

\$-32, 33, 34, 35 & 36

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

+ CRL.A. 906/2016

SHANKER DASS

..... Appellant

Through: Mr. Sudhir Pal Singh, Adv.
versus

STATE

..... Respondent

Through: Mr. Tarang Srivastava, APP for the
State with SI Pankaj Kumar, P.S.
Shalimar Bagh.

AND

CRL.A. 1006/2016

SANTOSH

..... Appellant

Through: Mr. Rajender Yadav, Adv.
versus

STATE (GOVT OF NCT OF DELHI)

..... Respondent

Through: Mr. Tarang Srivastava, APP for the
State with SI Pankaj Kumar, P.S.
Shalimar Bagh.

AND

CRL.A. 1023/2016

MUKESH KUMAR

..... Appellant

Through: Mr. Siddharth Yadav, Adv.
versus

STATE

..... Respondent

Through: Mr. Amit Chadha, APP for the State
with SI Pankaj Kumar, P.S. Shalimar
Bagh.

AND

CRL.A. 1104/2016

MINTU GIRI

..... Appellant

Through: Ms. Dimple Vivek, Adv.

8

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Mr. Amit Chadha, APP for the State
with SI Pankaj Kumar, P.S. Shalimar
Bagh.

AND

CRL.A. 127/2017

RINKU @ HARISH

..... Appellant

Through: Mr. Biswajit Kumar Patra and Mohd.
Kazim, Advs.

versus

STATE

..... Respondent

Through: Mr. Amit Chadha, APP for the State
with SI Pankaj Kumar, P.S. Shalimar
Bagh.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

%

09.03.2017

Appellants Rinku Kumar @ Harish, Mintu Giri, Shanker Dass and Mukesh Kumar have been convicted under Section 395/34 IPC by the trial court and have been sentenced to undergo rigorous imprisonment for a period of 10 years (each) with fine of ₹20,000/- (each) and in default of payment of fine to further undergo simple imprisonment for a period of 3 months (each). Appellant-Santosh Kumar has been convicted under Section 412 IPC and sentenced to undergo rigorous imprisonment for 10 years with

9

fine of ₹20,000/- and in default of payment of fine to undergo simple imprisonment for 3 months. The above named convicts have also been given benefit of Section 428 Cr.P.C.

One Mithai Lal Seth was also sent up to face trial, for the offences under Sections 395/397/412/120-B IPC but he died during the pendency of trial.

Rinku Kumar @ Harish, Mintu Giri, Shanker Dass and Mukesh Kumar have filed these appeals, which are being disposed of together.

Arguments heard and trial court record perused.

As per the prosecution, Santosh Kumar, Rinku @ Harish, Mintu Giri, Shanker Dass, Mukesh Kumar and Nagender (Proclaimed Offender) committed dacoity in the office of Manapuram Finance (the company, for short) situated at 2nd Floor, Ramji Lal Complex, DA Block, Shalimar Village, Delhi and robbed 11.4 kg of gold jewellery, ₹2.30 lacs in cash and three mobile phones belonging to the employees of the company. Rinku @ Harish, Mintu Giri, Shanker Dass and Mukesh Kumar along with Nagender went inside the office and committed dacoity while Santosh remained outside the building to keep a watch. After committing robbery all of them ran away with the looted articles. Anand Kumar (Branch Head), Kalim

Ansari (Guard), Shiv Kumar and Vijay (both employees of the company) were present in the office, inasmuch as, Kalim Ansari sustained injuries. FIR was registered on the complaint of Anand Kumar.

During the investigation, Santosh Kumar, Rinku @ Harish, Mintu Giri and Shanker Dass were arrested on 10th September, 2009 in FIR No. 272/09 under Section 399/402 IPC, by the officials of police station Shalimar Bagh; wherein they disclosed their involvement in this case. Accordingly, they were arrested in this case as well. Their statements were recorded wherein, they disclosed the ratio, in which the looted articles were distributed amongst them. No cash was recovered from them, however, some jewellery articles were recovered pursuant to disclosure of Shanker Dass. As regards the other convicts it was stated that they had purchased immovable properties, motorbike, mobile phone, auto rickshaw etc. in the name of their close relatives, from the sale proceeds of the looted jewellery and the robbed cash. Documents regarding property transaction and other articles were seized. Abovenamed accused had revealed that around 9-10 kgs of gold jewellery was sold to Mithai Lal, who was also arrested and ₹8.69 lacs in cash besides 266.5 gms of gold was recovered from his house.

During the trial, prosecution examined 57 witnesses. PW7 Anand

Kumar supported the prosecution version. He was present in the office of the company when the dacoity was committed by the accused persons. As per the prosecution, Rinku @ Harish, Mintu Giri, Shanker Dass and Mukesh Kumar had entered into the office of the company and had committed the dacoity. PW7 Anand Kumar has identified these accused persons in court. He had also given the details and the manner in which the dacoity was committed. He has deposed that accused persons removed the entire gold which later on, was found to be of 11.4 kg in various forms. They also took away ₹2.30 lacs in cash. They also removed his mobile phone and also that of the PW13 Kalim Ansari and PW18 Shiv Kumar, who were also present there. PW7 deposed that PW13 Kalim Ansari and PW14 Sanjay Malhotra were also present there. PW18 Shiv Kumar has also supported the version of PW7. He deposed that ₹80,000/- was taken away from the cash counter. He also identified Rinku @ Harish, Mintu Giri, Shanker Dass and Mukesh Kumar in court correctly. Trial court has found the testimonies of these witnesses to be trustworthy and reliable. I have also gone through the testimonies of these witnesses and find them to be trustworthy and reliable and sufficient enough to conclude that Rinku @ Harish, Mintu Giri, Shanker Dass and Mukesh Kumar had entered into the office of the company and

12

committed dacoity. PW6 Dr. Neeraj Choudhary, CMO, BJRM Hospital had proved the MLC of PW13 Kalim Ansari as Ex. PW6/A. PW13 has also deposed that he was stabbed by the knife.

As regards Santosh Kumar, as per the prosecution, he was present along with other the co-accused persons. He did not enter in the building. He remained outside. He was ex-employee of the company. Since he did not enter into the premises, he could not be identified by the eye witnesses. CDR also failed to establish the presence of Santosh Kumar at the spot. Accordingly, Santosh Kumar was acquitted for the offence under Sections 395/34 IPC, however, he has been convicted under Section 412 IPC. As per the prosecution, after his arrest, Santosh Kumar had disclosed that out of the booty, he got ₹26,000/- in cash and 1 ½ kg of gold jewellery as his share. He sold jewellery to Mithai Lal for ₹11 lacs. He further disclosed that he utilised ₹11 lacs for purchasing one plot admeasuring 60 sq. yards at Burari, Delhi for ₹ 6.5 lacs in the name of his mother Usha Devi; ₹70,000/-; for purchasing motorcycle make FZ-S Yamaha in the name of his brother Anil and one Nokia phone N-95 for ₹25,000/-. He further disclosed that he gave ₹2 lacs to Mintu Giri as a loan for the construction of his house. PW16 Ramesh Jain deposed that motorcycle FZ-16 Sports bearing registration No.

DL8SAL-3761 was purchased from his showroom on 29th March, 2009 by making payment in cash. Invoice of the said motorcycle was proved as Ex. PW16/A, original copy of insurance was proved as Ex. PW16/B and receipt of transport department was also proved as Ex. PW16/C. PW53 Dharamvir deposed that in June, 2009 he sold one plot admeasuring 60 sq. yards to Santosh Kumar for ₹6.18 lacs, however, registry was done in the name of his mother on 3rd July, 2009. Property documents were proved as Ex. PW53/A. In his cross-examination, PW53 deposed that he had directly negotiated the property deal with Santosh Kumar. He further deposed that consideration was shown in the documents as ₹1.60 lacs, but actual sale consideration was not the same. CDR data was also relied upon by the trial court to conclude that Santosh Kumar was in regular touch with Mithai Lal.

During the course of hearing, learned counsel for the appellants have given up the challenge to the conviction of appellants on merits. They have simply prayed for reduction of sentence. It is contended that Santosh Kumar is aged about 32 years. His parents are about 55 years old. He has no previous criminal record. He is in jail for the last 7 and a half years and his jail conduct is satisfactory.

Appellant-Rinku @ Harish is aged about 30 years; he was 23 years

old at the time of the incident. He is married and having one daughter, who is of school going age. His mother is aged about 60 years and is also suffering from various ailments. He belongs to a poor family and his whole family is suffering in his absence. He is in incarceration for more than 7 years.

Appellant-Shanker Dass is aged about 35 years. He also belongs to a poor family. His family, consisting of his wife, two daughters aged about 9 and 11 years; widowed mother, is leading a life of vagrancy in his absence, inasmuch as, education of his children is also suffering.

Appellant-Mukesh Kumar is aged about 34 years. He was 26 years old at the time of the incident. He is married. He has two children. His daughter is 9 years old; whereas son is 11 years old. His daughter is suffering from brain tumor and is in the need of immediate medical attention. He belongs to a poor family and in his absence whole family is at the verge of starvation.

Appellant-Mintu Giri was also young at the time of incident. He is unmarried. He belongs to a poor family. His aged parents are suffering from various ailments. He belongs to a lower strata of society. His parents are leading a life of a vagrancy in view of the fact that he is in incarceration

for over seven years.

I have considered the contentions of learned counsel for the appellants. All the appellants are in jail for almost seven and a half years. They belong to poor families and in their absence their families are facing immense hardship. Jail conduct of the appellants is satisfactory. The purpose of substantive sentence is twofold. It is punitive as well as reformatory. Jail conduct of the appellants shows that they have reformed themselves. Keeping in mind totality of the circumstances, while upholding the conviction of the appellants, their sentences are reduced to the period already undergone by them. Appellants be released if not wanted in any other case.

All the appeals are disposed of in the above terms.

Copy of the order be sent to the Jail Superintendent for serving it on the appellants and for compliance.


A.K. PATHAK, J.

MARCH 09, 2017

ga