

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

RESERVED ON : 19th APRIL, 2017

DECIDED ON : 27th APRIL, 2017

+ **CRL.A.469/2014 & CRL.M.B. 170/2015**

RAJESH @ PREM

..... Appellant

Through : Mr.L.S.Saini, Advocate with
Mr.Yatin Grover & Mr.Gagan Jindal,
Advocates.

versus

STATE NCT OF DELHI

..... Respondent

Through : Ms.Meenakshi Chauhan, APP.

+ **CRL.A.23/2016**

RAHIS @ GANJA

..... Appellant

Through : Mr.Amit Kumar, Proxy counsel.
versus

THE STATE (GOVT. OF NCT), DELHI

..... Respondent

Through : Mr.G.M.Farooqui, APP.

AND

+ **CRL.A.845/2015**

AJAY @ PAYYU

..... Appellant

Through : Mr.Puneet Singhal, Advocate.
versus

STATE NCT OF DELHI

..... Respondent

Through : Mr.G.M.Farooqui, APP.

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

S.P.GARG, J.

1. Aggrieved by a judgment dated 22.10.2013 of learned Addl. Sessions Judge in Sessions Case No.120/2013 arising out of FIR No.270/2010 PS Keshav Puram by which the appellants – Rajesh @ Prem (A-1), Rahis @ Ganja (A-2) and Ajay @ Payyu (A-3) were held guilty for committing offence punishable under Section 392 read with Section 397 IPC, they have preferred the instant appeals. By an order dated 01.11.2013, the appellants were sentenced to undergo RI for seven years with fine ₹10,000/- each.

2. Briefly stated, the prosecution case as reflected in the charge-sheet was that on 20.08.2010 at around 08.30 p.m. at House / Shop No.470-A, Ram Pura, Keshav Puram, Delhi, the appellants in furtherance of common intention along with their associate (not arrested) robbed Keshav Sharma of ₹60,000/-, chain along with locket, wallet containing ₹500, voter I-card and some documents using deadly weapons. The investigating Officer on receipt of complaint (Ex.PW-5/A) registered First Information Report. In the complaint, Keshav Sharma disclosed as to how and in what manner, the assailants had committed robbery at his shop. Statements of the witnesses conversant with the facts were recorded. The appellants were arrested in case FIR No.191/2010 PS Patel Nagar. Pursuant to the disclosure statements recorded, they were arrested in the instant case. Applications for conducting Test Identification Proceedings were moved. Certain recoveries effected in case FIR No.191/2010 were transferred to this case. Upon

completion of investigation, a charge-sheet was filed against the appellants in the Court. To prove its case, the prosecution examined eleven witnesses. In 313 Cr.P.C. statements, the appellants denied their involvement in the crime and pleaded false implication. The trial resulted in conviction as aforesaid. Being aggrieved and dissatisfied, the instant appeals have been preferred.

3. I have heard the learned counsel for the parties and have examined the file. Appellants' counsel argued that the Trial Court did not appreciate the evidence in its true and proper perspective and ignored the vital discrepancies in the statements of the prosecution witnesses without cogent reasons. There was delay in moving the applications for getting Test Identification Proceedings conduct. The weapon of offence recovered was not identified by the complainant. No Call Detail Record was collected and proved. One of the assailants was not identified by the complainant in Test Identification Proceedings. Learned APP urged that there are no valid reasons to disbelieve the testimony of the complainant who had no extraneous consideration to identify the appellants to be the assailants.

4. The occurrence took place on 20.08.2010 at around 08.30 p.m. The FIR was lodged promptly after recording victim's statement (Ex.PW-5/A) and rukka was sent on the same day at around 10.15 p.m. In the complaint (Ex.PW-5/A), Keshav Sharma gave detailed account of the incident. He informed that four assailants had arrived at his shop on three motorcycles. They had committed robbery at his shop and had deprived him of various valuable articles. They were armed with country-made pistols. He further informed that one motorcycle was of red colour, make Bajaj Pulsar. The complainant had no ulterior motive to fake the incident of

robbery. He did not nurture any grievance against the assailants and none of them was named in the FIR.

5. On 05.09.2010, A-1 and A-3 were apprehended and arrested in case FIR No.191/2010 registered at PS Patel Nagar. On interrogation, they made disclosure statements Ex.PW-2/A (of A-1) and Ex.PW-2/B (of A-3). One motorcycle make Pulsar was recovered from A-1 and A-3, which was seized vide seizure memo (Ex.PW-2/F). A pistol and a cartridge were recovered from A-1 which was seized vide seizure memo (Ex.PW-2/G). Revolver and cartridge recovered from A-3 were seized vide seizure memo (Ex.PW-2/H). On the same day, A-2 was also apprehended and a surgical blade was recovered from his pocket. His disclosure statement (Ex.PW-2/D) recorded and the knife was seized vide seizure memo (Ex.PW-2/M). Appellants' involvement emerged in this case on their making the disclosure statements. Apparently, the police of PS Patel Nagar had no concern with the FIR in question registered at PS Keshav Puram. The police officials apprehending the appellants in case FIR No.191/2010 registered at PS Patel Nagar did not have any inkling about the appellants' involvement in the crime before the disclosure statements made by the appellants.

6. Material testimony to infer the appellants' guilt is that of PW-5 (Keshav Sharma) - the complainant. In his examination-in-chief, he fully supported the prosecution and proved the version given to the investigating agency at first instance without variation. He identified the appellants to be the assailants who had committed robbery at his shop on 20.08.2010 at around 08.30 p.m. and had robbed valuable articles including cash at the point of deadly weapons. He participated in the Test Identification Proceedings conducted on 18.10.2010 at Tihar Jail and was able to identify

the appellants to be the perpetrators of the crime. He was fair enough not to identify Sunny @ Rakesh as he was not present at the time of commission of the crime along with the appellants. Appellants' contention that they were shown to the complainant in the Police Station prior to the holding of Test Identification Proceedings is without any foundation as they themselves had voluntarily agreed to participate in the Test Identification Proceedings. Had the police officials shown them to the complainant, there was no occasion for them to join the Test Identification Proceedings. Mere delay in filing the application for TIP is inconsequential as the appellants were arrested in another case FIR No.191/2010 registered at PS Patel Nagar only on 05.09.2010.

7. PW-5 (Keshav Sharma) attributed and assigned specific and definite role to each of the appellants in the crime. He implicated A-1 to be the individual who had removed ₹60,000/- after showing him pistol. The role assigned to A-2 is that he removed his purse from the pocket. A-3 snatched a chain after putting him in fear of revolver. In the cross-examination, no material discrepancy or infirmity surfaced to disbelieve the complainant's testimony. He elaborated that on the day of occurrence it was a Friday and the market was close. The boy employed by him in the shop was not available that day, it being off day. He further informed that in his complaint to the police, he had disclosed the language used by the assailants. No ulterior motive was assigned to the complainant for falsely implicating the appellants. The complainant was not familiar with the appellants before the incident. In the absence of any prior animosity or ill-will, he is not expected to implicate them in a false case. Being the victim, he must be interested to let the real culprit to book and he is not expected to rope in the

innocent ones. The appellants did not deny their presence at the spot at the time. They did not examine any witness in defence to show their presence at some other specific place at the relevant time.

8. Minor discrepancies and infirmities highlighted by the appellants' counsel are inconsequential as they do not go to the root of the case.

9. The impugned judgment based upon fair appreciation of the evidence deserves no intervention.

10. Sentence to undergo RI for seven years awarded by the Trial Court cannot be modified or altered as it is the minimum one prescribed under Section 392 read with Section 397 IPC. The crime committed by the appellants was intentional and planned. The complainant was robbed of his hard earned money for no fault of his. The robbed amount even could not be recovered after appellants' arrest. The appellants deserve no leniency.

11. The appeals are dismissed. Pending application also stands disposed of.

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

(S.P.GARG)
JUDGE

APRIL 27, 2017 / tr