

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

Reserved on : 26.11.2019

Decision on : 06.01.2020

IN THE MATTER OF:

CRL. A. 1246/2015 & Crl. M. A. 14383/2017

PANKAJ Appellant

Through: Mr. Sumer Sethi and Ms. Dolly
Sharma, Advocates.

versus

STATE Respondent

Through: Dr. M. P. Singh, APP for State with
SI Kapil, P.S. Farsh Bazar, Delhi.

AND

CRL. A. 1149/2015

BHIM Appellant

Through: Mr. Sumer Sethi, Ms. Dolly Sharma
and Ms. Naomi Chandra, Advocates.

versus

STATE Respondent

Through: Dr. M. P. Singh, APP for State with
SI Kapil, P.S. Farsh Bazar, Delhi.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

1. The present proceedings are instituted impugning judgment of conviction dated 26.09.2015 whereby the appellants were convicted for

offence punishable u/s 392/506/34 IPC. Vide order on sentence dated 28.09.2015, the appellants were directed to undergo RI for five years along with fine of Rs.5,000/- each for the offence punishable under sections 392/34 IPC in default whereof to undergo SI for 6 months. They were also sentenced to RI for one year for the offence punishable under sections 506/34 IPC. The sentences were directed to run concurrently and benefit of Section 428 Cr.P.C. was granted to both the appellants.

2. As both the appeals arise out of one common judgment, they are taken up together for consideration and disposed of vide this judgment.

3. For the sake of felicity, the facts noted by the trial court are reproduced hereinunder:

“Prosecution case, in brief, is that on 16.08.2013, an information was received at Police Station Farsh Bazar vide DD No.27-A that the purse and chain of the caller have been snatched. ASI Ami Chand rushed at house No.390, NSA Colony, Vishwas Nagar where complainant Vicky @ Ved Prakash met him but due to anxiety, he could not give the statement. DD No.27-A was therefore kept pending. On 18.08.2013, Vicky @ Ved Prakash came at the police station and gave the statement that on 16.08.2013 at about 04.30 pm when he reached at Gali No.14, Vishwas Nagar, accused Noor Mohd @ Noora, Pankaj and Bhim, who are the residents of NSA Colony and were known to him, stopped him. Pankaj made demand of money. On refusal, Bhim put knife type weapon on his back, Pankaj caught his both hands and Noor Mohd. @ Noora took out Rs.10,000/-, voter I card and pocket diary from the left pocket of his pant. They threatened Vicky that in case he made complaint to the police, they would kill him. After extending threats, they ran away from the spot. On the said statement of Vicky, FIR under Section 392/397/34 IPC was registered. Accused Noor Mohd. was arrested on 18.08.2013. He got recovered Rs.2000/- from his house. On 31.08.2013,

accused Pankaj was arrested. He got recovered Rs.1200/- from his house. On 08.09.2013, accused Bhim was arrested. The chhura, used in robbery, was recovered from his possession. Investigation was completed and chargesheet was filed in court under Section 392/397/411/34 IPC.”

4. After completing the investigation, charge under sections 392/506/34 IPC was framed against both the appellants as well as against one co-accused Noor @ Noor Mohd. A separate charge U/s 397 IPC was also framed against the appellant Bhim. The appellants pleaded not guilty and claimed trial.

5. The prosecution examined six witnesses in support of its case. The appellants also examined three witnesses in their defence.

6. I have heard learned counsels for the appellants as well as learned APP for the State. Learned counsel for Pankaj contended that inspite of the fact that accused were already known to him prior to the incident, the complainant did not mention their names in the first information recorded i.e. DD no.27A. It was also contended that no public witness was associated during investigations. Lastly, it was stated that the knife was not shown to the complainant during his examination. Learned counsel for Bhim contended that whereas the DD no.27A mentioned only robbery of purse and a chain, the FIR mentioned robbery of Voter ID Card, Pocket diary and Rs.10,000/-.

MATERIAL WITNESSES:-

7. The complainant i.e., Vicky @ Ved Prakash was examined as PW1. He deposed that on 16.08.2013 at about 04:30 PM while he was going on foot to buy copper wire, the appellants who were residents of his colony met him. While Pankaj demanded money from him and on his refusal, Bhim put

a knife like weapon on his back. Thereafter, Pankaj caught hold of his hands and their associate Noor @ Noor Mohd. took out Rs.10,000/-, Voter ID Card and pocket diary from the left pocket of his jeans pant. He also deposed that after taking above articles, the appellants threatened that they would kill him in case he made complaint to the police. He went back to his house and from there gave a call to police at 100 number mentioning only the robbed articles i.e., a purse and a chain. The police reached his house but he did not give any statement that day as he was perplexed. Two days after the incident, he gave a statement to the police on which FIR was recorded. He proved his statement made to the police as Ex.PW1/A. He further deposed that during investigations, he was called to the police station where he identified Pankaj and Bhim on 31.08.2013 and 08.09.2013 respectively. In court, during his testimony, he identified both appellants as well as the case property recovered at the instance of accused Noor @ Noor Mohd. i.e., 4 notes of denomination of Rs.500/-, a pocket diary and Voter ID card. He also identified currency notes of denomination of Rs.500 out of Rs.1200/- (2 notes of denomination of Rs.500/- and 2 notes of denomination of Rs.100/-) which were recovered at the instance of Pankaj. In cross-examination, he admitted that he was not aware about the address of Bhim. He also admitted it to be correct that accused Noor Mohd. was a BC (bad character) of the area.

8. The other witnesses examined were police officials who were associated with various stages of investigation. HC Suresh proved the FIR as Ex.PW2/B. Ct. Rahul (PW3) took copy of the FIR and original *Rukka* from the duty officer and handed it over to ASI Ami Chand. He was also witness to the recovery of case property made at the instance of accused Noor Mohd.

Ct. Sandeep (PW4) was witness to recovery of knife at the instance of Bhim. Ct. Anil (PW5) was witness to the recovery of Rs.1200/- (wrapped in a paper) recovered from the bed lying in the house of Pankaj. ASI Ami Chand (PW6) was the investigation officer.

9. The defence witness Sahidulnisha wife of accused Noor Mohd. was examined as DW1. Ms. Rajendri, mother of Bhim, was examined as DW2. Both of them deposed that the accused persons were falsely implicated, however, in their cross-examination they stated that they did not make any complaint to any senior officer. Kusum, mother of Pankaj was examined as DW3. She deposed that on 13.03.2012 the police officials apprehended the appellant in a false case under Arms Act for which they also made a complaint dated 16.03.2012 to the concerned SHO vide DD No.14B (Ex.DW3/A).

10. A perusal of the testimony of Ct. Sandeep shows that during his examination in chief conducted on 04.07.2014, he did not identify the knife, however on the subsequent date i.e. 29.08.2014, he identified it. The trial court had put a question to him as to on what basis he identified the knife to which he could not offer any explanation.

11. The trial court acquitted Bhim for the offence punishable under section 397 IPC. The State has not challenged Bhim's acquittal under the aforesaid section.

12. It has been brought to the notice of this court that co-accused Noor @ Noor Mohd preferred an appeal bearing Crl. A. No. 17/2016 which came to be decided by a coordinate bench of this court vide judgment dated 02.06.2017. A perusal of the decision would reveal that at the time of arguments, the learned counsel for Noor @ Noor Mohd. gave up the

challenge on the merits of the case and only prayed for modification of sentence. In these circumstances, the sentence awarded to Noor @ Noor Mohd. was modified to the period already undergone by him. The question whether a criminal appeal or revision can be disposed by recording a concession on merits of the case came before Supreme Court in Jeetu and Ors. v. State of Chhattisgarh reported in (2013) 11 SCC 489, where it was held as under :-

“17. As is evincible from the impugned judgment, the learned counsel for the Appellants before the High Court did not challenge the conviction but sought imposition of a lenient sentence.

18. In State of Uttar Pradesh v. Chandrika (1999) 8 SCC 638, the High Court in an appeal accepted the plea bargain and maintained the conviction of the Respondent Under Section 304 Part 1 IPC but altered the sentence to the period of imprisonment already undergone and to pay a fine of Rs. 5000/-, in default of payment, to suffer R.I. for six months. Be it noted, the High Court had not stated the actual period of imprisonment undergone by the Respondent therein. This Court took note of the judgment and order of conviction and sentence passed by the learned sessions Judge who had convicted him Under Section 304 Part I IPC and sentenced him to undergo eight years’ R.I. At the time of hearing of appeal, the finding of conviction was not challenged with a view to bargain on the question of sentence. The learned single Judge accepted the bargain and partly allowed the appeal by altering the sentence.

19. The legal acceptability of the said judgment was called in question by the State before this Court. Taking note of the fact situation, this Court observed that the concept of plea bargaining is not recognized and is against public policy under the criminal justice system. After referring to the decisions in Madanlal Ramchandra Daga v. State of

Maharashtra AIR 1968 SC 1267, Murlidhar Meghraj Loya v. State of Maharashtra (1976) 3 SCC 684, Ganeshmal Jashraj v. Govt. of Gujarat (1980) 1 SCC 363 and Thippaswamy (supra), a two-Judge Bench ruled thus:-

“8...It is settled law that on the basis of plea bargaining the court cannot dispose of the criminal cases. The Court has to decide it on merits. If the accused confesses his guilt, an appropriate sentence is required to be imposed. Further, the approach of the court in appeal or revisions should be to find out whether the accused is guilty or not on the basis of the evidence on record. If he is guilty, an appropriate sentence is required to be imposed or maintained. If the appellant or his counsel submits that he is not challenging the order of conviction, as there is sufficient evidence to connect the accused with the crime, then also the court's conscience must be satisfied before passing the final order that the said concession is based on the evidence on record. In such cases, sentence commensurating with the crime committed by the accused is required to be imposed. Mere acceptance or admission of the guilt should not be a ground for reduction of sentence. Nor can the accused bargain with the court that as he is pleading guilty the sentence be reduced.” [Emphasis Supplied]

20. In *Padam Singh v. State of U.P.* 2000 (1) scj 143, it has been held that in an appeal against conviction, the appellate court is under duty and obligation to look into the evidence adduced in the case and arrive at an independent conclusion.

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22. Tested on the touchstone of the aforesaid legal principles, it is luminescent that the High Court has not made any effort to satisfy its conscience and accepted the

*concession given by the counsel in a routine manner.
23....Therefore, it is the obligation of the Court to decide
the appeal on merits and not accept the concession and
proceed to deal with the sentence, for the said mode and
method defeats the fundamental purpose of the justice
delivery system.”*

13. It appears that the aforementioned position of law was not brought to the notice of the coordinate bench at the time of consideration of criminal appeal of co-accused Noor @ Noor Mohd. It is relevant to note that that no arguments on merits of the case were advanced and considered.

14. Coming back to the facts of the case, the incident took place on 16.08.2013. On that day itself, a call was made to the PCR number 100 and the information given by the complainant was recorded vide DD no.27-A. Reading of the aforesaid DD No.27-A would show that it was related to snatching of a purse and chain of the caller. The name of any of the appellants were not mentioned. Two days later, the complainant gave a statement resulting into the present FIR, where besides giving names and specific role of each of the accused, it was stated that the accused had snatched Rs.10,000/- (20 notes of Rs.500/-), a voter ID Card and a pocket diary.

15. During his deposition, the complainant did not give any explanation for the delay of two days in giving statement for the first time on 18.08.2013 except stating that he was threatened by the appellants. Had he felt threatened by the appellants, the complainant would have not even made the PCR call on 16.08.2013 after the incident. The appellants were well known to the complainant being residents of the same locality.

16. The recovery of knife has been disbelieved by the trial court. The

recovery of currency notes is not of much significance as the complainant had not reported snatching of any currency notes in the first information given to police on 16.08.2013. Another circumstance which brings doubt about the recovery and identification of currency notes is the fact that whereas in the FIR, snatching of 20 currency notes of only Rs.500/- denomination was reported however, during trial, the prosecution besides producing currency notes of Rs. 500/- denomination also produced 2 currency notes of Rs. 100/- denomination as well for identification. Although the complainant identified only currency notes of denomination of Rs.500/- only but prosecution failed to explain as to how 2 currency notes of Rs.100/- denomination became the case property. Additionally, in the facts of the case, I find considerable merit in the submission of the learned counsels for the appellants that no reliance can be placed on the identification of currency notes as neither serial numbers of currency notes were mentioned in the complaint nor the notes had any distinguishing identification mark. The recovery of vote ID card and pocket diary is also doubtful as the said articles were not mentioned in the first information given by the complainant vide DD No.27-A. In fact, ASI Ami Chand in cross-examination admitted that persons from neighbourhood gathered around them while they were making investigation and no one supported the version of the complainant.

17. From the above discussion and analysis, I am of the view that the prosecution has failed to prove its case beyond reasonable doubt against the appellants and they are entitled to benefit of doubt. Consequently, both the appeals are allowed and conviction of the appellants is set aside. The pending applications are disposed of as infructuous. As per the Nominal

rolls received from Jail, the appellants have already been released on completion of their sentence.

18. A copy of this order be sent to the trial court alongwith the records.

(MANOJ KUMAR OHRI)
JUDGE

JANUARY 06, 2020