

Delhi District Court

Somaiah vs State Of Karnataka 2007 (9) Scc 315 ... on 31 March, 2022

: 1:

IN THE COURT OF SH. SIDDHANT SIHAG, LD MM-01,
SOUTH EAST, SAKET COURTS, NEW DELHI

State v. Manoj Singh
FIR No.: 59/2020
P. S: Lajpat Nagar
U/s : 454/380/411 IPC

1. Cr. Case No.	:	1955/2020
2. Date of institution	:	12.04.2020
3. Date of commission of offence	:	04.02.2020
4. Name of the complainant	:	Sh. Agendra Kumar, S/o Sh. Amar Pal R/o C-126, 2nd floor, Lajpat Nagar-II, New Delhi
5. Name of the accused	:	Manoj Singh S/o Sh. Shyam Singh R/o H. No.132, Village- Kaknai, district-Champawa Uttarakhand
6. Nature of offence complained of	:	U/s 454/380/411 IPC
7. Plea of the accused person	:	Accused pleaded not guilty
8. Date reserved for order	:	26.03.2022
9. Final Order	:	Convicted
10. Date of judgment	:	31.03.2022

JUDGEMENT

1. The case of the prosecution in brief is that on 04.02.2020, State v. Manoj Singh FIR No.59/2020 P. S Lajpat Nagar Page No. 1 of 31 police got information from the complainant Sh. Agendra Kumar regarding theft by breaking lock of house no. C-126, 2 nd floor, Lajpat Nagar-II, New Delhi. As per prosecution, present accused committed theft in the house of the complainant by breaking the lock of the house and during investigation, he was arrested and he got recovered Rs.2,22,150/- which consisted of 63 currency notes of Rs.2000/-, 154 currency notes of Rs.500/-, 153 currency notes of Rs.100/-, 77 currency note of Rs.50/-, 299 currency notes of 100 USD, 4 currency notes of 5 USD 1 currency note of 1 USD, 8 Oman currency notes of 50, 1 Nigerian currency note of 1000/-, 46 Indian currency notes of 20, 165 Indian currency notes of Rs.10/- and one diamond ring.

2. On conclusion of investigation, charge-sheet was filed for the offences u/s 454/380/411 IPC against the accused. The copy of the charge sheet was supplied to the accused in compliance of provision under Section 207 Cr.P.C.

3. On the basis of the contents of the charge-sheet and after hearing both the parties, the charge was framed against the accused for the offences punishable under Section 454/380/411 IPC vide order dated 13.09.2021, to which he pleaded not guilty and claimed for trial.

4. The matter was put to prosecution evidence. Prosecution has examined Eleven (11) witnesses to prove its case against the accused.

HC Mukesh Kumar was examined as PW-1. He deposed that on 11.02.2020 he was posted at PS: Lajpat Nagar as HC. On that day, the present case was marked to him by SHO for investigation as the 1 st State v. Manoj Singh FIR No.59/2020 P. S Lajpat Nagar Page No. 2 of 31 IO / SI Amit Grewal was on leave. On 12.02.2020 he got information about the accused after going through the dossier from the file and the permanent address of the accused was found. He was of Village Kankai, Distt. - Champawat, Uttarakhand. Thereafter, he along with Ct. Veenit, Ct. Vishal and Ct. Rajpal went to Uttarakhand in a private vehicle to apprehend the accused after obtaining permission and also made departure entry at PS. Before going to the village of the accused, he first went to PS: Ritha Saheb and gave them the information about the accused and the local police assisted them to the village of the accused. They were able to trace the house of the accused with the help of the villagers and on seeing police team, the accused tried to run away from his house but he was chased for about 15 steps and was apprehended. Upon enquiry, the accused disclosed his name as Manoj and he had got recovered the stolen articles which were kept inside the almirah in a red colour bag. On opening the bag, they found cash amounting to Rs.2,22,150/-. Thereafter, he recorded his disclosure statement as Ex.PW-1/A . He also prepared the seizure memo of the cash of Rs.2,22,150/- and the same is Ex.PW-1/B. He also arrested the accused vide arrest memo Ex.PW-1/C. He also prepared the personal search memo of the accused vide personal search memo Ex.PW-1/D. Ct. Vineet and Ct. Vishal were present at the time of arrest and recovery proceedings. Thereafter, they handed over the accused and case property to IO/ SI Amit Grewal for further proceedings. He correctly identified the accused present in the court.

He further identified the coloured photographs of the case State v. Manoj Singh FIR No.59/2020 P. S Lajpat Nagar Page No. 3 of 31 property of the cash of different denomination of Rs.2000/-, Rs.500/-, Rs.100/-, Rs.50/-, Rs.20/- and Rs.10/- which run in 9 pages. Ld. Counsel for the accused did not dispute the identity of the case property and the same is Ex.PW-1/E (colly).

He was cross-examined by Ld. Counsel for accused. In his cross-examination, he deposed that on 12.02.2020 they left for Uttrakhand from the PS to apprehend the accused from his village. He did not remember the owner and number of the vehicle. There was no departure entry on the file, however, he told that he can produce the same if so directed. He did not remember the name of the police officials who had assisted them to find the village and house of the accused. He did not record their statement. He also did not record the statement of the local villagers. He had also not obtained any signature of the father of the accused in the arrest memo. He handed over red bag to SI Amit Grewal from which the cash was recovered. He had not obtained any signature of the public witness from the spot on the seizure memo. He denied the suggestion that he had not visited the village of the accused, nor prepared any arrest memo or personal search memo of the accused. He further denied the suggestion that cash property was not recovered by the accused from inside the Almirah

which was kept in the red bag.

5. Ct. Vinit Tomar was examined as PW-2. He deposed that on 11.02.2020, he was posted at PS: Lajpat Nagar as Constable. On that day, he along with HC Mukesh, Ct. Vishal and Ct. Raj Pal went to Kaknai, Champawat (Uttarakhand). On 13.02.2020, they reached at Kaknai and State v. Manoj Singh FIR No.59/2020 P. S Lajpat Nagar Page No. 4 of 31 apprehended accused Manoj. HC Mukesh interrogated accused Manoj. After interrogation, HC Mukesh arrested the accused vide arrest memo Ex.PW-1/E. HC Mukesh also conducted search of the accused vide search memo Ex.PW-1/D . During search of the accused, two I-phones (one white colour and another is golden colour), 7 rings (accused was wearing 4 rings and 3 rings recovered from the pocket of the accused) and one wrist watch (black color) recovered from the possession of accused. HC Mukesh recorded the disclosure statement of the accused Manoj which is exhibited as Ex.PW-1/A and at the instance of the accused, currency notes were recovered from the almirah kept in the house of the accused.

63 Indian currency notes of Rs.2000/-, 154 Indian currency notes of Rs.500/-, 153 Indian currency notes of Rs.100/- and 77 Indian currency notes of Rs.50/- amounting to total of Rs. 2,22,150/- was recovered from there. The recovered currency notes were seized and sealed with the seal of MK. Seizure memo is Ex.PW-1/B. Information of arrest had been given to the father of the accused who was present at his house. They alongwith accused and case property came back to Delhi and HC Mukesh handed over the accused as well as case property to the IO/ SI Amit Grewal. He also identified the case property as coloured photographs of the case property of the cash of different denomination of Rs.2000/-, Rs.500/-, Rs.100/- and Rs.50/- which run in 9 pages.

He was cross-examined by Ld. Counsel for accused. In his cross-examination, he told that they reached by car at PS: Ritha Sahib State v. Manoj Singh FIR No.59/2020 P. S Lajpat Nagar Page No. 5 of 31 (Uttarakhand) at the midnight of 11.02.2020. He did not remember the registration number and ownership of the car, however, that was XUV

500. IO had made departure entry at PS: Lajpat Nagar. However, he does not remember the details of departure entry. They made arrival entry at Ritha Sahib police station but he did not remember the details of the arrival entry. They went with police officials of PS: Ritha Sahib to the village of accused. He does not remember the names of officials from PS:Ritha Sahib who accompanied them to the village of the accused. IO did not record the statement of police officials from Ritha Sahib in his presence. The signature of the father of the accused was obtained on the arrest memo by HC Mukesh. No public persons from the village were present at the time of proceedings. HC Mukesh had seized red bag in which the money was recovered. He told 7 rings were recovered from the possession of accused Manoj and the same were seized by HC Mukesh.

He denied the suggestion that he had not visited the village of the accused along with IO and also that nothing was recovered from the possession of the accused. He further denied the suggestion that all the documents have been prepared while sitting in the police station and the case property was got recovered by the accused from inside the Almirah which were kept in the red bag.

6. Sh. Agendra Kumar was examined as PW-3. He deposed that he was prosthetic doctor by profession. On 04.02.2020, a theft had occurred at C-126, 2nd Floor, Lajpat Nagar-II, New Delhi-110024. At that time, he was residing at the same place where the theft occurred. At the State v. Manoj Singh FIR No.59/2020 P. S Lajpat Nagar Page No. 6 of 31 time of theft, he was present at his office i.e. B-24, Lajpat Nagar-II, New Delhi. His brother Rupesh Kumar was in his office with him. Rupesh left office for taking ATM Card from the house and went to the house. After reaching there, Rupesh called him on 04.02.2020 at about 02:00 p.m. and informed regarding theft in the house. He left his office and went to the home. He saw the main gate of the house was opened and after entering the house, he found the lock of almirah which was lying in the middle room was broken. Thereafter, he went to the last room of his house and found the lock of that almirah which was lying in the last room was also broken. The locker of the almirah was also broken. He checked articles which were kept by him in the locker as well as both the almirahs and found that certain articles were missing.

The articles i.e. 35,000 USD, approximately Rs.9 lacs, one diamond ring (worth Rs.50,000/-), one gold chain (worth Rs.50,000/- to Rs.55,000/-). He dialed 100 number and police officials reached at the spot and they called crime team at the spot. They collected evidence from his house. He gave written complaint to the police vide Ex.PW-3/A. Police officials prepared site plan as Ex.PW-3/B. He gave documents to the police officials showing the details of articles and currency that was stolen from his house which is Ex.PW-3/C. He had also given to the police officers photocopy of cash register details. He further deposed that when he dialed 100 number, PCR officials came to the spot and he informed the incident to them. Thereafter, within 10-15 minutes, police officials from PS: Lajpat Nagar also came over there and he alongwith State v. Manoj Singh FIR No.59/2020 P. S Lajpat Nagar Page No. 7 of 31 police officials searched for CCTV cameras and they found a CCTV Camera installed in the same building in which he was also residing on rent. When the footage was seen he saw that many persons were appearing in the footage and they were known to me as they were residing in the vicinity. However, he also saw the accused in the footage. It is further deposed that in the street, there were many CCTV cameras installed including CCTV cameras of Delhi Government and RWA. In the footage, accused was appearing.

After some days, police recovered the stolen items in part. His diamond ring was also recovered which was later on identified by him in the TIP proceedings which is Ex.PW-3/H. He had also produced the invoice of stolen/recovered diamond ring which is Ex.PW-3/I. He also identified the accused who was present in the court as he saw the accused in the CCTV footages.

He was cross-examined by Ld. Counsel for the accused. He told that he alongwith his two brothers and brother-in-law were residing at the place where the incident of theft took place. That premises was on rent. He further told that he had not provided the rent agreement to the IO. IO had not taken the statement of owner. He told that his younger brother first entered the house. He had found broken lock at the corridor after 2-3 months of the incident. He had kept the money at home for purchase of his house. IO called him at PS Lajpat Nagar and the amount recovered from the accused were part of payments received from his foreign clients and Indian clients. He denied the suggestions given by State v. Manoj Singh FIR No.59/2020 P. S Lajpat Nagar Page No. 8 of 31 the Ld. Counsel.

7. Sh. Satish Kumar was examined as PW-4. He deposed that he was working in a private company namely Observer Research Foundation situated at 20 Rouse Avenue, New Delhi. The incident of theft as alleged in this case occurred on 04.02.2020 prior to 02:00 p.m. when he reached at the place of occurrence. His younger brother Rupesh went to house No.C-126, 2nd Floor, Lajpat Nagar-II, New Delhi to collect ATM Card. He informed him telephonically at about 02:05 p.m. that some one broke the lock of main door of said house and he told that the articles of the said house were lying scattered. After receiving the information, he rushed to the spot and thereafter, police was informed by Agender Kumar. Handle of almirah was broken which was kept inside the room and it was appearing that iron rod was used in order to break the said handle. After search, he also came to know that 35,000/- USD, one diamond ring and gold ring, one gold chain and cash of around Rs.9.5-10 lacs were found stolen. The CCTV footage was also seen by him and he had correctly identified the accused. He further deposed that after some time, accused was arrested by police and part recovery of stolen items was effected. Police inquired him regarding this case and recorded his statement. Punchnama of currency notes was prepared in his presence which is Ex.PW-4/A . CD was exhibited as PW-3/J1, PW-3/J2, PW-3/J-3 and PW-3/J-4 and pen drives are Ex. PW-3/J-5 and Ex. PW-3/J-6. Through these CD and pendrives, accused can be seen entering into the building of complainant.

State v. Manoj Singh FIR No.59/2020 P. S Lajpat Nagar Page No. 9 of 31 He was cross-examined by Ld. Counsel for accused. He told that he was near his house and returned after 20 minutes of the incident. He does not remember who came last and locked it. His brother Agendra called the police. He alongwith his brother had gone to the police station and saw the accused at PS. He admitted that the accused is not seen entering into his house but can be seen entering into the building. He denied the suggestion given by the Ld. Counsel for the accused.

8. HC Manoj Kumar was recorded as PW-5. He deposed that on 04.02.2020, he was posted at PS: Lajpat Nagar as Head Constable and on that day, he was on emergency duty along with SI Amit Grewal. Upon receiving DD No.13A, he alongwith SI Amit reached at the spot situated at C-126, 2nd Floor, Lajpat Nagar-II where complainant Agender Kumar met them. He informed the IO about the incident of theft by breaking the lock of the door of the house of the complainant. Thereafter, SI Amit Grewal called crime team and within few minutes crime team reached at the spot and conducted the proceedings. Crime team inspected the spot to find out the chance print of offender and also got clicked the photographs of the spot.

Thereafter, complainant gave a written complaint regarding the incident of theft which is already Ex.PW-3/A. IO SI Amit Grewal made endorsement upon the complaint and prepared rukka vide Ex.PW- 5/A and handed over the same to him for registration of FIR. He went to PS to get the FIR registered and after registration of FIR, he came back to the spot and handed over the original rukka and copy of FIR to IO. State v. Manoj Singh FIR No.59/2020 P. S Lajpat Nagar Page No. 10 of 31 Thereafter, CCTV camera was searched and footage of CCTV cameras installed in the vicinity of the house of the complainant was checked. IO inquired him and recorded his statement.

He was cross-examined by Ld. Counsel for accused. In his cross-examination, he deposed that complainant along with his brother and some public persons stood outside the house of the

complainant. No one was present inside the house i.e. spot. Complainant informed about the stolen articles mentioning that articles of his house were lying scattered. IO seized the broken lock from the spot. He denied the suggestion that he never visited the spot and he is deposing falsely at the instance of the IO.

9. Ct. Ravinder is examined as PW-6. He deposed that on 14.02.2020 he was posted at PS: Lajpat Nagar as Constable. On that day, IO / SI Amit Grewal asked him to join the investigation alongwith Ct. Brahm Prakash. Thereafter, IO took the accused at his rented accommodation which was at Burari. The accused had pointed out the road towards his residence at Burari i.e. H. No.13/10, Block No.A2, Street No.14, Budh Bazar, Bhagat Colony, Delhi. IO had also prepared the pointing out memo Ex.PW-6/A. The accused had pointed towards his rented room i.e. at 3rd floor of the building. The door was opened by the accused. The accused had opened dressing table box and took out one gold ring having a diamond on it. Thereafter, IO had put the same in a transparent bag and sealed the same with the seal of AG and prepared a seizure memo Ex.PW-6/B. The accused further took out one bundle from State v. Manoj Singh FIR No.59/2020 P. S Lajpat Nagar Page No. 11 of 31 above the false ceiling and opened the same in which some USD, Nigerian, Oman and Indian currency were found. There were 290 notes of 100 USD, 4 notes of 50 USD, 8 notes of 20 USD, 4 notes of 10 USD, 2 notes of 5 USD and 1 note of 1 USD, 8 notes of 50 Oman currency, 1 note of 1000 Nigerian currency, 46 notes of Rs.20/- and 165 notes of Rs.10/- and prepared the seizure memo Ex.PW-6/C. The accused also got recovered his clothes which were used at the time of commission of offence i.e. one orange white sweat-shirt, one blue jeans and one black colour Nike shoes which the IO had seized with the seal of AG. IO had prepared the seizure memo Ex.PW-6/D. IO had also prepared the site plan of the recovery spot which is Ex.PW-6/E . Witness identified the photographs (running in 7 pages) of the case property i.e. gold diamond ring, different currency notes of USD, Oman, Nigerian and Indian. Witness correctly identified the case properties which is Ex.PW-6/F (colly).

He was cross-examined by Ld. Counsel for the accused. He deposed that after obtaining the P/C of the accused from the court, he alongwith the IO and Ct. Brahm Prakash went to the rented residence of the accused at Burari. He does not remember whether IO called the owner of the said house or not. The lock of the door was opened by the accused but he did not know from where accused got the key of the said house. The dressing table was not locked with any key. No public person was present at the spot when we entered the house of the accused. He and IO did not call any public persons at the spot. It is correct that IO had not State v. Manoj Singh FIR No.59/2020 P. S Lajpat Nagar Page No. 12 of 31 taken the signature of the any public witness on the seizure memo. He denied the suggestion that he had not visited the spot along with the IO, nor any documents were prepared in his presence and the recovered articles are planted.

10. Ct. Rajpal was examined as PW-7. He deposed that on 05/06.02.2020 he was posted as Constable at PS: Lajpat Nagar. On that day, he alongwith SI Amit Grewal went to C-Block, basement No.126 and H. No.127, 2nd floor to take the CCTV footage in pen drive and on 3 rd occasion, he alongwith SI Amit Grewal went to MSO Building PHQ to take a CD for the purpose of present investigation.

He was cross-examined by Ld. Counsel for accused. He deposed that on 05/06.02.2020 IO of the case have taken the footage himself from the abovesaid houses. He does not remember the exact date when the IO had recorded his statement. Firstly, IO had given the notice to the owner of the houses and thereafter, recorded their statements. He does not remember the exact date when the IO had recorded the statement of the owners of the said houses. He does not remember the exact date when he went to MSO Building. He denied the suggestion that he did not participate in the present investigation. He denied the suggestion that IO had not taken the CCTV footage from the abovementioned house.

11. Sh. Inder Mohan was examined as PW-8. He deposed that he was a property dealer by profession. He had rented his house at 13/10, A-2, Street no. 14, Budh Bazar, Bhagat Colony, Burari, Delhi to two girls namely Khushboo and Apphai for a period of 11 months starting State v. Manoj Singh FIR No.59/2020 P. S Lajpat Nagar Page No. 13 of 31 from 16.07.2019. He produced copy of rent agreement vide Ex. PW8/A (OSR). Police officials inquired him about Manoj. They also asked about his house and tenant. He came to know that his tenant Apphai was girl friend of accused Manoj.

He was cross-examined by Ld. Counsel for accused. He admitted that he had not provided the copy of rent agreement to the IO of the case due to lockdown. IO recorded his statement but he does not remember the date. IO had never called him at PS or anywhere else. He talked with IO on phone. He denied the suggestion that he had not given the house on rent to the girl friend of accused Manoj.

12. Sh. Paras Sharma was examined as PW-9. He deposed that he has been authorized by the owner Sh. Prem Prakash Chaudhary of Rama Krishna Jewellers vide authorization letter Mark-S1 to produce the tax invoice No.19-20/18091 dated 27.09.2019 purchased by Ideal Artificial Limbs Solution. The invoice which is annexed with the judicial file already exhibited as Ex.PW-3/I is the same which was given to the customer. The invoice is now (OSR).

He was cross-examined by Ld. Counsel for accused. He told that he has been working as a Manager in Rama Krishna Jewellers shop since September 2016. My duty is to manage the sales Staff. He does not know who is the customer of this bill Ex.PW-3/I .

13. Ms. Apphia was examined as PW-10. She deposed that she does not know the accused Manoj. She deposed that she does not know anything about the present case. No police official had called her or State v. Manoj Singh FIR No.59/2020 P. S Lajpat Nagar Page No. 14 of 31 visited at her house for any investigation or inquiry. She does not want to say anything else.

She was cross-examined by Ld. APP for the State as she resiled from her previous statement recorded u/s 161 Cr.P.C. She was confronted with her statement u/s 161 Cr.P.C. recorded by the IO which is Mark-A1 from point B to B1. She denied the suggestion that she had stated to the police that she was studying in class XII and she knew the accused Manoj who was her good friend. She denied the suggestion that she stated to the police that Manoj was staying in House no.13/10, Block- A-2, Street No.14, Budh Bazar, Bhagat Colony, Burari and Manoj has taken this house on rent from Inder Mohan @ Rajesh and Manoj was staying at that house. She denied the suggestion that she stated to

the police that in the month of February 2020, she alongwith Manoj went to his village at Kaknai, Distt.- Champawat, Uttrakhand and on 13.02.2020 police officials from PS: Lajpat Nagar had come there and arrested Manoj for theft and also Manoj got recovered the stolen money.

14. IO SI Amit Grewal was examined as PW-11. He deposed that on 04.02.2020, he was posted at PS Lajpat Nagar as SI and he was on emergency duty from 08:00 am to 08:00 pm. He was assigned a PCR call pertaining to burglary at C-126, 2 nd Floor, Lajpat Nagar-I, Delhi. When he reached the spot along with HC Manoj, he found that the main gate was open and the lock was missing. At the spot, he met the complainant Ajender Kumar who informed them that when he was at his clinic at B Block, Lajpat Nagar-II and was informed by his brother that State v. Manoj Singh FIR No.59/2020 P. S Lajpat Nagar Page No. 15 of 31 the door of his house was open and the almirah in the house was also open and the things inside the almirah were scattered. That upon hearing the aforesaid, the complainant came back to his house, and made a PCR call. The complainant in his statement to the police informed that USD 35,000/-, Rs.09 lakh Indian currency, one gold chain and, one diamond ring were missing from his almirah. The complainant further informed that he reached his home at around 02:00 pm. The complainant gave a written complaint pertaining to the aforesaid incident. He endorsed the complaint and sent HC Manoj along with the complaint to PS Lajpat Nagar for registration of FIR.

After registration of FIR, HC Manoj returned back to the spot along with the FIR. They informed the Crime Team South East District pursuant to which, crime team reached the spot. The Crime Team tried to take chance prints from the door and the almirah but none were found. Thereafter, they checked the CCTV footages from the neighbourhood and from a CCTV camera in the basement of the same building pointing towards the entrance. That upon checking the camera in the basement, they were able to short-list a suspect who at around 01:00 pm entered in the building. He was wearing a sweat shirt which was white from the chest region and orange sleeves. Again said, that the footage of the basement was checked for the timeline 01:00 pm to 02:00 pm and the suspect was seen at 01:45 pm approx. Further in the CCTV footage, it was observed that the aforesaid suspect exited the building after 10-15 minutes. The suspect was carrying a black backpack. The suspect exited State v. Manoj Singh FIR No.59/2020 P. S Lajpat Nagar Page No. 16 of 31 the building and went towards the back side, towards Veer Savarkar Marg via C Block. Upon inspection of CCTV Camera at C Block round about installed by PWD, they were able to discover a clear view of the face of the suspect. Thereafter, at the instance of the complainant, he prepared the site plan already exhibited as Ex.PW3/B.

Thereafter they came back to the police station and tried to match the aforesaid image of the suspect from the Criminal Dossier System wherein photographs of previous arrested criminals pertaining to burglary and their details are available. We were able to find a match of the accused in the Criminal Dossier System. That when we took out the previous conviction record of the accused, we found that with the same modus operandi, the accused was arrested within the jurisdiction of PS Vasant Kunj. That in the Criminal Dossier System, the permanent address of the accused was mentioned to be of Champawat District, Uttrakhand. That on that day, elections were going on in Delhi therefore, a team could not be dispatched on the same day. On 11.02.2020, a team constituting HC Mukesh, Ct. Vineet, Ct. Vishal, Ct. Rajpal were sent to Champawat District, Uttrakhand to apprehend the

accused.

On 13.02.2020, the aforesaid team returned back along with the accused. A cash amount of Rs.2,12,000/- approximately were recovered from the accused which was handed over to him by HC Mukesh. Under the personal search of the accused, two I- Phones, 07 gold rings, one black colour watch were recovered from the accused and same were handed over to me by HC Mukesh. They produced the accused State v. Manoj Singh FIR No.59/2020 P. S Lajpat Nagar Page No. 17 of 31 before the court on the same day and sought remand for 06 days. The court granted the remand of the accused for 06 days. Thereafter, at the instance of the accused, they went to Bhagat Colony, Burari, wherein accused pointed towards the rented accommodation, wherein he had stored remaining stolen articles of the present case.

When they went inside the aforesaid accommodation, the accused took out a plastic bag from the false ceiling. Upon opening of the plastic bag, USD Rs.29,411/-, 400 Oman Currency, 1000/- note of Nigerian Currency were recovered. That upon inspection of adjacent room, they found the diamond ring in the drawer of a table. Further, upon inspecting the next room, we were able to recover the clothes that the accused was wearing at the time of the burglary in the present case. They seized the currency and the clothes separately vide seizure memo already exhibited as Ex.PW6/C and Ex.PW6/D. Thereafter they got the medical of the accused done from AIIMS Trauma Centre, and brought the accused to the police station. They interrogated the accused for remaining stolen articles but the same could not be located. They sent the accused to the judicial custody after the expiry of 05 days of police custody.

Thereafter, they collected the copy of the CCTV footage from the basement of C-126 and C-127, and also from CCTV camera at roundabout C-Block, Lajpat Nagar and sent the same for FSL examination. The bill given by the complainant of the diamond ring was verified from Rama Jewellers, Lajpat Nagar. MHC(M) produced case property i.e. one plastic bag containing the clothes that were recovered at State v. Manoj Singh FIR No.59/2020 P. S Lajpat Nagar Page No. 18 of 31 the instance of the accused from the rented accommodation at Bhagat Colony, Burari. Witness correctly identified the same and submitted that the accused wore the said clothes at the time of the incident which was visible in the CCTV footage. MHCM Head Constable Sh. Vijay, P.S. Lajpat Nagar, produced register No.19 in which at serial No.1781/2020 contained the articles of seizure of clothes/shoes, Indian and foreign currency notes and gold ring were mentioned. The same were already exhibited as PW1/B, PW6/B, 6/D. During the investigation, he had also collected the FSL report of the CCTV footage and submitted it before the Hon'ble Court by supplementary charge-sheet. Accused Manoj Singh has been correctly identified by the witness.

He was cross-examined by Ld. Counsel for accused. He told that he got the information regarding the present case approximately at 2:15 p.m. on 04.02.2020. He reached at the spot of crime at 2:40 p.m. When he reached at the spot apart from complainant, his two brothers namely, Satish and Rupesh were present at the spot. The flat of the complainant is at second floor and it took about 2 min. from the ground floor to reach at the flat. There were three rooms in the flat. When he reached at the spot, he found lock(kundi) of main gate was broken and almirah lock was also open. The articles of almirah were found scattered in the room. There was no backside entry in the flat. There

was no CCTV camera installed at the entry point of the complainant house.

PW-11 told that he has not recorded the statement of younger brother of the complainant namely, Rupesh who reached the spot first. State v. Manoj Singh FIR No.59/2020 P. S Lajpat Nagar Page No. 19 of 31 The crime team had reached at the spot after one hour. Crime team had obtained chance print and photographs from the spot. He had only annexed crime team report in the charge-sheet. He had not collected the photographs from the crime team nor has the crime team handed over him the photographs. Head constable Manoj joined investigation along with him. He deposed that he has not seized any lock from the spot. Other than statement of the complainant, he had not seized any I.T. return, bank statement and source of income from him. The complainant had not handed him over any agreement deed/bayana receipt regarding purchase of the land/plot. Other than family members, no public person/guard were present at the spot.

Team had been deputed by the SHO on 11.02.2020 under the supervision of HC Mukesh to track the accused from his native place i.e. Uttrakhand. HC Mukesh handed over the accused after his arrest on 14.02.2020. The arrest memo and personal search memo of the accused was prepared by HC Mukesh at Uttrakhand itself. On 14.02.2020, he had moved an application before concerned Court for PC remand of the accused and thereafter, after getting medical of the accused, they had taken him to his rented accommodation at Budh Bazar, Bhagat Colony, Burari, Delhi. They reached at the rented accommodation at 4:30/5:00 p.m. When they reached at the spot, the rented house of the accused was found locked. They asked the friend of the accused namely, Apphia who was present at the spot to open the lock and thereafter, they entered the house. The name of the landlord of the house is Inder Mohan, he also State v. Manoj Singh FIR No.59/2020 P. S Lajpat Nagar Page No. 20 of 31 reached at the spot after one hour. He asked the landlord to provide the rent agreement between them, who told him that he will provide the same later. He admitted that rent agreement is not a part of the charge-sheet. He has not placed it on record because the landlord has not provided the same.

Friend of the accused namely, Apphia was present at the spot at the time of recovery of stolen articles but he had not taken his signature on the seizure memo and other public witness who were present outside of the building. HC Mukesh had handed him over one red bag which was already seized by him containing cash. Accused was carrying bag pack at the time of theft. The bag pack is not recovered from the accused. He admitted that currency of Oman and Nigeria was also recovered from the residence of accused from Delhi which was not part of the stolen articles alleged to be stolen from the house of the complainant.

During investigation, he found that accused is involved in other cases of theft at jurisdiction of P.S. Vasant Kunj, that's why he easily traced the accused through his dossier. He denied the suggestion that nothing has been recovered from the accused from his Delhi rented accommodation. He further denied the suggestion that accused is falsely implicated in the present case because he is previously involved in similar kind of cases. He denied the suggestion that no theft has been taken as stated by the complainant. He denied the suggestion that he has not done the investigation properly and accused is falsely implicated in the case.

15. Statement of accused was recorded u/s 294 Cr.P.C. He State v. Manoj Singh FIR No.59/2020 P. S Lajpat Nagar Page No. 21 of 31 submitted that he did not wish to dispute the genuineness of entries in the register No.19 and the documents filed by the prosecution which are mentioned below:-

1. FIR No.59/2020 dated 04.02.2020 Ex.P/A/1.
2. GD No.13A dated 04.02.2020 PS: Lajpat Nagar Ex.P/A/2.
3. Scene of crime report No.69/2020 prepared by HC Mahender Singh in the presence of photographer Ct. Baljit dated 04.02.2020 Ex.PA/3.
4. TIP proceedings of seized article dated 24.02.2020 Ex.PW-3/H.
5. CCTV footage and certificate u/s 65-B Indian evidence act provided by Sh. Anil Kumar Gowsai, Sh. S.S. Hussain and by Executive Engineer (elect)-1/ Sh. Anurag Sharma DGM, BEL Lodhi Road, New Delhi Ex.P/A/4, Ex.P/A/5, Ex.P/A/6 and Ex.P/A/7 respectively.
6. RC No.43/21/2020 dated 19.03.2020 Ex.P/A/8.
7. DD No.23B dated 11.02.2020 PS: Lajpat Nagar Ex.P/A/9.
8. GD No.26A dated 14.02.2020 PS: Lajpat Nagar Ex.P/A/10.

16. On examination of all the material witnesses, the prosecution evidence was closed. The statement of the accused was recorded under Section 313 r/w Section 281 Cr.P.C, after putting all the incriminating evidence against him. Accused denied the evidence against him and opted not to lead any defence evidence.

17. I have heard the arguments put forth by the Ld. APP for the state and arguments of the accused by Ld. Defence counsel. I have also perused the materials available on record.

It is pertinent to first discuss the relevant provisions of law State v. Manoj Singh FIR No.59/2020 P. S Lajpat Nagar Page No. 22 of 31 for the purpose of the present case. The essential ingredients to prove an offence under Section 454 Indian Penal Code are:-

1. The accused had committed lurking house trespass or house breaking.
2. In order to commit any offence punishable with imprisonment.
3. There should be an intention to commit theft.

18. The offence of House Breaking has been defined under Section 445 IPC. A person is said to have committed house breaking if he effects his entrance into the house or any part thereof or effects his

exist in any of the six ways described in the said section. The six ways given in the said Section are as follows:-

1. If he enters or quits through a passage by himself or by any abettor to commit house trespass
2. If he enters or quits through any passage not intended by any person other than himself or the abettor for human entrance; or through any passage to which he had obtained by scaling or climbing over any wall or building.
3. If he enters or quits through any passage which he or any abettor has opened which passage is not intended by the occupier of the house to be opened.
4. If he enters or quits by opening any lock to commit house trespass.
5. If he effects his entrance by using criminal force or committing assault or any by threatening a person with assault.
6. If he enters or quits by any passage which he knows to have been fastened against such entrance or departure and he had unfastened the State v. Manoj Singh FIR No.59/2020 P. S Lajpat Nagar Page No. 23 of 31 same.

19. Section 380 IPC prescribes punishment for theft in a dwelling house. The offence theft is defined under Section 378 IPC and the essential ingredients to constitute an offence under Section 380 IPC are as follows:-

1. Intention to take dishonestly
2. The property shall be movable property.
3. The property shall be taken out from the possession of any person without his consent.
4. There should be some moving of the said property to such taking.
5. The theft should have been committed in a dwelling house or place used for safe custody of property.

20. It is the case of the prosecution that on 04.02.2020, the accused went to Lajpat Nagar, with the intention of committing theft and in furtherance of the said intention, the accused went to house no. 126 (second floor), C Block Lajpat Nagar-II, where he broke the lock of the door and went inside the house. It is further alleged that he stole approximately INR Rs. 9,00,000, 35,000 US Dollars, one diamond ring and one gold chain. In order to corroborate this allegation, the prosecution examined PW-1, who along with PW-2, PW-7 and Ct. Vishal had arrested the accused from his house in Kakanai, Champawat, Uttarakhand and partially recovered stolen articles i.e. cash amounting to Rs.2,22,150/- kept inside an almirah, in a red color bag. The case property was correctly identified

by these witnesses at the stage of examination. During cross State v. Manoj Singh FIR No.59/2020 P. S Lajpat Nagar Page No. 24 of 31 examination, nothing material was extracted from these witnesses and the only minor contradiction was that as per PW-1, the signature of the father of the accused were not obtained on the arrest memo while PW-2 stated that the same were obtained.

Further, PW-8 deposed that he had rented House no. 13/10, A-2, Street no. 14, Budh Bazar, Bhagat Colony, Burari to PW-10 Ms Apphia who he later discovered to be the friend of accused. PW-10 turned hostile in her examination and deposed that she does not know the accused and that no police official had ever visited her house. With permission of the Court, she was cross-examined by Ld. APP wherein she denied the suggestion that accused was also staying in the aforementioned house. The testimony of PW-10 did not inspire the confidence of the Court and on account of having turned hostile, her testimony was discarded.

21. PW-11 IO SI Amit Grewal deposed that he along with PW-5 checked the CCTV footages and upon checking the camera in the basement, they were able to see the accused who at around 01:45 pm entered in the building. He was wearing a sweat shirt which was white from the chest region and had orange sleeves and he exited the building after 10-15 minutes. Upon inspection of another CCTV Camera installed at C Block, they were able to see clearly the face of the accused.

Post the arrest of the accused, at his instance, they went to Bhagat Colony, Burari, wherein accused pointed towards the rented accommodation and got recovered other stolen articles of the present case State v. Manoj Singh FIR No.59/2020 P. S Lajpat Nagar Page No. 25 of 31 i.e. 29,411/-. US Dollars and a diamond ring besides other foreign currency. The clothes that were worn by accused on the day of incident were also recovered from the said house.

22. The question for consideration is the discovery of property on the basis of disclosure statement given by the accused and its reliability. As mentioned above, the accused has submitted that this property was planted by the police and he was not involved in the offence. It is alleged by the prosecution that the stolen property has been recovered on the basis of the disclosure statement of the accused, who was the only person who had the knowledge of the place of hiding and thus, the statement is reliable.

23. At this point it is essential to note that in "Geejaganda Somaiah vs State of Karnataka 2007 (9) SCC 315 ", the Hon'ble Supreme Court has held as under:-

"21. Section 25 of the Evidence Act mandates that no confession made to a police officer shall be proved as against a person accused of an offence. Similarly Section 26 of the Evidence Act provides that confession by the accused person while in custody of police cannot be proved against him.

However, to the aforesaid rule of Sections 25 to 26 of the Evidence Act, there is an exception carved out by Section 27 of the Evidence Act providing 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. Section 27 is a proviso to Sections 25 and 26. Such statements are generally termed as disclosure statements leading to the discovery of facts which are presumably in the exclusive knowledge of the maker. Section 27 appears to be based on the view that if a fact is actually State v. Manoj Singh FIR No.59/2020 P. S Lajpat Nagar Page No. 26 of 31 discovered in consequence of information given, some guarantee is afforded thereby that the information was true and accordingly it can be safely allowed to be given in evidence."

24. The settled law on this point is that to convict an accused on the basis of his disclosure statement and the resultant recovery, the recovery must be unimpeachable and not be shrouded with elements of doubt. Circumstances such as-

- (i) the period of interval between the malfeasance and the disclosure;
- (ii) commonality of the recovered object and its availability in the market;
- (iii) nature of the object and its relevance to the crime;
- (iv) ease of transferability of the object;
- (v) the testimony and trustworthiness of the attesting witness before the Court ;
- (vi) Other like factors.

25. The above factors are some considerations that aid in gauging the intrinsic evidentiary value and credibility of the recovery. Adverting to the case at hand, the stolen articles were cash, which included foreign currency and a diamond ring. The diamond ring, in particular, is not an object which is fairly common or easily transferable. The shape, clarity and other features of the diamond make it peculiar and easily identifiable. PW-3 has correctly identified the said ring in the TIP proceedings Ex. PW-3/H. Similarly, foreign currency is also not something which is commonly found as one does not keep foreign currency at one's place without any reasonable justification. Further, the period of interval State v. Manoj Singh FIR No.59/2020 P. S Lajpat Nagar Page No. 27 of 31 between the malfeasance and disclosure is not much.

26. Ld. Counsel for the accused assails the aforementioned recovery on the ground that PW-11 in his deposition has stated that when he went to the house of PW-8 in Burari for the purpose of effecting recovery of remaining stolen articles, PW-10 Ms. Apphia had opened the lock of the front door. He further stated that even though PW-10 was present at the spot at the time of recovery however he omitted to get her signatures on the seizure memo. This is in contradiction to the deposition of PW-6 who had stated that lock of the front door was opened by the accused and no public witness was present there.

27. It has been held by Hon'ble Supreme Court India in case titled as "State of U.P. v. Naresh & Ors., Crl. Appeal No. 674 of 2006 " that :

"in all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely, errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. Where the omissions amount to a contradiction, creating a serious doubt about the truthfulness of the witness and other witnesses also make material improvement while deposing in the court, such evidence cannot be safe to rely upon. However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety.

The court has to form its opinion about the credibility of the witness and record a finding as to whether his deposition inspires confidence."

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28. The aforesaid contradiction can be attributed as a discrepancy on account of passage of time. In my opinion, the said contradiction is not of such a magnitude that it casts a shadow on the veracity or the truthfulness of the concerned witnesses. In my opinion, there is nothing concrete on record to discredit the testimony of the aforementioned witnesses so as to suggest that the recovery of aforementioned articles is planted. The witnesses, except for the aforementioned discrepancy, have stood the test of cross-examination. Thus, in light of the aforementioned, it is held that the disclosure statement and the resultant recovery is reliable.

29. Further, Id. Counsel for the accused submits that in the CCTV footage the accused can be seen entering the building at 01.49 p.m. and exiting the same at 01.57 p.m. Further the CCTV footage is of the accused entering the building in which the house of the complainant was situated and not specifically of entering his house. It is the contention of the Ld. Counsel that to commit the aforementioned crime in a span of approximate 8 to 9 minutes is not possible.

30. I do not find merit in the aforementioned contention of the Ld. Counsel that the entire prosecution case should be discredited on the ground that the span of time for which accused was in the building in question was mere 8-9 minutes. Further there is no plausible justification as to why the accused was present at the scene of crime. The accused has stated in his defence that he went to Lajpat Nagar on the date of the incident to look for one of his friend, who was residing in the same State v. Manoj Singh FIR No.59/2020 P. S Lajpat Nagar Page No. 29 of 31 locality but apart this bare statement, the accused has not brought any evidence on record to substantiate this statement. The accused never explained who this friend was nor did he provide any evidence to show that any such friend resided in the same locality. He in fact chose not to examine any witness. Thus, this defence taken by the accused is nothing but an empty statement and of no relevance.

31. In conclusion, prosecution was firstly required to prove that the property seized from the accused formed the part of the property stolen and possession of stolen property soon after theft raises the presumption that the possessor is either the thief or received the goods knowing them to be stolen. The burden to prove that the property seized is stolen property was lying on the

prosecution and the same has been discharged by the fact that the complainant correctly identified the recovered property and the stolen articles were recovered from the possession of the accused. The accused failed to give any satisfactory explanation qua the possession of stolen property. Therefore, accused is hereby liable for the offence punishable U/s 380 IPC and not U/s 411 IPC since the presumption of receiving the stolen property is negated upon seeing the evidence and therefore it is held that prosecution has proved the offence U/s 380 IPC.

32. As far as the offence U/s 454 IPC is concerned it was required to be established by the prosecution that the accused committed lurking house trespass or house breaking and secondly he did so in order to commit an offence punishable with imprisonment. Where the evidence State v. Manoj Singh FIR No.59/2020 P. S Lajpat Nagar Page No. 30 of 31 of theft is not direct but circumstantial, such evidence must be exhaustive and should exclude the possibility of guilt of any other person. In the present matter the same was established after considering the CCTV footage placed on record where the accused is seen entering the building of the Complainant and the same was established after seeing the testimony of concerned witnesses and also the fact that the stolen articles were recovered at the instance of the accused. Accordingly, offence U/s 454 IPC stands proved as the accused entered the premises by breaking the lock of the house of the complainant with intention to commit theft.

33. Accordingly, the court is of the view that the prosecution has successfully proved the guilt of the accused beyond all reasonable doubts. Hence, the accused is held guilty of the offence punishable u/s 454 & 380 IPC for committing house breaking and theft in the house of the complainant. Accordingly, the accused stands convicted for offence u/s Digitally signed 454 & 380 Indian Penal Code. SIDDHANT by SIDDHANT SIHAG SIHAG Date: 2022.03.31 17:18:26 +0530 Announced in open court (SIDDHANT SIHAG) today on 31st March, 2022 MM-01(SE), Saket Courts, New Delhi State v. Manoj Singh FIR No.59/2020 P. S Lajpat Nagar Page No. 31 of 31