

\$~R-1

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

+ CRL.A. 987/2002

RAFIQ AHMAD

..... Petitioner

Through: Mr.Sumeet Verma & Ms.Preeti
Jakhar, Advs.

versus

STATE

..... Respondent

Through: Mr.Ravi Nayak, APP for the State
with Mr.Tulli Tam, ASI, P.S.
Badarpur

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

% **19.05.2018**

This appeal has been filed by the appellant Rafiq Ahmad challenging the order dated 04.05.2002 convicting the appellant of offences under Section 395 and 412 of the Indian Penal Code (IPC) and the order dated 07.05.2002 in case FIR No. 390/1997 (Sessions Case No. 31/1998) sentencing the appellant to undergo rigorous imprisonment of seven years under Section 412 and imprisonment for 7 years under Section 395 IPC with fine of Rs. 10,000/- for each of these offences and in default rigorous imprisonment of one year. Both sentences have been ordered to run concurrently.

The case of the prosecution is that on the night intervening 7th and 8th June, 1997, a robbery took place at F-2-B1, Mohan Cooperative Indl. Area, Mathura Road, Badarpur in the office of Euro Link which was a computer manufacturing company. After ten days of the dacoity, police received secret information about the alleged dacoits and the looted articles being at Sangam Vihar. The premises were raided alongwith witnesses and nine

persons, including the appellant, were found sleeping in the premises and some of the looted goods were found lying at the premises. At the instance of the appellant, looted articles were recovered vide memo Ex PW1/A. Further articles were also recovered at the instance of the appellant vide memo Ex PW8/J from servant quarters of M.P. Flats. These recoveries were proved through the testimony of PW1, PW3, PW16 and PW18.

The counsel for the appellant has taken me through the evidence, however, I find that recoveries of the stolen articles at the instance of the appellant have been duly proved by the prosecution.

The counsel for the appellant then submitted that only a charge under Section 412 IPC had been framed against the appellant, however, he has been convicted under Section 395 IPC. He submits that there was no evidence led before the Trial Court showing involvement of the appellant in the dacoity. He submits that the appellant has been convicted only on the basis of presumption because the stolen articles were recovered at his instance. He submits that similar was the position of the co-accused from whom also the stolen articles were recovered, however, they have been awarded sentence of only three years rigorous imprisonment for offences under Section 395 IPC and 412 IPC.

I find merit in the contention raised by the counsel for the appellant. In the present case, the appellant had been charged only for offence under Section 412 IPC. There is no evidence led before the Trial Court which would prove beyond reasonable doubt the involvement of the appellant in the offence of dacoity. In such circumstances, presumption only on the basis of recovery of articles could not have been drawn against the appellant.

In view of the above, I give the benefit of doubt to the appellant and acquit him of the offence under Section 395 IPC while maintaining the conviction of the appellant under Section 412.

Before being granted suspension of sentence vide order dated 15.03.2004 read with order dated 18.05.2004, appellant had undergone almost two years and seven months imprisonment including remission earned. Pursuant to order dated 23.07.2003 a report from the Probation Officer was filed, which indicates that the accused is feeling remorseful and there is a chance of reform of the accused. In view of the said report, the sentence awarded to the appellant for the offence under Section 412 IPC is reduced to the period already undergone by him.

The appeal is partially allowed in the above terms.

Trial Court record be sent back.

NAVIN CHAWLA, J

MAY 19, 2018/rv