

Sajjan Vs. State

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Court : Delhi

Decided On : Nov-27-2013

Judge : G. S. Sistani

Appellant : Sajjan

Respondent : State

Judgement :

\$~ 25 * IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.A. 592/2010 %
Judgment dated 27.11.2013 SAJJAN Through: Appellant Mr.P.K. Sharma and Mr.Bakul Jain, Advs versus STATE Through: Respondent Mr.Feroz Khan Ghazi, Adv. for State S.I. Vikas, P.S. Subhash Place. CORAM: HON'BLE MR. JUSTICE G.S.SISTANI G.S.SISTANI, J (ORAL) 1. The present appeal has been filed against the order of conviction dated 8.3.2010 and order on sentence dated 8.3.2010 by which appellant was sentenced to undergo RI for 7 years along with fine of Rs.5,000/-, in default of payment of fine SI for 4 months punishable under Sections 392/ 34 IPC.

2. As per the FIR No.294/1999 lodged at Police Station Saraswati Vihar, under Section 392/397/34 IPC, the appellant was convicted along with three other persons, who committed robbery on 26.4.1999 between 11:00 and 11:15 a.m. upon one Sh.Sushil Aggarwal PW-20, complainant and Mr.Babu Lal, PW-13 of Rs.8.90 lacs on gun point. As per the prosecution, Sushil Aggarwal, was doing business related to chemicals at shop no.2831/212 Tri Nagar, Delhi; he was

residing at F-304, Rashmi Apartments, Pitampura, Delhi; and Babu Lal was one of his employees. On 26.4.1999 PW-20 along with Babu Lal, PW-13 were returning from the bank after withdrawing 9.55 lacs on a two-wheeler scooter. After withdrawing the money PW-20 had given Rs.65,000/- to Naresh Jain and Rs.8.0 lacs were kept by him in a yellow colour plastic bag which was handed over to Babu Lal. The balance sum of Rs.90,000/- was kept by him in a canvas bag, which was hanged on the handle of the scooter. The entire currency notes were of the denomination of Rs.50/-, 100/- and 500/-. When Sushil Aggarwal reached in front of primary school, Outer Ring Road, Sector-8, Rohini and had crossed half of the road, they stopped the scooter as a truck was coming from the opposite side. In the meanwhile one white maruti car came from the right side and from said car two boys came out while two boys were sitting inside the car. The boys who came out from the car put a katta on the person of Sushil Aggarwal and Babu Lal and snatched away Rs.8.90 lacs and ran away towards Peeragarhi Chowk. PW-20 was perplexed and frightened. They returned home, but did not disclose the facts to their family, as mother of PW-20 was unwell. PW-20, called his brother, Sushil Aggarwal and thereafter the matter was reported to the police. SI Manoj along with Constable Rampal, upon receipt of DD No.25, reached at Pitampura, on 26.4.2009 where he recorded the statement of PW-20. Rukka was prepared by S.I. Manoj Kumar and was sent for the registration of the case, which was registered at 9:00. At 10:00 p.m. complainant, Babu Lal and S.I. Manoj Kumar reached the place of occurrence and prepared the site-plan. In the meanwhile DD No.11 was also received regarding escaping of 4-5 persons after parking a Maruti Car in an abandoned condition at C-Block Market, Saraswati Vihar, Delhi. One Rajeev was arrested on 19.6.1999 by S.I. Jaidev; Rajeev disclosed about his involvement and participation in the offence which was registered vide FIR No.294/99 under Sections 392/34 IPC. The accused, Rajeev got recovered a country-made pistol stated to be used from a park situated between A and B Block, Saraswati Vihar, Delhi. One Ashwini and Harminder Singh were also arrested and their disclosure statements were recorded; subsequent thereto a case was registered against Sajjan Kumar, the present appellant and he was arrested on 5.7.1999 at about 8:30 p.m.; the disclosure statement of the appellant was also recorded, wherein he has disclosed his involvement and participation in the commission of offence

registered vide FIR No.294/1999. The appellant refused to participate in the TIP. The appellant, Sajjan pointed out to the place of incident and also the place where they left the Maruti Car bearing DL1CD1652 in an abandoned condition.

3. Another accused, Rajeev was also charged for the offence punishable under Section 25 of the Arms Act. The prosecution examined 23 witnesses in all, however, no evidence was led by the defence. Statements of the accused persons were recorded under Section 313 of the Evidence Act. In the statement recorded under Section 313, the appellant, Sajjan had stated that he is an agriculturist in his native village Farmana, District Sonapat, Haryana; and he was present in his house when he was arrested and was falsely implicated in the matter.

4. Counsel for the appellant, Sajjan submits that the judgment and order on sentence passed by the trial court is against the law, facts and circumstances of the case, as there is no material on record to suggest that appellant, Sajjan was involved in the commission of the crime. Counsel further submits that the prosecution has failed to establish the identity of the appellant and thus the judgment and order on sentence are liable to be reversed. Strong reliance is placed by counsel on the cross-examination of PW-20 and the complaint, Ex.PW-20/A, wherein the complainant specifically stated that he was unable to see other accused persons, sitting in the car due to the glass of the window being black [jo gari start thi sume ak do ladke aur bethe hone ka ahsas ho raha tha parantu kale sheeshe honk e karan kuch dikhai na parsaka; and in the absence of the identity of the appellant being established beyond doubt, the appeal is liable to be allowed.

5. Mr.Sharma, counsel for the appellant further submits that there is unexplained delay of 9 hours in the registration of the FIR, as the incident had taken place between 11:00 and 11:30 a.m., while Rukka was sent at 8:30 p.m. and FIR was registered at 9:10 p.m. It is further submitted that although it is stated that the incident took place in the middle of the road, no public witness was either associated or involved at any point of time. It is further submitted that there are material contradictions in the evidence of PW-13 and 20, who are the victims with regard to the involvement of number of persons. According to PW-20 there were three persons, but according to PW-13 there were four persons. As per the PW20

after the incident they were perplexed and went to the house, and did not disclose the incident to anyone on account of the serious illness of the mother of PW-20, whereas according to PW-2, the younger brother of the complainant, the father, who was a businessman was unwell, and, therefore, he was at home and he did not mention the serious illness or any illness of the mother, while the other victim, Babu Lal has testified that the entire incident was disclosed to the mother and sister, who were present at home.

6. Mr.Sharma, contends that these material contradictions, coupled with the unexplained delay, are sufficient to prove that the story of the prosecution is false and on this ground alone the appellant should be acquitted. Counsel further submits that the pointing out statement of appellant, Sajjan is inadmissible in evidence, as the place of incident was already known and thus the appellant could not have been convicted on the basis of the pointing out statement.

7. Mr.Ghazi, counsel for the State submits that there are no material contradictions in the evidence of any of the witnesses. Counsel also submits that it is most difficult to associate public witnesses, a fact which has even been recognized by the Supreme Court. Counsel for the State further submits that PW-13, is the eye-witness, who has clearly identified the appellant, Sajjan and his testimony is reliable, cogent and trustworthy and on his statement alone the appellant, Sajjan has been held guilty. It is also submitted that there is no unnecessary delay in lodging of the FIR. The delay has been explained, as the victim was perplexed, he went home and did not disclose the incident, as his mother was serious, and after the incident was disclosed to the police the police took the complainant and Babu Lal at the spot of the incident and thereafter sent Rukka.

8. I have heard counsel for the parties and considered their rival contentions. The trial court had convicted the appellant, Sajjan on the basis of the testimony of PW-20 (complainant) and PW-13, both were the victims and also the eye witnesses to the incident. The trial court has also considered the pointing out memo Ex.PW-12/A by which the appellant had pointed out to the place of occurrence along with the Ashwini and Harminder. The other two accused persons, Ashwini and Harminder have filed their separate appeals. The appellant, Sajjan has been

convicted by the trial court on the basis of the testimony of PW-13 and PW-20. According to the trial court both these witnesses had identified the appellant, as the person, who was sitting in the car. It is deemed appropriate to reproduce the relevant paragraphs of the judgment where the identification of the appellant has been discussed. Paragraphs 18, 22 and 24 read as under:

18. The prosecution to support and corroborate the testimony of PW-20 Sushil Aggarwal examined Babu Lal as PW-13 who also supported the case of the prosecution. PW-13 Babu Lal deposed that on 26.4.99 he along with PW-20 Sushil Aggarwal went to Bank of Punjab situated at Sector-8 Rohini from Laxmi Apartment on a two wheeler scooter and withdrawn Rs.9,56,000/-, out of which Rs.65000/- was given to Naresh Jain. PW-13 further deposed that thereafter they divided the balance amount in two parts and kept in two different bags. It is reflected from the testimony of PW13 that when they reached near the red light, Outer Ring Road just before the Madhuban Chowk then one car bearing no.DL1D1652 came from the back side out of which two boys get down and snatched two bags containing Rs.8,90,000/-. PW-13 further deposed that convict Ashwini put the Katta on him while convict Rajiv put katta on PW-20 Sushil Aggarwal. The respective testimony of PW-13 and PW-20 proved that on 26.4.99 both of them had gone to Bank of Punjab , Sector-8, Rohini from Laxmi Apartment i.e the residence of PW-20 Sushil Aggarwal on two wheeler scooter and withdrawn Rs.9,55,000/- out of which Rs.65,000/- were given to one Naresh Jain and the balance amount was kept in two bags and when PW-13 and PW-20 reached near Red Light, Outer Ring Road then convict Ashwini and Rajiv after getting down from car bearing no.DL1D1652 put katta on the person of PW-13 and PW-20 and snatched Rs.8,90,000/-. It is also reflected from the testimony of PW-13 and PW-20 that convict Harminder was sitting at the back side of the car while accused Sajjan was sitting on the driver seat of Maruti car. Both PWs identified all convicts and accused Sajjan who had participated in the commission of offence.

22. As per the testimony of PW-20 Sushil Aggarwal, he went to Bank of Punjab Ltd. on 26.4.99 at about 10.15 am and withdrawn Rs.9,55,000/- and when he was coming back on two wheeler scooter then the accused Rajeev and Ashwini snatched two bags containing total of Rs.8,90,000/- while two other accused

Harminder and Sajjan were sitting inside the car. PW-20 further deposed that he became perplexed and came to his house and at that time his mother was serious so he could not disclose the incident in family. PW-20 deposed that he informed his younger brother Sunil Aggarwal about the incident who immediately came to house and made telephonic call to the police. PW-20 further deposed that thereafter he disclosed each and everything to the police. PW-13 who accompanied PW-20 on 26.4.99 also deposed that after the incident they went to the house of PW-20 and narrated the incident to the younger brother of PW-20 Sushil Aggarwal namely Sunil Aggarwal. The prosecution has also examined Sunil Aggarwal as PW-2 who deposed that on 26.4.99 at about 11/11.15 am, his elder brother PW-20 Sushil Aggarwal was bringing Rs.8,90,000/- from the Bank of Punjab, Rohini Branch on two wheeler scooter along with his employee i.e PW-13 Babu Lal and he was told that two boys on the gun point had robbed Rs.8,90,000/- . PW-2 further deposed that when he came to know this fact then he made telephonic call to the police and the police also came to his house and after making enquiry they were taken to Police Post Shakti Vihar. The complaint ExPW20/A perused. On complaint ExPW20/A, Investigating Officer SI Manoj Kumar made endorsement ExPW22/A and sent Ct. Ram Pal to the Police Station for the registration of the case. PW-22 mentioned the time and date of incident as 26.4.99 at 11.30 am and the place of incident as Outer Ring Road, Opposite Primary School, Pitampura, Delhi. As per the endorsement ExPW22/A it further reflects that the Tehrir was sent on 26.4.99 at about 8.50 pm and FIR was registered by PW-5 HC Jamil Ahmed. There is delay in recording the FIR. The incident stated to be happened at 11.30 am while the FIR was registered at about 9.10 pm i.e after the expiry of eight hours. The prosecution has explained the delay in registration of FIR. PW-20 deposed that after the incident he got perplexed and he went to his house and at that time his mother was seriously ill and due to this reason, he called PW-2 Sunil Aggarwal his younger brother and thereafter the police was called and after making the inquiry, the FIR was registered. It is a matter of common knowledge that when an ordinary citizen like PW-20 has been robbed of Rs.8,90,000/- by four persons cannot have enough courage to go to the Police Station directly. PW-20 preferred to go to his house and have talk with his brother PW-2 Sunil Aggarwal. At that time, the mother of the

PW20 and PW-2 was seriously ill. If the said incident was brought to the knowledge of ailing mother then it would have caused problem to the ailing mother. The prosecution explained the delay in lodging the FIR. The delay in lodging the FIR is not fatal to the case of the prosecution.

24. It is also argued that as per the prosecution, the convicts Ashwini, Rajiv get down from the car bearing no.DL1D1652 and snatched Rs.8,90,000/- from PW-20 and PW13 but the accused Sajjan has not participated in the commission of offence. PW-20 and PW-13 clearly deposed that the convict Harminder was sitting on the back seat of the Maruti car while accused Sajjan was sitting on the driver seat. All the convicts and accused Sajjan were present at the scene of crime and they run away in the car bearing no.DL1D1652 after committal the offence. It clearly reflects the common intention on the part of all the convicts and accused Sajjan while committing the offence.

9. In the 15th line of paragraph 18, the trial court has noticed the testimony of PW-13 and PW-20 to the effect that according to PW-13 and PW-20 convict, Harminder Singh was sitting in the back side of the car while Sajjan (appellant herein) was sitting in the driver seat of the Maruti car; and both the PWs identified all the convicts and the accused, Sajjan, who had participated in the commission of the offence. The trial court has also noticed in paragraph 22 that PW-20 had deposed that accused, Harminder Singh and Sajjan were sitting inside the car.

10. The entire testimony of PW-20 has been read out in court and carefully examined, which would show that PW-20 has neither identified, Sajjan in court nor in his testimony he has identified, Sajjan or referred to Sajjan in his entire testimony.

11. In my view the trial court has made a factual error in relying upon the evidence of PW-20 to convict appellant, Sajjan. A very material aspect which cannot be ignored is that while recording Rukka, the complainant (PW-20) had categorically stated that he felt that there were two more boys sitting in the car, but on account of dark glasses, he could not see. [jo gari start thi sume ak do ladke aur bethe hone ka ahsas ho raha tha parantu kale sheeshe honk e karan kuch dikhai na parsaka.]. This aspect also finds mention in the cross-examination of PW-20. The

cross- examination of PW-20, reads as under:

From the maruti car one person got down from the rear seat and one person from the conductor seat side near driver. It is correct that there was only one person seating at the rear seat of the car who got down from the said car and the window glass colour was black.

12. I may however, hasten to add that PW-13 in his testimony has pointed out at Sajjan in court and also stated that he was the person sitting in the car.

13. As per the testimony of PW-13, he has identified Sajjan, as the person who was sitting in the driver seat. While the testimony of PW-13 seems reliable to the extent with regard to the commission of the offence and as to the pointing out of two other persons, namely, Rajeev and Ashwani, however, testimony of PW-13 with regard to the pointing out of appellant, Sajjan is unreliable and not trustworthy, on account of the fact that complainant, PW-20 at the time of the first statement recorded by the police had categorically stated that he could not see inside the car, on account of the black glasses. The complainant had also given a description of the other two boys, who had robbed them on gun point and in case he had seen the appellant, Sajjan, there was no reason for him not to have given description of Sajjan and in fact he goes on to say that he could not identify him on account of dark glasses of the car.

14. The pointing out memo Ex.PW-12/A cannot be treated as an incriminating factor against the appellant, Sajjan, as the place of the incident was not discovered at the instance of the appellant, Sajjan.

15. It has been held by the Supreme Court in the case of Swarn Singh Ratan Singh Vs. State of Punjab, AIR 1957 SC637 that in criminal cases mere suspicion however, strong cannot take the place of proof. The court must be satisfied that the case of the prosecution is not only substantially proved, but the guilt of the accused has also been established beyond reasonable doubt. It is only when the prosecution has proved its case beyond reasonable doubt the conviction cannot be disturbed in appeal. Both PW-13 as also PW-20 complainant were present at the spot of the incident while PW-20 has given a detailed description of two

persons at the time of making the statement. He also stated that on account of dark glasses in the car, he felt that there were two other persons, but could not see them. In the cross-examination this was reiterated. Thus, the possibility of PW-13 having seen the appellant is a weak piece of evidence and cannot be a ground to convict the appellant. Since two views emerge with regard to identification of the present appellant, benefit of doubt should go to appellant. It will be useful to reproduce the observations of the Honble Supreme Court in the case of Kali Ram Vs. State of Himachal Pradesh, AIR1973 which are as follows:

Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favorable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence. Rule has accordingly been laid down that unless the evidence adduced in the case is consistent only with the hypothesis of the guilt of the accused and is inconsistent with that of his innocence, the court should refrain from recording a finding of guilt of the accused. It is also an accepted rule that in case the court entertains reasonable doubt regarding the guilt of the accused, the accused must have the benefit of that doubt. ... The rule regarding the benefit of doubt also does not warrant acquittal of the accused by resort to surmises, conjectures or fanciful considerations. Although the benefit of every reasonable doubt should be given to the accused, the courts should not at the same time reject evidence which is ex facie trustworthy on grounds which are fanciful or in the nature of conjectures. The guilt of the accused has to be adjudged not by the fact that a vast number of people believe him to be guilty but whether his guilt has been established by the evidence brought on record. Indeed, the courts have hardly any other yardstick or material to adjudge the guilt of the person arraigned as accused. Reference is sometimes made to the clash of public interest and that of the individual accused. The conflict in this respect, in our opinion, is more apparent than real. It is no doubt true that wrongful acquittals are undesirable and shake the confidence of the people in the judicial system, much worse, however, is the wrongful conviction of an innocent person. The consequences of the conviction of an innocent person are far more serious and its

reverberations cannot but be felt in a civilized society. All this highlights the importance of ensuring, as far as possible, that there should be no wrongful conviction of an innocent person. Some risk of the conviction of the innocent, of course, is always there in any system of the administration of criminal justice. Such a risk can be minimised but not ruled out altogether.

16. There is also contradiction in the evidence of PW-20 and PW-13. According to PW-20 there were three persons, but according to PW-13 there were four persons. PW-20 in his examination-in-chief has said that two persons came out from the Maruti car one having thin built body and the other person was healthy and fat whereas PW-13 has testified that two persons came out from the Maruti car and they put katta on them and snatched the bag and that there were four persons in number, one was sitting on the driver seat and the other were sitting on the back seat. Thereafter he pointed out to Ashwani as the person who put the katta on him and pointed out to Rajiv who put katta on PW-20 Sushil Aggarwal and identified Harminder as the person sitting on the back side while the present appellant as the person who was sitting on the driver seat of the car.

17. In my opinion, in view of the categorical statement made by PW-20, the complainant that he could not see inside the car on account of dark glasses and further no description was given by him of this appellant would show that his testimony is reliable, trustworthy and natural in contrast to the testimony of PW-13 who could not have possibly identified the appellant and that too from the back side without seeing his face. In the absence of clear identification of the appellant, he cannot be convicted. On this ground alone the present appeal is allowed. The order on conviction and sentence is set aside. Appellant shall be released forthwith, unless he is wanted in any other case. G.S.SISTANI, J NOVEMBER ssn CRL.A. 592/2010

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