

Delhi District Court

State vs . Rajannata & Ors on 3 August, 2021

IN THE COURT OF SH. ANIMESH KUMAR, METROPOLITAN MAGISTRATE-06,
SOUTH EAST DISTRICT, SAKET COURTS, NEW DELHI

STATE	VS.	RajanNata & Ors
FIR NO:		57/17
P.S		Kalkaj
U/s		457/380/411/34 IPC
Cre No./2132/2017		

JUDGMENT

SI. No. of the case	141/2
Date of its institution	12/04/2017
Name of the complainant	Sh. Rakesh Sengar, S/o Sh. L B Singh, R/o H. NO. RZ 2062/A, 27A, Tughlakabad Extension, New Delhi.
Date of Commission of offence	07.02.2017
Name of the accused	1.Rajan@ Nata, 2. Sunil @ Sonu, 3. Vinod@ Pinki, All S/o Heera Lal, All R/o A-445, Khori Gaon, Surajku Faridabad, Haryana.
Offence complained of	457/380/411/34 IPC
Plea of accused	Not Guilty
Case reserved for orders	06.07.2021
Final Order	Conviction
Date of orders	03.08.2021

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BRIEF STATEMENT OF FACTS FOR THE DECISION:

1.

Vide this judgment, I seek to dispose off the case of the prosecution filed against the accused persons namely Rajan Nata, Sunil Sonu and Vinod @ Pinki for having committed the offence punishable u/s 457/380/411/34 of Indian Penal Code, 1861 (hereinafter referred as "IPC").

2 Briefly stated, it is the case of prosecution that on the intervening night of 06/07.02.2017 at about 12:00 AM (midnight), the accused persons in furtherance with their common intention to commit theft had entered into the property i.e. Flat No. 73, Aravali Apartment, Alaknanda, Kalkaji which belonged to Sh. Kailash Satyarthi by breaking into and stole some articles such as nobel prize citation, replica, jewelleryes, foreign currencies etc. Further, some of these stolen articles were recovered either from the immediate possession of the accused persons or at their instances from their residence or other places.

3. After completing the formalities, investigation was carried out by PS Kalkaji and a charge sheet was filed against the accused persons. Thereafter, charge u/s 457/380/34 IPC was framed against the accused persons namely Rajan Nata, Sunil @ Sonu and Vinod Pinki vide order dated 09.05.2017, to which they pleaded not guilty and claimed trial. Alternate charge u/s 411/34 IPC was also framed against the accused persons vide the said order, to which they also pleaded not guilty and claimed trial.

4. In order to prove the guilt of accused persons, the prosecution examined following nine witnesses:

Sh. Rakesh Sengar, the complainant, deposed as PW-1; ASI Sanjay Kumar deposed as PW-2;

Sh. B Magesh Krishna Ratana, the finger print expert, deposed as PW-3; Ct. Ashok deposed as PW-4;

S h . Bhuwan Ribhu, the victim, deposed as PW-5;

Smt. Sumedha Kailash, the victim, deposed as PW-6; S I Satish Bhati deposed as PW-07;

SI Vijay Kaushik the 10, Sh. Baijnath, the security deposed , as PW-08 and supervisor, deposed as PW-09.

5. After examination of all prosecution witnesses, at the request of Ld. APP, PE was closed on 10.03.2021.

Thereafter, statement of the accused persons were recorded on 15.03.2021 u/s 313 Code of Criminal Procedure, 1973 ("Cr.P.C") wherein they denied the allegations and chose not to lead DDE.

6. PW-1, the complainant in the present case, deposed that on 07.02.2017, at about 9.00 a.m., when he had for come picking up his car which was parked near the house of Sh. Kailash Satyarthi i.e. flat no. 73, Aravali Apartment, Alaknanad, Kalkaji, he saw one washerman was ringing the door bail. PW-1 told him there was no one inside the home but the washerman replied to him that the door was opened and someone was inside the house. Thereafter, PW-1 went inside the room and saw that the window of the house was broken and when he went inside from the drawing room to bedroom,

he saw the door of room was half opened and the light was on and lots of articles were scattered around the room and all lockers were broken and almirah also was unopened. He immediately called Sh. Bhuwan Ribhu, S/o Sh. Kailash Satyarthi and informed the same. Bhuwan Ribhu asked him to call to the police at 100 number immediately. PW called at 100 number and police came at the spot after sometime. The owner of the said building was out of country at the time of incident. After sometime, son of the owner i.e. Bhuwan Ribhu also reached at the spot and on inquiry, it was revealed that the noble prize replica, citation and some jewelleryes were also missing and he had informed to the police that list of stolen articles would be submitted once his parents would return from abroad. Police also reached at the spot and crime team was also called by the police, and they inspected and took photographs of the spot. Thereafter, the complainant had given a written complaint to the IO which is Ex. PW-1/A.

the case of the p
7. PW-2 in his testimony also supported officer in PS Kalkaji.

07.02.2017, he was duty
examination in chief, he deposed that on
over hi
and handed
at about 12.10 p.m., Ct. Ashok
came
that day,
he recorded FLIR No. 57/17 wh
of case. On the basis of rukka,
also issued the
Ex PW-2/B. He
Thereafter he made endorsement on rukka
Ex. PW-2/C.
Evidence Act which is now
under Section 65-B lIndian

of
the factum of matching
8. PW-3, the finger print expert, proved
chan
and Vinod Kumar with the
i.e. Sunil Kumar
of the accused persons
he deposed that that on 07.02
his testimony
from the crime spot. During
II Fingerprint and on that day
Scientific Officer, Grade

posted as Senior

to him f

and the same was marked

received a letter of crime

scene report

crime scene report, he given the report

details of

After going through the

examin

he also prepared the fingerprint

which is Ex. PW3/A.

Thereafter,

detail

58/17 and 59/17, PS Kalkaji and given

respect of FIR NO. 57/17,

result is Ex. PW3/B. On examination from the spot. The said print obtained from Mark S1 to Mark S10, the Mark Q15 with specimen finger / palm print print Mark Q1 to Q14 was identical with matched with S5 which was of Sunil and chance print mark Q2 had accused Sunil Kumar had matched with the The fingerprint Q2 of RPS9 of Vinod Kumar. Kumar FIR NO. 57/17 and Q14 of accused Vinod chance print lifted from the spot in case lifted from the case FIR NO. 59/17. He had also given had matched with the chance print Ex. Pw3/C character found in the finger which is 8 identical ridges the detail description of Ex. PW3/E.

match with RTI mark S5 finger ridges are of Q2 and Ex. Pw3/D. Photographs with RPS9 of the finger ridges are Ex. PW3/F Photographs of Q14 match and wife respectively of Sh.

Kailas

PW-5 and PW-6 were the son

9.

was committed.

PW-5 deposed t

present offence

whose house the

submitted a list of articles

during the course of investigation, he

06/07.02.2017. The said list of articles is intervening night of stolen from his house in the Ex. PW-5/A. The articles are noble peace prize award of US Senate, award of italian Senate, various small awards and medals,

-phone 5S, Jewellery items i.e. 8-10 gold rings, one gents ring, 5-6 moti Mala, 6 gold chains, 4 gold Kada, one diamond kada, 3-4 silvers sets, 4-5 silver kada, 2 mangalsutra, 8-9 ear rings, 6-8 payal and amount of cash of Rs.15,000/- and some small foreign currencies of various countries.

During the investigation, he produced a pair of shoes and handed over to IO on suspicion that the same might be of accused persons. The IO had seized the same. The said pair shoes is seized by the IO vide seizure memo Ex.PW-5/B. Later on, he was informed by the police that the said shoes stolen

from another flat no. 56 where the accused had also were committed theft in FIR No.58/17. He alongwith his mother Smt. Sumedha Kailash were called by the iO to take part in TIP proceedings in Saket Court. Thereafter, during the TIP proceedings, he identified the stolen articles which he had mentioned in list of articles given to the police.

10. PW-6 deposed that on 06/07.02.2017, she had gone abroad alongwith his husband and there was nobody at her home. When she was in foreign country, she came to know that there was a theft at her house. When she came back, she searched her house and found nobel prize citation, nobel replica medals, cash, gold and silver jewellery and some foreign currency from different countries were missing. Her son had given a list of stolen articles to the police. After some days, she came to know that police had arrested some accused persons and recovered stolen articles. Thereafter, she was called by the 10 to identify our stolen articles at Saket Court on 21.03.2017 and 22.03.2017. Thereafter, articles were shown to her with mixed different articles and she identified her articles i.e. golden pendant, necklace, earring, tops, jhumka, chain, nose-pin and other articles as mentioned in her TIP proceedings of case property. Her statement was also recorded by the Magistrate concern in TIP proceedings on it.

11. PW-4, PW-7 and PW-8 were the police witnesses in the present case. In their respective testimonies, they gave a detailed account of the circumstances and manner in which the accused persons were apprehended during the course of investigation. They also proved the factum of recovery of stolen articles from possession of the accused persons. Their testimonies would be discussed in detail in subsequent paragraphs of this judgment at relevant stage.

12. 12 The Ld. APP urged that testimonies of the material witnesses have remained unchallenged in the cross-examination and there is no reason to doubt their testimonies. Per contra, Ld. Counsel for the accused persons, on the other hand, argued that no direct evidence could be found against the accused persons in the present case for the offence of lurking house trespass and theft. Further, it has been argued that recovered case properties have been falsely implanted on the accused persons by the police officials. Lá. Counsel also submitted that no public witness of recovery has been examined by the prosecution. Since, prosecution has not been able to prove the guilt of the accused beyond reasonable doubt, therefore, benefit of doubt must be given to the accused.

I have considered the rival submissions and perused the materials available on record.

14. It should be noted that the accused has been charged for the offence of lurking house trespass and theft punishable u/s 457/380/34 IPC, and, alternatively, also for the offence of dishonestly receiving stolen property punishable u/s 411/34 IPC.

15.

15. Section 411 IPC deals with the offence of dishonestly receiving stolen properties. In the case of Rajender Kumar Vs. State (Delhi Administration), (1983) 23 Del LT 42, it was held that in order to bring home the guilt of the person under this provision, it is the duty of the prosecution to prove the following

(i) That the stolen property was in the possession of the accused;

(i) That some person, other than the accused had the possession of the property before the accused got possession of it, and

(ii) That the accused had knowledge that the property was the stolen property.

Further, in every case u/s 411 IPC, the prosecution must establish two facts by the

16. direct evidences i.e. (i) That a theft was committed and certain articles were stolen and If these two (ii) That the stolen articles were recovered from the possession of the accused. facts are established by the prosecution through direct evidences and if the recovery has been made from the accused recently, then the court may raise a presumption u/s 114 Indian Evidence Act, 1872 (herein after referred as 'Evidence Act) regarding the fact that the accused is either a thief or a receiver of the stolen property. Reference can be taken from illustration (a) to section 114 of Evidence Act.

17. This has to be read in the backdrop of section 4 of Evidence Act which gives rise to a legal fiction. All the presumptions provided therein are rebuttable and unless rebutted, unless contrary is established, a fictitious state of affairs is presumed to exist as if it is an actual reality. Reference can be taken from the decision of Hon'ble Gujarat High Court in the case of Ambala Vallabh Bhai vs. Mangal Bhai Dula Bhai AIR 1978 Guj 208 18 It should be noted that in order to raise presumption u/s 114 (a) Evidence Act the interval between the theft and recovery of the stolen articles from the possession of the accused should be short. Although there is no strait jacket formula to decide the length of such intervening period, however, the same would depend upon the facts and circumstances of each case. If the possession vis-a-vis stolen articles recovered from the accused does not seem to be natural one then the accused can be convicted even if this intervening period is a bit longer than usual. Reference can be taken from the decision of Hon 'ble Supreme Court in the case of Ali Sher vs. State of U.P. AIR 1974 SC 1830.

19. Hence, in view of the above discussions, it becomes clear that in order to raise presumption u/s 114(a) Evidence Act, the prosecution needs to establish the following:

i. Theft was committed and certain articles were stolen; ii. Stolen articles were recovered from the possession of the accused persons; and from ii. Interval between the theft and recovery of stolen articles the possession of accused persons should be short.

I shall be dealing with these aspects separately in the backdrop of evidences adduced by the prosecution on record in the instant case.

of Kailash Theft was committed and certain articles were stolen from the house Satyarthi In the instant case, in order to prove the factum of theft, the prosecution has

21. PW-7 and PW-

primarily relied upon the testimonies of PW-1, PW-2, PW-4, PW-5, PW-6,

8. PW-1 who is the complainant of the present case has completely supported the

22. house case of the prosecution on the point of house breaking and theft taking place in the of Kailash Satyarthi situated at Flat no. 73, Aravali Apartment, Alakhnanda, Kalkaji. During of 07.02.2017, he the examination in chief, he categorically deposed that in the morning also found that door of room was half open, saw the window of the said house broken and and articles were scattered around the room. all lockers were broken, almirah was opened inform Kailash Satyarthi i.e. PW-5 who asked him to Thereafter, he called the son of the witness of the incident of theft, however, his the police. While PW-1 is not an eye first person who has discovered about house breaking testimony is reliable as he is the and theft in the said house.

also and wife of Sh. Kailsah Satyarthi respectively)

23. Further, PW-5 and PW6 (son and theft taking place in their house. PW-5 had given proved the factum of house breaking of the which was stolen from his house in the intervening night list of articles to police 06.02.2017/07.02.2017. He along with his mother PW-6 had taken part in TIP proceedings and identified the stolen articles mentioned in the list provided by him.

PW-6, the mother of PW-5, had also supported the case of prosecution to proOve that house breaking and theft had taken place in her house in the intervening night of 06/07.02.2017. In her testimony, she had categorically stated that she vas in foreign which had taken place at her country when she came to know about the present theft her house and found house. She further stated that after she came back, she searched her husband, cash, gold and silver that Noble Prize Citation and Noble replica medals of currencies missing from her house. She had taken part jewelleries and some foreign were identified the case properties in TIP proceedings and identified her articles. She had also shown to her in the court.

25. PW-2, PW-4, PW-7 and PW-8 are the police witnesses. PW-

present case, duly proved the factum of registration of present has the date of incident was

IPC. PW-4 who was posted at PS Kalkaji on AM on 07.02.2017.

Kailash Satyarthi by DO at 09:00 theft taken place at the house of Sh.

reached at the spot.

Thereafter, he along with 10 SI Vijay Kaushik factum of house

26. PW-8, IO of the present case, also proved the
at the house of Kailash Satyarthi. In his testimony, he had ca
taken place
that he had received DD No. 16 A regarding burglary at 73 Aravali Apartment.
the spot

information, he along with other police officials went to receipt of the said found that the glass of main PW-1. He also inspected the spot and the complainant net of the said door was cut. He further entrance window was broken and steel/ iron and backside door was also opened.

scattered in the room
stated that articles were

testimonies of PWs would clearly prove that house discussed

27. Perusal of the above in the indeed taken in the house of Sh. Kaliash Satyarthi place breaking and theft had M intervening night of 06/07.02.2017 and some articles including nobel prize replica, citation, jewelleryes, foreign currencies were stolen from his house.

Stolen articles were recovered from the possesslon of theaccused personss

28. Having discussed the factum of house breaking and theft in the house of PW-5 in the preceding paragraphs, I shall now be dealing with the aspect of recovery of stolen articles from the possession of accused persons. In order to prove this recovery, the prosecution has primarily relied upon the testimonies of police witnesses i.e. PW-4, PW-7 & PW-8. All these police witnesses deposed on the similar lines and were involved in the investigation of the present case.

29. PW-4 in his testimony has successfully proved the factum of recovery of the stolen articles from the possession of accused persons. He had categorically deposed that some stolen articles such as jewelleryes, 1-Pad etc. were recovered from the possession of accused Rajan Nata vide seizure memo which is Ex. PW-4/A & PW-4/B. Thereafter, at the instance of accused Rajan, other co-accused persons were apprehended and other stolen articles i.e. nobel prize replica, medals, foreign currency etc. were either recovered from their possession or at their instances from their house or from other places.

30. PW-8, who is the IO of the present case, in his testimony has completely supported the case of prosecution qua the recovery of stolen articles from the possession of accused persons in the present case. In his testimony, he had deposed that on 11.02.2017, he had received the secret information regarding the hideout of accused persons involved in the present case. Thereafter, he along with other police officials went to B Block, Sangam Vihar, Gali no. 5 where at the instance of secret informer, they had apprehended the accused Rajan Nata who was carrying a bag on his back. When the bag was searched, stolen jewelleryes and other items i.e. -Pad were recovered from the said bag

vide seizure memo which is Ex. PW4/A & PW4/B. Thereafter, on the basis of disclosure statement of Rajan@ Nata, other co-accused persons i.e. Sunil @ Sonu Vinod @ Pinki were i.e. one noble apprehended. At the instance of co-accused persons, other stolen articles recovered bag, laptop, seven medals, momento, foreign currency etc. were replica, one at the instance of co-accused persons, on 13.02.2017, house from their house. Thereafter, etc. were recovered from the forest near breaking instruments, stolen jewellery articles Public School vide seizure memo which is Ex. PW-4/P and PW-4/Q. Kalkaji PW-8 further deposed that, the accused persons were thoroughly interrogated

31.

disclosed that they had thrown some of the s
wherein they had

nobel prize etc. at G-Block Sangam Vihar forest. On the basis of this disclosure made by went to the said forest on the accused persons, IO along with other police officials which is Ex. PW-4/U.

10.03.2017 and recovered nobel prize citation vide seizure memo Counsel for the accused persons submitted that the 32 During the final arguments, Ld.

entire case of prosecution is dependent on the disclosure statement
not admissible in evidence. It is al
given in police custody which are
no public witnesses have been examined by the prosecut
accused persons has not b
therefore, factum of recovery of stolen articles from the
testimonies of police witnesses.

successfully proved merely on the basis of articles from

33. In so far as the arguments related to relevancy of recovery of stolen the accused persons on the basis of their disclosure statements given in police custody is this argument does not hold any ground.

concerned, I am of the considered view that referred as "Evidence

34. Section 25 of the Indian Evidence Act, 1872 (hereinafter no confession made to a police officer, shall be proved as against a Act") provides that an offence. The terms of section 25 are imperative. A confession made person accused of officer under any circumstances is not admissible in evidence against the to a police made inadmissible u/s 162 Cr.P.C.

accused. Such statements have also been

35. While section 25 of Evidence Act and section 162 Cr.P.C makes a statement given by the accused to a police official inadmissible, however, section 27 of Evidence partially lifts this embargo by making admissible information given by the accused which leads to discovery of a fact. It provides that when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved against the accused in evidence.

36. At this stage, reference can also be taken from the decision of the Hon'ble Supreme Court in the case of Aghnoo Nagesia vs. State of Bihar 1966 SCR (1) 134, wherein while discussing the admissibility of a confessional statement vis-à-vis section 27 of the Evidence Act, the Hon'ble Apex Court has inter alia held the following:

A little reflection will show that the expression "confession" in ss. 24 to 30 refers to the confessional statement as a whole including not only the admissions of the offence but also all other admissions of incriminating facts related to the offence. Section 27 partially lifts the ban imposed by ss. 24, 25 and 26 in respect of so much of the information_ whether it amounts to a confession or not, as relates distinctly to the fact discovered in_ consequence_ of the information. if the other conditions of the section are satisfied. Section 27 distinctly contemplates that an information leading to a discovery may be a part of the confession of the accused and thus fall within the purview of ss. 24, 25 and 26. Section 27 thus _shows that a confessional _statement admitting the offence may contain additional information as part of the confession.

Perusal of the above discussed case law makes it very clear that the confessional statement of the accused persons regarding their involvement in the commission of house house of the complainant is not admissible u/s 25 Evidence Act. breaking and theft in the However, it should be noted that certain stolen properties i.e. nobel prize replica, citation, etc. were recovered either from the immediate possession or at their medals, jewelleries instances subsequent to the disclosure made by them. While this would not conclusively prove the guilt of accused persons qua their involvement in the offence of house breaking and theft, however, it would highlight the fact that the accused persons had the knowledge about these recovered stolen properties. This fact is admissible in evidence.

38 Therefore, disclosure statement of the accused persons to the
discovery of stolen properties at their instance is admissible in the
about the stolen properties.

go on to show that the accused persons had the knowledge Thereafter, the prosecution has successfully connected the recovered stolen properties testimonies of the complainant PW-5 & PW-6

from the present case by relying upon the also be noted that PW-

wherein they have correctly identified the said properties. It should recovered from the 5 and PW-6 have also correctly identified the stolen case properties the TIP proceedings. This fact is also relevant in possession of accused persons during the present case.

39 Further, in so far as the arguments related to non-examination o

also does not hold any ground.

concerned, I am of the considered view that this fact that no public witness has been

40. In the instant case, it is an undisputed However, mere non-examination of examined by the prosecution in the present case.

independent public witnesses would not automatically make
witnesses doubtful. Perusal of the testimony of PW-7
accompanied the 0 in the arrest and subsequent recovery of stolen

join the independent witnesses at the time apprehension to of suggest that while IO did try inhabitants of the locality were served written notice at the of accused Rajan, however, no other accused persons.

time of the apprehension of

41. Be that as it may, it is a settled proposition of law
officials cannot be discarded away because of the
merely

matter that their testimonies should be scrutinized in more were examined. It is another the Hon'ble Supreme detail. At this stage, reference can be taken from the decision of wherein dealing with a Court in the case of Tahir vs. State of Delhi [(1996) 3 SCC 338], the following:

similar question, the Hon'ble Apex Court held the interalia of the "In our opinion no infirmity attaches to the testimony force to the police police officials, merely because they belong down that

and there is no rule of law or evidence which lays conviction cannot be recorded the evidence of the police on unless corroborated by some officials, if found reliable, independent evidence. The Rule of Prudence, however, only since the requires a more careful scrutiny of their evidence projected can be said to be interested in the result of the case aftercarefu Dythem Where the evidence ofthe police officials.trustworthy and SScrutiny, inspires confidence and is found tobe absence o reliable it can formn basis of conviction_and thecorroboration someindependent witness of the locality tolend affect_the to their evidence doesnot in_any way of creditworthiness of the prosecution case. The obvious result a_police officer theabove discussion is that the statement ofconviction whenn can berelied uponand even form the basis of by other itis reliable. trustworthy and preferably corroborated evidence onrecord."

Madgaonkar

42. Further, the Hon'ble Supreme Court in the case of Pradeep Narayan 4 SCC 255 dealt with the issue of the requirement of the v. State of Maharashtra (1995) whether the evidence of a police witness examination of an independent witness, and Apex Court held that though the same must be subject requires corroboration. The Hon'ble evidence of police officials cannot be discarded merely on to strict scrutiny, however, the either interested in the investigation the ground that belong to the police force and are they possible the corroboration of their evidence on prosecution. However, as far as or in the material particulars should be sought.

the above mentioned case law, it becomes clear that while the

43. Therefore, in view of cannot be discarded away forthwith in the absence of any testimony of the police officials public witnesses, however, it would be prudent to examine or scrutinise their testimonies more closely and should preferably be corroborated. Accused may be convicted on the basis of the testimonies of the police officials if their testimonies are found to be reliable and trustworthy.

44. In the instant case, it should be noted that the accused Rajan was apprehended on the basis of information received from secret informant. In such situation, it could not be expected from the IO to serve written notice the on public persons before apprehending him. Although, IO could have made some more efforts to join public witnesses after his apprehension, however, failure on the part of IO to do so, would not automatically cast doubt on his credibility.

Apprehension of the accused Rajan was the breakthrough point of police investigation conducted in the present case as his arrest led to the apprehension of other co-accused persons and recovery of stolen articles.

45. Further, in so far as the absence of public witnesses at the time of apprehension of other co-accused persons is concerned, it is pertinent to note that they were apprehended and stolen articles were subsequently recovered around the midnight. Other stolen articles were recovered from forest area after repeated attempts. In this situation, even if public witnesses were not joined by 10, it would not make the testimonies of police witnesses unreliable.

46 Also, it is pertinent to note that the chances of false
and false implantation of case properties on them are ne
recovered articles are medals, nobel prize replica and citation which are not avail
the market. These articles are very personal in nature which

anyone under ordinary course. Further, the recovered articles were correctly identified by the victims i.e. PW-5 & PW-6 during the TIP proceedings and also in their respective testimonies.

47. Therefore, there is no ground to discard the testimonies of the PWs recovery of the case regarding the properties from the accused were police persons merely on the ground that they witnesses. These witnesses have been found to be reliable and testimonies do not suffer from their any material contradictions on the properties from the point of recovery of case possession of the accused persons.

Short interval between theft and recovery of stolen articles from the accused

48. It should be noted that the accused persons in the present case were 11.02.2017 & 12.02.2017 i.e. 4-5 arrested on days after the date of incident. Stolen properties were recovered in parts on 11.02.2017, 12.02.2017, 13.02.2017 & 10.03.2017.

49 While most of the stolen properties were recovered within few
on which theft

committed, few stolen properties such nobel was prize citation were recovered on 10.03.2017. Some delay had indeed happened in recovering the entire stolen properties. As per the police witnesses, this delay had happened as some of the stolen properties were thrown in the forest and it took some time to search the forest. It should be noted that the nobel prize citation which was recovered from the forest on 10.03.2017 is not something which is available in market and could be implanted by the police officials. Therefore, the explanation given by the police witnesses behind this delay seems to be plausible.

50. Hence, the interval between the theft and recovery of stolen articles from the possession of accused persons is not very long and is reasonable.

51 Therefore, in view of the above, I am of the considered view that the prosecution has remained successful in proving the following facts involved in the present case:

- i. House breaking and theft had taken place in the house of PW-5 & PW-6 on the intervening night of 06/07.02.2017.

ii. Articles including jewellerys, medals, nobel prize citation, replica, foreign Currencies etc. were either recovered from the immediate possession of the accused persons or at their instance.

of

52. Since, the prosecution has successfully established the fact of theft and recovery stolen articles from the possession of accused persons through direct evidence, therefore, 114(a) Evidence Act a presumption (although rebuttable) can be drawn under section the stolen regarding the fact that the accused persons are either thieves or receivers of properties.

the offence of

53. In order to home the culpability of the accused persons for bring the lurking house trespass and theft punishable u/s 457/380/34 IPC in the present case, i.e. the police prosecution has relied again the testimonies of PW-4, PW-7 and PW-8 upon also relied upon the testimony witnesses. Apart from these witnesses, the prosecution has of PW-3, the fingerprint expert.

Counsel for the accused persons submitted that the 54 During the final arguments, Ld.

commission of entire case of prosecution qua the involvement of accused persons in the their disclosure statements (given in lurking house trespass and theft is dependent upon which is not admissible in evidence. It was further argued that not even a police custody) examined by the prosecution in the present single eye witness of the said incident was accused Rajan Nata did not match with the chance prints case. Also, finger prints of the accused RajanNata was the main cog in the collected from the crime spot. Since, accused persons who were apprehended on the basis wheel of prosecution's story; other it was could not be convicted in the present case. Lastly, of his disclosure statement none of the accused persons could be that in the absence of any direct evidence, argued house trespass and theft punishable u/s 457/380 /34 convicted for the offences of lurking IPC.

55. As discussed in the preceding part of this judgment, the police witnesses i.e. PW-4, PW-7 and PW-8 had primarily supported the case of prosecution in order to establish the factum of recovery of stolen articles from the possession of accused persons. In so far as house trespass and theft is the culpability of accused persons for the offences of lurking Concerned, testimonies of of help to the prosecution as they are police witnesses are no which entirely dependent on the disclosure statements made by the accused persons, not admissible in evidence.

56. However, having said the above, it should be noted that while there is accused persons available on record for the offences direct evidence against the

457/380/34 IPC, however, it would be important to examine as to whether the prosecution from the circumstantial has remained successful in proving the guilt of accused persons evidences available on record.

57. Before examining the circumstantial evidences led by the prosecution in the present conviction of case in detail, it would be prudent to first discuss the legal position qua the accused on the basis of circumstantial evidences.

State of Andhra Pradesh and others

1991 SCC

58. In Padala Veera Reddy v.

407, the Hon'ble Supreme Court held that when a case rests upon circumstantial evidence, the following tests must be satisfied:

"(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

those circumstances should be of a definite tendency towards guilt of the accused; unerringly pointing to the guilt of the accused should form a chain

the circumstances, taken cumulatively, (3) that so complete that there is no escape from the conclusion the crime was committed by the within all human probability accused and none else;

and (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence."

59 In Balwinder Singh v. State of Punjab AIR 1996 Sc 706, it has been laid down that the circumstances from which the conclusion of guilt is to be drawn should be fully proved and those circumstances must be conclusive in nature to connect the accused with the crime. All the links in the chain of events must be established beyond reasonable doubt and the established circumstances should be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence. In a case based on circumstantial evidence, the Court has to be on its guard to avoid the danger of allowing suspicion to take the place of legal proof and has to be watchful to avoid the danger of being swayed by emotional considerations, however strong they may be, to take the place of proof.

In Harishchandra Ladaku Thange v. State of Maharashtra AIR 2007 SC 2957,

60.

inferences to be drawn from circumstantial while dealing with the validity of where a case rests squarely on circumstantial has been emphasized that when all the incriminating facts a

inference of guilt can be justified only innocence of the accused or the guilt of any other are found to be incompatible with the circumstances from which an inference as to the guilt of the person and further the proved beyond reasonable doubt and have to be shown to be accused is drawn have to be fact sought to be inferred from those circumstances. closely connected with the principal related to the conviction of an accused on the

61. Having discussed the legal position basis of circumstantial evidences, I shall now be examining the possibility of accused convicted for the offences u/s 457/380/34 IPC on the basis of persons getting circumstantial evidences in the present case.

62. It should be noted that as per the CCTV footages of the apartment which were seized by the police during the course of investigation, 3 persons could be seen to be involved in the commission of burglary on the date of incident. Seizure of these footages has been duly proved by the respective testimonies of PW8 (IO) and PW9 (the security supervisor of the Aravali apartment). While photographs of these 3 persons were not clear in the said footages, however, they would make it very clear that 3 persons were involved in the commission of burglary at 3 flats situated at Aravali apartment on the intervening night of 06/07.02.2017.

63. Further, another circumstance which shows the involvement of the accused persons in committing lurking house trespass and theft in the house of PW5 & PW6 is the chance prints (which were collected from the crime spot by the forensic team). It should be noted that as per the testimony of PW-3, finger print expert, chance prints collected from the spot in the present case matched with the finger prints of accused Sunil Kumar.

Hence, involvement of one of the accused Sunil Kumar can be established in the present case with respect to offences u/s 457/380 IPC. Further, finger print of other co-accused Vinod Kumar matched with the chance prints collected in the case FIR no. 59/2017 PS Kalkaji (other house in the same locality where house breaking and theft was committed on the same day). Presence of the accused Vinod in the same neighborhood and his involvement in the commission of similar crime therein does raise possibility of his involvement in the present case. It should be noted that stolen articles in the said FIR also got recovered from the possession of accused persons in the present case. Apparently, the accused persons had committed burglary in three houses in the said locality on the same day. Hence, presence of at least two of the accused persons namely Sunil and Vinod from the crime scene is a crucial fact/circumstance which has to be considered by this Court.

64. Further, another circumstance which goes against the accused persons is the immediate possession at their instances. recovery of stolen articles either from their or PW4, PW7 & PW8 in

their respective testimonies had categorically deposed that some stolen jewellery articles, I Pad etc. were recovered from the immediate possession of accused Rajan Nata when he was apprehended on 11.02.2017. They further deposed that some stolen articles such as nobel replica, laptop, medals, jewellery etc. were recovered from the house of accused Sunil and Vinod at their instances. Also, some other stolen jewellery, house breaking equipments etc. were recovered from the forest near Kalkaji Public School at the joint disclosure of the accused persons. Some more stolen properties such as nobel prize citation were recovered at the instances of the accused persons from the forest of G-Block, Sangam Vihar. Recovery of these stolen articles from the accused persons could only point out towards their guilt. Hence, the recovery of stolen articles of the present case from the possession of the accused persons clearly connects their involvement in the present case.

65. Moreover, the accused persons in their defence could not give any explanation as to how these stolen properties were recovered from their possession or at their instances. Hence, the recovery of stolen properties from accused persons seems to be credible. In this context, reference may be taken from the decision of the Hon'ble Supreme Court in *se of John Pandian v. State Represented by Inspector of Police, Tamil Nadu* (2010) 14 Scc 129, wherein the Apex Court upheld the decision of conviction based on the factum of recovery of objects used in crime from the accused. Relevant extract of the judgment is reproduced below:

"The discovery appears to be credible. It has been accepted by both the courts below and we find no reason to discard it. This is apart from the fact that this weapon was sent to the forensic science laboratory (FSL) and it has been found stained with human blood. Though the blood group could not be ascertained, as the results were inconclusive, the accused had to give some explanation as to how the human blood came on this weapon. He gave none. This discovery would very positively further the prosecution case."

66 Further, it should also be noted that when the above discussed incriminating circumstances pointing towards the guilt of accused persons were put to them, they could not give any explanation u/s 313 Cr.P.C except choosing the mode of evasive denial. At this stage, reference may be taken from the decision of the Hon'ble Supreme Court in the case of *State of Maharashtra v. Suresh* (2000) 1 ScC 471, it has been held that when the attention of the accused is drawn to such circumstances that inculpated him in the crime and he fails to offer appropriate explanation or gives a false answer, the same can be counted as providing a missing link for completing the chain of circumstances. We may hasten to add that we have referred to the said decision only to highlight that the accused has not given any explanation whatsoever as regards the circumstances put to him under Section 313 of the Cr.P.C.

Last but not the least, in the instant case, as discussed in the preceding part of this

67. successful in presumption u/s 114 of Evidence judgment, prosecution has been raising a Act that the accused persons are either thief or receiver of stolen properties. This presumption remained un rebutted throughout the trial. Further, guilt of accused persons for offence u/s 457/380/34 IPC could also be inferred from the circumstances discussed in the preceding paragraphs. These

circumstances not only establish the guilt of accused persons rather it also completely rules out their innocence.

Ld. Defence submitted that circumstantial evidences did not establish the guilt of

68. accused persons beyond reasonable doubt especially in light of the fact that no examined by the prosecution in order to prove these independent witnesses were circumstances.

It should be noted that a reasonable doubt is not an imaginary concept rather means a fair doubt based upon reason and common sense. Prosecution can be expected examine only those witnesses who have seen the incident or have some knowledge about it and not those who have not seen it. In the instant case, the defence counsel was Prosecution could unable to highlight the presence of any eye-witness at the crime spot.

were not not be castigated merely on the basis of surmises that public/eye-witnesses convicted innocent persons are not examined. It is the duty of Court to not only ensure that doubt is a but to also ensure that guilt persons are convicted. Proof beyond reasonable so that many guilty guideline and should not be to become an obsession permitted decision of reference may be taken from the persons are allowed to escape. At this stage, and another v. State of Punjab the Hon'ble Supreme Court in the case of Sucha Singh reasonable doubt, it has held (2003) 7 SCC 643, wherein while discussing the concept of the following:

"Prosecution can be expected to examine only those who ha
not seen t

witnessed the events and not those who have though the neighbourhood maybe replete with other residents also. Exaagerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or_lingering suspicion and thereby the destroy social defence. Justice cannot be made_sterile on plea thatit is bettertolethundred guilty escapethan punish an innocent. Letting quilty escape is notdoing justice according to and Others [AlA Satpal Singh law. [See: Gurbachan Singh v.

to meet any and 1990 SC 209]. Prosecution is not required forward by the accused. [See State of every hypothesis put 1992 SC 840|A U.P. v. Ashok Kumar Srivastava [AIR reasonable doubtis not an imaginary, trivialor merely possible doubt. but a fair doubt based upon reason and common sense.

proved t must grow out ofthevidence in the caSe.lfacase is flaws perfectly it is argued that itisartificial: if a case has some inevitable because human beings are prane to err. t is argued meticulous that it is tooimperfect. One wonders whether in the being hypersensitivity to eliminate a rare innocent from Dunished., many quilty persons mustbe allowed to escape."

discussions and findings, I am of the considered 70 Therefore, in view of the above circumstances is one where there is no trace of doubt that all view that present case lead to the guilt of the accused persons. The complete the chain and singularly aforementioned circumstances which have been established by the prosecution complete the chain of guilt of accused persons. I do not find any

substantial reason to disbelieve the disclosure statements of the accused persons and the subsequent recovery of stolen properties from their possession or at their instances. Presence of at least two accused at the crime scene could be established from the chance prints which matched persons with their finger prints. Hence, there is no trace of doubt that the circumstances have been proven beyond reasonable doubt by the prosecution.

71. Hence, in view of the above, all three accused persons namely Rajan Nata, Sunil and Vinod are convicted for the offence punishable u/s 457/380/34 IPC.

Announced in the open court on 03.08.2021 Animesh Kumn-

Kumar) 03/08/2-

(Animesh
MM-06, South East New Delhi

It is certified that this judgment contains 24 pages and each page bears my signatures.

Kwman-

Animesh (Animesh Kumar) MM-06, South East, New Delhi/03.08.2021