

NON-REPORTABLE
IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 712 OF 2009

JAHANGIR HUSSAIN

..APPELLANT

VERSUS

STATE OF WEST BENGAL

..RESPONDENT

WITH

CRIMINAL APPEAL NO. 579 OF 2010

PARMESHWAR LAL SONI

..APPELLANT

VERSUS

STATE OF WEST BENGAL

..RESPONDENT

J U D G M E N T

M.R. SHAH, J.

As both these appeals arise out of the impugned common judgment and order passed by the High Court of

Calcutta and are with respect to the same FIR, but by the different accused persons, both these appeals are being decided and disposed of by this common judgment and order.

2. That both the appellants herein (the original accused), namely, Jahangir Hussain (original accused no.4) and Parameshwar Lal Soni (original accused no.3) were tried for the offences punishable under Sections 170/395 of the IPC. The prosecution case in short was that on 7th March, 2000 at about 4 p.m. the accused persons on trial along with another accused Tony Anthony (since deceased) intercepted one Ranjan Ojha at the crossing of Brabourne Road and Sukeas Lane within the P.S. Hara Street, Calcutta and identified themselves as officers of Customs falsely and asked Ranjan Ojha to get into a taxi. The said Ranjan Ojha had cash of Rs.5 lakhs with him which he collected from one Suresh Saraf and Naresh Kumar Kabra being so directed by his employer Dinesh Kabra. He kept the cash amount of Rs.5 lakhs in a bag being carried by him. The accused persons encircled him and then took him forcibly into a stationary taxi cab after overpowering in him. When he tried to raise alarm the miscreants covered his mouth with their hands

and started assaulting him with fists and blows. The vehicle sped away from the P.O. and the miscreants snatched the bag containing cash of Rs. 5 lakhs from the informant Ranjan Ojha. The informant was then taken to a place in front of premises No.1, Tapsia Road (South) at about 5 p.m. and he was then forced out of the taxi which then sped away. The informant then informed his employer Dinesh Kabra about this incident and then reported the matter to Tapsia Police Station. It was specifically stated by the informant that all the miscreants were of the age group of 25/30 years and the informant hoped that he would be able to identify them. He also reported the police that two of the miscreants were carrying mobile phone with them. After investigation, all the accused were charged for the offences under Sections 170/395 of the IPC. Initially, there were five accused persons. However, one of the accused Tony Anthony died during the pendency of the trial. The remaining accused pleaded not guilty and therefore they came to be tried by the learned Sessions Court for the aforesaid offences. The sessions Court case was numbered as Sessions Case No. 47/2000.

2.1 To prove the case against the accused, the prosecution examined in all 24 witnesses. The appellants herein – original accused nos. 4 & 3 respectively, were, in fact, identified by PW2 in the T.I. Parade. There was also recovery of money looted from the accused persons, i.e., Rs.10,000/- from the custody of Jahangir Hussain and Rs. 1 lakh from the custody of Parmeshwar Lal Soni. That after closing pursis was submitted by the prosecution further statement of the accused persons under Section 313 CR.P.C. were recorded. That all the incriminating materials were brought to the notice of the accused. However, the case of the accused was a case of denial.

3. That thereafter, on appreciation of evidence, the learned trial Court held the accused Jahangir Hussain (original accused no.4) guilty for the offence under Section 395 of the IPC and held the accused Parmeshwar Lal Soni (original accused no.3) guilty for the offence under Section 412 of the IPC. The learned trial Court sentenced one Shahid Ali and Jahangir Hussain to suffer R.I. for seven years and to pay a fine of Rs.5,000/-, in default, to suffer R.I. for one year each. The learned trial Court also sentenced Parmeshwar Lal Soni and

Ramesh Singh @ Lotan Singh to suffer R.I. for seven years and to pay a fine of Rs.5,000/-, in default, to suffer R.I. for one year each.

3.1 The conviction and sentence imposed by the learned trial Court came to be confirmed by the High Court by the impugned judgment and order.

4. Feeling aggrieved and dissatisfied with the impugned common judgment and order passed by the High Court, convicting Jahangir Hussain for the offence under Section 395 of the IPC and convicting Parmeshwar Lal Soni for the offence under Section 412 of the IPC, the original accused nos. 4 & 3 have preferred the present appeals.

5. We have heard the learned advocates for the respective parties at length.

5.1 We have gone through and considered in detail the judgment and order passed by the learned trial Court as well as the impugned judgment and order passed by the High Court. We have minutely considered and even re-appreciated the entire evidence on record.

5.2 Having heard the learned advocates for the respective parties and considering the findings recorded by both the courts below and the reasoning given, we are of the opinion that the courts below have not committed any error in holding Jahangir Hussain, original accused no.4, guilty for the offence under Section 395 of the IPC and in holding Parmeshwar Lal Soni, original accused no.3, guilty for the offence under Section 412 of the IPC. PW2 has identified Jahangir Hussain in T.I. Parade. There is a recovery of Rs.1 lakh from the custody and possession of Parmeshwar Lal Soni and Rs.10,000/- from the custody and possession of Jahangir Hussain, which were at the instance of the accused themselves. Therefore, both the courts below have rightly held the accused guilty for the offences for which they were tried and convicted.

6. Learned advocate appearing on behalf of the appellants, in the alternative, has prayed to impose the lesser punishment and consequently to modify the sentence imposed by the courts below mainly on the grounds that the incident had occurred nearly 19 years ago; that there was no previous antecedents; Jahangir Hussain at the time of the offence was

aged about 28 years in the year 2000 and is now 45 years of age; that he has an aged father of 70 years and mother of 68 years. That Parmeshwar Lal Soni has undergone nearly 54 months out of the total period of 84 months; that he was 48 years of age in the year 2002 and is now aged about 64 years; it is also submitted by the learned advocate appearing on behalf of the accused – Jahangir Hussain that he is ready to pay the enhanced fine, although his monetary condition is poor. Hence, he has prayed for consideration of reducing the sentence to the period already undergone.

7. Having heard the learned advocates for the respective parties, we confirm the impugned judgment and order passed by the High Court, confirming the conviction of the accused Jahangir Hussain for the offence under Section 395 of the IPC and conviction of the accused Parmeshwar Lal Soni under Section 412 of the IPC. However, in the peculiar facts and surrounding circumstances of the case, we reduce the sentence from seven years R.I. to five years R.I. and enhance the fine to Rs.20,000/- each.

8. In view of the above and for the reasons stated above, both these appeals succeed in part. The impugned judgment and order passed by the High Court convicting the accused Jahangir Hussain under Section 395 of the IPC and convicting the accused Parmeshwar Lal Soni under Section 412 of the IPC is hereby confirmed. However, while maintaining the conviction, the impugned judgment and order passed by the High Court by which the accused are sentenced to undergo seven years R.I. is hereby modified and both the accused are sentenced to undergo five years R.I. for the offences for which they are convicted. Both the accused are ordered to pay fine of Rs.20,000/- each and in default to undergo further one year R.I. Both these appeals are partly allowed to the aforesaid extent only.

9. By orders dated 13.04.2009 and 22.03.2010 respectively, both the accused Jahangir Hussain and Parmeshwar Lal Soni were released on bail by this Court. Hence, both the accused Jahangir Hussain and Parmeshwar Lal Soni be taken into custody to serve out the remaining period of their sentence.

.....J.
[L. NAGESWARA RAO]

NEW DELHI;
MARCH 29, 2019.

.....J.
[M.R. SHAH]