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

+ **CRL.A. 601/2017**

RAVINDER PAL

..... Appellant

Through: Mr Sumit Choudhary and Ms
Aakanksha Bansal, Advocates.

versus

THE STATE

..... Respondent

Through: Ms Meenakshi Chauhan, APP for
State with SI Sandeep Kumar, PS
Narela.

WITH

10.

+ **CRL.A. 605/2017 & CRL.M.(BAIL) 543/2019**

RAJ KUMAR

..... Appellant

Through: Mr Rajiv Bajaj and Ms Sagrika
Wadhwa, Advocates (DHCLSC).

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Ms Meenakshi Chauhan, APP for
State with SI Sandeep Kumar, PS
Narela.

WITH

11.

+ **CRL.A. 668/2017 & CRL.M.(BAIL) 356/2019**

SANDEEP @ DEEPU

..... Appellant

Through: Mr Sanjay Gupta, Advocate.

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Ms Meenakshi Chauhan, APP for
State with SI Sandeep Kumar, PS
Narela.

AND

12.

+ **CRL.A. 850/2017 & CRL.M.(BAIL) 760/2019**

SUNIL @ KALA

..... Appellant

Through: Mr Neeraj Bhardwaj and Ms Pooja,
Advocates.

versus

STATE

..... Respondent

Through: Ms Meenakshi Chauhan, APP for
State.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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26.11.2019

1. The appellants have filed these appeals impugning a common judgment dated 01.04.2017, whereby they were convicted of an offence under Sections 392/342/34 of the IPC.

2. The case in question arises from an FIR (FIR No.312/2011), which was registered pursuant to the statement made by one Shri Radhey Shyam. He had stated that he was a driver of commercial vehicle (EICHER Canter No.HR 55A 6890 – hereafter ‘the Vehicle’) and was employed with a firm named Poly Star Polymer. He stated that on 27.06.2011, he had transported the goods of his company in Hissar and had returned on 28.06.2011. On his return journey, he had picked up two oil expeller machines, which were

loaded on the Vehicle. The said machines were to be delivered at Narela Industrial Area. He stated that he reached Narela at about 10:30 PM/11:00 PM and since the machines could not be uploaded at the material time, he consumed his dinner and slept in the Vehicle. He had reported that while he was sleeping, at around 2:30-2:45 AM, 3-4 boys entered the cabin of the Vehicle. They picked up the keys, which were lying on the dashboard. They had then started the Vehicle and drove it towards *80 foota road*. He stated that he protested but they muffled him by placing their hand on his mouth. He stated that, thereafter, they drove alongside a stationery vehicle described as Mahendra Pick Up Van, which was idling. He stated that they then removed him from the Vehicle and made him sit in the Mahendra Pick Up Van. Thereafter, they drove him in to a place on the highway near Rai Police Station. They then kicked him and beat him with fists and, thereafter, tied and left him at the spot. He stated that subsequently he had requested one passer-by for a phone and had informed his employer, Anshuman Garg, who deposed as PW-2.

3. There are certain inconsistencies in the testimony of Radhey Shyam (PW-9), which was recorded subsequently. He now stated that 5-6 boys had entered the cabin of the Vehicle and had beaten him. In the FIR in question, the number of boys were reported as three to four and there was no allegation that he had been beaten by them when they entered the cabin of the Vehicle.

4. There is inconsistency in reporting of the incident as well. The employer of the complainant (Anshuman Garg) had testified that he had received information by an unknown person at about 4:00 AM on

29.06.2011. He had immediately reported the same to the police by dialling 100. He further testified that he remained in his house (at Rohini) till about 5:30 AM and, thereafter, had left for Rai Police Station. This is not consistent with the testimony of PW-9 (Radhey Shyam) who had stated that he had informed his employer (PW-2) about the incident after borrowing a phone from a passer-by at about 5.30 AM. It is seen that PW-2 (Anshuman Garg) had also deposed as to certain particulars of the incident which he could not have known, without the same being informed the driver (PW-9).

5. The trial court had also noticed these inconsistencies but had found that the same were not material. This is so because the Vehicle (Canter bearing No. HR 55A 6890) had been recovered. The said vehicle was recovered on a secret information received by the police, pursuant to which raiding party had been prepared on 04.07.2011. Head Constable Surender, who had testified as PW-11, was one of the members of the raiding party. He had deposed that the secret information had been received to the effect that 4-5 boys, who had robbed the Vehicle, would come in the same vehicle to commit other offences in the Industrial Area of Mangolpuri and they could be apprehended if a raid was conducted.

6. He deposed that pursuant to the said information, the raiding party left for the spot in the two private vehicles. They reached Safal Mother Dairy, Industrial Area, Mangolpuri and set up barricade on the road from Safal Mother Dairy to Mangolpuri Railway Station. He stated that at about 7:20 PM, the Vehicle (described as a tempo no. HR 55A 6890 brown metallic colour) was seen coming from Mangolpuri and on the same being pointed out by the secret informer, a barricade was set up in the middle of the road.

On stopping the said vehicle, three accused – namely, Sandeep @ Deepu, who was driving the vehicle; Sunil @ Kala, who was sitting on the conductor seat; and Raj Kumar, who was sitting in the cabin – were apprehended. Sandeep and Sunil were overpowered while attempting to escape. The other boys, who were standing behind the cabin, managed to escape. It is stated that on interrogation, the said accused persons made disclosure that the oil expeller machines had been sold to one Raghunath of Naya Bazar. On the basis of the such disclosure, the said machines were also recovered.

7. They had also disclosed the other co-accused as Ravinder Pal (appellant in CrI.A.601/2017).

8. Radhey Shyam (PW-9), driver of the vehicle had also identified the accused.

9. The trial court had found that the investigation was wanting in several aspects. First of all, the CDR details had not been recovered. There was no investigation as to the Mahendra Pick UP Van, in which Radhey Shyam had been brought from Narela to the spot near Rai Police Station. There is also no investigation with regard to recovery of a mobile phone of Radhey Shyam, which was alleged to have been stolen.

10. Nonetheless, the trial court held that notwithstanding such inconsistencies and the lacunae in the investigation, the prosecution had established the involvement of the accused in the offence. The decision rested mainly on the recovery of the Vehicle; apprehension of the three accused at the spot; and their identification by PW-9.

11. Considering the evidence on record, this Court concurs with the view

of the trial court.

12. The learned counsel appearing for the appellants also state that they do not seek to press their challenge to the conviction. However, it is prayed that the sentence awarded to the accused be reduced to the time already served.

13. The appellants have made a compelling case for such relief. Raj Kumar (appellant in CrI.A.605/2017) was barely 18-19 years at the material time. The other appellants were also in their twenties. Although, there are allegations that the appellants are involved in other cases but admittedly, they have been discharged/acquitted. The status report indicates that they are not involved in any other case apart from the present cases (FIR No.312/2011). It is seen that the appellants have served substantial part of the sentence awarded to them. Ravinder Pal (appellant in CrI.A.601/2017) is to serve only one year and three months further time; Raj Kumar (appellant in CrI.A.605/2017) is to serve approximately further five months; Sandeep @ Deepu (appellant in CrI.A.668/2017) and Sunil @ Kala (appellant in CrI.A.850/2017) are to serve about one year and one month. It is also stated that all the appellants have minor children and are required to attend to their families. Ravinder Pal is a widower and is also required to take care of his two minor children.

14. Considering the mitigating circumstances as well as the facts obtaining in the present case, this Court considers it apposite to reduce the sentence of the appellants to the period already served. The appellants shall be released from custody forthwith, subject to the appellants paying the fine as imposed by the trial court.

15. The appeals are disposed of with the aforesaid observations. All pending applications are also disposed of.

16. Order *dasti* under signatures of the Court Master.

VIBHU BAKHRU, J

NOVEMBER 26, 2019
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