon him to undergo RI for 7 years and pay the fine directed by the learned Trial Judge. His bail bond and surety bond is cancelled. He shall surrender and suffer the remaining sentence.

12. TCR be returned.

13. Copy of this order be supplied to the Superintendent Central Jail Tihar for updation of his record.

(PRADEEP NANDRAJOG)
JUDGE

MAY 24, 2016
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