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

+ CRL.A. 616/2003

(4) CRL.A. 82/2004

RAJENDER @ RAJU @ GANJU

RAJU @ KHEM RAJ

..... Appellants

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

versus

STATE

..... Respondent

Through: Mr.Ravi Nayak, APP along with SI
Shailesh and ASI Suresh Kumar, P.S. New Usman
Pur.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

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19.05.2018

These appeals have been filed by the appellants challenging the order dated 2nd September, 2002 passed by the Additional Sessions Judge, Karkardooma Courts, Shahdara, Delhi in Session Case No.32/01 convicting the appellants of the offence under Section 392/397/171/34 IPC and the order dated 3rd September, 2002 awarding sentence of rigorous imprisonment of 9 years each and fine of Rs.2,000/- each for offence under Sections 397/34 IPC and Sections 392/34 IPC, in default further rigorous imprisonment of one year each for each of the said offence. The appellants were further sentenced to undergo rigorous imprisonment of one year each for the offence under Section 171 IPC.

The case of the prosecution is that in the morning of 25th

October, 2000 at about 8.15 a.m., the accused had called upon the PW-1 Tilak Raj Chaddah at his residence at B-380, Gali No.17, Bhajanpura, Delhi. PW-1 was on the first floor which is his residence. One of the accused was wearing a police uniform and he told PW-1 that he needs his signatures on some papers. PW-1 allowed the appellants to come to the residential floor and at that stage, the appellants took out pistols and threatened PW-1 and PW-5 his wife Smt.Veena Chaddah to hand over all the cash and jewellery to them. PW-1 gave a diamond ring while his wife gave Rs.40,000/- lying in the almirah, two rings, chains, one pair of silver pajeb, four gold bangles and tops to the appellants and one more person. The appellants left the house locking PW-1, PW-5 and their son in the house.

Further, it is the case of the prosecution that on 14th December, 2000, the appellants were seen running and one person was chasing them while shouting for them to be apprehended. The appellants were apprehended and on interrogation, made a disclosure statement about their complicity in the present case. An application for holding Test Identification Parade (TIP) of accused persons was moved on 22nd December, 2000, however, as the complainant did not turn up, the TIP was postponed to 4th January, 2001 as the Courts closed for winter vacation in the interregnum.

The appellants refused to join in the TIP while the co-accused Santosh agreed for the same. The complainant, however, could not identify the co-accused Santosh during such TIP. Santosh was therefore, discharged.

Though, counsel for the appellants has drawn my attention to various contradictions in the statements of the witnesses, it cannot be denied that PW-1 had identified the appellant Raju @ Khem Raj as one of the roberers while PW-5 Smt. Veena Chaddah identified the appellant Rajender @ Raju Ganju as one of the robbers. It may be correct that they could not identify the other accused, however, in my opinion, the same would not be of much relevance. It is not denied that there is no animosity or any other reason for the said prosecution witnesses to falsely implicate the appellants especially when they had refused to identify the third accused namely Santosh. Being victims of the crime, it cannot be said that they would try to falsely implicate innocent persons in the offence.

In view of the above, the conviction of the appellants under Section 392 IPC is upheld and cannot be interfered with.

However, having said that, one important factor in the present case is that the appellants are stated to have made a disclosure statement on being apprehended in some other case. No recovery of any weapon could be made from the appellants. Further, no robbed article has been recovered at the instance of the appellants.

In ***Ghanshyam @ Bablu vs. State*** 2010 (1) JCC 240, this Court had acquitted the accused therein of an offence under Section 397 IPC as there was no recovery of the weapon at the instance of the accused therein. Similarly, in ***Samuddin @ Chotu vs. The State of NCT of Delhi*** 2010 (4) JCC 3091, the accused therein had again been acquitted of offence under Section 397 IPC as the prosecution had failed to produce the weapon alleged to have been used in the crime.

In my opinion, therefore, in the present case, the conviction of the appellants under Section 397 IPC cannot be sustained.

As far as the conviction of the appellants under Section 171 IPC is concerned, it was the case of PW-1 and PW-5 that only one of the persons was wearing a police uniform with a badge of Delhi Police. PW-1 has identified the appellant Raju @ Khem Raj as the person who introduced himself as a CBI official.

In view of the said statement while the conviction of Raju@ Khem Raj under Section 171 IPC is upheld, the conviction of Rajender @ Raju Ganju under Section 171 IPC is set aside.

As far as the sentence is concerned, keeping in view that there was no recovery of any article from the appellants and also the fact that Rajender @ Raju Ganju had undergone imprisonment of 4 years 9 months as on 14th September, 2006 and appellant Raju@ Khemraj had undergone imprisonment of 4 years, one month and 5 days as on 19th July, 2006, with remission of 1 year, 3 months and 9 days, the sentence of the appellants is reduced to the period undergone by them.

The appeals are partially allowed in the above terms.

The LCR be returned back to the trial Court.

NAVIN CHAWLA, J

MAY 19, 2018

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