

IN THE HIGH COURT AT CALCUTTA
Criminal Appellate Jurisdiction
Appellate Side

PRESENT :

THE HON'BLE JUSTICE RABINDRANATH SAMANTA

C.R.A. 21 of 1991

Ramabatar Rajbar @ Ramawatar Nimtar Rajwar...Appellant

-Vs-

The State of West Bengal...Respondent

Mr. Ayan Bhattacharya,
Ld. Advocate as Amicus Curiae

...for the Appellant

Mr. Pratik Bose,
Ld. Advocate.

... for the Respondent

Heard On: **22.04.2022**

Judgment On: **18.05.2022**

Rabindranath Samanta, J:-

1. This appeal has been preferred by the appellant against the judgment and the order of conviction and sentence passed by learned Sessions Judge, VIII Bench, City Sessions Court, Calcutta in S.T No. 1 of May, 1989 arising out of S.C. No. 6 of 1989 whereby the appellant Ramabatar Rajbar @ Ramawatar Nimtar Rajwar was convicted for commission of the offence punishable under Section 412 of the Indian Penal Code (in short IPC) and sentenced to suffer rigorous imprisonment for a period of three years and to pay a fine

of Rs.500/-, failing which he would suffer rigorous imprisonment (R.I) for a further period of one year.

2. To put briefly, the prosecution case may be stated as under:-

On 16.06.1988 in the early morning at 4:50/4:55 A.M. the informant Ashoke Koley of 211, Rabindra Sarani, Calcutta- 700007 was going to his shop from his house. While he was crossing Rabindra Sarani at the junction of Burtalla street, four persons armed with bhojali (a sharp cutting weapon) and bombs obstructed him and snatched away a cloth bag of him containing cash of Rs. 1200/- and assaulted him on his left hand with a bhojali. He was medically treated at a local hospital. On way to local police station he met one Bhagawan Das Bindawala who also got bhojali injuries on his head on the same day by the same gang at Madho Kristo Seth Lane at about 4:45 A.M. Mr. Bindawala stated to him that on 16.06.1988 at about 4:45 A.M. while he along with his sister Lakshmi Debi Himat Singhka and brother-in-law Bharat Kumar Himat Singhka were passing along Madho Kristo Seth Lane infront of 2/1, Madho Kristo Seth Lane, then four persons of the aforesaid description armed with bhojali and bombs attacked them and snatched away a cash of Rs.2,000/-, two citizen wrist watches, two gold necklaces, two gold finger rings and two pieces of gold churi (bangle) and fled away towards Burtalla. He also stated that he was medically treated at MRS Hospital and was discharged therefrom.

On the basis of the FIR lodged by the informant at the local police station a Section D (Burrabazar) PS Case No. 397 dated 16.06.1988 under Sections 394/397, IPC was registered for investigation. During the course of investigation the Investigating Officer arrested the five accused persons namely Dilip Das @ Gopal Das, Giasuddin Sk. @ Bapi, Uttam Das @ Nata, Prakash Thapa @ Nepali and the appellant Ramabatar Rajwar @ Ramawatar Nimtar Rajwar and they were remanded to judicial custody. On prayer of

the Investigating Officer the learned Magistrate allowed him to take appropriate steps for holding Test Identification Parade of the suspects in jail, now Correctional Home by a Magistrate and accordingly a T.I. Parade was held. During investigation the Investigating Officer examined the available witnesses and recorded their statements under Section 161 Cr.P.C. After completion of the investigation the Investigating Officer submitted charge-sheet against the accused persons under Sections 392/307/34, IPC against the accused persons excepting the appellant Ramabatar Rajwar @ Ramawatar Nimtar Rajwar. However, the Investigating Officer submitted charge-sheet under Section 411 of IPC against the appellant.

3. After the case was committed to the Court of learned Sessions Judge, Calcutta, charge under Sections 395/397, IPC was framed against the accused persons namely Dilip Das @ Gopal Das, Giasuddin Sk. @ Bapi, Uttam Das @ Nata, Prakash Thapa @ Nepali and Ramabatar Rajwar @ Ramawatar Nimtar Rajwar and charge under Section 412, IPC was framed against the four accused persons namely Dilip Das @ Gopal Das, Giasuddin Sk. @ Bapi, Prakash Thapa @ Nepali and Ramabatar Rajwar @ Ramawatar Nimtar Rajwar. All the accused persons pleaded not guilty to the charges framed against them and they claimed to be tried. Hence, the trial commenced.
4. In order to bring home the charges the prosecution examined as many as twenty four witnesses. Besides, some documents namely FIR, seizure list etc., have been marked as Exhibited documents and some materials have been marked as MAT Exhibits.
5. On consideration of the ocular and documentary evidence and after hearing the learned Advocates appearing for the parties the learned Trial Judge convicted the appellant and imposed sentence upon him in the manner as indicated above.
6. The appellant assails the impugned judgment on the ground that while the learned Trial Judge has held that the prosecution has

failed to prove the charges under Sections 395/397, IPC, the charge under Section 412 of IPC is not tenable against the appellant.

7. Since the instant appeal is the first appeal before this Court, I scrutinised both oral and documentary evidence as adduced by the prosecution.
8. Amongst the prosecution witnesses the witnesses who are vital to prove the prosecution case are P.W. 1 Bharat Kumar Himat Singhka, P.W. 15 the informant Ashoke Kumar Koley, P.W. 17 Smt. Lakshmi Debi Himat Singhka and P.W. 19 Bhagawan Das Bindawala. On assessment of the evidence of the aforesaid four witnesses it appears that none of the witnesses has been able to identify any of the accused persons in Court. The learned Trial Judge in the judgment as impugned has observed that the aforesaid four witnesses who were named in the FIR and who witnessed the incident failed to identify any of the accused persons in Court though they identified all the accused persons in jail at the time of holding the Test Identification Parade. In this regard, the learned Trial Judge has made an illustrated finding that while the incident took place at dawn at about 4:45 A.M, it was quite probable that it was difficult for the aforesaid four witnesses to identify the accused persons, more so when the place of occurrence was surrounded by 2/3 storeyed buildings on both sides. Learned Trial Judge has lent no credence to the identification of the accused persons during T.I. Parade on the ground that the incident took place in the middle of June, 1988 and the Test Identification Parade was held in the month of September, 1988. It has been inferred by the learned Trial Judge that this fact cannot be brushed aside that before producing the witnesses in T.I. Parade, the investigating agency might have disclosed the identity of the accused persons to the witnesses. On such findings the learned Trial Judge has held that the accused persons including the appellant are not guilty of the commission of the offence

punishable under Sections 395/397, IPC. As against such findings no appeal or cross appeal has been preferred by the state. Therefore, the inference arrived at by the learned Trial Judge on acquitting the accused persons of the charges as above has attained finality.

9. Now, the question comes up for consideration whether the conviction recorded against the appellant for commission of the offence punishable under Section 412, IPC by the learned Trial Judge is sustainable while the main charges of committing dacoity under Sections 395/397, IPC have not been proved.
10. Mr. Pratik Bose, learned lawyer appearing for the state submits that there is no fetter on the part of a Court to record conviction separately for offence punishable under Section 412, IPC if the Court finds that the evidence as produced by the prosecution is credible and overwhelming. Learned lawyer taking this Court to the oral and documentary evidence adduced by the prosecution points out that the evidence on record unequivocally demonstrate that the appellant possessed the stolen articles derived from the dacoity.
11. Mr. Ayan Bhattacharya, learned lawyer appearing for the appellant as Amicus Curiae vehemently argues that while the charges under Sections 395/397, IPC have not been proved, the appellant/accused could not be held guilty under Section 412, IPC which forms an integral part of the charges under Sections 395/397, IPC. In support of his argument learned counsel has cited a decision in the case of **K. Venkateshwar Rao alias Venkatal alias I. Rao-Vs- State Represented by Inspector of Police, A.P.** reported in **(2002) 6 SCC 247**. In the decision as cited supra the Hon'ble Apex Court has held that while the charge of dacoity has not been proved by the prosecution, the charge under Section 412, IPC of retaining the stolen articles of dacoity fails automatically. In such context it will be apposite to refer to Section 412, IPC. Section 412, IPC provides that whoever dishonestly receives or retains any stolen property, the possession

whereof he knows or has reason to believe to have been transferred by the commission of dacoity, or dishonestly receives from a person, whom he knows or has reason to believe to belong or to have belonged to a gang of dacoits, property which he knows or has reason to believe to have been stolen, shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine. The language employed in the Section clearly shows that the articles an accused retains shall be related to those articles captured or received during the commission of dacoity. While the charge of dacoity fails, the charge under Section 412, IPC automatically fails in the light of the decision as cited supra.

12. Therefore, I hold that the prosecution has failed to bring home the charge under Section 412, IPC.
13. Therefore, the judgment and the order of conviction and sentence passed by the learned Trial Judge warrants interference by this Court.
14. In the result, the appeal merits success and accordingly the appeal is allowed on contest.
15. The judgment and the order of conviction and sentence passed by the learned Sessions Judge, VIII Bench, City Sessions Court, Calcutta in S.T. No. 1 of May, 1989 arising out of S.C No. 6 of 1989 is hereby set aside.
16. The appellant is acquitted of the charge under Section 412, IPC and he be set at liberty at once, if not wanted in connection with any other case.
17. The appellant be discharged from the bail bonds.
18. No order as to costs.
19. Urgent certified website copies of this judgment, if applied for, be given to the parties upon compliance with all requisite formalities.

(*Rabindranath Samanta,J.*)