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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 24th May, 2019

+ CRL.A. 655/2002

SURAJ @ LADI

..... Appellant

Through: Mr. P.K. Bhardwaj, Advocate

versus

THE STATE

..... Respondent

Through: Mr. Amit Ahlawat, APP

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The appellant along with two others was brought to trial in sessions case (no.213/1997) in the court of the additional sessions judge, New Delhi, on the basis of evidence gathered during investigation of first information report (FIR) no.158/1996 of police station Chitranjan Park and by judgment dated 11.04.2002 held guilty and convicted on the charge for offences under Sections 397 and 342 read with Section 34 of the Indian Penal Code, 1860 (IPC). The additional sessions judge, by subsequent order dated 22.04.2002, awarded rigorous imprisonment for seven years with fine of Rs.5,000/- on the first count and rigorous imprisonment for one year

with fine of Rs.1,000/- on the second count as the punishment to each of the said convicts. She directed that in the event of default in payment of fine, they would further undergo simple imprisonment for six months and fifteen days respectively and further that the substantive sentences shall run concurrently, also according benefit of set off under Section 428 of the Code of Criminal Procedure, 1973 (Cr.PC) for the period of detention already undergone.

2. Each of the three convicted persons assailed the aforementioned judgment and order on sentence by their independent appeals. The appeal (Crl. A 857/2002) of co-convict Rajender (A1) was disposed of by judgment dated 20.01.2003, the conviction having been converted to one under section 394 IPC in his respect, it being found that there was no proof of he having used the weapon (knife). The appeal (Crl. A 397/2002) of co-convict Rajesh Yadav (A2) was found to have abated since the said person died before the matter could be heard, the proceedings against him, thus, having been brought to a close by order dated 03.03.2010.

3. Against the above backdrop, the present appeal of Ladi @ Suraj (A3) alone survives for consideration and adjudication.

4. The trial court record had been requisitioned by the registry and added to the file of the appeal. It is reported that the said record had gone missing from the registry. It may be mentioned here that similar loss of records in more than one hundred criminal appeals has been reported by the registry, such loss having been subjected to inquiries made but with no one being held accountable or responsible. Pursuant to the directions of the Chief Justice, endeavour was made to re-

construct the missing record. It has been partially re-constructed and placed before the Court. The appeal has, thus, come up for consideration before this Court along with partially re-constructed record, it being conceded by both sides that the contentions have to be examined primarily on its basis and the summary of evidence which has been set out in the impugned judgment.

5. The record shows that the matter relates to an incident that occurred on 12.03.1996 at about 12 o' clock noon time in House no.M-27, Greater Kailash, Part-II, New Delhi, where Aruna Kar (PW-1) was residing. She was present at home alongwith her two servants which included Premwati (PW-2) and Navin (PW-3). As per her statement (Ex. PW1/A) which eventually became the basis of the FIR (Ex. PW6/E), three or four persons had forcibly entered the house. They had first caught hold of the man servant (PW-3) and started roughing him up. Upon hearing his cries, PW-1 and the maid servant (PW-2) had rushed to the scene. They were also caught hold of by the intruders, some of whom were wielding knives. As per the version in the FIR, and in the court deposition of all the three said persons, the intruders had threatened the inmates into submission and under duress at the point of knives, injuries also having been caused with such weapon, PW-1 was made to part with valuables kept in her house, this including certain jewellery items i.e. two gold bangles (Ex. P9 and P10), two gold rings (Ex. P11 and P12) and one gold chain (Ex.P13).

6. The initial input received telephonically by the police was that an unsocial element (*Badmash*) had entered the said house, this being the subject matter of DD no.4A recorded at 12.30 p.m. in the police

station on the same date, its copy (Ex. PW6/A) having been proved. Be that as it may, the case was entrusted to ASI Hari Kishan (PW-7) who, accompanied by constable Gajender Singh, had set out for the place in question. Aruna Kar (PW-1) and Naveen (PW-3) had suffered injuries and were taken to nearby Batra Hospital where they were medically examined, the medico-legal certificates (MLCs) – Ex. PW9/A and PW9/B – in their respect having been proved at the trial and confirming that they had suffered injuries in the incident.

7. ASI Hari Kishan (PW-7), having obtained confirmation that she was fit, had recorded the formal statement of Aruna Kar (PW1/A) which resulted in the FIR being registered. It may be noted here that even in the said FIR, PW-1 had confirmed that she had identified one of the intruders as Rajender Yadav (A1), he being the son of Ramdev Yadav, who was a native of the same village from where her another servant Palakdhari (PW-8) hailed. It is clear from her version even in the court that she did not know any of the other three accomplices of A1 from before.

8. The prosecution evidence has brought out that on 07.05.1996, the appellant (A3) was apprehended by constable Shiv Kumar of police station Hauz Khas, the arrest having been made under Section 41 Cr. PC in which regard DD entry no.14A was recorded in the said police station, on same date. A disclosure statement (mark 'A') attributed to the appellant was introduced in evidence by PW-7 who was the investigating officer (IO) of the case till 10.05.1996. Upon transfer of PW-7 on the said date, the investigation of the case at hand was handed over to SI Sunil Kumar (PW-15), who remained

responsible for further investigation till 09.07.1996, the probe thereafter having been taken over from him by SI Sarv Dev Mishra (PW-16) with effect from 10.07.1996, the last said investigating officer (IO) having eventually concluded the investigation and filed the charge-sheet.

9. The evidence further shows that in the wake of disclosure made by A1 on 07.05.1996 as to his complicity in the crime at hand, information was conveyed by DD no.14A dated 07.05.1996 of police station Hauz Khas to the investigating officer (IO) of the present case. On such basis, the IO caused formal arrest of A3 for purposes of this case. But, in the meanwhile, A3 had been formally arrested in another case vide FIR no.47/1996 also of police station Chitranjan Park. The evidence further shows that during investigation of the said other case, pursuant to his disclosure (mark 'B'), recovery of aforementioned gold jewellery of PW-1 was effected from a jeweller Rajender Kumar of Kharia Mohalla, Roshanara Road, Subzi Mandi, Delhi, vide seizure memo (Mark 'A'), the police proceedings indicating the seizure being under Section 102 Cr. PC. Eventually, the said recovered gold jewellery – gold bangles (Ex. P9 and P10), gold rings (Ex. PW11 and 12) and gold chain (Ex. PW13) – were brought for test identification by the victim (PW-1), the proceedings in which regard were presided over by Mr. Ravinder Dudeja, Metropolitan Magistrate (PW-12). The evidence conclusively reveals that the said articles of jewellery were properly and positively identified by PW-1 to be her stolen property.

10. The evidence also shows that Rajender (A1) was arrested on 17.05.1996, the third person Rajesh Yadav (A2) having been arrested

on 30.08.1996. While evidence of PW-16 regarding circumstances leading to the arrest of co-convict Rajesh (since deceased) is consistent, there is some confusion created regarding the arrest of co-convict Rajender in which regard depositions of PW-13 and PW-14 were relied upon. PW-13 spoke about the arrest of Rajender being made in the company of one Pramod, PW-14 referred to the present appellant being arrested with Rajender on 17.05.1996. The learned counsel for the appellant, however, fairly conceded that nothing turns on this discrepancy in as much as no documentary proof corroborates the said statement of PW-14, the evidence otherwise conclusively showing that the appellant was already in custody of the police since his arrest on 07.05.1996.

11. The robbery took place on 12.03.1996. The appellant was arrested on 07.05.1996. The stolen property was recovered pursuant to his disclosure and at his instance. This gives rise to a presumption that either he himself was the thief or that he had received the stolen goods knowing that the same were stolen property. The fact that he was himself complicit in the crime is confirmed and established by the testimony of Aruna Kar (PW-1) who identified him during her court testimony as one of the intruders.

12. In the above facts and circumstances, the involvement of the appellant in the robbery in the house of PW-1 has been correctly found by the trial court to be proved beyond all reasonable doubts. The evidence also shows that at the time of she being relieved of her valuable goods, Aruna Kar and her servants were beaten up, injuries

being inflicted on their persons. These facts constitute the offence punishable under Section 394 IPC.

13. While fairly conceding that the conviction of the appellant for the above mentioned offence under Section 394 IPC has been properly brought home, the counsel for the appellant, however, argued that the case in so far as it is directed against the appellant cannot be held to be covered by Section 397 IPC. It was his submission that the evidence of PW-1 referring to A3 as the one of the intruders who had used the knife as the weapon of offence to inflict injuries is not worthy of reliance. Having examined the evidence on record, this court finds merit in this submission.

14. As noted earlier, the appellant was arrested on 07.05.1996. He was interrogated by the officials of police station Hauz Khas who had apprehended him on reasonable suspicion. On the basis of his disclosure statement, recoveries were effected at his instance on 15.05.1996. He was not confronted immediately with the complainant. There is no statement of the complainant recorded prior to the trial wherein she would identify him as one of the robbers who had wielded or used the knife. This was brought out during the cross-examination of PW-1. From the tone and tenor of her testimony, impression gained is that she was also not very sure as to such role of the appellant in the case of robbery. Her two servants PW-2 and PW-3 could not even identify the appellant as one of the robbers. In these circumstances, benefit of doubt will have to be extended to the appellant about the use of weapon. Noticeably, the fourth intruder has not been identified or apprehended till date.

15. In the above facts and circumstances, the conclusion as to the guilt needs modification. The conviction of the appellant is converted from the offence under Section 397 / 34 IPC to one under Section 394 / 34 IPC. The conviction for the other offence under Section 342 / 34 IPC would stand maintained.

16. The offences were committed in 1996, twenty three years ago. The trial stood concluded in April 2002. This appeal was filed in August 2002. It has come up for final hearing and adjudication almost seventeen long years thereafter. It is not the case of the State that the appellant has had any past criminal record. In these facts and circumstances, there is a case made out for reduction of sentence. In the considered view of this court, ends of justice would be met if the appellant is sentenced to rigorous imprisonment for five years with fine of Rs.5,000/- for the offence under Section 394 / 34 IPC. The punishment awarded under Section 342 / 34 IPC is confirmed and maintained. As directed by the trial court, the substantive sentences shall run concurrently and the appellant will be entitled to set off under Section 428 Cr. PC.

17. The nominal roll dated 27.11.2018 sent by Superintendent, Central Jail no.2, shows that the appellant had undergone incarceration, during the period of investigation, trial and thereafter for a period of four years eleven months and twenty two days, he also having earned remission for seven months thirteen days. In these circumstances, he has already suffered incarceration for the period of substantive punishment that has been awarded by the above noted modification. Therefore, for such purposes, he need not surrender to

the jail. However, he shall deposit the fine with the trial court within two weeks hereof, failing which he would have to undergo the default sentences.

18. The appeal is disposed of in above terms.

19. A copy of this judgment shall be given *dasti* to the appellant, as is requested.

R.K.GAUBA, J.

MAY 24, 2019

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