
(2017) 06 DEL CK 0009

In the Delhi High Court

Case No : 331 of 2016

HARVINDER SINGH @ RAJU & ORS.

APPELLANT

Vs

STATE NCT OF DELHI

RESPONDENT

Date of Decision : 01-06-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 313](#) - Power to examine the accused
[Indian Penal Code, 1860](#), [Section 397](#),
[Section 149](#), [Section 395](#) Se

Citation : (2017) 06 DEL CK 0009

Hon'ble Judges : Sunil Gaur

Bench : SINGLE BENCH

Advocate : Bharat Singh, Pramod Kumar, Vikas Padora, Biswajit Kumar Patra, Inderjeet Sidhu, Meenakshi Chauhan

Judgement

1. In the above-captioned four appeals, the challenge is to common impugned judgment of 22nd February, 2016 and order on sentence of 24th February, 2016 vide which all the four appellants have been held guilty for the offence under Section 395 of IPC and they have been sentenced to undergo rigorous imprisonment for five years each with fine of Rs.2,000/- each with default clause. These four appellants have also been held guilty for the offence under Section 397 of IPC and minimum sentence of seven years has been awarded to them.

2. Since these four appeals are directed against common impugned judgment, so these appeals have been taken up for hearing together and are being decided by this common judgment. In pursuance of production warrants issued vide last order, appellants have appeared in person.

3. The precise case set up against appellants by complainant-Chander Shekhar Aggarwal, as noticed in the impugned judgment, is that on 14th June, 2012, at about 8.20 P.M., he alongwith his wife-Shanta Aggarwal was watching T.V. and three persons with faces covered with black color masks entered in his bedroom

and they asked them to keep quiet by pointing a pistol, which as per complainant, was a country made pistol. They were also in possession of Knife, Dagger and a weapon used to break open the almirah. They allegedly caught hold of his wife. The complainant tried to run out of the room and shouted for the servants namely Prem Singh and Ashok but got no response. The accused persons were five in number and only three entered the room and one of them was present on the staircase and the other was in the lobby to keep a vigil. The accused dragged the complainant to interior of the room and asked him to hand over the cash. Complainant's wife, being threatened, handed over the keys of the almirah to her husband, who opened the almirah and handed over two packets of Rs.50,000/- each to them. The accused persons forced the complainant to hand over his purse which was containing Rs.5200/- and 100 US Dollars. Thereafter, accused persons dragged the complainant to his Pooja room and tied him with ropes. The complainant found that both of these servants were also immobilized as their legs and hands were tied and mouth gagged. The accused persons had disconnected the telephone lines. After looting, all the three accused, who were inside the room and carried out the booty and left the house around 8:40 P.M.. Only after this, one of the servants was able to untie himself, who then untied all the other persons including the complainant. The case under Section 395 IPC was registered at PS Rajinder Nagar on 14th June, 2012 on the complaint of aforesaid complainant-Sh. C.S. Aggarwal.

4. It is the prosecution's case that from appellant-Harvinder Singh, one buttondar knife, looted cash of Rs.5,000/- and a bunch of keys of Toyota Qualis HR 55K 9924 were recovered and from appellants-Puneet and Manoj, buttondar knives and a cloth of mask type was also recovered and from appellant-Ranjeet, an iron rod was recovered. Apart from this, the looted cash of Rs.10,000/- was also recovered from appellant-Manoj.

5. It is also the prosecution case that appellant-Puneet had refused to participate in the Test Identification Parade (hereinafter referred to as "TIP"). Appellants were put on trial for the offence under Sections 120-B read with Section 395; Section 394 read with Section 149 and Section 347 read with Section 149 of IPC. During the trial, complainant-C.S. Aggarwal had deposed as PW-3 and his wife as PW-4. The two servants of complainant i.e. Ashok Kumar (PW-9) and Prem Singh (PW-10) had also deposed as eye-witnesses. Nupur Aggarwal (PW-12) has also identified the two necklaces which were looted. The witnesses to the recovery of the looted articles are WSI Sheela (PW-19), ASI Sunil Kumar (PW-23) and Constable Satpal (PW-25). SI Ram Narain (PW-22) is the Investigating Officer of this case. The stand taken by appellants in their statement under Section 313 of Cr.P.C. before the trial court is of false implication and according to them, the recovered looted property has been planted upon them. On the strength of evidence recorded, trial court has found appellants to be guilty of the offences under Sections 395 & 397 of IPC and has sentenced them to the period already indicated above.

6. Learned counsel for appellant-Harvinder submits that trial court has erred in holding appellant-Harvinder guilty of offences under Sections 395 and 397 of IPC by merely relying upon the recovery of Rs.5,000/- from him. It is pointed out that no Test Identification Parade was held to identify appellant-Harvinder and none of the witnesses have identified him to be one of the assailants and so, conviction of appellant-Harvinder is unjustified. It is submitted on behalf of appellant-Harvinder that recovered currency notes cannot be said to be looted cash as none of the witnesses has identified the recovered currency notes to be the one belonging to them. So, it is submitted that impugned judgment qua appellant-Harvinder deserves to be set aside and he be acquitted.

7. On behalf of appellant-Ranjeet, it is submitted that merely because Rs.10,000/- was recovered from this appellant would not justify his conviction for the offence under Section 395 of IPC as there is no evidence on record to prove that this appellant had participated in the commission of offences in question and so, conviction of this appellant under Sections 395/397 of IPC is wholly unjustified. It is also pointed out by learned counsel for appellant-Ranjeet that this appellant was not subjected to Test Identification Parade and he was not identified by any of the witnesses. Thus, acquittal of appellant-Ranjeet is sought by counsel for this appellant.

8. It is asserted by counsels for the three appellants-Manoj, Ranjeet and Puneet that cash of Rs.10,000/-purportedly recovered from them, by itself does not justify their conviction for the offences under Sections 395/397 of IPC, as there is no evidence on record to incriminate them. It is submitted by learned counsel for remaining appellants that complainant has not come forward to take superdari of cash of Rs.10,000/- each allegedly recovered from appellants and due to lack of incriminating evidence, all the four appellants deserve to be acquitted.

9. Learned counsel for appellant-Puneet supports the submissions advanced by learned counsel for appellants and submits that the complainant had not deposed about the alleged recoveries in his chief examination in the first instance and during the cross-examination of complainant, an application was filed and thereafter only, re-examination of complainant was conducted and in his re-examination, he deposed about the recoveries, which are suspect, and so ought not to be relied upon.

10. Learned counsel for appellant-Puneet supplements by pointing out that TIP of appellant was conducted after one and half year and so, the possibility of photographs of appellants having been shown to the witnesses cannot be ruled out and thus, conviction of appellant-Puneet and Manoj deserve to be set aside. Lastly, it is submitted on behalf of appellants-Puneet and Manoj that the scientific evidence of tallying of the fingerprints of these appellants with the chance prints have not been undertaken and so, their conviction is otherwise also not justified.

11. Learned counsel for appellant-Manoj adopts the stand taken by appellants-

Ranjeet and Puneet and submits that there is recovery of one knife from appellant-Manoj and this by itself would not justify his conviction for the offence under Sections 395 and 397 of IPC. So, it is submitted on behalf of all the four appellants that their conviction is wholly unjustified and is not supported by evidence on record and so, they deserve to be acquitted.

12. On the other hand, learned Additional Public Prosecutor supports the impugned judgment and submits that the conviction of appellants is justified as it has come in the evidence that at the instance of main accused-Tejinder and Joginder, appellant-Harvinder has been arrested and from him, the looted currency notes were recovered. It is pointed out by learned Additional Public Prosecutor that there are call records which connect main accused-Tejinder and Joginder with appellant-Harvinder and the chart location of mobile towers also indicates that appellant-Harvinder was in the vicinity of the spot at the time of incident and so, it cannot be said that there is lack of evidence to connect appellant-Harvinder with the offence in question.

13. It is further submitted by learned Additional Public Prosecutor that there was no occasion for holding a TIP for the reason that appellants were masked when they had committed the offence in question and appellant-Puneet has been already identified by the material witnesses and that appellants-Ranjeet and Manoj have been arrested at the instance of appellant-Harvinder and the recoveries have been effected from them and so, the chain of circumstances shows the involvement of all the four appellants in commission of the offence in question. Thus, it is submitted that appellants have no case on merits and so, these appeals deserve to be dismissed. Nothing else is urged on behalf of either side.

14. Upon hearing and on perusal of impugned judgment and the evidence on record, I find that it is not a case of mere recoveries alone, but it is a case of circumstantial evidence. The chain of circumstances reveals that appellants-Ranjeet, Manoj and Puneet were very much party to commission of the offence in question as they were in conspiracy with appellant-Harvinder, who in turn was actively conniving with the main accused-Tejinder. The scientific evidence of call details of mobile phones of appellants/accused and the chart location effectively connects the appellants with the main accused and their complicity in committing this crime becomes quite evident. The question of identification of the recovered currency notes pales into insignificance for the reason that appellants in their statement under Section 313 of Cr.P.C. have not owned the recovered cash, which was looted in this incident.

15. Complainant's lapse of not deposing regarding recoveries in the Chief Examination and of his deposing about it in re-examination would not be of any consequence because in the cross-examination, the substratum of the prosecution's case does not get demolished. The manner in which the offence in question has been committed, calls for awarding of exemplary punishment, but the trial court in the facts and circumstances of this case has chosen to award

the minimum sentence under Section 397 of IPC. Thus, there cannot be any reduction in quantum of sentence awarded. In view of aforesaid, these appeals fail on merits as well as on the quantum of sentence. As such, above-captioned four appeals and the pending applications are accordingly dismissed.