

Sanjay Vs. State

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Court : Delhi

Decided On : Jan-17-2014

Judge : Indermeet Kaur

Appellant : Sanjay

Respondent : State

Judgement :

\$~R-11, R-12 & R-13 * % + IN THE HIGH COURT OF DELHI AT NEW DELHI
Judgment Reserved on:09.10.2014 Judgment Delivered on:17.01.2014
CRL.A.31/2006 SANJAY Appellant Through: Mr.Puneet Singhal, Adv. along
with accused in person. versus STATE Respondent Through: + Ms.Fizani
Hussain, APP along with SI Amarjeet. CRL.A.575/2006 SUNIL KUMAR @
PEHALWAN Through: Appellant Mr.Puneet Singhal, Adv. versus STATE
Respondent Through: + Ms.Fizani Hussain, APP along with SI Amarjeet.
CRL.A.905/2006 SUNIL @ SOMI Appellant Through: Mr.Puneet Singhal, Adv.
along with accused in person. versus STATE Respondent Through: Ms.Fizani
Hussain, APP along with SI Amarjeet. CORAM: HON'BLE MS. JUSTICE
INDERMEET KAUR INDERMEET KAUR, J.

(Oral) 1 On 19.11.2001 at about 11.00 a.m. in house No.C-174, Sector-1,
Avantika, of the complainant Kamla Devi (PW-1), the appellants/accused had
while committing robbery had also caused injuries upon her person. 2 There were
four persons involved in the incident namely Sunil Kumar @ Pehalwan, Sajay, Jai

Pal and Sunil @ Somi. Jai Pal has since suffered the sentence imposed upon him. The other three accused are before this Court. 3 All the accused persons were convicted for the offences under Sections 452/392/394 read with Section 34 IPC. Accused Sunil Kumar @ Pehalwan and accused Sanjay were also separately convicted for offence under Section 397 of the IPC and Section 37/54/59 of the Arms Act. While appellant Sunil Kumar @ Pehalwan was found to be in possession of a buttondar knife; appellant Sanjay was found to be in illegal possession of a country made pistol. 4 All the aforementioned accused persons had been convicted and had been sentenced to undergo rigorous imprisonment for a period of 7 years and to pay fine of Rs.500/- in default of payment of fine to undergo rigorous imprisonment for 3 months under Section 394 IPC; for the offence under Section 452 of the IPC the accused persons had been sentenced to undergo rigorous imprisonment for 5 years and to pay fine of Rs.500/- in default of payment of fine to undergo rigorous imprisonment for 3 months. Accused Sanjay and Sunil Kumar @ Pehalwan had also been convicted under Section 27 of the Arms Act read with Section 397 of the IPC but no separate sentence was imposed qua the said offences. 5 Star witness of the prosecution was Kamla Devi examined as PW-1. She had deposed that at about 11.00 a.m. while she was about to close the main door accused Sunil @ Pehalwan along with Sanjay had entered into her house; she questioned them; they caught her and took her inside the bathroom; two more boys entered the house and joined them. Amongst the four boys two persons opened her Almirah and took out the jewellery lying there. The two persons present in the bathroom were armed; one of them was armed with one a knife and the other was armed with a country made pistol; he put it on her chest. She started crying. Accused Sunil @ Pehalwan had stabbed her on her head. The accused robbed her of two pairs of bangles, 4-5 rings, one set, three chains, a pair of tops and cash amounting to Rs.12,000/-. 6 Rajesh Kumar Sharma (PW-2) neighbor of the complainant informed the police; he had found PW-1 lying in an injured condition and bleeding from her head. 7 Unfortunately, for the offenders, matriculation certificate of Sunil @ Pehalwan had been left at the crime scene. This certificate was from the Board of School Education Haryana. It was verified from the Competent Authority and vide report Ex. PW-4/B the correctness of the said certificate had been certified. It was this certificate which had led to the

apprehension of the accused persons. 8 At this stage it would also be relevant to note that the incident had occurred on 19.11.2001 at about 11.00 a.m. it was reported in the local police station vide DD No.15A at 12.00 noon. The MLC of the victim was conducted on the same day at 2.40 p.m. vide document Ex. PW-6/A proved through Dr.Raj Mohan Divedi (PW-6). Ex.PW-6/A had evidenced injuries on the left parietal scalp region of the victim. 9 Investigation was marked to H.C. Subash (PW-9) who along with H.C.Dhari Ram (PW-7) reached the spot. Crime team was summoned. Photographer Arjun (PW-3) had taken the photographs of the site Ex.PW-3/A to C; negatives of which proved as Ex.PW-3/A1 to C1. Dog squad was summoned but as per the Dog Squad Incharge Constable Virender Singh (PW-12) no clue could be found. The finger print expert SI Naresh Kumar (PW-11) was summoned. Two chance prints from the jewellery box and four chance prints from iron safe were taken. 10 SI Praveen Lodhi (PW-15) was the investigating officer. He along with H.C. Rishi Raj (PW-14) had gone to the house of accused Sunil @ Pehalwan where he was arrested. His disclosure statement Ex. PW-7/S was recorded. Pursuant to his disclosure statement he got recovered two gold bangles, one gold jhumka and one buttondar knife from underneath the bed of his house which were sealed and seized vide memo Ex. Ex.PW-7/S-3 and Ex.PW-7/S-2 respectively. 11 This disclosure statement had also disclosed the complicity of other co-accused Sanjay, Sunil @ Somi. Sanjay was arrested. His disclosure statement Ex.PW-7/T was recorded. CrI.A Nos.31/2006, 575/2006 & 905/2006 He got recovered a Page 5 of 17 necklace, one ring, one ear ring and a country made pistol along with three live cartridges. They were taken into possession vide memo Ex.PW-7/T-2 and Ex. PW-7/T-3 respectively. 12 Accused Jai Pal was thereafter arrested. His disclosure statement Ex.PW-7/X was recorded. As noted supra he has already suffered his period of the sentenced. It may thus not be relevant to discuss the evidence qua him. 13 Sunil @ Somi was thereafter arrested on 21.11.2011. disclosure statement Ex.PW-7/Y was recorded. His Pursuant to his disclosure statement he got recovered two bangles, one jhumka, one ring and eight silver coins and a shirt; they were seized and sealed vide memo Ex. PW-7/Y-1. 14 Sanction for prosecution under Section 39 of the Arms Act was obtained and proved through SI Satish Bhardwaj (PW-16). Sanction had been granted by the then Additional DCP. TIP of the accused persons as also

of the case property was also ordered. PW-1 had identified accused Sanjay in the TIP proceeding. Other accused persons had refused TIP. The TIP of the case property was also conducted. The TIP proceedings were proved through Learned ARC Inderjeet Singh (PW-17) as Ex.PW-17/A to H. 15 This was the gist of the version of the prosecution. 16 In the statement of the accused recorded under Section 313 of the Cr.P.C. they pleaded innocence. Their submission was that they have been falsely implicated. 17 No evidence was led in defence. 18 On behalf of the appellant arguments have been addressed in detailed by Mr.Puneet Singhal, Advocate. At the outset, learned counsel for the appellants submits that the offence is of the year 2001 and all the appellants have been on bail since the year 2006. It is pointed out that per the nominal roll, appellant Sanjay has since undergone incarceration for a period of 5 years; Sunil @ Somi has undergone incarceration for a period of 4 years 8 months which is exclusive of the period of remission earned. Appellant Sunil @ Pehalwan has undergone incarceration for a period of 4 years 9 months. It is stated that Sanjay and Sunil @ Somi are both married and they have families; whereas Sanjay is aged 40 years; he has two children aged 18 years and 6 years; Sunil @ Somi is aged 33 years and is now doing work of white wash and has a family. They were both present in the course of hearing. Sunil @ Pehalwan could not be traced. On theailable warrants issued against him it was reported that he had become a Sadhu Baba and his parents have disinherited him. 19 It is submitted that in this background the sentence already undergone by them should be the sentence imposed upon them. In the alternate on merits, testimony of PW-1 has been assailed. It is pointed out that no specific role has been attributed by PW-1 to any of the accused persons. In the absence of this conviction of the appellants Sanjay and Sunil @ Pehalwan under Section 397 is not called for as this is an individual offence. It is pointed out that the identification of the accused is also doubtful for the reason that PW-1 in her deposition has admitted that the photograph of Sanjay had been shown to her before she had identified him in the TIP. Thus the TIP becomes an eye-wash. It is further stated that because of the reason that the photographs of the other accused also might have been shown to the complainant, they refused the TIP; as such their refusal to join the TIP was for a valid reason and should not be read adversely against them. It is submitted that the recoveries are doubtful not only of

the alleged pistol and the knife but also of the jewellery articles as no specific mark of identification was admittedly present either on the weapons of offence or on the jewellery articles. No public witness had joined any of these recoveries. It is pointed out that Kamla Devi (PW-1) has admitted that she knew one of the co-accused Jai Pal since 17-18 years. Thus it is clear that PW-1 because of family rivalry had falsely implicated all the accused persons. Benefit of doubt accrues to them and they are entitled to an acquittal. 20 Learned public prosecutor has refuted the submissions of the learned counsel for the appellants. It is submitted that the impugned judgment does not call for any interference. Period of incarceration already undergone by the three accused persons is not under challenge. Learned public prosecutor points out that appellant Sanjay and Sunil @ Pehalwan had been convicted under Section 397 IPC for which there is minimum punishment prescribed which is of 7 years and as such this Court cannot sentence the appellants for a lesser period as has been argued by the learned counsel for the appellant. On merits, it is stated that the conviction calls for no interference. 21 It is largely the testimony of PW-1 which has to decide the fate of the appellants. PW-1 was the complainant. On oath in court she has reiterated the averments which have been made in her complaint. Relevant would it be to state that within less than one hour of the incident the information reached the local police station; the incident had occurred at 11.00 a.m. and the first DD entry was recorded at 12.00 Noon. Accused persons had entered the house of the victim. Accused Sunil @ Pehalwan was armed with a knife; he stabbed the victim in her head. Accused Sanjay was armed with a pistol. Jai Pal and Sunil @ Somi opened the almirah and had taken the jewellery items; they had taken two sets of bangles, four rings, one set, three chains, 21 silver coins, three pairs of ear rings and cash of Rs.12,000/-. Appellant Sunil @ Pehalwan snatched the ear rings which PW-1 was wearing. Appellant Sunil had got blood stains at the time when he stabbed the victim. He had removed his blood shirt and exchanged it for the shirt of the husband of PW-1. The accused persons thereafter fled away. PW-1 was removed to the hospital by PW-2. She was medically examined and as noted supra her medical evidence shows that she had suffered an incised wound measuring 1.5 cm x. 5 cm. on her left parietal region. There was an abrasion on her right forearm and contusion on both the forearms. This document speaks volumes and fully corroborates the

version of PW-1. 22 In her cross-examination PW-1 admitted that her statement was recorded once in the hospital and thereafter in the police station. She had joined TIP proceedings. She admitted that the incident lasted for 1 hours. In the cross-examination certain questions have been put to her by learned defence counsel and her purported improvements qua her earlier statement (Ex.PW-1/A) have been put to her but nothing material has been elicited. She admitted that she knew Jai Pal for the 17-18 years; she did not name him in the FIR as his face was muffled. She denied the suggestion that he has been falsely implicated. She admitted that she had gone to the police station where all the accused persons were sitting; she identified them in the police station. Some of her gold articles were recovered but not all. Cash amount of Rs.12,000/- as also 2 bangles, 2 chains, one gents ring, two ladies rings and eleven coins were not recovered. She had gone to identify the recovered articles at Tis Hazari. 23 The TIP proceedings i.e. of the accused and of the stolen articles were conducted by PW-17 on 28.11.2001. Accused Sanjay was put to TIP where PW-1 amongst 10 other similar persons had identified him correctly in the said proceedings. Other accused persons as noted supra i.e. Jai Pal, Sunil @ Pehalwan and Sunil @ Somi had refused the TIP. There is nothing in the version of PW-1 or of any other witness of the prosecution which evidences that the photo of Sanjay had been shown to her prior to her identifying him in the said TIP. This argument of the learned counsel for appellants is not born out from the record. Version of PW-1 also has to be read as a whole. Although in one part of her version she has stated that she had gone to police station where she had identified the accused persons yet it is not in dispute and is also evident from Ex.PW-17/A to Ex.PW-17/H that the TIP was conducted of the accused persons on 28.11.2001 where for the first time PW-1 had been asked to identify the accused. In fact this version has been explained in a later part of her testimony wherein she has stated that after the incident for the next one month she did not move out of her house meaning thereby up to 19th December 2001 she had probably not visited the police station. The TIP had been conducted at Tis Hazari in this intervening period i.e. on 28.11.2001. This testimony in fact fully establishes that PW-1 had not gone to the police station for the purpose of identification prior to the accused having been put to TIP. 24 What has emanated from the aforementioned versions both oral and documentary is that

robbery had been committed in the house of PW-1 by the four persons i.e. the accused persons. All of them had been correctly identified by her. Sanjay had been correctly identified by her in the TIP and other accused Jail Pal, Sunil @ Pehalwan and Sunil @ Somi had willingly, consciously and voluntarily refused TIP. Adverse inference against them for not joining TIP has to drawn. In these circumstances, their identification in the court was a valid identification. 25 Shirt of the husband (Shiv Charan) of PW-1 had also been seized from the house of Sunil @ Pehalwan which bore a sticker of the name of Shiv Charan. This was identified by PW-1; this was the same shirt worn by the appellant Sunil @ Pehalwan. She also identified the blood stained shirt which the accused had left at the spot. 26 A buttondar knife which was recovered pursuant to the disclosure statement of Sunil @ Pehalwan was seized vide memo Ex.PW-7/S-2; it was attested by PW-7 & PW-14; both of whom had testified to this document. The sketch of the knife shows that it has a blade of 11.4 c.m.. It was this knife which had been used by Sunil @ Pehalwan to inflict injuries on the left parietal region of the scalp of PW-1. Not only is the version of PW-1 clear on this count but the medical record also corroborates this version. Recovery of this knife from Sunil @ Pehalwan stands proved. 27 A deshi katta/pistol was recovered from accused Sanjay. Sketch of the pistol was proved as Ex. PW-7/T-1. CFSL vide its report Ex.PX had opined this country made pistol of .315 bore along with the three live cartridges (which had been seized vide memo Ex. PW7/T-2 and Ex.PW-7/T-3) to be in a working condition. It was described as a firearm under the Arms Act, 1959. This recovery also stood proved. 28 Prosecution has thus been successfully able to establish that the accused persons had entered the house of PW-1 and while appellant Sanjay was armed with the pistol; Sunil @ Pehalwan had a buttondar knife by which he had inflicted injuries on the head of PW-1 pursuant to which she had been examined and remained in the hospital for the whole day. 29 From each of the accused persons jewellery articles were also recovered. Appellant Sunil @ Pehalwan pursuant to his disclosure statement had got recovered two gold bangles and a jhumka from underneath the mattress of his bed from the first floor of his house which were taken into possession vide memo Ex.PW-7/S3. Appellant Sanjay pursuant to his disclosure statement Ex.PW-7/T-3 got recovered one gold necklace, one ring, one ear ring. Appellant Sunil @ Somi pursuant to his disclosure statement Ex.PW-7/Y

got recovered two gold bangles, one jhumka, one ring and eight silver coins from almirah in his room which were taken into possession vide memo Ex.PW-7/Y-1. 30 TIP of the jewellery articles was also conducted by PW-17. The TIP proceedings sheet running into three pages have certified that PW-1 had correctly identified the articles belonging to her amongst similarly placed other jewellery articles which had been taken out from separate pullandas. She had correctly identified the bangles, coins, rings, her chain, jhumkas and tops belonging to her. She had also correctly identified the shirt of her husband which has been placed with three other shirts of similar nature. 31 Prosecution has been able to establish its case to the hilt. 32 The conviction of the appellant on no count calls for any interference. 33 As noted supra Sunil @ Somi has been convicted under Section 394 of the IPC. He has already undergone 4 years and 8 months. He is on bail since 2006. He has not abused that process. He has a family; he is presently doing work of white wash. He was present in the court during the course of hearing. He has also paid the fine amount. Subject to payment of fine of Rs.10,000/- which shall be paid over to the victim Kamla Devi within one week from today Sunil @ Somi is sentenced for the period already undergone by him in default of payment of fine to undergo simple imprisonment for three months. 34 Accused Sanjay and Sunil @ Pehalwan have been convicted and sentenced under Sections 452,394 and 397 of the IPC. The conviction under Section 397 of the IPC qua their roles - Sanjay having been found in possession of a pistol and Sunil @ Pehalwan having used the knife pursuant to which victim had suffered injuries on her left portion of her head establishes that they had committed the offence under Section 397 of the IPC. 35 Section 397 of the IPC prescribed a minimum sentence of 7 years. Appellant Sanjay has undergone a sentence of 5 years; appellant Sunil @ Pehalwan has undergone a sentence of 4 years and 9 months. Keeping in view the legislative mandate since the offence of the appellants has been fully proved under Section 397 of the IPC both the aforementioned accused Sanjay and Sunil @ Pehalwan are sentenced to undergo the remaining portion of their sentence. Their bail bonds and surety bonds stand cancelled. 36 Accused Sanjay is present in Court. He be taken into custody and sent to jail to suffer the remaining portion of sentence. Appellant Sunil @ Pehalwan is an absconder; non-bailable warrants be issued against him; as and when he is arrested he shall be taken into custody to suffer his

remaining portion of the sentence. 37 Appeals are disposed of in the above terms.
INDERMEET KAUR, J JANUARY17 2014 ndn

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