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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 22nd May, 2019

+ Crl. Appeal No. 345/2002

PARKASH

..... Appellant

Through: Mr. Subhash Chechi, Adv.
along with appellant in custody.

versus

THE STATE (DELHI ADMN.)

..... Respondent

Through: Mr. Sanjeev Sabharwal, APP
for the State with SI Janak
Singh, PS Okhla Industrial
Area.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The appellant, along with two others, was sent up for trial to the court of Sessions on the basis of reports (charge-sheets) under Section 173 of the Code of Criminal Procedure, 1973 (Cr.P.C.) submitted upon conclusion of investigation into first information report (FIR) nos. 812/1997 and 42/1998, both of police station Okhla Industrial Area (the police station). Besides the appellant Parkash (A-2), the other persons who were, thus, prosecuted included Ram Bilas (A-1) and Tek Chand (A-3). The charges brought against the said persons were of commission of dacoity armed with deadly weapon on the premises of two factories, they being factory no. B-6/3, Okhla Industrial Area, Phase-II and premises no. F-89/9, Okhla Industrial

Area, Phase- I, New Delhi. The incident of dacoity alleged to have been committed *vis-à-vis* the first premises relates to the night of 11th and 12th December, 1997, this being the subject matter of FIR no. 812/1997, and the dacoity at the second premises relates to the incident of 18th and 19th January, 1998, this being the subject matter of FIR no. 42/1998. Ram Bilas (A-1) was released on bail but he thereafter absconded and was eventually declared a proclaimed offender. The trial was concluded against the appellant Prakash (A-2) and co-accused Tek Chand (A-3), it culminating in judgment dated 08.03.2002 whereby both of them were held guilty and convicted under Section 398 of Indian Penal Code, 1860 (IPC). The Sessions Judge, by subsequent order dated 08.03.2002, awarded rigorous imprisonment for seven years to each of the two convicted persons, extending benefit of set off under Section 428 Cr.P.C. for the period of detention already undergone.

2. It may be mentioned here that co-convict Tek Chand (A-3) had preferred separate appeal (Crl. Appeal no. 208/2002). The report of the registry indicates that the said appeal of Tek Chand was dismissed for non-prosecution by order dated 25.10.2007, he having been directed to be taken in custody and committed to jail to undergo the remaining sentence.

3. The appellant Parkash (A-2) had preferred the present appeal. He was released on bail, the substantive sentence having been suspended by order dated 24.07.2003. He too would not appear when the appeal was called out, this eventually resulting in non-bailable

warrant being issued against him which was executed and he was taken in custody on 13.05.2019.

4. The proceedings on the file of this appeal would show that the trial court record had been called for and added to the paper book of the appeal. The said record, however, went missing from the registry. As has been noted in several decisions on various criminal appeals of this Court, a large number, more than 100, appeals have been affected by similar loss of trial court records in the registry. As has also been reported in context of such other appeals, pursuant to submissions made to the Chief Justice, administrative inquiries have been made but no one in the registry has been held responsible for loss of the records. Be that as it may, pursuant to the directions issued on the administrative side, with the approval of the Chief Justice, endeavour was made to re-construct the missing record. Some re-constructed record has been presented to the Court but then that is not complete.

5. Mercifully, however, summary of evidence which was adduced before the trial court is duly noted at some length in the trial court judgment. Having regard to that, the learned counsel for the appellant, submitted that he is ready to argue on the appeal, his request being only for modification of the result, in that according to the evidence the conviction under Section 398 IPC cannot be upheld, the facts proved only bringing out involvement of the appellant in a case of robbery which is ordinarily punishable under Section 392 IPC. On these submissions, the counsel submitted that he is restricting the appeal for prayer not only for modification of the result of the case but also reduction of the rigor of the sentence which has been meted out,

referring in this context to the prolonged and protracted proceedings which have been faced by the appellant.

6. Submissions of both sides have been heard and considered in light of above. The record shows that the first robbery relating to FIR no. 812/1997 was reported by Pushkar Singh Bhandari, Security guard of the concerned factory premises from where certain bales of leather had been stolen under threats. Pushkar Singh Bhandari clearly mentioned the involvement of four persons in the said crime. Similarly, the incident at the second premises was reported by the security guard Shiv Bahadur Singh who vaguely stated forcible entry by four-five persons. From the entire evidence, it is not clear as to whether Shiv Bahadur Singh, or for that matter the other associate guard, who was also present at the scene, were able to specify if the robbers were four or five in number. In these circumstances, one cannot proceed on the assumption that the robbers would be five or more. Thus, the crimes committed at both the premises cannot be treated as those of dacoity, they being crimes in the nature of robbery.

7. Robbery at the first premises was reported. But then, the identity of the robbers was not known. After more than a month of the said occurrence, the second robbery took place. It is in the process of the said robbery that while the robbers were loading the stolen goods, also bales of leather, into a vehicle they had brought that someone raised alarm about arrival of the police, this prompting the robbers to flee away with the vehicle carrying the stolen goods that had been loaded. Two of the robbers statedly could not board the vehicle, which was moving away with the stolen goods, one making good his

escape, the other being Ram Bilas (A-1) who was apprehended at the spot and eventually brought to trial, but he having later jumped bail, the trial against him not having concluded. It is the disclosure made by the said Ram Bilas (A-1) which led the investigating agency to the door of the appellant on the next day in his native village in Haryana, this resulting in bales of leather having been recovered from his possession, such recovered goods having been identified by the proprietor during the course of investigation, as affirmed by him in his testimony at the trial, to be the stolen property.

8. From the above sequence of events which, it is now conceded was properly brought home and established through evidence which has not been impeached, the complicity of the appellant in the offence of robbery at the second premises stands duly proved beyond all manner of doubts. The chronology of events must lead to the presumption under Section 114 of Indian Evidence Act, 1872 that the appellant who was found in possession of the above-mentioned stolen goods soon after (in fact the very next day) the theft, was himself the thief, he not having given any legitimate account for possession of the stolen goods.

9. In the above scenario, the guilt of the appellant for the offence of robbery ordinarily punishable under Section 392 IPC has been proved by the prosecution. But, the question remains as to whether the appellant could have been held guilty and convicted under Section 398 IPC. It needs to be noted that for bringing home the case under Section 398 IPC, the prosecution must prove that the offender in question was armed with a deadly weapon. Though the evidence does

indicate that some of the robbers were carrying weapons in the nature of knives, there is nothing in the testimony of any of the crucial witnesses proving that the appellant was one of those who was wielding knives. In these circumstances, the penal clause in Section 398 IPC cannot be invoked against him.

10. On the foregoing facts and in the circumstances, the conviction of the appellant is modified from one under Section 398 IPC to one under Section 392 IPC. In the facts and circumstances, there is a case made out for reducing the rigor of the punishment as well. The offence took place in January, 1998, more than twenty one years ago. The trial had concluded in March, 2002. The appeal at hand has taken more seventeen years to come up for consideration and adjudication. It is not the case of the State that the appellant has been involved in any other crime either prior to the case which is the subject matter of the present appeal or thereafter.

11. In these circumstances, the punishment is reduced to rigorous imprisonment for four years. Needless to add, the appellant shall be entitled to set off for the period of incarceration undergone during investigation, trial and appeal under section 428 Cr.P.C. Ordered accordingly.

12. The appeal is disposed of in above terms.

13. A copy of this judgment shall be sent to the superintendent Jail with appropriate warrant to be issued by the Registrar (Appellate) forthwith.

R.K.GAUBA, J.

MAY 22, 2019/nk