

**Rajkumar @ Babloo Vs. State**

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**Court :** Delhi

**Decided On :** Sep-06-2013

**Judge :** S. P. Garg

**Appellant :** Rajkumar @ Babloo

**Respondent :** State

**Judgement :**

\* IN THE HIGH COURT OF DELHI AT NEW DELHI RESERVED ON :

8. h July, 2013 DECIDED ON :

6. h September, 2013 + CRL.A. 542/2012 RAJKUMAR @ BABLOO Through : ..... Appellant Mr.Chetan Lokur, Advocate. versus STATE Through : ..... Respondent Mr.M.N.Dudeja, APP. ` CORAM: MR. JUSTICE S.P.GARG S.P.GARG, J.

1. Rajkumar @ Babloo (the appellant) challenges a judgment dated 20.11.2010 of learned Sessions Judge in Sessions Case No.51/2008 arising out of FIR No.11/2005 registered at Police Station Uttam Nagar by which he along with Malkiat Singh, Charan Singh and Nand Kishore @ Sanjay was convicted for committing offences punishable under Sections 394/395 read with Section 397 IPC. By an order dated 22.11.2010, he was sentenced to undergo RI for ten years with fine `5,000/- under Section 394 IPC and RI for ten years with fine `5,000/- under Section 395 read with Section 397 IPC.

2. Allegations against the appellant were that on 04.01.2005, he and his associates con-jointly committed dacoity at Pawans house bearing No.168, Gali No.9, Laxmi Vihar, Mohan Garden, Uttam Nagar and robbed articles detailed in the FIR and Sunitas supplementary statement. Further allegations were that they also committed decoity in the House of Bhim Sain at E-65, Bhagwati Garden, Uttam Nagar in between 02.30 to 03.00 A.M. and robbed articles detailed in the statements of the victim and his family members. It is further alleged that the assailants were armed with deadly weapons and they used it to commit decoity and voluntarily caused injuries to Tek Chand, Bhagwan Devi, Bhim Sain, Rakesh Kumar, Pawan Kumar and Sunita. The police machinery came into motion when DD No.35-A (Ex.PW19/A) was recorded at Police Station Uttam Nagar on 04.01.2005 on getting information that the assailants had entered inside House No.168, Gali No.9, Laxmi Vihar, Mohan Garden, Uttam Nagar and had killed informants husband. The investigation was assigned to SI Bhagwan Singh who with HC Davinder went to the spot. Another DD No.37-A (Ex.PW-10/A) was recorded at 04.20 A.M. on getting information that the assailants had entered in House No. E-65, Bhagwati Garden, Uttam Nagar and had robbed its inmates after beating them. The Investigating Officer lodged First Information Report after recording Pawan Kumars statement (Ex.PW-1/A). During the course of investigation, the culprits were arrested and few robbed articles were recovered at their instance. Applications for TIP were moved and statements of the witnesses conversant with the facts were recorded. After completion of investigation, a charge-sheet was submitted in the court. The prosecution examined 24 witnesses to prove the charges. In his 313 statement, the appellant pleaded false implication. On appreciating the evidence and after considering the rival contentions of the parties, the Trial Court by the impugned judgment convicted the appellant for the offence mentioned previously and sentenced him accordingly. Being aggrieved, he has preferred the appeal. It is significant to note that Kalu, Raju and Pappu @ Chuha were also arrested during investigation, however, the eye-witnesses could not identify them in the Test Identification Proceedings and they were discharged.

3. Appellants counsel urged that the Trial Court did not appreciate the evidence in its true and proper perspective. No incriminating article was recovered from appellants possession. The prosecution witnesses have given contradictory

version as to the number of assailants and the role played by them in the incident. PWs 3, 5 and 6 did not identify the appellant as one of the assailants who committed robbery/decoity at E-65, Bhagwati Garden, Uttam Nagar. The appellant was shown to the witnesses in the Police Station and for that reason he did not participate in the TIP proceedings. The prosecution witnesses have given divergent statements as to what cash and other articles were robbed. No independent public witness was associated at any stage of the investigation. Chance prints lifted from the spot did not match. Appellants disclosure statement was not recorded and he was not named by co-accused persons in their disclosure statements. Learned Additional Public Prosecutor urged that there are no sound reasons to discard the testimony of injured witnesses who had no prior animosity with the appellant to falsely implicate him in the incident.

4. I have considered the submissions of the parties and have examined the Trial Court record. There are no good reasons to discard the prosecution version about the incidents of robberies that took place at House No.168, Gali No.9, Laxmi Vihar, Mohan Garden, Uttam Nagar and House not E-65, Bhagwati Extension on the night intervening 03/04.01.2005. Daily Diary (DD) No.35-A (Ex.PW19/A) was recorded in this regard at 03.00 A.M. without any delay. The informant was the inmate of the house and she disclosed that the assailants had killed her husband. Again DD No.37-A (Ex.PW10/A) was recorded at 04.20 A.M. regarding commission of decoity at E-65, Bhagwati Garden, Uttam Nagar. Statement of victim Pawan Kumar was recorded and Investigating Officer lodged First Information Report by making endorsement (Ex.PW19/A) over it at 09.30 A.M. In the statement, the victim gave graphic detail as to how and under what circumstances, 7-8 intruders armed with iron rods and pistol committed decoity in his house and injured him and his wife. He also disclosed that the said intruders also committed decoity at a nearby house of Tek Chand. The victim had no reasons to fake the incident of decoity at the dead of night at his house. In the incident, he and his wife Sunita Arya sustained injuries. PW-1 (Pawan Kumar) was injured with iron rod on his mouth, lower jaw, forehead and left cheek. When PW-4 (Sunita Arya) intervened to save him, one of the assailants (Malkiat Singh) fired at her twice and injured her. Both were taken to hospital. PW-18 (Dr.Udai Kumar Singh) medically examined Pawan and prepared MLC (Ex.PW-18/B). PW-20

(Dr.Nishu Dhawan) proved the MLC (Ex.PW20/A) pertaining to injured Sunita Arya. As per MLC, she suffered gunshot injuries. Similarly, victims PW-3 (Tek Chand) was medically examined by Dr.Vishal Sehgal at DDU hospital. The MLC (Ex.PW-20/C) has been proved by PW-20 (Dr.Nishu Dhawan). She also proved MLCs of injured Rakesh (Ex.PW-20/B), Bhim Sain (Ex.PW-20/D) and that of Bhagwan Devi (Ex.PW-18/A). The injuries sustained by them were not suggested to be self-inflicted or accidental. All the injuries sustained by them confirm their presence at the place of occurrences and make them reliable witnesses. There is no conflict between the ocular and medical evidence. There are no sound reasons to disbelieve their testimonies. It is significant to note that co-convicts Malkiat Singh, Nand Kishore @ Sanjay and Charan Singh had preferred CrI.A.Nos.1369/2010, 18/2011 and 1369/2010 respectively before this Court. While maintaining their conviction vide orders dated 31.05.2012 and 17.10.2012, sentence order was modified to the extent that they were sentenced to undergo the period already spent by them in custody.

5. The appellant (Raj Kumar @ Babloo) was arrested on 01.02.2005 by the police of Special Cell vide arrest memo (Ex.PW19/D). His involvement in the instant case surfaced in the disclosure statements. PW-19 (Insp.Bhagwan Singh) moved applications for holding TIP proceedings for Pappu @ Chuha, Kallu, Raj Kumar and Raju. The witnesses did not identify Pappu @ Chuha, Kallu and Raju in the TIP proceedings. The appellant refused to participate in the TIP proceedings. Adverse inference is to be drawn against him for declining to participate in the TIP proceedings. No plausible explanation has been given for refusal to join the Test Identification Proceedings. No worthful evidence has emerged to establish that he was shown to the public witnesses in the police station.

6. PW-1 (Pawan Kumar) in his statement (Ex.PW-1/A) had given description of the assailants and had claimed to identify them if shown to him. In his Court statement, Pawan Kumar identified Malkiat Singh, Nand Kishore, Charan Singh and Raj Kumar to be assailants and attributed specific role to them. He was categorical to depose that Malkiat Singh had a katta in his hand and fired on his wife. Nand Kishore had an iron rod and he caused injuries to him. Charan Singh and Rajkumar (appellant) were present at the spot with them (Malkiat Singh and

Nand Kishore). The assailants had remained in the house of the victim for sufficient long duration and had direct confrontation with them. PW-1 (Pawan Kumar) and his wife PW-4 (Sunita Arya) were injured in the incident. Apparently, they had clear and sufficient opportunity to identify and recognize the assailants. In the cross-examination, he denied that the accused persons were shown to him before conducting TIP. He denied the suggestion that Raj Kumar was apprehended by the police at Mansa Mandi (Punjab) and was falsely implicated in this case. PW-4 (Sunita Arya) also identified the present appellant along with co-convicts in the court. She deposed that Malkiat Singh had a revolver in his hand and the other three assailants stood near her bed along with him (Malkiat Singh). They all gave beatings to her husband. Three assailants had danda, hocky and knife. In the cross-examination, she disclosed that she was unable to participate in the Test Identification Proceedings of case property as she remained in bed for seven to eight months due to the injuries caused to her. She denied that the police had shown the accused persons after her discharge from the hospital by bringing them to her house.

7. PW-3 (Tek Chand), PW-5 (Bhagwan Devi), PW-6 (Bhim Sain) were fair enough to depose that they were unable to identify Raj Kumar to be one of the assailants. They identified Charan Singh and Nand Kishore and assigned specific role to them in the incident. However, PW-11 (Rakesh Kumar) was able to identify all the assailants Malkiat Singh, Charan Singh, Nand Kishore and Raj Kumar. In his deposition in the court, he clarified that Malkiat Singh had a katta in his hand and Charan Singh, Raj Kumar and Nand Kishore had iron rods at the time of incident. In the cross-examination, he admitted that the accused persons were not known to him prior to the incident and he saw their faces on the night of incident only. He denied that the police officials had shown him the photographs of some persons. He volunteered to add that he identified the accused persons for the first time before the Metropolitan Magistrate. He denied to have visited the police on 06.01.2005 or on 09.01.2005 or to have seen the accused persons sitting there.

8. The court has no reasons to disbelieve the statements of PWs-1, 4 and 11 regarding identification of the present appellant in the court. They had no ulterior motive to implicate an innocent person and to let the real culprit go scot free. No

specific suggestion was put in the cross-examination to claim that the appellant was present on the date and time of occurrence at some other specific place i.e. at his house or at the place of his work. No such witness from these places was examined in defence. They were fair enough to not to identify Pappu @ Chuha, Kallu and Raju in the TIP proceedings. Minor contradictions and improvements highlighted by the appellants counsel do not discredit the otherwise natural and reliable testimony of the public injured witnesses. The discrepancies referred to by the counsel are insignificant and not material. The occurrence took place at the residential houses at the dead of night. The intruders were 7/8 in number and were armed with weapons. The court can well understand and realize the trauma and shock of inmates of the house on finding strangers with deadly weapons in their hands at that odd hours. There are bound to be some discrepancies between the narration of different witnesses when they speak of details, after witnessing such a horrible incidence. Corroboration of evidence with mathematical precision cannot be expected in criminal cases. I find no valid reasons to interfere in the impugned judgment which is based upon fair appraisal of the evidence.

9. Malkiat Singh, Charan Singh, Nand Kishore and Raj Kumar were sentenced to undergo RI for ten years with total fine `10,000/-. Malkiat Skingh and Charan Singh were further sentenced to undergo RI for seven years with fine `3,000/- under Section 412 IPC. Malkiat Singh was sentenced for two years RI under Section 25 Arms Act with fine `2,000/-. All the sentences were to run concurrently. The convicts were given benefit of Section 428 Cr.P.C. As observed above, Malkiat Singh, Charan Singh and Nand Kishore were sentenced to undergo custody period already spent by them in this case. The custody period of Charan Singh was more than seven years. Nominal roll of the present appellant reveals that he has spent seven years, one month and twenty days incarceration as on 26.04.2012. He also earned remission for six months and fifteen days as on 26.04.2012. The said custody period has increased to almost more than eight years. Taking into consideration, facts and circumstances, the present appellant is directed to undergo the sentence already served by him in this case.

10. The appeal stands disposed of in the above terms. A copy of the order be sent to Jail Superintendent, Tihar Jail with the direction to release the appellant, if he is

not required in any other case. Copy be also sent to the accused/appellant through Jail Superintendent. Trial Court record, if any, along with copy of this order be sent back. (S.P.GARG) JUDGE 6 h September, 2013 sa

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