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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 17th May, 2019

+ CRL.A. 729/2002

SANJEET @ SANJEEV

..... Appellant

Through: Mr. Lalit Naagar, Advocate

versus

GOVT. OF N.C.T. OF DELHI

..... Respondent

Through: Mr. Amit Ahlawat, APP with SI
Satyender Gulia and ASI Virender Tyagi, PS
Mehrauli

+ CRL.A. 754/2002

DHANNI RAM & ANR.

..... Appellants

Through: Mr. Lalit Naagar, Advocate

versus

THE STATE (NCT OF DELHI)

..... Respondent

Through: Mr. Amit Ahlawat, APP with SI
Satyender Gulia and ASI Virender Tyagi, PS
Mehrauli

+ CRL.A. 784/2002

DHARMENDER @ LALA

..... Appellant

Through: Mr. Lalit Naagar, Advocate

versus

THE STATE (NCT OF DELHI)

..... Respondent

Through: Mr. Amit Ahlawat, APP with SI
Satyender Gulia and ASI Virender Tyagi, PS
Mehrauli

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The four appellants before this court along with five others stood trial in Sessions case (no.2/99) on the charge for offences punishable under Sections 395, 397 and 412 of Indian Penal Code, 1860 (IPC), on the basis of evidence gathered during investigation into the first information report (FIR) no.333/1998 of police station Mehrauli and, by judgment dated 03.09.2002 of Additional Sessions Judge, were held guilty on the charge under Sections 395 and 397 IPC, the other five co-accused having been acquitted. By subsequent order dated 07.09.2002, the trial court awarded rigorous imprisonment for seven years with fine of Rs.10,000/-, in default thereof to undergo rigorous imprisonment for six months as the punishment.

2. These appeals were preferred in September 2002, assailing the abovesaid judgment and order, the sentences having been suspended and the appellants released on bail on their respective applications by later orders. The turn of the appeals for hearing has come up almost seventeen years thereafter.

3. At the hearing, the counsel appearing for the appellants submitted that they do not press the appeal so as to assail the finding as to their complicity in the offence of dacoity, they only questioning the propriety of the conclusion reached by the trial court for invoking Section 397 IPC so as to impose higher punishment, it being the argument that there is no justification for conviction with the aid of the said penal clause in absence of any evidence showing any of the appellants having wielded or used any weapon. The appellants through counsel further submitted that this is the solitary case in which they have been held guilty, the case against them registered in District Palwal at Haryana having resulted in acquittal, there being no record of any other complicity on their part either prior to or after the commission of the offence which was the subject matter of the case from which these appeals arise.

4. A perusal of the evidence, with the aid and assistance of the learned counsel on both sides, has brought out that the case at hand concerns dacoity which was committed by seven / eight persons, including the four appellants herein, around the midnight of 17 and 18.06.1998, at Seth Farm House of Neena Seth (PW-4) located at 3, Dera Mandi near Mehrauli Kishan Garh. At that point of time, her employees, Ratan Kumar (PW-6) and Sanoj Kumar (PW-7), were present on the premises. They were sleeping in their quarters, but were woken up by the intruders, one of whom was carrying a country made pistol. It is at the point of the said weapon that PW-6 and PW-7 were made to co-operate by not raising alarm or causing any

interference, the intruders having tied them up with clothes and having taken the keys and under threats extended valuable goods having been stolen from the property, this including air conditioners, television sets, furniture, etc.

5. The crime was registered on the statement of PW6, the copy of the FIR (Ex. PW2/A) having been proved at the trial. The investigating agency initially could not make any break-through. As per the prosecution case, on 23.07.1998, on some secret information appellant Satpal (A6), appellant Dhani Ram (A7), and two others namely Satbir (A8) and Sunder (A9), were intercepted by Haryana Police in District Palwal. The evidence shows that upon being apprehended and interrogated, A7 led to recovery of fourteen stolen articles from his possession, this including refrigerators (Ex.P1 to P3), air conditioners (Ex. P4 to P6), television sets (Ex. P7 to P9), stabilizers (Ex.P10 & P11), battery (Ex.P12), certain furniture items like sofa, chair and cushion (Ex.P13 collectively) and 10 dining chairs (Ex.P14 collectively). Similarly, A6 led to recovery of some further stolen articles from the residence of the sister of the appellant Dharmender @ Lala (A5), further evidence including disclosure of A5 showing special knowledge on his part, this indicating complicity on the part of A5, A6 and A7. The investigation and interrogation of those arrested eventually led the police to the appellant Sanjeet (A2). Though no recovery was effected from his possession, his palm print was found, during investigation, to be matching with the chance print which had been lifted from the place of dacoity.

6. Though PW-6 and PW-7 were unable to identify any of the persons who were brought to trial, the learned sessions court was satisfied as to the complicity of A2, A5, A6 and A7 on the basis of above mentioned matching of the palm print, and recoveries of stolen goods that had been effected indicating special knowledge. It has to be borne in mind that the recovery of the stolen goods from District Palwal in Haryana would show that the looted property had been shifted immediately out of the territory of Delhi. The fact that the Haryana Police was able to trace out the connection between the goods suspected to be stolen with the dacoity that had been committed in Delhi a few days ago only reinforces the prosecution story and the credibility of the charge brought against the four appellants.

7. In the above facts and circumstances, this court accepts and endorses the finding returned by the trial court as to the complicity of the appellants in the offence of dacoity. But then, there can be no dispute as to the fact that there is no evidence showing any of the appellants having been in possession of, or wielded or used, any weapon at the time of participation in the dacoity. The accusations in the prosecution case and the evidence vaguely show that one of the dacoits was holding a country made weapon which was used to deter the inmates of the farm house to surrender. It is trite that Section 397 IPC can be invoked only against the offender who uses weapon at the time of commission of the dacoity. It cannot be generally invoked on the principle of vicarious liability, so as to pin down the other persons complicit in the dacoity or robbery with aggravated punishment. In

this view, the conclusion reached by the trial court as to guilt of the appellants for the offence of dacoity being punishable with reference to Section 397 IPC is found to be erroneous. The result of the trial against the appellants thus needs suitable modification.

8. For the foregoing reasons, the conclusion of the trial court holding the appellants guilty for offence under Section 395 read with Section 397 IPC is set aside. Instead, the appellants stand held guilty and convicted on the charge under Section 395 IPC only.

9. The offence was committed twenty one years ago. These appeals have come up for hearing seventeen years after the trial court had rendered its judgment. It is not the case of the State that the appellants have had any criminal record other than the case from which these appeals arise. There is nothing shown to indicate any involvement of the appellants in any crime after the present one. In these circumstances, there is a case made out for modification of the order on sentence. It is directed that instead of the punishment awarded by the court below, the appellants will stand sentenced to rigorous imprisonment for three years with fine of Rs.5,000/- each, and in default to further undergo rigorous imprisonment for three months each.

10. The nominal rolls show that each of the appellants have already undergone incarceration more than the sentence which has been now awarded by modification. Therefore, they need not surrender to custody. The bail bonds are discharged.

11. These appeals are disposed of in above terms.

R.K.GAUBA, J.

MAY 17, 2019

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