

Ravi Magor Vs. State

Ravi Magor Vs. State

SooperKanoon Citation : sooperkanoon.com/876189

Court : Kolkata

Decided On : Feb-28-1997

Reported in : 1997CriLJ2886

Judge : N.K. Batabyal and ;Nure Alam Chowdhury, JJ.

Acts : Indian Penal Code, 1860 - Sections 392 and 397; ;[Arms Act, 1959](#) - Sections 25(1) and 27; ;Code of Criminal Procedure (CrPC) - Section 164; ;Evidence Act - Section 114

Appeal No. : Criminal Revn. No. 24 of 1994

Appellant : Ravi Magor

Respondent : State

Advocate for Def. : Usuf Ali Dewan, Adv.

Advocate for Pet/Ap. : S. Maitra, Addl. Public Prosecutor

Disposition : Appeal dismissed

Judgement :

Nure Alam Chowdhury, J.

1. This appeal by accused-appellant Ravi Magor (alias-Rabi Bahadur, alias -- Rabi Bahadur Magor) is directed against the judgment and order of conviction and

sentence dt. 13-10-93 passed by the 14. Addl. Sessions Judge, 14th Court, Alipore, South 24 pgs., in Sessions Trial Nos. 5(7) of 1992, convicting the appellant for an offence under Section.392/397 1 .P.C. and sentencing him to suffer R. 1. for eight years and to pay a fine of Rs. 2,000/- i.d., to suffer R.I. for a further period of 4 months and also convicting him for an offence under Section 25(1)(a) of the Arms Act and sentencing him to suffer R.I. for two years and to pay a fine of Rs. 1,000/- i.d., to suffer R.I. for a further period of 2 months, both the substantive sentences of imprisonment to run concurrently.

2. In the Trial Court, the present appellant and two others were charged for an offence under Section 392 read with Section. 397 of the IPC. An additional charge for an offence under Section 25(1)(a) read with Sec. 27 of the Arms Act was framed against the present appellant. The accused-persons pleaded not guilty to the charge and claimed to be tried. All the accused persons were found guilty of the offence under Section 392/397 IPC and the accused-appellant was further found guilty of the offence under Section 25(1)(a) read with Section.27 of the Arms Act. They were sentenced to suffer substantive imprisonment and to pay fine as stated above. Of them, only Ravi Magor-alias Rabi Roy Bahadur has preferred this appeal.

3. The prosecution case, in short, is that on 30-4-91, at about mid-day, the accused-persons of the case, rang the door-bell of the first floor flat, of the defacto-complainant at 7, Sarat Chatterjee Avenue, Calcutta and when the maid-servant (PW-4) opened the door, they managed to enter the Flat and tied the hands and feet of the two inmates (the de facto-complainant and (he maidservant) gagged the mouth of the maid, snatched away the gold-ornament from their body, opened the almirahs with the bunch of keys forcibly, took and looted cash amounting to Rs. 25,000/-, a large number of gold and silver ornaments, some studded with diamonds, wrist-watches, T.V., V.C.R. etc. worth about 6 lakhs and put the Articles in suitcases and gunny-bags and decamped with the booty. They were armed with deadly-weapons like Pistol, Kataries etc. at the time of committing the offence. The husband of the de facto-complainant was at Madras at that time and her son was not in the flat then.

4. That day, the Custom-Authorities on a raid apprehended the Accused-person from Hotel-Mayur on Dharmatala St., Calcutta and were taken to the Custom House where inventory list was prepared in presence of witnesses and Police. The booties of robbery were recovered from them. One unlicensed country-made pistol was recovered from accused-Ravi Magor. All the articles recovered were seized by Police under seizure-lists. After investigation, Charge-sheet was submitted against the accused-persons. Charge as stated above was framed against the accused-persons.

5. The accused-persons pleaded not guilty to the charges.

6. The defence case as appears from the trend of cross-examination and the examination of the accused u/s. 313 Cr. P.C. is that the accused -- persons have been falsely implicated in this case, by the Customs-Authority in connivance with the de facto-complainant who is a very influential person. The case of the appellant is that he was arrested from Lord Sinha Road and was taken to Lalbazar, where his L.T.I, was taken. The further-defence stand is that one Chandra Sekhar and his brother Hari used to smuggle-goods from Nepal being financed by the family of the de facto - complainant and they used to stay at Hotel-Mayur in Calcutta. The de facto complainant's family informed about it to the Custom-authority and the police arrested the said Chandra Sckhar and Hari in connection with this case but due to influence, they got their release from this case. The Articles recovered are all smuggled goods and the same do not belong to the de facto-complainant. The appellant and the other accused-persons were not arrested from Hotel-Mayur.

7. The outcome of the trial has already been stated above. The Ld. advocate appearing on behalf of the appellant has submitted that the judgment and order of conviction and sentence passed against the appellant cannot be maintained as nothing was recovered from his client, he was not properly identified in T.I. Parade, no reliance can be placed upon the identification of the Articles in Court by the prosecution witnesses, for the absence of any independent witness at the time of the preparation of the seizure-list by police and the contradictions involved in the evidence given by the prosecution witnesses.

8. The Id. State-advocate has submitted that the prosecution side has been able to establish their case convincingly against accused-appellant by reliable and cogent evidence. It has been further submitted that there is no substance in the contention of the Id. advocate for the appellant; Therefore, there is no ground for interfering with the impugned judgment and order of conviction and sentence.

9. The eye-witnesses of this case, are Smt. Kalawati Jhunjunwala (PW-3), Smt. Ashtami Haider (PW-4) and Sri Ram Yadav (PW-6). Ashtami (PW-4) was the maid-servant of the house of Jhunjunwala at the material time and she was the first to see the miscreants on the date of occurrence at about mid-day, when the doorbell rang and she opened the door of the Flat. According to her, no male-member was present in the house at that time. She found the four accused-persons at the door and one of them wanted to know whether the son of Smt. Kalawati was inside the house or not. Ashtami went inside to call Kalawati (PW-3), when all the four accused-persons followed her up to the room of Kalawati and suddenly tied her hands and feet with a rope and also covered her mouth with a muffler (Mat. Exht.-VII) and laid her down on the floor. They snatched away bangles from Kalawati and threw her down on the bed and then they snatched keys from her and opened the almirahs and took out all the articles and then left the room with the articles. Thereafter, Kaiawati (PW-3) went to the Verandah and shouted for help, when the neighbours came. This witness has identified the appellant along with the other accused-persons in Court.

10. Smt. Kaiawati (PW-3) has stated that there was a dacoity at her house on 30-4-91 at about mid-day. Her husband was then at Madras and her son, Rajib (alias Pintu) was not present in the Flat then. At first, there was a ring of the door-bell when Ashtami (PW-4) opened the door. Then four accused-persons entered the flat being armed with Katari (Mat. Exht.-V and VI) and Pistol. The miscreants tied the hands, legs and the mouth of Ashtami. They also tied the legs and hands of Kaiawati with a rope. They took the keys from Kaiawati and opened three almirahs. Then they took out from the almirahs all ornaments and the camera and all the valuable articles including the VCR and took away Rs. 25,000/- in cash. The ornaments included gold-bangles studded with American-diamond, wrist-watches, gold-ring, white metal necklace with American diamond, time-piece and many

other articles (Mat. Exhts. IX, X, XI, XII, XIII, XIV, XV, XVI, XVII, XVIII XX, XXI, XXII, etc. up to-L.). After the miscreants left the place, PW-3 shouted. Then the neighbours came. Police was informed, the police came there, She made a statement to Police and signed the same. Her signatures on the statement has been marked Exht. 2/1,2/2 and 2/3. The police officer came on some other day and she gave a detailed statement of all the items stolen away.

11. Sriram Yadav (PW-6) is a driver of Texmaco Co. of which the husband of Kaiawati (PW-3) is a Vice- President. He has stated on 30-4-91, at about mid-day, he came to the flat of Mr. Jhunjhunwala at 7, Sarat Chatterjee Avn., Calcutta. He rang the bell at the door of the flat, when four accused persons came out of the same flat. Three of them were holding brief cases and the other one was holding a gunny-bag containing VCR and other articles. They got down the stair-case. This raised the suspicion of PW-6. he saw, them going towards the Lake on foot. When PW-6 returned to the flat, he found that already a hue & cry was started. Ashtami and Kaiawati reported to him, that there was a dacoity in the flat and all the articles were taken away. PW-6 then got down on the staircase and found that the persons had left by a taxi. There were many people who came to the place on hearing the shouts. Police came after half an hour and seized two Kataries and a muffler and a rope. PW-6 signed the seizure list as a witness and his signature has been marked as Exht.-8/I. The two Kataries seized were marked Exht. V and VII. He has identified the muffler marked Mat. Exht.-VII and the rope (Mat Exht.-VI). He has identified the accused persons including the appellant in Court.

12. The person who went to the place of occurrence attracted by the shouts is Sri Gagan Malhotra (PW-9) who is a resident of Premises No. 8, Sarat Chatterjee Avenue, Calcutta. He has stated that on the date of occurrence at about midday, on hearing a hue & cry, he had been to the Flat of Mr. Jhunjhunwala and came to learn from Mrs. Jhunjhunwala (PW-3) that a robbery had taken place at her premises. She was then crying. After about half an hour, the police came and made enquiries from Mrs. Jhunjhunwala (PW-3). The police seized in his presence, the two Kataries, a muffler and some jute- strings under seizure-list. The witness signed. The labels pasted on all the over packets.

13. Mr. Mahinder Shatti (PW-5) is the manager of Hotel-Mayur of Lenin Sarani, Calcutta, he has said that on 30-4-91, Mr. Shyamal Sengupta, Custom Officer (PW-7) came to his Hotel and told him that he had got some information to work out in a room of the Hotel. PW-5 took PW-7 to the Room No. 11. PW-7 checked the room and asked PW-5 to keep a watch, so that nobody from that room could go out. At about 3.25 p.m. PW-7 came down with three young men who were inside the room. As per Hotel register, the boarders were Ravi Roy Bahadur and P. Bahadur against Room No. 11, on 30-4-91 at 2.30 p.m. The police seized the register. The witness signed as a witness to the seizure-list. His signature is marked Mat. Exht.5/1. The Custom-Officer arrested appellant-Ravi Magor and another person. The witness has identified the appellant in Court.

14. Mr. Shyamal Sengupta (PW-7) is a Superintendent, Central Excise & Customs. He has stated that on 30-4-91, on getting an information at about 2.00 p.m. over telephone that 3-4 persons along with contraband V.C.P., V.C.R., etc. etc. had put up in Mayur Hotel near Jyoti Cinema on Lenin Sarani (Old Dharmatala st.). he formed a party and rushed to Hotel Mayur. He came to know on enquiry from the Hotel Manager (PW-5) at the reception-counter that 3-4 persons had put up in room No. 11 and about half-an hour before. The party rushed to room No. 11 and found the door open. They entered the room and overpowered the three young men who were found in that room. They found one VCR. kept inside a gunny-bag. They also came to know that those persons had a good number of gold-ornaments inside a suitcase. The party took the three persons nabbed and two local witnesses along with the Articles to the Customs House, Calcutta. The apprehended persons disclosed their names as Ravi Magor, Parshram and Bhola Mamut. PW-7 then informed his higher-officer who contacted immediately Lalbazar Police Officers. They came to Customs House from Lalbazar. As required under the Rules of the Customs Dept., PW-7 took the services of a Goldsmith Sri Panehu Gopal Roy (PW 17) of Gita Jewellery, B.B. Ganguly St. Calcutta and in presence of the said goldsmith and the Police Officer, the P.W. 7 made inventory of the goods found in the possession of the said three apprehended persons. The service of the goldsmith was requisitioned to ascertain whether the ornaments were of gold or not. The inventory list running into 4 sheets has been marked Mat. Exht. IX. The local witnesses and the goldsmith also signed

in the presence of PW-7. On the basis of the inventory, police Officer prepared a seizure-list. PW-7 signed the seizure list on all the pages. His signature of the seizure list has been marked as Mat. Exht.-X and X/1 collectively. At the time of search at the Customs House, besides the VCR Camera, wrist-watches, ornaments etc. a revolver was found kept on the right side of the waist of Ravi Magor. PW-7 indentified the appellant in Court. The revolver has been marked Mat. Exht. L/1. The inventory list has been marked Mat. Exht.-IX. The VCR seized has been marked Mat. Exht.-VIII. The Video camera has been marked Mat Exht.-X. The transistor has been marked Mat Exht. XI and XI/1. Also seized were 13 watches, 5 ornaments cases, 18 pieces of gold bangles pitted with pearls, gold bracelets studded with stones, 7 pieces of gold-guiness, 6 pieces of gold-chains studded with a stone 30 pieces of ear-rings, 20 pieces of rings, a gold-coloured metal bracelet, studded with stones, a chain of American diamond, 11 pieces of earrings, etc. etc. and many other things.

15. Mr. Amitava Chowdhury (PW-8), Superintendent of Central Exise, was posted as Inspector of Barasat Customs Divn., Customs House, Calcutta, on 30-4-91. On that date at about 2.30 p.m., he accompanied by Mr. Shyamal Sengupta (PW-7) and Inspector Mr. S.K. Bose and D.C. Ghosh, conducted a raid at Hotel Mayur on a source of information. They first consulted the Hotel register and thereafter entered into a room which was occupied by three young persons. He has identified the appellant, as one of the persons apprehended there. The party recovered gold ornaments, a VCR. and on search thereafter one revolver, a knife and some Nepali currency notes, etc. etc. and the inventory list was prepared in presence of the Police Officer at Customs House. The seizure-list was also papared in the presence of witnesses. The witness has identified the VCR. (Mat. Exht.-VIII, the revolver (Mat. Exht.-III), a spring-knife (Mat. Exht.-IIII), Nepali Currency-notes (Mat-Exht.-LIV), the brief-cases (Mat. Exhts-XVII and XVII/1); video-camera (Mat-Exht.-X) and ornaments (Mat Exht.-IX) -- L. on 30-4-91, Inspector Dipak Ch. Dutta (PW-12) was posted as Inspector of Customs, Barasat Customs Divn. at Customs House, Calcutta, he has said that on that date Mr. S.R. Sengupta (PW-7) and other officers brought some goods with three detained persons to the Customs Office. Police Officer from Lalbazar were called there. PW-12 made inventory in respect of jewellery only, in presence of the jeweller (PW-17) and other officers of

the Customs Dept. and the Police Officer. The inventory list has been marked Mat. Exht.-IX. Jeweller also signed the list. Two witnesses-Sri Sitaram Yadav (PW-14) and Kalidas Verma (PW-18) were present then. PW-12 has further stated that a seizure list was prepared by the Police Officers of Lalbazar who were present at that time. This witness signed the seizure list as a witness. The witness has identified the ornaments marked as Mat. Exhts.-IX-L.

16. Mr. Samir Kr. Dey (PW-13), on 30-4-91, was posted as Insopector of Customs, Barasat Customs Divn. at Customs House, Strand Rd., Calcutta. He has stated that on that date PW-7 came to Customs House with three persons and some smuggled goods as per direction of the Superintendent of Customs (PW-7). He prepared an inventory list in respect of the miscellaneous articles other than ornaments in presence of witnesses. The inventory list running into two pages has been marked as Mat Exhts.-IX/3 collectively. Two witnesses Sitaram and Kalidas also signed the inventory list in his presence and the presence of Officers of Lalbazar who prepared the seizure list in which PW-13 signed as a witness. The witness has identified the V.C.R., Video Camera, Camera (ordinary). Pocket-transistor, Pocket-National Panasonic Transistor, Table-clock (Quartz), 13 wrist-watches, Converters, metallic strip, Nepali currency notes, etc. etc. seized at that time. He also identified the spring-knife (Mat. Exht.-XIII), country-made pistol power-adopter, Remotes-Switch, silver bowl, silver cup, silver spoon, Pen-stand (Mat. Exhts.-VIII, X, XI, XII, XXXVIII, LVIII, XVI, LIV, LX, LII, LIX, XIV, etc. collectively.

17. Sri Panchu Gopal Roy (PW-17) is a jeweller by profession and runs a Jewellery shop under the name & style of Gita Jewellery at 172, B.B. Ganguly St., Calcutta. He has stated that in the lastpart of April, 1991, he attended the Customs House on being called by the Customs Officer, to weigh the gold ornaments. There he weighed some gold ornaments and the ornaments were noted by the Customs Officer in a list prepared by them and signed by PW-17. He has shown his signature on the list marked as Mat Exht. IX/3.

18. Sri Sitaram Yadav (PW-14) is a dealer in Khaini. he has stated that on 30th April, 1991, at about mid-day, he had been to Dharmatala St., Calcutta to sharpen

his knife required in connection with his business. He found a gathering in front of a Hotel near Lenin Sarani. At that time, a person disclosing himself to be a Customs Officer requested PW-14 to be present as a witness to the seizure and since another person there agreed to be a witness, so, PW-14 also agreed. These two persons were taken to the Customs House. Suitcases were opened at Customs House and a number of articles, i.e., gold-chains, knife, VCR, Camera, ring, etc. were brought out. A jeweller was called who weighed the ornaments. The police was informed and Police Officers came. A seizure list was prepared first by the Customs Officer and thereafter by Police. PW-14 signed both the lists. In his presence a revolver was recovered from one of the accused-persons and a knife from the another accused. PW-14 has identified the appellant as the operson from whom a revolver was recovered.

19. Mr.SudipNeogi(PW-15)who is a Judicial Officer, held T.I. Parade as Judicial Magistrate, 3rd Court, Alipore, in respect of the appellant and three accused-persons in connection with Tollygunj P.S. Case No. .235 dt. 30-4-91 at Presidency Jail Premises at Alipore. He has stated that the T.I. parade was held after observing all the formalities. Smt. Kalawati (PW-3) identified the appellant and two others accused persons by indicating their bodies. Smt. Ashtami (PW-4) indentified the appellant and two others by touching their bodies. Witness Sitaram Yadav also identified the appellant and two others. In cross-examination, the witness has stated that after the suspects were identified, the appellant-Magor and another accused-person reported that they were previously identified to the witnesses at Lalbazar. It has also been obtained from the cross-examination of this witness that no U.T.P. of Nepali Origin was produced by the Dy. Jailor for mixing the suspects with him.

20. Mr. Debabrata Sinha (PW-19) is a Judicial Official who held as Judicial Magistrate, 1 st Court, Alipur, on 14-5-91 recorded the statement of one of the accused-persons (who is not the appellant) under Section 164 Cr. P.C.

21. Mr. Monoj Kr. Roy (PW-16) is an Officer of Calcutta Police Posted at the Arms Act (sic). Dept., Lalbazar, on 18-6-91, he held the same position. On 15-6-91, he received a sealed packet from Asst. Commissioner of Police D.D. (i) for

examination and test in connection with Tollygunj P.S. Case No. 235 dt 30-4-91. The sealed packet contained a country-made Pistol. On examination, the witness found that the country-made Pistol was not in proper working order as the hammer with firing-pin was not cocked by pulling trigger. He has also stated that he found that the pistol could be fired by pulling trigger after cocking the hammer manually. According to him, after repairing the same could be made serviceable. He has further stated that the pistol came under the purview of the Arms Act. From the cross-examination of this witness, it appears that no suggestion was put. to the witnesses that the pistol dis not come under the purview of the Arms Act.

22. The I.O., Mr. Pankaj Kr. Dev., Inspector of Police, Calcutta (PW-20), conducted one part of the investigation on 30-4-91 he as Duty Officer, Tollygunj P.S. received an annonymous telephone call stating that a robbery had taken place at 7, Sarat Chatterjee Ave., Calcutta. He recorded that information in G.D. entry No. 3234 dt. 30-4-91 (Exht.-14) and communicated that information to D.C. (D.D.I), D.C. (S.D.) and O.C. Control, he arrieved at the P.O. at about 12.50 hrs., Smt. Kalawati Devi (PW-8) and recorded her statement and took up investigation under the verbal orders of the O.C. PW-3 signed the statement recorded by PW-20 and it was 'treated as FIR- (Exht.-2). On returning to the P. S., formal FIR was drawn up (Exht.-13) and tollygunj P.S. Case No. 235 dated 30-4-91 was started against four unknown persons. Her seized jute string, JKatari, woollen-muffler under seizure-list duly signed by witnesses (Exht.-8) and examined witnesses, Gagan Malhotra (PW-9), Astami (PW-4), Rajib Jhunhunwala and recorded their statements. He also examined others but did not record their statements as their statements did not throw any light on the incident. The O.C, Anti-Decoity Squad came in the meantime with Photographer (PW-2) and Foot and Finger Print Expert. The Photographer took poictures under the direction of PW-20 and the Expert took finger-print impression from an alluminium box. On 1-5-91, PW-20 again examined PW-3 for details of the ornaments, other articles stolen. On 2-5-91, on receipt of a requisition from D.C. (D.D.1), PW-20 sent the C.D. along with the seized articles to the Requisitioning Officer through D.C. (D.D.).

23. The other part of lhe investigation was conducted by S.LA. lahiri, (P.W.P.-21). he went to the P.O. on 30-4-91 and assisted PW-20 in conducting the

investigation. On the same day, D.C. (DD-1) informed O.C, Anti-Dacoity Squad to go to Customs House. PW-21 went there with the OC, Anti-Dccoity Squad. In his presence, the inventory-list was prepared at the Customs House. He examined Customs Officers and witnesses of seizure and took up in vestigation under the orders of D.C. (DD-1). On the following day, he produced the accused before the Court and made a prayer for retention of the seized articles. He also submitted prayer for getting the fire-arm examined by Arms Expert. he visited Hotel-Mayur and seized the Hotel register on production. He also examined the Manager of the Hotel. Hesubmitted the prayer for recording the statement of one of the accused persons under Section 164 Cr. P.C He received the report of the Arms Expert, he submitted prayer for sanction for prosecution of the appellant under Section.25(1)(a) of the Arms Act. He submitted Charge-sheet and supplementary charge-sheet after getting sanction under the Arms Act.

24. All the prosecution witnesses have been throughly cross-examined by the Id. advocate for the appellant and the Id. advocate for the other accused-persons separately. No contradiction on any material point has been found. The witnesses were not known to the appellant or anyone of the other accused-persons of the case. So, there is no question of bias of the wilnesses against the appellant. Moreover, there is no explanation why the prosecution witnesses will come to depose falsely, the prosecution witnesses are a motley collection of people coining from different walks of life from a Khaini- vendor to a Hotel-Manager, from a house-wife to a neighbouring student etc. So far as the defence case of the appellant is concerned no suggestion has been given in cross-examination of the PW-5 about chandrashekhar or his brother, Hari smuggling goods from Nepal being financed by the Jhunjhunwala.

25. The Id. advocate for the appellant has raised a very important mixed question of law and fact. This is with regard to the matter of identification of the accused appellant and the identification of the stolen recovered articles. There is no doubt about the fact that no T.I. parade of articles was held. The id. advocate for the appellant immediately after the holding of the T.I. parade stated before ihe Judicial Magistrate (PW-15) holding T.I. Parade thai he was shown to the identifying witnesses at Lalbazar. It was also been submitted that no Nepali U.I.Ps. was

mixed up with the suspects though the appellant is a Bahadur. PW-15 has very categorically stated that suspects and the U.I.P.s were of similar age-group, almost in similar dresses and of the same status and appearance. PW 15 has denied the suggestion that the purposely avoided to say that two accused persons seemed to be Nepali-s. From the evidence on record, it cannot be said that the suspects were not mixed up with U.I.P.s. of similar age, almost similar dress and of the same status and appearance. Regarding the allegation of the appellant being shown at Lalbazar, it is to be noted that it has got to be considered in the fact and circumstances of the case.

26. It is true that no T.I. parade of articles was held in this case. The articles which were identified included mostly the ornaments of Kalawati (PW-3), some domestic articles like VCR., electric-gadgets connected therewith, fountain-pens, wrist-watches, time-piece, camera etc. Generally, T.I. parade of articles is held to establish the identity of the stolen recovered articles before the actual identification in Court. But, there may be circumstances in which the identification of articles in Court without any T.I. Parade of the same has been accepted as admissible identification. In *Kanta Prashad v. Delhi Administration* 0043/1958 : 1958 CriLJ698 , it was held that failure to hold T.I. Parade does not make the identification inadmissible in Court. The weight to be attached to such identification is a matter for the Courts of fact and it is not for the apex Court to reassess the evidence unless exceptional grounds are established necessitating such a course. Again, in *Earabhadrapa v. State of Karnataka* , it was held that where the lady witness identified the stolen property, viz., ornaments and silk sarees without prior test identification, the testimony of such witness was not inadmissible in evidence, for want of prior test identification. It is a matter of common knowledge that ladies have an uncanny sense of identifying their own belongings, particularly articles of personal use in the family.

27. From the above decision, it can be inferred that for special reasons, identification of articles in court without test identification does not render the identification inadmissible. The Id. Trial Judge has given reasons why he accepted the identification of the articles of use by Smt. Kalawati (PW-3) in Court without prior T.I. Parade as admissible and attached weight to it. With regard to the items

of domestic use, e.g., ornaments, wrist-watches, camera, VCR., bunch of keys, Suitcase, fountain-pens etc. etc., We do not find any reason to differ from the view taken by the Id. Trial Judge except the items like the revolver (Mat. Exht. LII), Knife (Mat. Exht. LH), Indian currency notes (Mat, Exhit. LX) and the Nepalese currency notes (Mat. Exht. LIV).

28. In view of the principles laid down by their lordships of the apex Court in the cases cited above, it can be said that these items have been properly identified by PW-3. But, the fact remains that the attack which has been mounted by the Id. Lawyer for the appellant upon the identification of the stolen recovered ornaments and articles of domestic use as referred to above cannot be said to be well-founded.

29. In this view of the matter, the broad fact which emerges is that some of the stolen articles from the residence of Jhunjhunwalas were recovered within 3-4 hrs. within the city and hence, the Court may presume under Section 114 illustration (a) of the Evidence Act, that the said articles were either stolen by the appellant and others or they had received the goods knowing them to be stolen. It is not the case of the appellant that the articles belong to the appellant and others or that the articles came from any other source. The words 'may presume' in the Section leave to the Court to make or not to make the presumption according to the circumstances of the case. In the context of the recovery of some of the stolen articles from the possession of appellant and his cohorts, almost immediately after the occurrence and the absence of any explanation of the appellant and others for their possession of the same renders the identification of the appellant by the identifying witnesses in T.I. parade believable notwithstanding the allegations made by the appellant that he was identified at Lalbazar. Thus, considering the facts, circumstances and the probabilities of the case, the Id. Trial Judge was justified in coming to the conclusion that the appellant and his cohorts committed the offence of robbery being armed with deadly weapons like Katari, revolver etc. That finding of the Id. Trial Judge is accordingly confirmed.

30. The Id. advocate appearing on behalf of the appellant has submitted that according to the evidence of the Arms Expert, Manoj Roy of Calcutta Police (PW-

16), the fire-aim (Mat. Exht., LII) was not in proper working condition at the time of its examination on 15-6-91. Accordingly, the Id. advocate has submitted that the said pistol could not come as an arm under the Arms Act. Unfortunately, this court cannot agree with the explanation given by the Id. advocate for the simple reason that the definition of 'Arms' as given in Sec. 2 of the Arms Act clearly is wide enough to include within its ambit fire-arms from which firing could be made. The Id. lawyer for the appellant has ever looked the relevant portion of the deposition of PW-16 in examination-in-Chief where he has stated, 'However, it can be fired by pulling trigger after cocking the hammer manually, it can be made proper serviceable after repairing. The above item comes under the purview of Arms Act'. So, it is obvious that the fire arm which was examined by Expert could be operated by pulling trigger after cocking the hammer manually. This contention of the Id. advocate for the appellant also fails. The finding of the Id. Trial Judge on this Court is also affirmed by this Court.

31. No argument has been advanced regarding the severity of the sentence imposed upon the appellant. however, we have considered this aspect of the matter and we are satisfied that the Id. Trial Judge after giving his anxious consideration to the various aspects of the matter has come to his considered view by stating the grounds in clear and unambiguous terms and in the circumstances, this Court finds no reason to interfere with the sentence part of the impugned judgement. Therefore, the judgement and the order of conviction and sentence recorded by the Id. Trial judge, so far as the appellant is concerned are confirmed. Before winding up the appeal, a few words need be said about the order of disposal of the recovered stolen property passed by the Id. Trial Judge. It appears that the Id. Trial Judge has given the directions for disposal of the articles but there is a small loophole which requires to be plugged. So far as the Indian currency notes amounting to Rs. 25,000/- (Mat Exht. LX) and the Nepali currency notes (Mat. Exht. LIV) are concerned, the direction of the Id. Trial Judge cannot be maintained. These articles were not identified according to law by PW-3. Therefore, those articles cannot be returned to the defacto-complainant. The Id. Chief Judicial Magistrate, Alipur, South 24 pgs. is directed to dispose of these two articles according to law.

32. In view of the findings made above, the appeal is dismissed.

Nure Alam Chowdhury, J.

33. I agree.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com