

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

RESERVED ON : 23rd October, 2013

DECIDED ON : 31st October, 2013

+ CRL.A.189/2004

MANISH

..... Appellant

Through : Mr.Rakesh Kumar with Mr.Deb
Nandan, Advocates.

+ CRL.A.139/2004

RAM SARUP

..... Appellant

Through : Mr.Rakesh Kumar with Mr.Deb
Nandan, Advocates.

+ CRL.A.169/2004

MANOJ

..... Appellant

Through : Mr.S.S.Dahiya with Mr.L.K.Dahiya,
Advocates.

versus

STATE

..... Respondent

Through : Mr.Lovkesh Sawhney, APP.

CORAM:

MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Manish (A-1), Ram Sarup (A-2), Manoj (A-3) and Pintu @ Parvinder were arrested in case FIR No.19/2001 registered at Police Station Subzimandi and sent for trial for committing offences punishable

under Sections 120-B/392/394/397 IPC. The prosecution case in the charge-sheet was that on 18.01.2001 Raghubir Singh and Ravinder had gone to deposit cash of their employer Om Prakash doing business in the name and style of M/s Kanshi Ram Pawan Kumar, at 181-182, Azad Market, Delhi in Oriental Bank of Commerce on scooter No.DL-4SS-1731. They had bags containing cash ₹3,28,000/- and ₹2.5 lacs each. When they went near Oriental Bank of Commerce, Roshanara Road, at about 11.00 a.m. two boys armed with knife and katta snatched the bag containing ₹3,28,000/- from Raghubir Singh after inflicting injuries on his hands and legs. On raising hue and cry, the assailants fled the spot and escaped on a scooter standing nearby. The police machinery was set in motion when Daily Diary (DD) No.5A was recorded at 11.20 A.M. at Police Station Subzimandi on getting information from ASI Vijender, PCR that a dacoity had taken place near Oriental Bank of Commerce, Palace Cinema. The investigation was assigned to SI Gurusewak Singh (PW-25) who with Addl.SHO and Constables Satpal and Govind Ram went to the spot and came to know that injured had already been taken to hospital by PCR officials. He recorded Raghubir Singh's statement (Ex.PW-14/A) at Sir Ganga Ram Hospital and lodged First Information Report after making endorsement (Ex.PW-25/B) thereon. Statements of

witnesses conversant with facts were recorded. On 28.01.2001 scooter bearing Registration No.DL-2S-C-9515 used in the crime was recovered from a gali in Aryapura, Subzimandi lying unclaimed and seized vide seizure memo (Ex.PW25/F). On 10.04.2001 Manoj (A-3) was arrested vide DD No.88B under Section 41-1 (a) Cr.P.C. registered at PS Gokulpuri and ₹5,000/- were recovered from his house. On 09.04.2001 Manish (A-1) was arrested in case FIR No.139/2001 under Section 25 Arms Act PS Gokulpuri and pursuant to his disclosure statement, ₹10,000/- were recovered from his house. On 18.04.2001 Pintu was arrested from near Ghantaghar, Subzimandi while sitting on a motor-cycle bearing registration No.3-SL-5260. On his instance A-2 was arrested on 19.04.2001. On 20.04.2001, in pursuance of disclosure statement made by him, ₹10,000/- were recovered from his residence. A-1, A-3 and Pintu declined to participate in the TIP proceedings. After completion of investigation, a charge-sheet was filed against all of them in the court for committing offences mentioned previously. They all were duly charged and brought to trial. The prosecution examined 40 witnesses to substantiate the charges. In their 313 statements, the appellants denied their complicity in the offences and pleaded false implication. They examined Durgesh (Manish's mother) and Phool Singh (Manoj's father)

in defence. After appreciating the evidence and considering the rival contentions of the parties, the Trial Court by the impugned judgment dated 04.02.2004 in Sessions Case No.53/2001 held A-1, A-3 and Pintu perpetrators of the crime under Sections 120-B, Section 392 read with Section 120B IPC. A-1 was held guilty for committing offence punishable under Section 394 and 397 IPC. Ram Sarup was acquitted of the charges of criminal conspiracy to commit robbery but was convicted under Section 411 IPC. A-1, A-3 and Pintu were awarded RI for two years under Section 120-B IPC and RI for four years each with fine ₹10,000/- each under Section 392/34 IPC. A-1 was further sentenced to undergo RI for seven years with fine ₹10,000/- for the offence under Section 394 IPC and RI for seven years for the offence under Section 397 IPC. A-2 was awarded RI for two years with fine ₹10,000/-. All the substantive sentences were to operate concurrently. Being aggrieved, A-1 to A-3 have challenged their conviction. It appears that Pintu has not preferred any appeal.

2. I have heard the learned counsel for the parties and have examined the record. There is no challenge to the incident of robbery that took place on 18.01.2001 near Oriental Bank of Commerce in which Raghubir Singh was robbed of ₹3.28 lacs by the assailants using deadly

weapons. PW-2 (Om Parkash) proved that on 18.01.2001 his employees Raghubir Singh and Ravinder had gone to deposit the cash in Oriental Bank at about 11.00 A.M. After about 20 minutes, he got a telephone call from the bank about the robbery whereby the employees were deprived/looted of ₹3.28 lacs. He further disclosed that Ram Sarup was their employee in the shop prior to the incident and used to go to the bank to deposit the cash. PW-3 (Ravinder Kumar) and PW-14 (Raghubir Singh) have also testified on similar lines and there are no good reasons to disbelieve them. They were not imagined to fake the incident of robbery. The crucial question to be ascertained is as to who were the perpetrators of the crime. The prosecution implicated A-1, A-3 and Pintu to be the assailants who had committed the broad-day light robbery after getting feedback from A-2. There is complete denial by the appellants of their involvement in the crime. Daily Dairy (DD) No.5A was recorded at 11.20 A.M. on getting information from ASI Vijender of PCR that a decoity had taken place near Oriental Bank of Commerce. ASI Vijender, who admitted the injured Raghubir Singh in the hospital was not examined. This DD No.5A does not contain the number of the assailants or the vehicle number in which the assailants had arrived at the spot. SI Gurusewak Singh recorded Raghubir Singh' statement (Ex.PW-14/A) in

which he gave graphic detail as to how and in what manner he was robbed by two boys armed with knife and katta. When he did not part with the bag containing cash, he was injured and the assailants were successful to flee the spot with the bag. The complainant (Raghubir Singh) did not disclose the detailed description of the assailants. He also did not disclose if the assailants had fled the crime spot on a two wheeler scooter standing nearby. Apparently, the complainant did not disclose the scooter number on which the assailants had arrived at the spot and fled the scene. In his court statement as PW-14, Raghubir Singh did not opt to support the prosecution and exonerated the accused persons by declining to identify any of them. He was categorical to state that he was not in a position to identify the assailants present in the court. Additional Public Prosecutor cross-examined him after seeking court's permission. However, nothing material could be elicited to ascertain the identity of the assailants. The witness volunteered to add that his attention was towards the brief-case and he was unable to see the faces of the assailants. He denied the suggestion that on 20.04.2001, he had identified A-1 before the police. PW-3 (Ravinder Kumar) also turned hostile and did not identify and recognize the assailants. He was specific to depose that the four accused persons present in the court were not the assailants. Cross-examination by

Additional Public Prosecutor did not yield any positive evidence. He rather deposed that in April, 2001 the police had shown him two boys in the police station and he had informed them that those boys Manish (A-1) and Pintu were not the assailants. Apparently, both PW-3 (Ravinder Kumar) and PW-14 (Raghubir Singh) who had direct confrontation with the assailants for long time during day-time and had enough and clear opportunity to observe their features did not opt to support the prosecution and exonerated the accused persons facing trial. No ulterior motive was assigned to these witnesses for deviating from their previous statements recorded during investigation. None of them was able to note down the scooter number on which the assailants had fled the spot. They also did not subscribe to the prosecution story that the robbers were chased by PW-12 (HC Darshan Kumar) or that PW-6 (M.L.Nanda) had confrontation with them. PW-7 (Anurag Nanda) also preferred to resile from his previous statement (Ex.PW-7/A) and declined to identify the assailants stating that he was unable to see their faces. He denied the contents of statement (Ex.PW-7/A) to have been made by him to the police.

3. The prosecution heavily put reliance upon PW-6 (M.L.Nanda)'s testimony who was able to identify Pintu and Manish

(A-1). He testified that he had seen both of them running near his work shop at premises No. A-8736, Roshan Ara Road, Kalu Ram Building, Delhi at about 11.00 A.M. One of the boys had a pistol in his hand with which he fired but it got misfired. The other boy had a black colour bag in his left hand. When he attempted to push the said boy, he took out a meat cutting knife and intended to inflict injuries to him. Finally he succeeded to flee the spot on a two-wheeler scooter. Pintu was the boy who had a pistol in his hand with which he had fired and A-1 had attempted to injure him. In the cross-examination, he deviated from the version narrated in examination-in-chief and stated that due to knee problem, he was unable to walk and had not gone anywhere after hearing commotion. He was called in the police station after about two and a half months of the incident for identification of the accused person. He expressed inability to identify the offenders and when the police officials insisted, at their instance he identified them. He was categorical to state that he had not seen any person running away with the bag and had not seen the accused persons running from the spot. PW-6 (M.L.Nanda) cannot be considered as reliable and trustworthy witness to base conviction. Though he had allegedly seen the robbers sitting on a scooter and fleeing from the spot, he was unable to disclose scooter number used

in the crime. He did not disclose the name of the police official who had given chase to the robbers. His statement has not been corroborated in material particulars by PW-12 (HC Darshan Kumar) who allegedly gave a chase to the assailants. In his deposition, he (H.C.Darshan Kumar) was not sure about the number of two-wheeler scooter used in the crime and described its number DL-2S-C-1915. The scooter recovered on 28.01.2001 after about 10 days of the incident from a nearby place in a Gali, Aryapura in an abandoned condition was having registration No.DL-2S-C-9515. It is amazing that the police who was investigating a grave offence was unable to find out and recover the vehicle used in the incident for ten days when it was lying abandoned at a nearby spot i.e.Aryapura, Subjimandi. It makes PW-12 (HC Darshan Kumar)'s version that had noted down the number of the scooter and had disclosed it in the statement recorded under Section 161 Cr.P.C. on the same day highly suspect. Had it been so, there could not have any difficulty to recover the scooter lying unclaimed at a nearby distance. The PCR officials who went to the spot at the first instance did not disclose the number of the scooter used in the incident. PW-12 (HC Darshan Kumar) in the cross-examination revealed that he had flashed the number of two wheeler scooter on wireless set, however, copy of the wireless message was not

placed on record. DD No.5A does not record use of any scooter number in the crime. As per PW-13's testimony, this scooter was registered in the name of Surender Singh. PW-17 (Manoj Jain) deposed that scooter bearing registration No.DL-5SC-7245 belonged to him and it was stolen on 13.01.2001 for which he had lodged report of theft at police station Roop Nagar. The prosecution did not collect any evidence as to who was the accused in the said FIR or if the said scooter was stolen by the assailants in this case. PW-12 (HC Darshan Kumar) did not state if PW-6 (M.L.Nanda) had any confrontation with the assailants or any of them had fired. No crime weapon was recovered from the possession of the accused persons. PW-12 made vital improvements in his deposition and even identified Manoj who had driven the scooter. In his 161 statement (Ex.PW-12/DA), he did not claim to identify the third accomplice. It is highly unbelievable that this witness who had fleeting glance at the driver of the scooter would be able to recognize him in the court after lapse of long time. The accused persons were justified to decline to participate in the TIP proceedings as admittedly they were shown to the prosecution witnesses in the police station. PW-12's version does not find corroboration.

4. The next limb of the argument to connect the accused persons with the crime is recovery of the robbed cash at their instance from their houses. It reveals that out of ₹3.28 lacs robbed only a paltry sum of ₹25,000/- in all was recovered from the residences of A-1 to A-3 after a gap of about more than three months of the incident. It is highly unbelievable that these accused persons would retain robbed cash intact with their bank slips on it and would not change it. No independent public witness was associated at the time of recovery of cash. Neither the victims nor the owner was joined at the time of recovery. Moreover, money allegedly recovered was not in the exclusive possession of accused persons. It is relevant to note that the original record was not traceable. The reconstructed record is incomplete and does not contain appellants' statements recorded under Section 313 and Statement of defence witnesses. In the absence of original documents on record and deficiencies in the record, it is difficult to appreciate the evidence of the witnesses minutely and the benefit must go to the accused persons.

5. In the light of the above discussion, I am of the view that the prosecution has failed to establish its case beyond reasonable doubt. The impugned judgment cannot be sustained and is set aside. The appeals are

accepted and the conviction and sentence of the appellants are set aside.

Personal bonds and surety bonds stand discharged.

6. A copy of the order be sent to Jail Superintendent, Tihar Jail for information. Trial Court record along with a copy of this order be sent back forthwith.

(S.P.GARG)
JUDGE

October 31, 2013

sa