

Sajan vs.state

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Court : Delhi

Decided On : May-11-2017

Appellant : Sajan

Respondent : State

Judgement :

\$~ * IN THE HIGH COURT OF DELHI AT NEW DELHI SAJAN STATE + CRL.A. No.605/2001 Date of Decision :

11. H MAY, 2017 APPELLANT Through Ms.Sunita Arora, Ms.Vidushi Sharma, Advocates versus RESPONDENT Through Mr.Akshai Malik, Additional Public Prosecutor for the State. AND + CRL.A. No.958/2001 OM PRAKASH Through Mr.Ankur Sood, Ms.Romila Mandal, Advocates APPELLANT versus STATE RESPONDENT Through Mr.Panna Lal Sharma, Additional Public Prosecutor for the State. CORAM: HON'BLE MR. JUSTICE P.S.TEJI P.S.TEJI, J Both these appeals are disposed of together by this common 1. judgment as the same have been preferred against a common judgment of conviction and order on sentence.

2. The present appeals have been preferred aggrieved by the judgment of conviction dated 8th March, 2001, convicting the Crl.A. Nos.605/2001 & 958/2001 Page 1 of 11 accused Sajan (appellant in Crl.A. No.605/2001) under Sections 452, 393 & 397 Indian Penal Code, 1985 (IPC) and the co-accused Om Prakash (appellant in Crl.A. No.958/2001) under Sections 452, 393 read with Section 34 of the IPC and order on sentence dated 8th March, 2001, vide which the sentence

was passed against the appellants to undergo Rigorous Imprisonment (RI) for a period of two years and to pay a fine of Rs.500/- for the offence punishable under Section 452 of the IPC, and five years RI with fine of Rs.1,000/- for the offence punishable under Section 393 IPC. The accused Sajan was also sentenced to undergo seven years RI under Section 397 IPC. In default of payment of fine under Section 452 and 393, it was ordered that the accused would undergo additional RI of three months and six months each respectively. The accused/appellants were given benefit of Section 428 Cr.P.C. The factual matrix emerging from the records are that on 10th 3. June, 1999 at about 8.15 p.m., the appellants entered the office of the complainant i.e. Jagdish Goel at West Moti Bagh, Sarai Rohilla when one of the accused gave parchi to the complainant while the other bolted the door. It was alleged by the complainant that the accused persons pointed out a desi katta towards him but he at once pounced upon them as a result of which one of the assailants i.e. Sajan fell down while the other i.e. Om Prakash ran away. It is clear from the record that desi katta, vegetable knife and parchi were recovered and the accused Sajan was handed over to the police. Thereafter upon checking, the police found one live cartridge loaded in the desi katta. The accused/appellant Om Prakash was declared as proclaimed offender but later on was arrested on 12th January, 2000. With respect the accused persons were challaned to the allegations, from inside. CrI.A. Nos.605/2001 & 958/2001 Page 2 of 11 under Sections 452/386/392/3

of the Indian Penal Code and under Section 25/

of Arms Act. The statement of the accused persons were recorded under Section 313 of the Cr.P.C. in which the accused persons pleaded not guilty. The accused Sajan was held guilty under Sections 452, 393 4. & 397 of the IPC while the accused Om Prakash was held guilty under Sections 452 & 393 read with Section 34 of the IPC by the learned Additional Sessions Judge, Delhi and by an order dated 8th March, 2001, appellants were ordered as given above to undergo Rigorous Imprisonment (RI) for a period of two years and to pay a fine of Rs.500/- for the offence punishable under Section 452 of the IPC, and five years RI with fine of Rs.1,000/- for the offence punishable under Section 393 IPC. The accused Sajan was also sentenced to undergo seven years RI under Section 397 IPC. In default of payment of fine under Section 452 and 393, it was ordered that the

accused would undergo additional RI of three months and six months each respectively. The accused/appellants were also given benefit of Section 428 Cr.P.C.

5. The main grounds of challenge in Crl.A. No.605/2001 are that the learned Trial Court failed to appreciate the fact that the whole story by prosecution is not tenable in view of the ground of Mens Rea. The identity of the person who informed the police on telephone, remains doubtful. The accused/appellant went to ask for his money from PW1 and instead of settling the lawful dues, the complainant called the police and labelled the victim as decoit. The prosecution was unable to prove the case under Sections 25/

of the Arms Act and that no charge was framed under this Section. The appellant Sajan was additionally charged under Section 397 IPC which was against the law as it is not likely that a Crl.A. Nos.605/2001 & 958/2001 Page 3 of 11 single person was carrying two arms, one kitchen knife and another katta. All the witnesses in this case are interested witnesses and no independent witness was joined by the police. The possession of arms by the applicant was never proved successfully by any of the witnesses and the absence of any proof showing scuffle and fight taking place inside the office between four persons raises doubt. The main grounds of challenge in Crl.A. No.958/2001 are that the learned Trial Court failed to appreciate that the prosecution had miserably failed to prove the case beyond reasonable doubt keeping in view the evidence on record inasmuch as there were material contradictions in the testimony of PW1 Jagdish Goel and PW2 Balwan Singh to the effect that PW1 in his examination-in- chief, stated that the appellant was not carrying any weapon in his hand, however, in cross-examination, it was stated that both the accused persons were having firearms; PW2 in his examination-in- chief stated that one boy (Om Prakash) escaped after showing `Katta, however, in his cross-examination, he stated that he saw nothing in the hand of the other accused as he was running & PW1 in his statement stated that the writing work was done at Police Station while PW2 stated that the same was done in the office of PW1. Non-examination of the statement of Ram Lal was a serious lapse on the part of the prosecution, however, his statement under Section 161 Cr.P.C. was recorded. The prosecution could not recover the alleged Katta nor the mobile phone from the appellant. No public person was made as witness

inasmuch as PW1& PW2were interested witnesses. The contention of the appellant was not appreciated to the effect that he refused to join TIP for the reason that SI Maninder Singh took the photographs of the appellant and showed the same to PW1& PW2 CrI.A. Nos.605/2001 & 958/2001 Page 4 of 11 The nominal roll of the appellant Sajan has been called for 6. which reflects that as on 5th December, 2002, he had undergone sentence of three years five month and twenty one days which included under trial period less interim bail period. Vide order dated 23rd May, 2002 passed by this court, the sentence of the appellant Sajan was suspended during the pendency of the appeal.

7. The nominal roll of the appellant Om Prakash reflects that as on 6th March, 2002, he had undergone sentence of two years one month and twenty five days which included under trial period less bail period. Vide order dated 18th January, 2002, the sentence of the appellant Om Prakash was suspended during the pendency of the appeal on the ground that the appellant had already undergone half of the sentence of imprisonment awarded to him. The prosecution had examined as many as six prosecution 8. witnesses namely PW1Jagdish Goel; PW2Balwan Singh; PW3HC Anwar Ahmed; PW4HC Shekhar Anand; PW5Tejpal & PW6Maninder Singh.

9. In support of his contention, reliance is placed on the pronouncement of the Supreme Court in(1996) 9 SCC104State of U.P. Vs. Noorie (Smt) Alias Noor Jahan & Ors.

10. Per contra, learned Additional Public Prosecutor for the State has submitted that the accused Sajan and Om Prakash were rightly held guilty and convicted under Sections 452, 393 & 397 IPC and under Sections 452 & 393 read with Section 34 IPC respectively inasmuch as the accused Om Prakash joined the accused Sajan in bolting the door of the office of the complainant; both the accused pointing desi katta and thereafter the accused Om Prakash running with mobile of the complainant. The accused Sajan was caught along with desi katta & vegetable knife who was handed over to CrI.A. Nos.605/2001 & 958/2001 Page 5 of 11 the police while accused Om Prakash managed to escape from the The Accused Om Prakash was arrested on 12th January, spot.

2000. 11. I have gone through the available records including the arguments advanced by learned counsel for the appellant as well as by learned Additional Public Prosecutor for the State.

12. Upon hearing the rival contentions of the parties at length, important evidences led are being examined. PW1Jagdish Goel in his statement stated that on 10th June, 13. 1999 at about 8.15 p.m., when he was sitting in the office of his shop and other workers were sitting outside, two boys came to his office and one of the boys gave a letter to him. This witness stated that he started reading the same but due to weakness of his eyes, could not read much except his name and, therefore, he took his spectacles from the drawer of the table when both the boys pushed him. One of the accused bolted the door from inside. PW1stated that the accused had two knives and revolver in their hands. Thereafter, the accused pointed out the knife and pistol at him but PW1immediately pointed upon them as a result of which one of the assailants fell down. At the same time, this witness tried to catch hold of the other accused; opened the door and raised an alarm upon which his employee PW2Balwan and Ram Lal entered into the office with the help of whom he managed to catch one of the accused (Sajan) while the other accused (Om Prakash) fell down and ran away along with the mobile of PW1which was lying on the table. This witness stated that police was called and the accused (Sajan) was handed over to the police along with desi katta, vegetable knife and the said parchi. This witness stated that one live cartridge was there in pistol. CrI.A. Nos.605/2001 & 958/2001 Page 6 of 11 found one live cartridge and, PW5SI Tejpal in his statement stated that on 10th June, 14. 1999, he was posted on emergency duty at PS Sarai Rohilla when he received DD No.66B (Copy was marked as Ex.PW5A). This witness along with Ct.Satbir Hussain, reached the place of incident where PW1Mr.Jagdish Goel met him. PW1handed over one boy whom he had caught hold of, whose name was revealed as Sajan. PW1Jagdish Goel also handed over one loaded katta and parchi. Then PW5recorded the statement (Ex.PW1C) of Jagdish Goel (PW1 which bore his signature at point C. This witness prepared rukka (Ex.PW3A) and sent Const.Shabir Hussain to the police station for the purpose of registration of the case. PW5unloaded the katta; thereafter, prepared sketch of katta and live cartridge (Ex.PW1A) which bore his signatures. The katta and live cartridge were sealed in a pullanda with the seal of

TP. After using the seal, the same was given to Ct.Shabir Hussain. The complainant i.e. PW1Jagdish Goel also handed over one kitchen knife to this witness at the spot, which he stated to be in the hand of accused Sajan. Parchi (Ex.PW1F) was also taken into possession vide memo Ex.PW1E which bore the signature of this witness. This witness arrested the accused and effected his personal search vide memo Ex.PW5B which also bore his signatures. On the pointing out of the complainant, PW5 thereafter, prepared site plan of the place of incident (Ex.PW5C). in the disclosure statement (PW5D) of the accused Sajan, he disclosed the name of co-accused Om Prakash. Thereafter, Ct.Shabir Hussain came at the spot and handed over original rukka and copy of FIR (Ex.PW3B) to this witness. PW5also recorded the statement of PW2Balwan Singh. PW5stated that CrI.A. Nos.605/2001 & 958/2001 Page 7 of 11 PW3HC Anwar Ahmed in his statement stated that he was 15. the duty officer at PS Sarai Rohila and on the basis of rukka (Ex.PW3A), he recorded formal FIR (Ex.PW3B) which bore his signatures. PW4HC Shekhar Anand in his statement, stated that on 10th 16. June, 1999, SI Tejpal deposited two pullandas sealed with the seal of TP and that this witness made entry at Sl.No.2169 at register no.19. This witness further stated that on 16th July, 1999, one pullanda containing desi katta was sent to CFSL, Malviya Nagar through SI Maninder Singh vide RC No.

and he made entry (Ex.PW4A) in register no.19 in this regard. PW2Balwan in his statement stated that he was the 17. employee of PW1Jagdish Goel. This witness stated that at the time of incident, he along with Ram Lal were sitting outside the shop after finishing work and on hearing cries of PW1from inside the office of the shop, rushed to office and saw one person lying on the ground while another succeeded in escaping. PW2identified both the accused in Court. This witness stated that when he reached the spot, he saw Katta in the hand of Sajan. Later on, this witness came to know that he also had a vegetable knife. This witness saw nothing in the hand of the other accused as he was running but saw that mobile phone of PW1was also not there on the table inside the office. PW6SI Maninder Singh in his statement stated that 18. This witness, on investigation of the case was entrusted to him. 28th June, 1999, recorded the statement of witnesses as well as supplementary statements of complainant Jagdish Goel and HC Shekh Anand. PW6also placed on file the report of FSL, Malviya Nagar to whom the case

property was sent. This witness Crl.A. Nos.605/2001 & 958/2001 Page 8 of 11 Thus, it arrested the accused Om Prakash (vide arrest memo Ex.PW6B), who was declared as proclaimed offender, and his disclosure statement (Ex.PW6B) was also recorded by this witness which bore his signatures. Search of the accused Om Paraskh was taken (Ex.PW6C) which bore his signatures. With regard to the involvement of accused Om Prakash, this witness also recorded supplementary statement of complainant as well as other witnesses. This witness, thereafter, prepared supplementary challan and completed the investigation whereafter chargesheet was filed in Court by the SHO. PW6stated that the accused refused to participate in TIP proceedings. Photocopy of TIP proceedings were placed by this witness which was marked as Ex.PW6D.

19. the is clear from the testimony of PW1that accused/appellant Sajan along with co-accused Om Prakash, after making preparations and assaulting the complainant or wrongfully restraining him, armed with deadly weapons like knife and Katta, trespassed into the shop of the complainant and waived desi katta at him while the other accused bolted the shop from inside. Thus, the accused persons trespassed into the shop of the complainant. Their intention, therefore, is explicitly clear. They also pointed out desi katta towards the complainant. Upon the complainants reacting and pouncing upon the accused and opening the door, one of the accused persons (Sajan) fell down while the other i.e. Om Prakash, ran away with the mobile of the complainant. This fact is corroborated by the statement of PW2Balwan who in his statement stated that he along with PW1Jagdish Goel and Ram Lal, caught hold of one of the accused i.e. Sajan while the other i.e. Om Prakash managed to slip away. The statements of PWs 1 & 2 causing hurt for Crl.A. Nos.605/2001 & 958/2001 Page 9 of 11 have been duly corroborated by the statement of PW3 4 & 5. PW5SI Tejpal corroborated and testified the statement of PW1to the effect that the accused Sajan along with one loaded Katta and parchi were handed over to him at the place of incident. PW5SI Tejpal also stated that the complainant PW1Jagdish Goel also handed over one kitchen knife to him at the spot. PW3HC Anwar Ahmed received rukka (Ex.PW3A); recorded FIR and made entry in the register. Pulanda containing desi Katta was sent to CFSL through PW6SI Maninder Singh. Thus, it is also established that desi katta & vegetable knife were recovered from the possession of the accused. The

accused persons were armed with deadly weapons like knife and katta and they tried to commit robbery after keeping the complainant under fear. The accused Sajan possessed knife and katta and used it for committing robbery.

20. All the above witnesses were cross-examined at length but the defence failed to put any dent to their testimony. They remained unshaken with regard to their statements.

21. The discussion made above shows that the testimony made by the complainant Jagdish Goel has duly been corroborated by other prosecution witnesses and medical evidence which brings the case of prosecution within the four corners of the alleged commission of offence which culminated into the conviction of the is of the considered opinion that appellants. the prosecution has successfully proven the guilt of the appellants. In view of the above scenario, this Court does not find any 22. illegality, irregularity or impropriety in the judgment of conviction dated 8th March, 2001 passed by the learned Additional Sessions Judge and that the same does not call for any interference.

23. So far as the sentence awarded to the appellant Om Prakash This court Crl.A. Nos.605/2001 & 958/2001 Page 10 of 11 the is concerned, keeping in view the role attributed to him, sentence awarded to him is reduced to three years under Section 393 IPC with fine of Rs.1,000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of six months. Rest of the sentence awarded to both the appellants shall remain the same as awarded by the trial court.

24. The appellant Om Prakash is directed to deposit the amount of fine within a period of fifteen days else to surrender before the Trial Court concerned to serve the sentence in default of payment of fine.

25. Bail bonds and surety bonds of appellant Sajan are cancelled. He is directed to surrender before the trial court concerned within fifteen days from today to serve the remaining sentence.

26. 27. A copy of compliance. The appeals are disposed of in the above terms. the order be sent to concerned court for MAY11 2017 aa (P.S.TEJI) JUDGE Crl.A. Nos.605/2001 & 958/2001 Page 11 of 11

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