



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

%

Date of Decision: 08.04.2024

+

CRL.REV.P. 160/2024, CRL.M.(BAIL) 203/2024

MOHD. NASIM

..... Petitioner

Through: Mr. Sunil Kumar and Mr. M.K. Bhardwaj, Advocates.

versus

STATE NCT OF DELHI

..... Respondent

Through: Mr. Sanjeev Sabharwal, APP for State with SI Dinesh, P.S. Amar Colony.

AND

CRL.REV.P. 478/2024, CRL.M.(BAIL) 587/2024, CRL.M.A. 10804/2024, CRL.M.A. 10805/2024

JAMIL

.... Petitioner

Through: Mr. Varun Kumar and Ms. Renu Rani, Advocates.

versus

THE STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Sanjeev Sabharwal, APP for State with SI Dinesh, P.S. Amar Colony.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. By way of present petitions filed under Section 397/401 Cr.P.C., the petitioners seek setting aside of the judgment dated 28.11.2023 passed by learned ASJ-03 (FTC), South East, Saket, New Delhi whereby while upholding the petitioners' conviction, their sentences were modified as under:-



For offence punishable under Sections 394/34 IPC	R.I. for 2 years with fine of Rs.5,000/-
For offence punishable under Section 411 IPC	S.I. for 6 months

2. Since both the petitions have been filed against judgements arising out of a common FIR being FIR No. 304/2011 registered under Sections 394/411/34 IPC at P.S. Amar Colony and considering that common submissions have been addressed, the same are taken up for consideration together and disposed of vide this common judgment.

3. Admittedly, the learned Trial Court vide judgment of conviction dated 04.05.2017 had convicted the petitioners for the offence punishable under Sections 394/34 and 411 IPC and vide order on sentence dated 17.05.2017 they were sentenced to undergo rigorous imprisonment for 3 years alongwith fine of Rs.5,000/- in default whereof, they were directed to further undergo simple imprisonment for two months for the offence punishable under Sections 394/34 IPC and simple imprisonment for 1 year for the offence punishable under Section 411 IPC. Both the sentences were directed to run consecutively. Benefit of Section 428 Cr.P.C. was also granted to both the petitioners.

4. Brief facts, as noted by the Trial Court, are as under:-

“1. Brief facts of the case are that on 13.8.2011 at about 12.30 p.m. at A-II, 2nd Floor Jhuggi wali Gali, Amrit Puri, Garhi, New Delhi within the jurisdiction of P.S. Amar Colony, complainant Surender Gupta was robbed of Rs.49,000/- and one mobile phone belonging to him and he was also caused injuries by the robbers. Matter was reported to the police.



During investigation, police arrested accused Jamil, Mohd. Nasim and Wasim and on 16.8.2011 from Pandit ji Ka Makaan, Shankar Puri, Vijay Nagar, Ghaziabad, UP recovery of cash of Rs.7400/- and a pair of binoculars was effected at the instance of accused Nasim, an amount of Rs.23,280/- and a wrist watch was recovered from Masterni Manju Ka Makaan, Gali no. 3, Naveen Kunj, Prakash Vihar, Loni Ghaziabad, UP at the instance of accused Jamil, while accused Wasim @ Pasa got recovered another wrist watch from under the flyover on GT road near Shahdara Metro Station. All the accused persons disclosed their involvement in the present case and failed to account for the recoveries and hence, the present case was registered against the accused persons. After completion of investigations in the present case, charge sheet was filed under sections 394/411/34 IPC.”

5. In trial, prosecution examined a total of 7 witnesses. The prosecution case hinges on the testimony of the complainant, who was examined as PW1. He had deposed that both the petitioners, being carpenters, had come to his house to make a wooden almirah. On 13.08.2011, when the petitioners came to his house on the pretext of collecting their tools and while he was watching TV, he was attacked from behind and given beatings with fist blows as well as with a broken wooden stool. Thereafter, petitioners also robbed him of Rs.65,000/- and took away his mobile phone. He deposed that while in his initial complaint, he had mentioned that a sum of Rs.49,000/- had been taken away, however, subsequently upon thoroughly checking, he came to know that a sum of Rs.65,000/- had been robbed. During investigation, Investigating Agency seized a sum of Rs.23,280/- as well as a wrist watch at the instance of petitioner/Jamil. From petitioner/Mohd. Nasim, cash of Rs.7,400/- and a pair of binoculars were seized. Rest of the witnesses were police officials.



6. During the course of submissions, learned counsels for the petitioners has contended that both the Courts below failed to appreciate the fact that the complainant had made contradictory statements in his complaint and in his testimony before the Court. In this regard, attention has been invited to the allegations levelled in the FIR, wherein it was alleged that injuries were caused by the petitioners with a hammer, however, in the testimony before the Court, the complainant used the word 'wooden stool'. It is contended that neither any hammer nor any wooden stool was recovered during the investigation. Further, no MLC was prepared or exhibited, to substantiate the allegations of injury caused to the complainant. It is also contended that the complainant had not stated about robbery of binoculars, and that the same was planted against petitioner/*Nasim*. Lastly, it is stated that there are no other cases pending against any of the petitioners.

7. I have heard the learned counsels for the parties and perused the Trial Court Record as well Appellate Court Record.

8. Pertinently, there is no dispute on the identity of the present petitioners, as both of them have admitted to working at the house of the complainant. The case property was also recovered within 3-4 days of the date of incident. Although, there is some variance in the testimony of complainant with respect to articles robbed, however, there is no dispute that he has consistently deposed about cash of Rs.65,000/- and his mobile phone having been stolen. PW6/SI B.D. Khan (*Retd.*) had recovered Rs.7,400/- and binoculars from petitioner/*Nasim* and had also gotten TIP of the case property conducted. He had also recovered Rs.23,280/- and a wrist watch from petitioner/*Jamil*. The proceedings of TIP of the recovered case property was exhibited as Ex. PW6/J. Although, the aspect of wrist watch



being robbed is not stated in the complaint or in the testimony, however, there is clear mention of other articles. Insofar as the contention of non-recovery of weapon of offence i.e. wooden stool is concerned, the same is irrelevant. In Aas Mohd. @ Ashu v. State¹, this Court has held that mere non recovery of weapon of offence is not fatal to the prosecution case.

9. Considering the aforesaid, especially the fact that the petitioners have not denied working at the complainant's house as also the fact that the complainant duly identified the robbed goods recovered from the petitioners, I do not find any ground to interfere with the judgment passed by the Appellate Court and the same is upheld. Both the petitions are dismissed alongwith pending applications.

10. A copy of the judgment be communicated to the concerned Jail Superintendent.

MANOJ KUMAR OHRI
(JUDGE)

APRIL 08, 2024/ga

¹ 2021:DHC:4339