

Satish vs.state

Satish vs.state

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Court : Delhi

Decided On : Jul-04-2019

Appellant : Satish

Respondent : State

Judgement :

* % + IN THE HIGH COURT OF DELHI AT NEW DELHI RAJ KUMAR. Reserved on:

5. h April 2019 Decided on:

4. h July, 2019 CRL.A. 922/2017 Represented by: Mr. R.N. Sharma and Ms. Appellant versus Sonia, Advocates. STATE OF NCT OF DELHI

... RESPONDENTS

Represented by: Mr. Ashok Kumar Garg, APP for the State with SI Ashish, PS S.B. Dairy CRL.A. 950/2017 Represented by: Mr. Purvesh Buttan and Mr. Appellant Fahad Imtiaz, Advocates. versus Represented by: Mr. Ashok Kumar Garg, APP Respondent for the State with SI Ashish, PS S.B. Dairy CRL.A. 976/2017 Represented by: Mr. Rahul Sharma, Advocate. versus Appellant + SATISH STATE + ISLAM STATE NCT OF DELHI Respondent Represented by: Mr. Ashok Kumar Garg, APP for the State with SI Ashish, PS S.B. Dairy CRL.A. 922/2017 & conn. matters Page 1 of 40 + CRL.A. 980/2017 MOHD. ZAIKI Represented by: Mr. Rahul Sharma, Advocate. versus Appellant STATE NCT

OF DELHI Respondent Represented by: Mr. Ashok Kumar Garg, APP for the State with SI Ashish, PS S.B. Dairy + CRL.A. 1109/2017 SUNIL KUMAR Represented by: Mr. Aditya Vikram and Mr. Appellant RAJENDER Represented by: Mr. S.S. Handa and Mr. Shiva Appellant versus Handa, Advocates. THE STATE GOVT OF NCT OF DELHI Respondent Represented by: Mr. Ashok Kumar Garg, APP for the State with SI Ashish, PS S.B. Dairy + CRL.A. 104/2018 PARVEEN GOYAL Represented by: Appellant Mr. K.Singhal, Advocate. CRL.A. 922/2017 & conn. matters Page 2 of 40 STATE + versus Vinash, Advocates. Represented by: Mr. Ashok Kumar Garg, APP Respondent for the State with SI Ashish, PS S.B. Dairy CRL.A. 1183/2017 versus THE STATE GOVT OF NCT OF DELHI Respondent Represented by: Mr. Ashok Kumar Garg, APP for the State with SI Ashish, PS S.B. Dairy CORAM: HON'BLE MS. JUSTICE MUKTA GUPTA CRL.A. 922/2017 CRL.A. 950/2017 CRL.A. 976/2017 CRL.A. 980/2017 CRL.A. 1109/2017 CRL.A. 1183/2017 CRL.A. 104/2018 1. By these appeals, appellants Raj Kumar, Satish, Islam, Mohd. Zaiki, Sunil Kumar, Rajender and Parveen Goyal challenge the impugned judgment dated 6th September 2017 wherein the appellants Satish, Islam, Mohd. Zaiki, Sunil Kumar and Rajender were convicted for offence punishable under Section 395 IPC. Appellants Sunil and Satish were also convicted for the offence punishable under Section 397 IPC and Raj Kumar and Parveen Goyal were convicted for the offence punishable under Section 412 IPC in FIR No.340/2011 registered at PS Shahbad Dairy. Appellants also challenge the order on sentence dated 11th September 2017 directing Satish, Sunil, Rajinder, Islam and Zaiki to undergo rigorous imprisonment for a period of fourteen years and to pay a fine of 5000/- each and in default to undergo simple imprisonment for a period of one year for the offence punishable under Section 395 IPC, Satish and Sunil to undergo CRL.A. 922/2017 & conn. matters Page 3 of 40 rigorous imprisonment for a period of seven years and to pay a fine of 5000/- each and in default to undergo simple imprisonment for a period of one year for the offence punishable under Section 397 IPC and Raj Kumar and Parveen Goyal to undergo rigorous imprisonment for a period of ten years and to pay a fine of 50,000/- each and in default to undergo simple imprisonment for a period of one year for the offence punishable under Section 412 IPC.

2. Assailing the conviction, learned Counsel for Satish submits that identification of Satish is disputable as Satish was not identified at the first instance but during the trial while he was in custody. He further submits that identification was also not possible as all alleged persons present inside the factory were sitting head down which means that they could not identify the assailants. SI Anuj Nautiyal in his testimony has deposed that he met Lukhman and Manoj at Tihar Jail on 28th January 2012 before the TIP proceedings thus creating doubt that the assailants were shown to the witnesses. He further submits that the prosecution has failed to produce any site plan of the place of occurrence in order to establish whether there was electricity or not. The prosecution has also failed to link Satish with any recovered vehicle. He further submits that Satish was arrested in FIR No.326/2011 registered at PS Adarsh Nagar on 27th January 2012 and while being produced in that case, the Investigating Officer of the present case talked to him and sought PC remand and thereafter filed the application for TIP proceedings. He submits that Tofi Ram did not recognize Satish in the TIP proceedings but recognized him in court and did not recognize him in the third instance. He further submits that no recovery was made from him and he has been falsely implicated in the present case. He further submits CRL.A. 922/2017 & conn. matters Page 4 of 40 that offence punishable under Section 395 is not made out as there were only 3-4 persons and under Section 395 the minimum requirement is that of five persons. The broken lock was also not seized in order to show forced entry into the factory.

3. Learned Counsel for Sunil Kumar submits that there were four eye- witnesses and all of them stated that they were tied down by the gamcha while three of them stated that the assailants used knife or swords. He further submits that no description of the assailants was given. He also submits that Sunil was arrested in another case. As per the disclosure statement which was recorded the only evidence to connect Sunil was the fact that was already discovered on 14th December 2011 or disclosed by Islam so there can be no fresh disclosure again. No eye-witness identified the vehicle nor has the recovery been made at the instance of Sunil. SI Sonu in his deposition stated that he broke the lock of the main gate, but the same has not been seized. He further submits that Lukman has deposed that Sunil was armed with a deadly weapon but only the evidence of identification by Lukman is not sufficient to connect Sunil to the alleged robbery.

4. Learned Counsel for Islam and Mohd. Zaiki submits that statements of most of the witnesses present at the time of the incident were recorded after the arrest of Islam and after a lapse of almost three months from the date of incident. He further submits that none of the four eye-witnesses gave any clue about the description of persons who allegedly robbed the factory in their statements recorded under Section 161 Cr.P.C. He submits that the TIP of Islam and Mohd. Zaiki was also not conducted prior to the identification in court. Reliance is placed upon the decisions of the Supreme Court reported as (1980) 2 SCC665V.C. Shukla v. State, and (1998) 1 SCC CRL.A. 922/2017 & conn. matters Page 5 of 40 169 Raju alias Rajendra v. State of Maharashtra. Moreover, three out of the four eye-witnesses failed to identify Islam or Mohd. Zaiki. He also submits that Dina Nath who was examined in court as PW-3 and PW-6 has given different versions of the incident on different dates, thus his testimony cannot be relied upon. He further submits that as per the prosecution Islam was arrested along with Rajender, Parveen Goyal and Raj Kumar on 14th December 2011. The arrest memo of Islam shows that he was arrested on 14th December 2011 but it contains DD No.7B dated 15th December 2011. He further submits that as per the cross-examination of Inspector Ajay Kumar, Islam was called for inquiry on 11th, 12th and 13th December and was subsequently arrested on 14th December however there is no documentary proof of his presence at the police station on 11th, 12th and 13th of December. It is the case of the prosecution that during the course of the raid on 14th December 2011, Islam pointed towards the vehicle bearing number HR38L0648 parked at Shah Alam Bandh, which was allegedly used at the time of dacoity. Islam was arrested around 5:30 P.M. and his personal search was conducted immediately thereafter and the vehicle was recovered at around 11:00 P.M. and the ignition key of the vehicle was provided by him. This seems improbable as after the personal search at around 5:30 P.M., everything was supposed to be in the possession of the police officials and Islam could not have provided the ignition key at the time of seizure of the vehicle. As per the deposition of Inspector Ajay under whose instruction raid was conducted, when the recovery is made by the official of Special Staff outside their office then the same is deposited at the police station where the recovery is made, which further corroborates the fact that no recovery was made in the present case. He submits that the contradictory CRL.A. 922/2017

& conn. matters Page 6 of 40 testimonies of the members of the raiding team further establishes the fact that they did not visit Islams house. He submits that a perusal of column 13 of crime team report only shows copper scrap weighing 4.5 tonnes and there is no mention of slab or jali. The Investigating Officers did not try to interrogate the neighbors or the public persons outside the factory to find out if they had noticed any heavy vehicle on the night when the incident had taken place. Furthermore, the fact that the vehicle belonging to Mohd. Zaiki was used or that Islam was standing with Mohd. Zaiki and Rajender outside or that they were present on the day of the incident has also not been corroborated by any independent witness. The inaction on part of the Investigating Officer of not seizing the attendance register and the stock register also gives inference of false implication and there is no evidence on record to show that the articles allegedly recovered belonged to Naveen Sharma. Furthermore, no TIP of the article was conducted. He further submits that as per the story of the prosecution, the owner Naveen Sharma purchased the robbed articles from the entity Naveen Impex. The godown address of Naveen Impex as mentioned in the invoice is the same as that of Seema Dhatu Udhog. Even, the Investigating Officer in his testimony has deposed that the owner of Seema Dhatu Udyog and Naveen Impex are the same person. He further submits that the case property does not bear any distinctive mark which could show that the articles which were produced before the Court were the same as the one allegedly stolen or recovered. The same has been corroborated by the testimony of Tofi Ram, Dina Nath, Naveen Sharma, Lukmaan and SI Anuj Nautiyal. He further submits that as per the story of the prosecution after superdari of the articles, the photograph of the articles were taken but perusal of the testimony of SI Anuj Nautiyal CRL.A. 922/2017 & conn. matters Page 7 of 40 and ASI Jag Narain clearly shows that both have failed to explain as to who had taken the photograph and when. He further submits that Section 114(a) of the Evidence Act would not be applicable due to the mode and manner in which the recovery was made from Islam two months after the date of incident without any independent corroboration. Broken lock of the factory has not been seized by the police officials. Furthermore, the testimony of the police witnesses shows that there was no DD entry/log book entry made by them during the entire course of investigation. Even though there were twelve eye-witnesses on the day of the

incident only four have been examined by the prosecution. Reliance is placed on the decision of the Himachal Pradesh High Court reported as 2002 (3) ShimLC282Arjun Singh & Ors. and State of H.P. v. State of H.P. and Jagdish Chand & Ors., decision of the Orissa High Court reported as 1983 CriLJ1715 Rajkishore Sahu and etc. v. The State and the decision of the Bombay High Court reported as 1997 (2) MhLj 404 Vasant @ Roshan Sogaji Bhosale v. State of Maharashtra.

5. Learned Counsel for Rajinder submits that there is no direct evidence on record against Rajinder. Tofi Ram, Lukmaan and Harender in their testimonies have admitted that Rajinder was not amongst the people present at the time of the alleged incident. Dina Nath was examined thrice in court and he has given different versions of the incident at all times and thus his testimony cannot be relied upon. Furthermore, Dina Nath failed to identify the other appellants in judicial TIP. The judicial TIP of Rajinder was not conducted and dock identification was at the instance of his employer, with the motive to misappropriate the case property that was got released by him. His dock identification after two years holds no value. Reliance has been CRL.A. 922/2017 & conn. matters Page 8 of 40 placed on the decisions of the Supreme Court reported as (1998) 1 SCC169Raju alias Rajendra v. State of Maharashtra and AIR 1979 SC1127 Kanan & Anr v. State. He further submits that there was no recovery/corroborative evidence to establish the guilt of Rajinder. Rajinder was interrogated multiple times from 11th December 2011 to 14th December 2011 and his confessional statement was involuntary, thereby making the alleged recovery of copper slab highly doubtful. Reliance has been placed on the decision of the Supreme Court reported as (2019) 3 SCC770Ashish Jain & Ors. v. Makrand Singh & Ors. He further submits that the only substantive evidence against Rajinder is the testimony of HC Ravi Rana and Inspector Ajay. HC Ravi Rana simply testified in his deposition that from the possession of accused Rajender one slab of copper etc. Inspector Ajay did not testify that the alleged copper slab was recovered at the pointing out and/or at the instance of Rajinder. It is highly doubtful that Rajinder despite of his interrogation from 11th to 13th December 2011 continued to keep the copper slab at the alleged site. Furthermore, Rajinder did not point to the spot of recovery and therefore there was no recovery of a new fact on his information. No site plan/sketch of the place

of recovery/godown was prepared, nor was any pointing out memo prepared by the Investigating Officer. HC Ravi Rana admitted in his testimony that at the time of the seizure, one person was sitting at the godown/kabaddi shop. It had two gates which were open at that time. As per the testimony of Gurbax Singh, Rajinder was not in possession of the said godown/kabaddi shop rather one person namely Tikam was the tenant and in possession as per the rent agreement dated 3rd October 2010. He further submits that the alleged copper slab was not recovered at the pointing out of Rajinder and hence the CRL.A. 922/2017 & conn. matters Page 9 of 40 alleged recovery cannot be used under Section 27 of the Evidence Act. He further submits that Naveen Sharma in his testimony admitted that the slabs looted had no definite mark of identification and similar copper slabs were being made by other factories as well and were available for sale in the market. As per Section 9 of the Evidence Act, identification of case property is relevant and ought to have been conducted so that corroborative evidence about the allegedly recovered copper slabs was substantiated and proved. He further submits that Inspector Ajay and SI Anuj Nautiyal admitted that no judicial TIP of the case property was conducted and HC Ravi Rana admitted that no seal was put by the Investigating Officer upon the allegedly recovered copper slab. The photographs of the case property P1 to P10 were not proved by any of the witnesses in court thereby creating suspicion that the alleged recovery was planted. He further submits that Naveen Sharma produced tax invoice to prove his ownership but since he failed to produce any original document the same cannot be relied upon. Moreover, the tax invoice pertains to raw scrap and it shows the seller and purchaser being the same person. He also submits that it would not be fair to connect the allegedly recovered copper slab having no distinct mark of identification with the articles looted on 16th October 2011. Reliance is placed upon the decision of the Supreme Court reported as (2018) 16 SCC161Navaneethakrishnan v. State.

6. Learned Counsel for Raj Kumar submits that the copper slabs weighing 320 kgs and copper scrap weighing 120 kgs are alleged to have been recovered at the instance of the appellant on 14th December 2011 from his Shop No.D-18, Mahindra Park, Near Jahangirpuri, Delhi. However, the alleged recovery does not inspire confidence since there was no independent CRL.A. 922/2017 & conn.

matters Page 10 of 40 witness present at the time of alleged recovery. Moreover, the police witnesses have given contradictory statements with respect to the time and manner in which the recovery was affected. As per the testimony of ASI Surender Pal (PW-17) the property was recovered from the shop of Raj Kumar. They reached his shop at 11:30 P.M. when the godown was opened with a key by Raj Kumar himself. HC Ravi Rana (PW-20) in his examination-in-chief stated that they reached the shop at 1:30 A.M. and the shop was opened from the key recovered on the personal search of Raj Kumar. However in his cross-examination he stated that the shop of Raj Kumar was found open when they reached there but he could not identify the place or portion from which the robbed articles were recovered from the shop. He further added that he did not see any specific identification marks on the articles recovered from the shop. SI Ajay Kumar (PW-21) stated that they reached Raj Kumars shop at about 1:30 A.M. on 15th December 2011 and opened the shop from the key recovered on the personal search of Raj Kumar. ASI Brijender Singh (PW-22) stated that they reached Raj Kumars shop at about 11:45 P.M. and no public person was found due to odd hours. Learned counsel further submits that the recovery/seizure memo of the case property does not bear any date which further casts doubt on the alleged recovery of the case property from Raj Kumar. Learned Counsel also submits that the case property was not sealed and the same was produced before the Trial Court in an open condition. The case property also did not bear any identification mark and the same has been admitted by witnesses Tofi Ram, Deena Nath, Ct. Sandeep, Naveen Sharma, Lukman, Harinder, ASI Madan Lal, ASI Lakhwinder, Mahender Pratap and SI Anuj Nautiyal. The prosecution has not been able to prove that the case property was the CRL.A. 922/2017 & conn. matters Page 11 of 40 subject matter of the present robbery or that Raj Kumar had knowledge that the same was robbed property. He further submits that the case property is easily available in the market and the same is alleged to have been recovered on 15th December 2011, two months after the date of occurrence with no link being proved. He further prays that Raj Kumar is entitled to be acquitted under Section 412 on the ground that prosecution has not been able to prove knowledge on the part of Raj Kumar to the extent that the case property which is claimed to have been recovered at his instance was robbed property. Reliance is placed upon the

decisions of the Supreme Court reported as 1998 (2) JCC (SC) 168 Kochu Maitheen Kannu Salim v. State of Kerala, MANU/SC/1031/2012 Pramod Bhanudas Soundankar v. State of Maharashtra, MANU/SC/0213/1994 Achyut Das v. State of Assam , decisions of the Delhi High Court reported as 1998 (2) JCC (DELHI) 207 Chander Pal v. State, 1998 (1) JCC (DELHI) 173 Dinesh Kumar v. State of Delhi, 2014 (1) JCC (DELHI) 433 Rajbir v. State, 2010 (2) JCC (DELHI) 1578 Kali Ram v. State and decision of the Punjab & Haryana High Court reported as 2015 (2) RCR (Criminal) 613 Allauddin & Ors. v. State of Haryana.

7. Learned Counsel for Parveen Goyal submits that the prosecution has not been able to prove the recovery of four slabs and four copper wire jaali as they have not examined any independent witness to prove the recovery. Further, Parveen Goyal was present in the police station multiple times for interrogation before the recovery which makes it difficult to believe that the person who was visiting the police station would keep the looted articles at his shop to allow the police to have an easy recovery. The seizure memo does not mention the address of the shop which was opened by Parveen CRL.A. 922/2017 & conn. matters Page 12 of 40 Goyal further showing that the police could not prove that the recovered articles were lying at the shop for which Mohd. Ilyas was examined. He further submits that the recovery was made after a delay of about two months from the date of the incident. He further submits that Parveen Goyal was arrested on 14th December 2011 whereas the arrest memo bears the details of DD No.7B recorded on 15th December 2011. Therefore the recovery in pursuance of the disclosure statement dated 14th December 2011 is highly doubtful as the DD No.7B was recorded on 15th December 2011. Cross-examination of PW-21 further reveals that the number put by witness on the sacks containing scrap was not visible on the sack produced in court. He further stated that he could not tell who was the owner of the shop and that the piece of copper scraps shown to him in court were not recovered from any of the appellants. He further submits that the photographs of the case property were shown to all the recovery witnesses that is PW-17, 20 and 21 and common fact emerged from it that is that none of the recovery witnesses stated that the photographs contained the recovered articles from Parveen Goyal or the other appellants. The articles allegedly recovered at the instance of Parveen Goyal have not been identified by the recovery witnesses as having been

recovered from Parveen Goyal. He further submits that the recovered goods were easily available in the market as has been deposed by the employees of the factory in which the robbery/dacoity took place. Furthermore, the alleged shop owner Mohd. Ilyas deposed that Parveen Goyal was doing the work of old AC jallis of copper making it highly possible that the copper slabs allegedly recovered from him were his own property kept in the shop in the usual course of business. The prosecution tried to prove the ownership for the copper slabs by producing CRL.A. 922/2017 & conn. matters Page 13 of 40 the invoice of copper scrap which is proved by Naveen Sharma, owner of the factory. The invoice shows that it was issued by Naveen Impex, having its godown at 45/24, Bawana Road. Prahlad Pur, Delhi-42 whereas the robbery/dacoity also took place at the same address. It creates a doubt qua the ownership of the copper scrap. Thus, the identification of the copper slab itself becomes worthless, more particularly in the absence of TIP of case property and production of an invoice which was apparently a false one. He further submits that no offence under Section

IPC is made out against Parveen Goyal. That on the basis of the alleged recovery coupled with the presumption under Section 114(a) Evidence Act that when a person is found in possession of stolen property, it can be presumed that either the person himself stole the property or that he has received the goods knowing them to be stolen, however the law does not permit a presumption that the accused was aware or had reason to believe that the person who sold the copper slabs to him was a gang member of dacoits. The prosecution has not produced any such evidence to show that Parveen Goyal had any such information to believe the same. For a conviction under Section 411 IPC the prosecution must prove beyond reasonable doubt that the alleged recovered articles were part of the stolen articles. The recovery witnesses did not identify the case property to be the same as the one recovered from Parveen Goyal thus not establishing the identity of the stolen articles. He further submits that Parveen Goyal has no past antecedents and has not misused the bail granted to him during trial. Reliance is placed on the decision of the Supreme Court reported as (2014) 3 SCC421Birju v. State of M.P.

8. Learned APP with respect to Satish submits that Tofi Ram, Dina Nath, Lukmaan and Harender identified Satish in court as one of the persons CRL.A. 922/2017 &

conn. matters Page 14 of 40 who had entered the factory. He further submits that Sunil in his disclosure statement submitted that the vehicle belonged to Satish and was used for committing the robbery. Sunil further stated that Satish left his vehicle with him 2-3 days before he was arrested in the Adarsh Nagar case. The vehicle was found to be registered in the name of Munni Devi, mother in law of Satish which further proves his involvement in the crime.

9. Learned APP with respect to Sunil submits that the disclosure statement of Islam is reliable as it led to the recovery of copper slabs and a vehicle No.HR38L0648 He submits that Sunil has been identified by Dina Nath. He further refutes the submission that in TIP only Lukman identifies Sunil as he had been identified by Tofi Ram as well.

10. Learned APP with respect to Islam submits that he was arrested on 14th November 2011 by SI Ajay Kumar and his disclosure statement was recorded which led to the recovery of copper slabs and a vehicle No.HR38L0648 Furthermore, a pointing out memo was prepared at the instance of Islam pursuant to which two bags of copper slabs and two bags of copper wire bundles were recovered. In the personal search of Islam, one key ring was recovered and not one key. He further submits that minor discrepancies in the investigation conducted by the Investigating Officer cannot be a ground for acquittal. He further states that VAT has been charged on the tax invoice provided by Naveen Sharma therefore it cannot be false and fabricated.

11. Learned APP with respect to Mohd. Zaiki submits that as per the disclosure statement of Islam, vehicle No.HR38L0648 belonged to Mohd. Zaiki. Furthermore, the documents pertaining to the abovementioned vehicle were recovered at the pointing out of Mohd. Zaiki from the ground floor of CRL.A. 922/2017 & conn. matters Page 15 of 40 his house. Mohd. Zaiki has been identified by Dina Nath. He further submits that minor contradictions in the testimonies of the witnesses tend to happen with passage of time. Dina Nath's statement before court was recorded again after a period of four years thus minor contradictions are bound to be there.

12. Learned APP for the State with respect to Rajender submits that the submission that there is no direct evidence against Rajender is incorrect as he has been identified by Dina Nath on 28th February 2013 and 10th April 2017 in court. He further submits that Islam in his disclosure statement admitted that most of the stolen property was taken away by Satish, Sunil and Rajender who in turn sold it and gave him 1,00,000/-. He further submits that recovery of 1 copper slab, 44 sacks of copper wire, two enameled wire roll in four bags and two bags of copper scrap was made at the instance of Rajender pursuant to his disclosure statement. Case of the prosecution is further proved by the testimony of Tofi Ram who stated that the particular kind of copper silli was only made by them in Delhi and no person had purchased the same from them. He further submits that VAT has been charged on the tax invoice provided by Naveen Sharma therefore it cannot be false and fabricated.

13. Learned APP with respect to Raj Kumar submits that the stolen property of the dacoity has been recovered from Raj Kumar. As per Islams disclosure, he sold three bags of the stolen copper jaali to Raj Kumar, whereafter recovery of three slabs and three bags of wire jaali was made at the instance of Raj Kumar. Case of the prosecution has been proved by the police witnesses and by the testimony of Tofi Ram who stated that the particular kind of copper silli was only made by them in Delhi and no CRL.A. 922/2017 & conn. matters Page 16 of 40 person had purchased the same from them.

14. Learned APP for the State with respect to Parveen Goyal submits that Islam in his disclosure statement has stated that he sold 13-14 bags of the stolen copper jaali to Parveen Goyal. ASI Surender Pal in his testimony deposed that Parveen Goyal had led them to a shop in Mustafabad, Delhi and produced four slabs and four bags of copper wire and jaali. Moreover, PW-17 identified Parveen Goyal and also the case property in the photographs. He rebuts the submission of the counsel for Parveen Goyal with respect to the arrest memo bearing details of DD No.7B recorded on 15th December 2011 on the ground that the same is a matter of record and cannot be a ground for acquittal. He further submits that Parveen Goyal has been rightly convicted under Sections 412 IPC as the case property of the dacoity has been recovered from him.

15. Brief facts of the case are that on 16th October 2011 at about 4:15 A.M., information was received from wireless operator regarding theft of copper by 15-16 people near Kali Mata Mandir. Aforesaid information was recorded vide DD No.8A (Ex.PW-4/A) and was assigned to SI Sonu. He alongwith Ct. Amit went to Khasra No.48/24, 45/25, Seema Dhatu Udyog, Village Prahlad Pur where he met the complainant Harinder who informed that 8-9 boys had taken away slabs of two tonne and two and a half tonne scrap by pointing out swords and knives. He recorded the statement of Harinder wherein he stated that he was working as a labour in a factory at Village Prahaladpur, Delhi where scrap of copper was melted. In the intervening night of 15th/16th October 2011 at about 1:30 A.M., he along with eight other labourers of the factory were working in the factory and the three supervisors of the factory were sleeping in the camera room. When he CRL.A. 922/2017 & conn. matters Page 17 of 40 and Lukman were taking the bags of the scrap inside the factory, 3-4 boys jumped on the bundle of scrap from the roof of the factory. Lukman raised an alarm and ran towards the room where there was furnace. The boys threatened him and one of them broke open the small gate of the main factory and 4-5 boys entered the factory from there. They were armed with swords and knives. The boys gathered all the labourers and three supervisors in the hall of the factory and tied their hands and legs with the cloth. They snatched the phones of Tofi Ram, Manoj and Chottu and took the key of the main gate from Tofi Ram. They made them sit with their head down in the hall. After some time, they heard the noise of the lock of the main gate opening and a vehicle entering the factory. The boys loaded the copper slabs and the bags containing the copper scrap in the vehicle and went away after locking the main gate from outside. Tofi Ram went outside the factory and informed the owner about the said incident. On the basis of this statement, exhibited as Ex. PW-9/A, FIR No.340/2011 (Ex.PW-4/B) was registered at PS Shahbad Dairy for offences punishable under Sections 458/3 IPC.

16. Further investigation of the case was handed over to SI Mahender Pratap who along with Ct. Amit went to Seema Dhatu Udyog, Khasra No. and Village Prahaladpur, Bangar where he met SI Sonu Sharma, the complainant and

other labourers and supervisor of the factory. The Crime Team headed by SI Anil Kumar conducted the inspection of the spot and gave the report vide Ex.PW-2/A. He prepared the site plan at the instance of the complainant vide Ex.PW-9/B. He recorded the statement of the owner of the factory and other labourers and added Sections 395/3

IPC during the course of investigation.

17. On 17th October 2011, SI Mahender Pratap got conducted the medical CRL.A. 922/2017 & conn. matters Page 18 of 40 examination of labourers Gopal and Deena Nath who sustained injuries in the incident. On 18th October 2011, further investigation of the case was handed over to SI Arun Kumar. On 12th December 2011, SI Ajay Kumar of Special Staff, North West had called suspect Islam in a case registered at PS Adarsh Nagar regarding a firing incident. Enquiries were made from him for the purpose of knowing the whereabouts of Satish and Sunil.

18. On 14th December 2011, SI Ajay called Islam, Rajender, Parveen Goyal and Raj Kumar to his office for the purpose of knowing the whereabouts of co-accused Sunil and Satish. Islam revealed that Sunil, Satish and their associates were carrying swords and other weapons while committing dacoity at Prahladpur, Shahbad Dairy and Narela. He further informed that some of the robbed articles were lying in his possession while some were in the possession of Rajender. He further informed that he had sold some of the robbed articles to Parveen Goyal and Raj Kumar. SI Ajay inquired from PS Shahbad Dairy with respect to registration of any case and came to know about FIR No.340/2011. Islam, Raj Kumar, Rajender and Parveen Goyal were arrested under Section 41.1 Cr PC vide arrest memos Ex.PW-17/A1, Ex.PW-17/B1, Ex.PW-17/C1 and Ex.PW-17/D1 respectively. Their personal search was done vide personal search memos Ex.PW-17/A2, Ex.PW-17/B2, Ex.PW-17/C2 and Ex.PW-17/D2 respectively. In the personal search of Islam, Raj Kumar, Rajender and Parveen Goyal, key rings with keys were recovered. Their disclosure statements were recorded vide Ex.PW-17/A3, Ex.PW-17/B3, Ex.PW-17/C3 and Ex.PW-17/D3 respectively.

19. Thereafter SI Ajay alongwith HC Surender Pal, Ct. Ravi Rana, HC Vinod Kumar, Ct. Bijender, HC Dharambir, Ct. Gajender and the appellants CRL.A.

922/2017 & conn. matters Page 19 of 40 Islam, Raj Kumar, Rajender and Parveen Goyal went to Shardanand Colony to Rajenders godown from where they recovered one slab of copper, 44 sacks of copper wire, two enamelled wire rolls in four bags and two bags of copper scraps. They were taken into possession vide seizure memo Ex.PW- 20/A under Section 102 Cr PC.

20. Thereafter, Islam led them to Shah Alam Bandh, Jahangirpuri and pointed out to one vehicle bearing number HR-38-L-0648 which belonged to his friend Mohd. Zaiki who was also involved in the dacoity. The vehicle was taken into possession vide seizure memo Ex.PW-17/A4. Two copper slabs and two bags of copper wire were recovered from Islams Jhuggi at his instance. They were seized vide seizure memo Ex.PW-17/A5 under Section 102 Cr PC.

21. Appellant Raj Kumar led them to godown No.D-18, Mahendra Park, Near Jahangirpuri and produced about three copper slabs and four bags of copper wire jaali which were taken into possession vide seizure memo Ex.PW-21/B.

22. When the team led by SI Ajay Kumar returned to PS Mourya Enclave, one public person was present who was claimed to be the owner of the factory where the dacoity was committed. He requested for handing over of the case property but was informed to contact the Investigating Officer at PS Shahbad Dairy and make a request before the court for release of the case property. The case property was deposited with MHC(M) Mourya Enclave.

23. On 15th December 2011 SI Anuj Nautiyal of the Crime Branch, Special Team received the file of the FIR No.340/2011 from the reader of ACP for further investigation. On 17th December 2011 he along with HC CRL.A. 922/2017 & conn. matters Page 20 of 40 Lakhwinder went to Rohini court complex in Court Room No.104 where appellants Raj Kumar and Parveen Goyal were produced. He moved an application for interrogation and arrest of appellants which was allowed by the Ld.MM. Appellants Parveen Goyal and Raj Kumar were interrogated and arrested vide arrest memo Ex.PW-15/A and Ex.PW-15/B respectively. He recorded their disclosure statements vide Ex.PW-15/C and Ex.PW-15/D respectively. Thereafter he moved an application for production of appellants Islam and Rajender pursuant to which Islam and Rajender were produced alongwith

Parveen Goyal and Raj Kumar on 21st December 2011. He moved an application for their interrogation and arrest which was allowed by the Ld.MM. Appellants Rajender and Islam were arrested vide arrest memo Ex.PW-15/E and Ex.PW-15/F respectively and their disclosure statements were recorded vide Ex.PW-15/G and Ex.PW-15/H respectively. Raj Kumar was sent to Judicial custody and Islam, Rajinder and Parveen were taken on Police custody remand. Islam and Rajender pointed out the place of occurrence that is Khasra No.45/24, Prahlad Pur Bangar, Delhi vide pointing out memo Ex.PW-15/J.

24. On 28th December 2011, SI Anuj Nautiyal along with HC Lakhwinder went to the court of Ld. MM, Rohini where appellant Sunil was present in muffled face. He moved an application for interrogation and arrest of the Sunil which was allowed by the Ld.MM. Sunil was interrogated and arrested vide arrest memo Ex.PW-15/K and his disclosure statement was recorded vide Ex.PW-15/L.

25. On 3rd January 2012, SI Anuj Nautiyal went to Tihar Jail No.3 where he met Lukmaan, Manoj and Dina Nath who were sent inside jail premises for participating in TIP proceedings of Sunil. TIP of Sunil was conducted by CRL.A. 922/2017 & conn. matters Page 21 of 40 Sh. Bhupender Kumar, learned Metropolitan Magistrate (PW13) vide Ex.PW8/A in which witness Lukman correctly identified Sunil, however, Dina Nath and Manoj failed to identify Sunil.

26. On 5th January 2012, SI Anuj Nautiyal along with HC Lakhwinder and Ct. Rajesh went to Rohini Court where he moved an application for PC remand of appellant Sunil. He pointed out the place of robbery vide pointing out memo Ex.PW-15/U. He led them to bye-pass near Sanjay Gandhi Transport Nagar, service road where they seized one TATA Ace No.DL-1- LP-5304 vide seizure memo Ex.PW-15/M. The case property was deposited with MHC(M) of PS Crime Branch.

27. On 10th January 2012, HC Lakhwinder on the direction of SI Anuj Nautiyal collected the case property from MHC(M), PS Maurya Enclave and deposited the same with MHC(M), PS Crime Branch vide RC No.6/21/12.

28. On 12th January 2012, he recorded the statement of Mohd. Ilyas, landlord of the shop of Parveen Goyal, Tara Chand, land lord of shop of Raj Kumar and Gurbux Singh, landlord of shop of Rajender.

29. On 19th January 2012, SI Anuj Nautiyal along with HC Lakhwinder went to Rohini Court where he moved an application for interrogation and arrest of appellant Mohd. Zaiki which was allowed by the Ld. MM. Mohd. Zaiki was interrogated and arrested vide arrest memo Ex.PW-15/N and his disclosure statement was recorded vide Ex.PW-15/O. He led the police to the ground floor of his house and produced three documents that is challan, Insurance document and Form 47 of the vehicle No.HR-38-L-0648 which were seized vide seizure memo Ex.PW-15/P.

30. On 27th January, 2012, SI Anuj Nautiyal alongwith HC Lakhwinder went to Rohini Court where he moved an application for interrogation and CRL.A. 922/2017 & conn. matters Page 22 of 40 arrest of appellant Satish which was allowed by the Ld. MM. Satish was interrogated and arrested vide arrest memo Ex.PW-15/R and his disclosure statement was recorded vide Ex.PW15/S.

31. On 27th January, 2012 itself, SI Anuj Nautiyal filed an application for fixing a date for judicial TIP of Satish vide Ex.PW14/A which was allowed and TIP was fixed for 28th January, 2012. Satish after the arrest was remanded to judicial custody. On 28th January, 2012, Sh. Manish Khurana, learned M.M. (PW14) conducted TIP, wherein witnesses Lukman and Manoj participated. In the said proceedings, though Lukman failed to identify Satish, however, Manoj correctly identified Satish.

32. After the completion of investigation charge sheet was filed. Charge was framed against Sunil and Satish for offences punishable under Sections 395/397/120B IPC, against Mohd. Zaiki for offences punishable under Sections 395/120B IPC, against Parveen Goyal and Raj Kumar for offence punishable under Sections 412 IPC and against Rajender and Islam for offences punishable under Sections IPC.

33. Tofi Ram (PW-1), Supervisor of the factory in his testimony stated that at the factory they used to prepare bricks from copper scrap. On the intervening night of 15th-16th October 2011 he was working in the factory as a supervisor. There were 8-10 other workers in the factory whose names were Harender, Chotu, Gopal, Manoj, Lukman, Rehman, Gulzar and Mahesh. At about 12:30 A.M., while the workers were working in the factory in another room and he was in his room, he came out on hearing a loud noise and saw that 5-7 unknown persons had held the labourers on point of knives and swords. They tied the hands of labourers including his and put them in the godown of the factory. Thereafter they looted the goods CRL.A. 922/2017 & conn. matters Page 23 of 40 that is copper scrap, copper sillis and other copper goods and went away. He could hear voices which indicated that they were loading goods in a vehicle. The robbers had taken the keys of the gate from him after threatening him and might have got the vehicle inside the factory. Later on when the stock was checked, 4-4.5 tonnes of copper articles was found missing. They freed themselves by crawling towards each other and untying the rope by which their hands were tied. The robbers took away their mobile phones too. After freeing himself he made a call to his employer from the nearby tea stall and informed him about the incident. His employer Naveen came to the factory with his brother Sachin. The police met them in the morning at about 4:00A.M.-4:30 A.M. and made enquiry from them. He identified appellants Satish and Sunil as the persons who had looted the factory. He identified the case property in photographs Mark PX1 to PX3. In his cross-examination he stated that the bricks/slabs stolen were of particular type which were made only by them in Delhi and no other person had purchased the copper scrap. He further stated that he had never been called to the police station in connection with the present case.

34. Naveen Sharma (PW-7), owner of the factory stated that he had been running a factory of manufacturing copper/brass sillies, in the name and style of Seema Dhatu Udyog, situated at Khasra No.

and 45/25, Prahlad Pur, Bangar, Delhi. On 15th October 2011, he left his factory at about 9:00 P.M. and in the night at about 4:00 A.M.-. 4:30 A.M. he received a phone call from his supervisor Tofi Ram Meena that 8-9 persons had trespassed into the factory and tied the workers by pointing knife and swords towards them and have robbed 14-15 copper sillis weighing two tonnes and copper scrap

weighing 2.10 tonnes. He also informed him that he had CRL.A. 922/2017 & conn. matters Page 24 of 40 already made a call at 100 number. He rushed to the factory and found PCR officials present inside the factory. In his presence, police officials from PS Shahbad Dairy also reached his factory and conducted the investigation and got registered the FIR. During the investigation, the Investigating Officer recorded his statement wherein he informed the Investigating Officer that the goods were worth 20,00,000/-. During the course of investigation, he also handed over one invoice of copper scrap to the Investigating Officer which was seized by him. Later he received information that the offenders had been apprehended by Special Staff (North-West) and copper sillis and copper scrap had been recovered by them. He went to the office of Special Staff at Pitampura where he saw and identified ten copper sillis and copper scrap and informed the Investigating Officer of the present case. Thereafter he moved an application for release of the case property in his favour and the same was released in his favour vide order dated 2nd May 2012. A Panchnama and Indemnity Bond were prepared in this regard vide Ex.PW- 7/C and Ex.PW-7/D. He identified the samples of the case property produced by the MHC(M) in court. In his cross-examination he stated that he did not put any identification mark on the manufactured copper sillis. There was also no identification mark on the imported copper scrap. He further stated that he had not identified the case property in judicial TIP.

35. Harender (PW-9), labourer deposed in sync with his testimony made before the police. He identified appellants Sunil and Satish present in court as the persons who entered the factory on that night and tied them.

36. Lukmaan (PW-8), labourer corroborated the testimony of Harender (PW-9) and Tofi Ram (PW-1).

37. Dina Nath @ Chhotu, labourer was examined in court as PW-3 on CRL.A. 922/2017 & conn. matters Page 25 of 40 28th February 2013 and as PW-6 on 28th February 2015 and 10th April, 2017.

38. Gurbux Singh (PW-10), owner of godown at Swami Shardanand Park, Bhalaswa Dairy stated that there were shops and godowns constructed over the said plot. He had let out the shops and godown to the tenants and one godown to

one kabari whose name he did not remember. After going through the rent agreement dated 3rd October 2010 witness stated that the godown with one room was given on rent to one Tikam Singh son of Nathu Singh at a monthly rent of 5000/- 39. Tara Singh (PW-11) in his testimony stated that he owned shop No.D-18, Gali No.37, Mahendra Park, Delhi which he let out to Raj Kumar on rent who was working as a scrap dealer/kabari in the shop. They did not enter into any rent agreement. At that time the rate of rent was 2000/- per month. In his cross-examination he stated that his house was situated about 1 k.m. away from the shop but he had never heard anything about the appellant dealing in stolen goods.

40. ASI Madan Lal (PW-12) deposed that on 15th December 2011 he was posted at PS Mourya Enclave as MHC(M) and on that day SI Ajay Kumar deposited copper slabs, wire and scrap in unsealed condition. He accordingly made entries in register no.19 at serial no.12

vide Ex.PW- 12/A. On 10th January 2012 he handed over the case property to HC Lakhwinder of PS Crime branch vide RC No.6/

(Ex.PW-12/B) and made entry in register No.19 at point X in Ex.PW-12/A. In his cross- examination he stated that the road certificate does not bear the time or mode of dispatch to PS Shahbad Dairy.

41. Sunil Kumar and Satish in their statements recorded under Section 313 Cr.P.C. stated that they were already in custody in FIR No.326/2011 CRL.A. 922/2017 & conn. matters Page 26 of 40 registered at PS Adarsh Nagar and have been acquitted in that FIR. At the time when they were in Tihar Jail, the production warrant of the present case was received and they got to know about the present FIR. No recovery was made from them. After their arrest in the present FIR, SI Anuj Nautiyal showed their faces to the witnesses at PS Adarsh Nagar and since they were not able to satisfy the demand of the Investigating Officer they were falsely implicated in the present case.

42. Mohd. Zaiki and Islam in their statement recorded under Section 313 Cr.P.C. stated that they were innocent and were falsely implicated in the present case.

43. Raj Kumar in his statement recorded under Section 313 Cr.P.C. stated that he was picked up by special staff from his shop prior to 14th December 2011 and was

kept in the basement of office of special staff and later on was falsely implicated in the present case.

44. Parveen Goyal and Rajender in their statements recorded under Section 313 Cr.P.C. stated that they were picked up by special staff from their house prior to 14th December 2011 and were kept in the basement of office of special staff and later on was falsely implicated in the present case. Parveen Goyal also stated that he was not in possession of any shop in Gali No.2, Mustafabad, Delhi on 14th December 2011 and he had vacated the same in January 2011. He did not produce any copper slab or bags of copper wire. He further stated that the Investigating Officer had taken his signatures on blank papers.

45. Some of the general contentions addressed by learned counsels for the appellants are that Section 395 IPC is not made out as there were less than five persons involved and arrested, no proof of identification of the case CRL.A. 922/2017 & conn. matters Page 27 of 40 property has been given by the owner of the factory or its workers, the case property has not been properly identified in the Court and though arrested on 14th December, 2011, the arrest memos of Islam, Rajinder, Raj Kumar and Parveen Goyal mentions DD No.7B of 15th December, 2011. As noted above, consistent testimonies of the witnesses namely Harinder, Lukman, Dina Nath and Tofi Ram who were present at the spot were that 5-7 unknown persons who were armed with the weapons entered the factory from the roof and tied and wrongfully confined the workers and supervisors of the factory in one room with heads down whereafter they opened the gate and few more persons entered the factory. Though out of these accused persons, only 5 who were present at the spot could be arrested, however from the testimonies of the prosecution witnesses it is clear that there were more than 8-10 persons including ones, who joined later on when the gate of the factory was open. Further, 5 accused namely Satish, Sunil, Islam, Zaiki and Rajinder who participated were arrested. In view of 5 and more people being involved in the offence, even though all of them were not arrested and tried, the offence of dacoity as punishable under Section 395 IPC is clearly made out.

46. As regards the ownership and identification of the case property is concerned, no doubt, no test identification of the property was done, however, witness Naveen Sharma, the owner of the factory immediately after the incident gave the invoice showing the purchase. Even if the invoice belonged between the two companies which have the same address, the ownership therein cannot be disputed. Further, soon after the recovery Naveen Sharma had reached P.S. Mourya Enclave where the case property was deposited on 14th November, 2011 and had identified the same thereby, CRL.A. 922/2017 & conn. matters Page 28 of 40 there being no necessity for conducting of TIP of the case property. As regards identification before the Court is concerned, it may be noted that vide order dated 2nd May, 2012, on an application by Naveen Sharma, the case property was released to him keeping a sample thereof and the photographs of the case property. Hence, on the basis of photographs, the case property was identified during the trial. Vide order dated 2nd May, 2012, when the goods were released on superdari to Naveen Sharma, learned Trial Court noted that none of the accused claimed ownership regarding the copper scraps and copper slabs and had no objection on the same being released. The photographs of articles taken were kept on record and given to the counsels for the accused as well and the case property was identified through the photographs. Hence, the objections taken to the exhibition of the case property through the photographs now deserves to be rejected.

47. As regards test identification of the accused is concerned, as noted above in the evidence of the witnesses, since Islam and Rajinder who were allegedly the accused at the spot were being called for investigation by SI Ajay Kumar in regard to a firing incident registered at Police Station Adarsh Nagar, wherein, they disclosed about their involvement in this case, the accused having been present in the police station earlier, the conducting of the TIP having been dispensed with by the investigating officer cannot amount to an illegality warranting acquittal of the accused.

48. Accused Satish and Sunil were directly arrested in this case when in custody in other FIR and thus, on their production before the learned Metropolitan Magistrate on the same day, SI Anuj Nautiyal, the Investigating Officer of the Crime Branch who arrested them, applied for their Test Identification Parade which

was got conducted. Contention of the CRL.A. 922/2017 & conn. matters Page 29 of 40 learned counsel that SI Anuj Nautiyal met the witnesses Lukman, Dina Nath and Manoj before TIP was conducted, would not affect the sanctity of the Test Identification Parade because the accused were in judicial custody and even though, the Investigating Officer met the witnesses to tell them the procedure, there was no way, he could have got identified the accused by the witnesses prior to the TIP being conducted.

49. As regards non seizure of the lock and the key, it may be noted that the case of the prosecution itself is that more than 5-6 accused jumped into the factory from the roof whereafter, they tied down the labourers and supervisors and took the key of the main gate from the supervisor whereafter, they opened the main gate and other accused entered the premises and the copper slabs and scraps were loaded in the vehicles which fact the witnesses deposed as they could hear the sound of the vehicles though none of them saw the vehicle in which the goods were loaded. Thus the locks not being broken open there was no requirement of the lock and key of the factory to be seized.

50. Appellants Islam, Rajinder, Raj Kumar and Parveen Goyal have challenged the authenticity of their arrest memos for the reason though it is the case of prosecution that they were arrested in the evening of 14th December, 2011 at around 5 pm, however, their arrest memos notes DD No.7B dated 15th December, 2011. In this regard, it would be noted that initially, Islam, Rajinder, Raj Kumar and Parveen Goyal were not arrested by the local police which was investigating the FIR No.340/2011 but by SI Ajay Kumar of Special Staff, North West District, who was working on a case relating to firing being FIR No.326/2011 dated 3rd December, 2011 under Sections 307/452/3

IPC and Section 25 and 27 of the Arms Act, CRL.A. 922/2017 & conn. matters Page 30 of 40 registered at P.S. Adarsh Nagar wherein, Satish and Sunil were suspected. To trace Sunil and Satish, enquiries were conducted from Islam and subsequently from Rajinder, Raj Kumar and Parveen Goyal, which led to disclosure of the involvement of Sunil, Satish, Rajinder, Islam and Mohd. Zaiki in FIR No.340/2011 and hence, SI Ajay Kumar arrested Islam, Rajinder, Parveen and Raj Kumar under Section 41.1 Cr PC and made recoveries under Section 102

Cr PC. On conclusion of the proceedings, Kallandara vide DD No.7B on 15th December, 2011 was prepared, which was noted in the four arrest memos for completion of record as is evident from the perusal of record. It may be noted that no such question has been asked to the witness SI Ajay Kumar, who appeared as PW21 in cross examination.

51. As regards the appellants Sunil and Satish are concerned, witness Lukman in his testimony before the Court, has clearly identified Sunil Kumar and Satish as the two accused who took him and co-worker Harinder inside the factory and tied both of them. He further stated that both Sunil Kumar and Satish were armed with deadly weapons i.e. a big knife and sword and they threatened him and the co-worker Harinder. No doubt, Lukman in the Test Identification Parade conducted identified Sunil Kumar but not Satish, however, coupled with the depositions of Tofi Ram, Dina Nath and Harinder who have also identified Sunil and Satish as the two who had jumped into the factory with other accused and were armed, there is sufficient evidence on record to prove the commission of offences punishable under Section 397 and 395 IPC by Sunil and Satish.

52. At the instance of Sunil Kumar, one vehicle i.e. Tata Ace DL1LP5304 was recovered for which a seizure memo dated 6th January, 2012 was CRL.A. 922/2017 & conn. matters Page 31 of 40 prepared and exhibited as Ex.PW15/M and he informed that the said vehicle belonged to the co-accused Satish. However, despite the recovery pursuant to the disclosure having been proved, the prosecution has failed to prove that the said vehicle is connected with the offence committed as neither of the witnesses gave the number of the vehicle in which the robbed articles were taken nor did they identify the said vehicle to be used in the commission of the offence nor was the robbed property recovered from the said Tata vehicle. Be that as it may, testimony of Lukman, coupled with the testimonies of Tofi Ram, Dina Nath and Harinder who identified Sunil Kumar and Satish as the two accused who on the said date, were armed with big knife and sword and tied them, it can be safely held that the prosecution has proved the commission of offences punishable under Sections 395 and 397 IPC against Satish and Sunil Kumar beyond reasonable doubt.

53. As regards appellant Islam is concerned, case of the prosecution is that on receipt of an information, he was called to join investigation on 12th December, 2011 by SI Ajay Kumar of Special Staff whereafter, on 14th December, 2011, he came along with the Rajinder and Parveen Goyal. Pursuant to the information received from Islam, he led the police party to Shah Alam Bandh, Jahangirpuri and pointed out one vehicle bearing Number HR38L0648(Camel colour) and revealed that the said vehicle belonged to Zaiki, who was also involved in the dacaoity. At the instance of Islam, from his jhuggi H4/D-232 Jahangirpuri, two copper slabs weighing 105.8 Kgs. and 117 Kgs. and two bags of copper wire bundles weighing 41.4 Kgs. and 19 Kgs. were also recovered. Since Islam had already been called to the police station for joining the investigation in another case, in such a situation, conducting the Test Identification Parade would have been CRL.A. 922/2017 & conn. matters Page 32 of 40 a futility. Before Court, Islam was identified by Dina Nath when he appeared as PW3. However, when he appeared as PW6 on 28th February, 2015 and 10th April, 2017, Dina Nath failed to identify Islam. Claim of Islam in his statement under Section 313 Cr PC was that he was falsely implicated, however, he has not rendered any plausible explanation with regard to recovery of two heavy copper slabs and two bags of copper wire bundles except saying that no recovery was made from his possession. From the identification of Dina Nath as also the recoveries of the copper slabs and copper wire bags which were duly identified by Naveen Sharma, the owner of the factory, this Court finds that the prosecution has proved its case against Islam for the commission of the offence punishable under Section 395 IPC beyond reasonable doubt.

54. As regards Mohd. Zaiki, he surrendered before the Court on 19th January, 2012, whereafter he was formally arrested. Since he had surrendered before the Court, no formal application of the Test Identification Parade was moved and he was identified by Dina Nath when he appeared as PW3. Pursuant to his disclosure statement, documents relating to vehicle bearing No.HR38L0648were recovered lying under the bed in his house. However, no recovery of the robbed article was made from the said vehicle nor was it identified by any of the witness as a vehicle used in robbery. Hence, the recovery of these three documents i.e. Challan, Insurance Documents and Form No.47 relating to vehicle bearing

No.HR38L0648is meaningless.

55. Contentions of learned counsel for Islam and Zaiki that Dina Nath did not identify them when he appeared as PW6, deserves to be rejected for the reason that initially, Dina Nath appeared as PW3 when he identified both the CRL.A. 922/2017 & conn. matters Page 33 of 40 accused, however, Dina Nath was recalled as a witness wherein during his examination on 28th February, 2015 and 10th April, 2017, he again identified Zaiki but not Islam. Even if Dina Nath failed to identify Islam subsequently, he correctly identified him in the Court when he was examined in the Court initially on 28th February, 2013, which was quite proximate to the date of incident being just over one year. Merely because the other eye witnesses namely Tofi Ram, Lukman and Harinder did not identify Islam and Zaiki, the same does not absolve Islam and Zaiki of their offence for the reason that when there are number of offenders and number of victims, attention of each witness/victim would not be towards each of the accused as each victim would be cornered by one or two accused only.

56. Further, learned counsel for Islam and Zaiki has vehemently contended that there were no distinctive marks on the articles which fact deserves to be rejected for the reason that Naveen Sharma deposed that the kind of copper slabs and the wires which were manufactured in his factory were not being manufactured by any other person or entity in Delhi. This version of Naveen Sharma is duly supported by Tofi Ram. Hence, this Court finds no error in the conviction of Islam and Zaiki for the offence punishable under Section 395 IPC.

57. As regards accused Rajinder is concerned, he has been duly identified by Dina Nath when he appeared as PW3 and again on 10th April, 2017, when he appeared for the second time as PW6. Pursuant to the disclosure statement of Rajinder, one copper slab and 43 sacks of copper wire (weighing 37.8 Kgs., 38.5 Kgs., 60.8 Kgs., 63.2 Kgs., 39.5 kgs., 60.2 Kgs., 73.3 kgs., 34.2 kgs., 37.6 Kgs., 73.8 Kgs., 42.8 kgs., 57.8 Kgs., 33.2 Kgs., 36.2 Kgs., 106.9 Kgs., 47.2 Kgs., 68 Kgs., 50.5 Kgs., 59.3 Kgs., 45.1 Kgs., CRL.A. 922/2017 & conn. matters Page 34 of 40 68.8 Kgs., 48.8 Kgs., 42.6 Kgs., 55.2 Kgs., 41.9 Kgs., 30.3 Kgs., 42.2 Kgs., 67.9 Kgs., 47.6 Kgs., 39.3 Kgs., 95 Kgs., 46.2 Kgs., 39.4 Kgs., 37.4 Kgs., 44.3

Kgs., 44 Kgs., 29 Kgs., 73.7 kgs., 33.7 Kgs., 21 Kgs., 15.9 Kgs., 37.4 Kgs., 41.5 kgs.,) were recovered besides two bags of scrap wire, four bags of enamelled wire rolls. The recovery at the instance of Rajinder is huge and same is from his warehouse. Case of Rajinder in his statement under Section 313 Cr PC is that no recovery was made at his instance. He had not led the police to Shradanand Colony from where recoveries were made. However, evidence of SI Ajay Kumar (PW-21), ASI Surender Pal (PW17) and HC Ravi Rana (PW20) coupled with the seizure memo prepared prove the recovery at the instance of Rajinder. Case of Rajinder in his statement under Section 313 Cr PC is also that he was picked up from his house on 14th December, 2011 and falsely implicated. However, no evidence of illegal arrest has been proved by Rajinder in his defence. Contention of learned counsel for the appellant Rajinder that Tofi Ram, Lukman and Harinder specifically stated that Rajinder was not present at the spot, deserves to be rejected for the reason, these witnesses merely did not identify him to be present at the spot. As already noted when there are number of assailants and number of victims, it is not necessary that each of the victim will be in a position to notice all the accused. This fact has also been clarified by Lukman in his testimony, who stated that he could not identify the remaining accused for the reason that the occurrence took place 5-6 years ago. Even Tofi Ram stated that he had not counted the numbers. The two testimonies clearly show that they are fair and natural and there are no improvements. Learned counsel for the appellant Rajinder claimed that Gurbax Singh who appeared in the witness box as PW10 stated that the CRL.A. 922/2017 & conn. matters Page 35 of 40 warehouse from where the alleged recovery was made had been let out to Tikam Singh and thus, Rajinder was not tenant in the premises and hence, he has nothing to do with the warehouse from where the alleged recovery has been claimed by the prosecution. Gurbax Singh who appeared in the witness box deposed that he had many shops and godowns constructed over the plot at Shradanand Colony, Bhalswa Dairy and had let out those shops and godowns and one of the godowns was let out to a Kabari whose name, he did not number but it could be Rajinder. After going through the rent agreement, he stated that it had been let out to Sh. Tikam Singh. During the cross examination, it was revealed that Tikam Singh is the brother of Rajinder Singh. Considering the evidence of Dina Nath who identified Rajinder

while appearing as PW3 and later as PW6 on 10th April, 2017 and the amount of recovery as noted above, prosecution has proved its case beyond reasonable doubt against Rajender for having committed offence punishable under Section 395 IPC. Hence, his conviction for offence punishable under Section 395 IPC is upheld.

58. Learned counsel for the appellant Raj Kumar has challenged the alleged recovery on the ground that no independent witness was present at the time of alleged recovery. However, SI Ajay Kumar and ASI Brijender Singh (PW22) have clearly deposed about the recoveries made from the shop of Raj Kumar. The non-association of public persons is clarified by ASI Brijender who stated that they reached the shop of Raj Kumar at 11.45 pm when no public person was available. Further, the contradiction as to whether they reached the shop at 11.45 pm or 1.30 am is not material.

59. The recoveries effected from Shop No.D18, Gali No.37, Mahender Park, Delhi is of three copper slabs weighing 104.6 Kgs., 112 Kgs and 104.4 CRL.A. 922/2017 & conn. matters Page 36 of 40 Kgs. and copper scrap weighing 45.4 Kgs., 42.7 Kgs. and 50 Kgs. which is a big quantity. Tara Chand (PW11), the owner of shop No.D-18, Gali No.37, Mahender Park, Delhi appeared in the witness box and stated that he had let out the shop to Raj Kumar on rent and that he was a scrap dealer. As noted above, Naveen Sharma stated that the copper slabs and the copper scraps though made in other factories as well but no other person was making such kind of copper slabs/bricks, thus they were distinctive.

60. At the instance of Parveen Goyal from House No.139, Gali No.2, Purana Mustafabad, Delhi, four copper slabs weighing 114.4 Kgs., 114.1 Kgs., 113.4 Kgs. and 110.4 Kgs. and four bags of copper scrap weighing 42.9 Kgs., 48.9 Kgs., 39.4 Kgs. and 43.6 Kgs. were recovered. Mohd. Ilyas (PW16) appeared in the witness box and deposed that he had given ground floor hall of his house No.139, Gali No.2, Purana Mustafabad, Delhi on rent for a period of two months to Parveen Goyal and that Parveen Goyal was doing the work of A.C. Jaalis of Copper. Contention of the learned counsel for the petitioner that the robbed articles / alleged recovery from Parveen Goyal had not been identified, deserves to be

rejected for the reason, as noted above, vide order dated 2nd May, 2012, the case property was released to Naveen Sharma on his application moved before the learned Metropolitan Magistrate, which order clearly noted that none of the accused claimed ownership in the property recovered and that they had no objection if the property is released on superdari to Naveen Sharma. For the purposes of identification with the consent of the counsels for the accused, photographs of the recovered property was taken which was collectively exhibited as Ex.P2 by SI Ajay Kumar, who appeared in the witness box and identified the recovered property. Merely because Parveen Goyal was CRL.A. 922/2017 & conn. matters Page 37 of 40 called multiple times for interrogation, does not lead to an inference that no recovery was effected at his instance. From the evidence of Mohd. Ilyas and SI Ajay Kumar, the recovery from Parveen Goyal of the robbed article has been proved beyond reasonable doubt.

61. Appellants Raj Kumar and Parveen Goyal have been convicted for the offence punishable under Section 412 IPC. Section 412 IPC provides as under: in 412. Dishonestly receiving property stolen the commission of a dacoity.-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.

62. Thus, one of the necessary ingredients to prove commission of offence punishable under Section 412 IPC is while receiving the robbed property, the accused should have knowledge that it had been robbed pursuant to a dacoity. The issue before this Court, is whether Raj Kumar and Parveen Goyal were aware that the stolen property purchased by them was pursuant to the commission of dacoity. No such evidence has been led by the prosecution except the disclosure statement of the co-accused. Raj Kumar and Parveen Goyal in their statements have given no explanation from whom they bought the material and also did not produce any invoices of purchase. Thus though a presumption can be raised that

Raj Kumar and Praveen Goyal knowingly purchased stolen copper slabs and scrap however CRL.A. 922/2017 & conn. matters Page 38 of 40 there is no material on record to prove that they had the knowledge that the robbed articles were pursuant to a dacoity committed. Hence, the conviction of Raj Kumar and Parveen Goyal is liable to be converted from offence punishable under Section 412 IPC to one for offence punishable under Section 411 IPC. Ordered accordingly.

63. As regards the order on sentence, in view of the fact that the offence proved to have been committed by Raj Kumar and Parveen Goyal is one punishable under Section 411 IPC, for which, sentence which may extend to three years imprisonment or fine or both can be awarded, sentence of Raj Kumar and Parveen Goyal, who have undergone imprisonment of nearly 2 years and 6 months, is reduced to the period already undergone.

64. Sentence of Satish and Sunil Kumar for the offence punishable under Section 397 IPC is maintained i.e. rigorous imprisonment for a period of 7 years with fine of 5000/-. However, in default of payment of fine, sentence is modified and they are directed to undergo sentence of simple imprisonment for a period of one month in default of payment of fine.

65. Appellants Satish, Sunil Kumar, Islam, Zaiki and Rajinder have been convicted for the offence punishable under Section 395 IPC and awarded sentence of rigorous imprisonment for a period of 14 years and to pay fine of 5000/- each and in default, to undergo simple imprisonment for a period of one year. The sentence awarded is excessive and needs modification. The sentence of appellants Satish, Sunil Kumar, Islam, Zaiki and Rajinder for offence punishable under Section 395 IPC is reduced to rigorous imprisonment for a period of 6 years and to pay a fine of 5000/- each, in default, to undergo simple imprisonment for a period of one month each. Sentences of Satish and Sunil are directed to run concurrently. CRL.A. 922/2017 & conn. matters Page 39 of 40 66. Appeals are accordingly disposed of. Appellants Raj Kumar and Parveen Goyal are directed to be released forthwith if not required in any other case.

67. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record and intimation to appellants.

68. TCR be returned. JULY04 2019 Vj/akb (MUKTA GUPTA) JUDGE CRL.A. 922/2017 & conn. matters Page 40 of 40

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