

Abdul Aziz Vs. State

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Court : Delhi

Decided On : Apr-29-2014

Judge : S. P. Garg

Appellant : Abdul Aziz

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI RESERVED ON : March 21, 2014 DECIDED ON : April 29, 2014 + CRL.A.323/2012 ABDUL AZIZ Through : Appellant Mr.R.P.S.Jaiswal, Advocate. versus STATE Through : Respondent Mr.M.N.Dudeja, APP for the State. CORAM: MR. JUSTICE S.P.GARG S.P.GARG, J.

1. The appellant-Abdul Aziz challenges the correctness and legality of a judgment dated 04.02.2012 of learned Additional Sessions Judge-02 (North) in Sessions Case No.52/2011 arising out of FIR No.263/2006 under Section 395/412/120B IPC registered at police station Kotwali by which he was convicted under Section 412 IPC. By an order dated 09.02.2012, he was sentenced to undergo RI for seven years with fine `10,000/-.

2. Briefly stated, the prosecution case, as set up in the charge- sheet, was that on 04.06.2006 at about 3.15 p.m. a decoity took place at the office of the complainant-Sukhbir Sharan Aggarwal at 1994, Katra Lachu Singh, Chandni

Chowk, Delhi. The assailants decamped with cash `22/23 lacs after putting the complainant and his staff in fear of death at revolver/knife point. Daily Diary (DD) No.23 was recorded regarding the incident and the investigation was assigned to SI Vijay Kumar Dahiya (PW-32). He lodged First Information Report after recording Sukhbir Sharan Aggarwals statement (Ex.PW-6/A). Efforts were made to find out the culprits. On 07.07.2006 at about 04.00 p.m. Shivam Yadav @ Vikas was arrested and from his possession a country made-pistol was recovered. He recovered `20,000/- from the house of co-accused Chhotey Lal, at D-105, 1st Floor, Budh Nagar, Inder Puri, Narayana, Delhi. He was taken to Darbhanga, Bihar during police remand. Further case of the prosecution is that on 16.07.2006, Shivam Yadav lead the police team to the house of Abdul Aziz at village Fainkla, PS Bahadurpur, Distt. Darbhanga (Bihar) and recovered `30,000/-. Subsequently, he lead the police team to the house of Chhotey Lal at Ikmighat Chandi, PS Bahadur Garh, Darbhanga (Bihar) and `20,000/- were recovered from his possession. During investigation, statements of witnesses conversant with the facts were recorded. Laboratory. Crl.A.No.323/2012 Exhibits were sent to Forensic Science After completion of investigation, a charge-sheet was Page 2 of 8 submitted against Shivam Yadav @ Vikas; Chhote Lal; Wazid and Abdul Aziz (the appellant). Supplementary charge-sheet was filed against Javed @ Anwar @ Banaras @ Anmed Raji Siddiqui; Deena Nath @ Deena; Wajid and Harmam, who were declared Proclaimed Offenders. Initially, charge under Sections 120-B; 397 read with Section 120-B IPC was framed against accused Shivam Yadav @ Vikas Yadav, Abdul Aziz and Chhote Lal by an order dated 30.11.2006. Separate charge under Section 412 IPC was also framed against them. After Wazids arrest, similar charges were also framed against him by an order dated 25.05.2007. Subsequently, amended charge was framed by an order dated 15.03.2011 only against accused Shivam Yadav, Chhote Lal and Wazid for committing offences under Sections 120 B; 395/34 and 397 IPC. Separate charge under Section 27 Arms Act was also framed against Shivam Yadav and Wazid. The prosecution examined 35 witnesses in all. In 313 statements, the accused persons pleaded innocence and denied their complicity in the crime. None of them examined any witness in defence. The trial resulted in the conviction of Shivam Yadav and Wazid under Section 395 IPC and 27 Arms Act. Abdul Aziz (the appellant), Chhote Lal,

Shivam Yadav and Wazid were held guilty for committing offence under Section 412 IPC. It is relevant to note that in CrI.A.No.1241/2012, 1079/2012 and 536/2012, Chhote Lal, Shivam Yadav and Wazid respectively, gave up challenge to their conviction and their appeals were disposed of by a judgment dated 08.05.2013 of this Court.

3. I have heard the learned counsel for the parties and have examined the record. Only allegation against the present appellant is that on 16.07.2006, `30,000/- were recovered from his house at village Fainkla, PS Bahadur Pur, Distt. Darbhanga (Bihar) which he received or retained knowing or having reasons to believe it to be a robbed property. Earlier, allegations against Abdul Aziz were that he conspired with his associates in the commission of the decoity and was instrumental to provide 17 live cartridges from Nepal. Subsequently, charge was amended and Abdul Aziz was exonerated of all the offences except 412 IPC.

4. Material witnesses examined to establish the charge under Section 412 IPC are PW-32 (SI Vijay Kumar Dahiya), PW-24 (Ct.Shailendra) and PW-34 (Ct.Suresh). No independent public witness was associated at any stage of the investigation qua the appellant. It is alleged that at the time of effecting the arrest and recovery, the police officials from the local police station were present. However, none of them was taken as witness. Memos prepared at the spot do not bear their signatures. The Investigating Officer did not give reasonable and plausible explanation for not joining them as witnesses. It is pertinent to note that Javed @ Anwar was one of the assailants who had committed decoity at complainants office but despite several attempts he could not be arrested and was declared Proclaimed Offender. The appellant is his father. Prior to his arrest on 16.07.2006, he was nowhere in the picture. Shivam Yadav after arrest on 07.07.2006 in his disclosure statement (Ex.PW-19/E) implicated Javed @ Anwar to be one of his associates in committing the decoity. He further disclosed that out of the robbed cash of `22 lacs, he had got his share `2,85,000/- besides keeping `1 lac in addition. He, however, did not disclose the exact address of his associate Javed @ Anwar. Disclosure statement does not reveal if Shivam Yadav volunteered to recover any robbed cash from his associate Javed @ Anwar. It has come on record that various raids were conducted in Bihar for number of days. However, at

no stage prior to 16.07.2006, the appellants house was visited or raided. Only on 16.07.2006, allegedly Shivam Yadav took the police team to the appellants house and `30,000/and one cheque book of PNB Bank were produced by the appellant which he had kept in a suitcase lying in the room. Apparently, Shivam Yadav had taken the police team to appellants house to effect arrest of his associate Javed @ Anwar, appellants son, who was one of the suspects in the commission of decoity. The appellant (Abdul Aziz) was not a suspect and the Investigating Officer had no incriminating material to arrest him that time. PW-32 (SI Vijay Kumar Dahiya) did not give any specific ground to make his arrest. After his arrest, disclosure statement (Ex.PW23/D) was recorded on 16.07.2006. Again, it does not bear signatures of any independent public witness from the locality. Arrest memo (Ex.PW23/B) does not reflect the time when Abdul Aziz was arrested. The Investigating Officer did not collect any document to show that Abdul Aziz was in exclusive possession of the house. PW-23 (HC Shelesh Sharma) in the cross-examination disclosed that the appellant was arrested at about 12 o Clock. He was not aware if the arrest time was shown in the arrest memo (Ex.PW-23/D). He admitted in the cross-examination that Abdul Aziz's wife was also present there at that time. He admitted that they had not gone to the police post Fainkla and no official from that police post was joined in the investigation. PW-24 (Ct.Shailendra Kumar) did not disclose from where the appellant recovered the robbed cash. He admitted in the cross-examination that they had gone to Bihar with Shivam Yadav on 10.07.2006 and till 15.07.2006, they raided many places but nothing could be recovered. He claimed that he had gone to Bihar twice but was not aware regarding his visit for the first time. He was unable to tell the exact places raided by them during their visit. He gave inconsistent and contradictory version that they had gone to Abdul Aziz's house at about 10.00 a.m. He further admitted that the accused was not produced before the local court at Darbhanga. PW-32 (SI Vijay Kumar Dahiya) disclosed that on 13.06.2006, for the first time, he went to Bihar with his staff and returned on 04.07.2006. His next visit to Bihar was on 10.07.2006. He admitted that efforts were made to arrest Javed @ Anwar several times, but he could not be found. He disclosed that they reached the house of the appellant at about 12.15 p.m. He further admitted that the SHO of local police station was not joined as a witness despite his presence. The Investigating Officer

did not collect any evidence if appellants son Javed @ Anwar had visited him at a specific date after the incident and had handed over the booty and if so, to what extent. As per the disclosure statement (Ex.PW-23/D), the appellant was in regular touch with his son Javed @ Anwar and he had given him information about the arrest of his associates. Under this scenario, the appellant was not expected to retain the robbed cash in intact condition with wrapper containing signatures on it in his house. There is no evidence that the appellant was aware that the recovered cash was part of the robbed property. This cash was not recovered pursuant to the disclosure statement of any co-accused. Recovery of `30,000/- after a considerable period of more than one and a half month from the date of occurrence from appellants house is suspect and cannot be believed. Conviction of the appellant on the testimonies of the police officers PW32 (SI Vijay Kumar Dahiya), PW-24 (Ct.Shailendra) and PW-34 (Ct.Suresh) alone in the absence of any independent corroboration, cannot be sustained particularly when the local police officials allegedly present at the time of incident were not associated as witnesses and no public person from the locality was joined; the statements of police officials are inconsistent.

5. In the light of the above discussion, conviction and sentence of the appellant cannot be sustained. The appellant is given the benefit of doubt and is acquitted. Copy of the order be sent to the concerned Jail Superintendent for information. Trial court record be sent back along with a copy of this order. The appellant shall be released forthwith if not required to be detained in any other case. (S.P.GARG)
JUDGE April 29, 2014/sa

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