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Ajay vs.state

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Court : Delhi

Decided On : Jun-01-2017

Appellant : Ajay

Respondent : State

Judgement :

IN THE HIGH COURT OF DELHI AT NEW DELHI AJAY Decided on:

1. t June, 2017 CRL.A. 1761/2014 ..... Appellant Represented by: Mr. Biswajit Kumar Patra, Adv., Mr. Bharat Chugh, Adv. (amicus curiae) with appellant produced in custody. versus Represented by: Ms. Rajni Gupta, APP for State with SI Pritosh Rathore PS Kirti Nagar. ..... Respondent CRL.A. 1302/2015 * % + + STATE RATAN alias TANU ..... Appellant Represented by: Mr. Imran Khan, Adv. STATE DHCLSC, Mr. Bharat Chugh, Adv. (amicus curiae) with appellant produced in custody. versus ..... Respondent Represented by: Ms. Rajni Gupta, APP for State with SI Pritosh Rathore PS Kirti Nagar. CORAM: HON'BLE MS. JUSTICE MUKTA GUPTA MUKTA GUPTA, J.

(ORAL) CRL.A. 1761/2014 & CRL.A. 1302/2015 Page 1 of 14 1. Vide impugned judgment dated 13th October, 2014 Ajay and Ratan @ Tanu were convicted for offence punishable under Section 3
IPC. Ratan @ Tanu was also convicted for offences punishable under Section 397 IPC and Section
Arms Act. Vide order on sentence dated 15th October, 2014 both Ajay and Ratan

@ Tanu were sentenced to undergo rigorous imprisonment for a period of five years and to pay a fine of 1,000/- each for offence punishable under Section 3
IPC. Ratan @ Tanu was further sentenced to undergo rigorous imprisonment for period of seven years and to pay a fine of 1,000/- for offence punishable under Section 397 IPC and rigorous imprisonment for period of one year for the offence punishable under Section
Arms Act.

2. Learned counsels for the appellants contend that a bare reading of the testimony of the complainant would show that it is full of contradictions; not only did he fail to identify alleged recovery made by the Police officers, in his cross-examination the complainant even failed to identify the appellants. The entire prosecution case is based on the testimony of one single complainant and since his testimony is not trustworthy, no conviction can safely be based on the said testimony. The complainant has belied the version of the Police officers that the arrest was made at his instance and on his information. The entire prosecution case was concocted to avoid the test identification parade as the complainant was not in a position to identify the appellants before the Metropolitan Magistrate. The appellants have been falsely implicated and thus be acquitted.

3. Learned APP for the State on the other hand contends that in respect of the identification of the appellants there is no anomaly in his examination- CRL.A. 1761/2014 & CRL.A. 1302/2015 Page 2 of 14 in-chief. Though the complainant stated that the recoveries were not made in his presence, however he identified the signatures on all the memos and thus proved that the arrest and recoveries were made in his presence. She further contends that the evidence of a hostile witness cannot be effaced totally and if part testimony of the witness is corroborated in material particulars by the testimony of the Police witnesses, the same should be relied upon and conviction based thereon. Reliance is placed on the decision reported as (2006) 2 SCC450Radha Mohan Singh @ Lal Saheb & Ors. Vs. State of U.P.

4. Process of law was set into motion on 16th June, 2011 around 12:30 A.M. when information was received that opposite M.S. Garden SBI, in Tanki Wala Park, two

boys while walking snatched the mobile and purse of the caller and ran away. The aforesaid information was recorded vide DD No.3A (Ex. PW-8/A) and assigned to SI Surta Nand. He along with Ct. Naresh reached the Park but on search no person was found. After they returned back to the police station, around 1:30 A.M., complainant Harshdeep Singh came to the police station and got recorded his statement (Ex. PW-1/A). He stated that he was a resident of B-400, III Floor, Sudarshan Park, Moti Nagar, New Delhi and worked at AAA Maruti workshop, Kirti Nagar, Industrial Area. On 16th June, 2011 at about 12:00 A.M. when he was going to his residence from his work on motorcycle bearing No.DL-3CAQ-6089, he stopped his motorcycle near the park, State Bank of India, Mansarover Garden for urinating. Since the road was well illuminated, so he went inside the park. When he was returning, suddenly two boys surrounded him. One of them put a knife on his neck and asked him to handover whatever he had and the other boy started searching him. CRL.A. 1761/2014 & CRL.A. 1302/2015 Page 3 of 14 He got very scared on seeing the knife, thus he did not resist. He gave them his mobile with number 9268449737 and his wallet which had 1200 in it and both the persons fled away. The boy who had shown him the knife was cock-eyed, about 5 feet 2 inches in height and was wearing a white and red t- shirt with black jeans. The other boy was dark complexioned and was around 5 feet 5 inches in height. He was wearing a light purple kurta and blue jeans. He stated that if the two boys came before him, he could recognize them. After those two boys had run away, he took the phone from a stranger and called at 100 number. On the basis of aforesaid information, FIR No.167/2011 (Ex. PW-2/A) was lodged under Sections 392/3
IPC at PS Kirti Nagar.

5. Thereafter, Harshdeep accompanied the police officers to the spot. SI Surta Nand prepared the site plan (Ex. PW-1/B) at the instance of Harshdeep. Harsheep produced the receipt Ex.PX of the purchase of mobile phone which was seized vide memo Ex. PW-1/H. On the same day, Harshdeep informed SI Surta Nand that he saw one of the robbers near Jhule Wala Park, Mansarover Garden, who can be apprehended if a raid is conducted. Consequently, SI Surta Nand along with SI Dinesh, Ct. Praveen and Harshdeep left for the Park and apprehended one person on the pointing out of Harshdeep and his name was revealed as Ratan @ Tanu. On his personal search, one button actuated knife was recovered from the

right pocket of the pant and one black and brown colour purse was recovered from the rear pocket of his pant which was found containing currency note of 500/- and photocopy of the PAN card of Harshdeep. SI Surta Nand measured the knife and prepared its sketch vide Ex.PW-
and seized the same vide seizure memo Ex. PW-4/A. The purse containing currency note CRL.A. 1761/2014 & CRL.A. 1302/2015 Page 4 of 14 of 500/- and photocopy of the PAN card was seized vide seizure memo Ex.PW-1/D. Ratan @ Tanu was arrested vide memo Ex.PW-1/G, his search was conducted vide memo Ex.PW-1/G-1 and his disclosure statement recorded vide Ex. PW-1/E. Pursuant to the disclosure statement of Ratan @ Tanu, they reached Bihari Chowk, where one person was standing near the road side and Harshdeep identified the said person as the companion of Ratan @ Tanu. Ratan @ Tanu also identified him as Ajay. He was apprehended and on enquiry his name was confirmed as Ajay. On the search of Ajay, one mobile phone was recovered from the right pocket of his pant and the same was identified by Harshdeep. The mobile phone which was of black colour and make Huawai was seized vide memo Ex. PW-1/C. Ajay was arrested vide arrest memo Ex. PW-1/F and his personal search was conducted vide memo Ex. PW-1/F-1. Disclosure statement of Ajay was recorded vide Ex. PW-1/E-1. Subsequently, charge sheet was filed for offences punishable under Sections 392/3
IPC and Sections 25/27/
Arms Act against the two appellants.

6. Both Ratan @ Tanu and Ajay, in their statements recorded under Section 313 Cr.P.C., stated that they had been falsely implicated in the present case, nothing was recovered from their possession and the case property had been falsely planted upon them.

7. In order to appreciate the evidence on record it would be appropriate to note the testimony of the complainant Harshdeep Singh PW-1 verbatim who was examined in chief and cross-examined on the same date as under: 01.05.2012 CRL.A. 1761/2014 & CRL.A. 1302/2015 Page 5 of 14 PW1: Statement of Shri Harshdeep Singh S/o Sardar Gurvinder Singh, Aged about 22 years, R/o B-400, IIIrd Floor, Sudarshan Park, Moti Nagar, New Delhi, 10th Pass, Pvt. Job. On S.A. I do not

remember the exact date, month and the year, however the incident had taken place last year. At the relevant time was working in the Maruti Work Shop, Industrial Area, Kirti Nagar. At about 12.00 night, after finishing the work at my work shop, I was going to my residence on my motorcycle bearing No.DL-3C-AQ-6089 and on the way I stopped the motorcycle as I felt urinating. I stopped the motorcycle near Jhulewala Park, Mansrover Garden. After passing the urinary in the Jhulewala Park when I came out of the park, two boys surrounded me. The said two boys are present today in the Court. I do not know the names of the accused persons. At this stage witness has pointed out towards accused Ratan present in the Court and has stated that: he (Ratan) had put knife on my neck and asked me to hand over whatever I was having with me. Thereafter, the other accused (witness has pointed towards accused Ajay) started taking my search and thereafter both the boys snatched my mobile phone and my purse containing 500/- or 700/-. Again said I do not remember the exact amount of money kept in my purse. After that both the accused persons fled away from the spot. I demanded the mobile phone from one passersby and informed the police at number 100 regarding the incident. After that police reached the spot and narrated the incident to the Police and my statement in this regard was recorded. Same is Ex.PW1/A bearing my signatures at point A. Police prepared site plan Ex.PW1/B bearing my signatures at point A. Police prepared site plan Ex.PW1/B bearing my signatures at point A. On the same day the police officials of PS Kirti Nagar brought both the accused persons in the police station. My mobile and purse were recovered from one of the accused persons in the police station. I cannot point out specifically CRL.A. 1761/2014 & CRL.A. 1302/2015 Page 6 of 14 from whose possession my mobile phone and purse (wallet) was recovered. My mobile phone and purse were taken into possession by the police vide seizure memos Ex.PW1/C and PW1/D bearing my signatures at point A. Nothing else was recovered from the possession of the accused persons. Both the accused persons were interrogated and arrested. The disclosure statement of accused Ratan is Ex.PW1/E and that of accused Ajay is Ex.PW1/E1 bearing my signatures at point A. The arrest memo of accused Ajay is Ex.PW1/F bearing my signatures at point A and that of accused Ratan is Ex.PW1/G bearing my signatures at point A. The personal search memo of accused Ajay and accused Ratan are Ex.PW1/F1 and PW1/G1 respectively

bearing my signatures at point A. I had submitted the original bill of mobile phone to the police and the seizure memo in this regard is Ex.PW1/H bearing my signatures at point A. The said receipt/ bill is Ex.PX bearing my signatures at point A. Thereafter, I left the police station. At this stage, Ms. Neelam Narang, ld. Additional Public Prosecutor for State seeks permission to cross-examine the witness as the witness is resiling from his previous statement made to the Police. Heard. Permitted. XXXXX by Ms. Neelam Narang, Prosecutor for State ld. Additional Public It is incorrect that one knife was recovered from the possession of accused Ratan upon his search by the police. Vol. Police had shown me that knife in the police station stating that the same had been recovered from one of the accused. It is wrong to suggest that in my presence one knife was recovered from accused Ratan which had been used by him at the time of incident then he kept the same on my neck. At this stage witness has been shown the seizure memo of the knife mark A bearing his signatures at point A. On seeing CRL.A. 1761/2014 & CRL.A. 1302/2015 Page 7 of 14 the same witness has stated that he signed the said document without going through its contents. It is correct that police prepared sketch of the knife in my presence and same is Ex.PW
bearing my signatures at point A. It is correct that when my purse was recovered, same was containing one currency note of 500/- denomination and one photocopy of my PAN Card having my photograph. I had not stated to the police in my statement that when I was making efforts to search the accused persons on 16.06.2011 and I reached near Tankiwala park, I saw one boy having squint eyed (cock eyed) standing near Tankiwala park and identified him as one of the assailants who had snatched my mobile phone and purse along with his associate, I went to the PS and informed the police and thereafter with the police I reached near Tankiwala park and on my identification accused Ratan today present in the Court was arrested. Confronted with the statement Ex.PW1/X where it is so recorded from point A to A1. It is incorrect to suggest that from the possession of accused Ratan my purse was recovered and one knife was also recovered in my presence. Rest of the statement Ex.PW1/X is read over to the witness today in the court which he denied having the same made to the police and his statement is confronted with Ex.PW1/X from point B to B1 where it is so recorded. It is incorrect to suggest that mobile phone was recovered from the possession of accused Ajay.

It is incorrect to suggest that I am deposing falsely in respect of arrest of accused persons and the recovery effected from them as I have been won over by the accused persons. I can identify the case property if shown to me. At this stage one sealed pullanda duly sealed with the SN is opened and same is found containing one buttondar knife of silver colour. Same is shown to the witness and the witness has stated that: I cannot say that this is the same knife but it was of silver colour. Buttondar knife is Mark P1. Another sealed pullanda duly sealed with the seal of SN is opened and same is found containing one mobile phone make CRL.A. 1761/2014 & CRL.A. 1302/2015 Page 8 of 14 VIRGIN (HUAWEI C3105) having battery inside but without SIM Card. Same is shown to the witness and the witness has correctly identified the same which was robbed of from him on the day of incident. The same is Ex.P1. Another sealed pullanda duly sealed with the seal of SN is opened and same is found containing one black colour purse (wallet) having a currency note of 500/- and one photocopy of PAN Card in the name of Harshdeep Singh having his photograph and one small stone (stone is not mentioned in the seizure memo) Same is shown to the witness and the witness has correctly identified the same which was robbed of from him on the day of incident. Purse containing currency note and the photocopy of the PAN Card is collectively is Ex.P2. Witness has not identified the small stone contained in the purse. XXXXXX by Sh. Vineet Bahl, Adv. ld. Counsel for accused No.1 Ajay. At this stage ld. Counsel for accused has produced photograph Ex.PW1/DA of some person and the same is shown to the witness. The person shown in the photograph is present today in the court (witness has pointed out towards accused Ajay). Again said the person shown in the photograph is not present in the court today and I do not know whose photograph is this. It is correct that during investigation I had come to know through police that one of the robbers was drug addict. Jhulewala park and Tanikwala park are two different parks. Q. Can you tell the location of Jhulewala park?. Ans. Jhulewala park is located in Ramesh Nagar near the Big Water Tank which is not inside the park. Q. Can you tell the location of Tankiwala park?. Ans. Jhulewala park is also called Tankiwala Park. It is a big park. CRL.A. 1761/2014 & CRL.A. 1302/2015 Page 9 of 14 It is correct that the jhulewala/ tankiwala park is not on my way from my work place to my residence. Vol. My uncle (chacha) lives in Ramesh Nagar i.e. 8/131. I had left from their

house and on Ramesh Nagar side there was barricade and the way was from Mansrover Garden side. I came from work place to my chachas residence at Ramesh Nagar and from there I was on my way back home on the day of incident. It is correct that from

Ramesh Nagar, my residence is in East direction and the Jhulewala park is in West direction. Is it correct that opposite State Bank of India there is a Q. park having without opening from that side and on the another corner there is a public urinal?. Ans. It is correct that there is a public urinal but I did not use the same and the boundary wall of the park was broken. It is incorrect to suggest that wall of that park was never broken and at the date of incident also it was not broken because it is well maintained district park of that area. I cannot say whether police has not apprehended the drug addict because of the reason that had be been apprehended, police had to provide him drug from their own pocket. I do not know whether accused Ajay along with his family is doing work of ironing clothes in front of the park for the last forty years. I have identified accused Ratan in the police station. I had shown my doubt about accused Ajay as I had not seen his complete face. XXXX by Sh. Ratan Kumar, Adv. ld. Counsel for accused No.2 Ratan. I am 9th pass. My date of birth is 15.12.1989. Presently I am 22 years old. I had joined AAA Maruti Workshop, Kirti Nagar, Delhi in the year 2011. The month I cannot tell. I was not the employee of AAA Maruti Workshop, Kirti Nagar, Delhi, but I was employee of Ashishani Consultancy at Bali Nagar, Delhi dealing with insurance inspection. Vol. daily I used to visit AAA Maruti Workshop, Kirti Nagar, Delhi for inspection. CRL.A. 1761/2014 & CRL.A. 1302/2015 Page 10 of 14 I can read Hindi but I can write somewhat Hindi. Vol. I can write in English. It is correct that statement Ex.PW1/A is not in my handwriting. IO has scribed the same. I have signed this statement on the next date of incident. I was signed after about 10 hours of the incident. IO had scribed my statement Ex.PW1/A as I had narrated to him. IO had told me about the statement before I signed the same. I have motorcycle bearing No.DL-3S-AQ-6089 make Bajaj. Can you tell the relation of girl with whom you were on Q. the motorcycle at the time of incident?. Ans. There was no such girl with me. I cannot tell the number of papers on which I had signed. It is incorrect to suggest that I had signed the blank papers. I had signed all the papers the very next day of the incident. I have not made any departure entry at my work

place i.e. AAA Maruti Workshop, Kirti Nagar, Delhi. The site plan Ex.PW1/B was prepared in my presence which I had signed at point A in the police station. It is incorrect to suggest that I was not robbed on the day of incident. The robbed purse (wallet) was of brown colour racsine. There were
persons who had robbed me. Court question: In your examination in chief you had deposed about two persons and now in your cross-examination you have deposed about
persons. Can you clarify whether there were two persons or
persons who had robbed you?. Ans. One person who had shown me knife had caught hold of me from my neck and due to that I felt giddiness and therefore, I cannot say whether they were two or
persons who had robbed me. CRL.A. 1761/2014 & CRL.A. 1302/2015 Page 11 of 14 I was not in senses for
minutes. I had fallen down on the floor. When I had fallen down after that there were no one surrounding me. I cannot tell the complexion of person who had caught hold of me from my neck as it was dark (night time). I had reached the police station after about
minutes of the incident. I could see silver colour knife. It is wrong to suggest that I have lodged false FIR. It is wrong to suggest that I am deposing falsely. 8. A perusal of the evidence of this witness shows that though he identified in his examination-in-chief the two accused present in Court as assailants and that Ratan had put knife on his neck and Ajay took his search and took out his mobile phone and purse containing 500/- or 700/-, in the FIR this witness has stated that his purse contained 1200/-. Further the case of this witness was that no arrest or recovery was made in his presence and he was called to the Police Station by the Police officials and mobile and purse were shown to him. He could not specifically point out as to from whom mobile phone or purse was recovered. Mere identification of the signatures on the search memos does not prove that the two accused were arrested upon his identification or that the recoveries were made in his presence. Further in respect of the identification also, in cross-examination when this witness was confronted with the photograph, he identified firstly the photograph to be of Ajay and later said that the person in the photograph was not present and that he could not identify him. In the Court question put to the

complainant that though his case was that 2 persons were involved in the incident, however he stated in his cross-examination that 2-3 persons were involved; the explanation of this witness was that one person who had shown him the knife had caught hold of him by his neck due to which he felt CRL.A. 1761/2014 & CRL.A. 1302/2015 Page 12 of 14 giddy and was thus unable to say whether they were 2 or 2-3 persons. He further stated that he was not in his senses for 2-3 minutes and that he had fallen down on the floor. Further he stated that he also could not tell the complexion of the person who caught him by the neck since it was dark. Thus his initial version in the cross-examination that on the pointing out of the knife of one person, the other person took out his mobile phone and money is materially contradicted by his answer to the court question. In Court, he also failed to identify the knife allegedly recovered from the appellants and he was categorical that neither the appellants were arrested nor any recovery was made from the appellants in his presence.

9. Indubitably, conviction can be based on the testimony of a solitary witness if the same is reliable and trustworthy. Further conviction can be based on the testimony of a hostile witness if his part version is duly corroborated in material particulars. [See 1991 (3) SCC627Khujji @ Surendra Tiwari Vs. The State of Madhya Pradesh.].

10. In the present case as noted above the version of the complainant is contradictory on each material aspect whether it is the place where he was working, how he made the statement, the place where his statement was recorded, as to how arrest of the accused persons was made, the recoveries made or the identification of the accused and also the weapon of offence.

11. Considering the nature of evidence of the complainant, it is a fit case where the appellants are entitled to the benefit of doubt. The impugned judgment of conviction and order on sentence are set aside. The appellants who are in custody are directed to be released forthwith if not required in any other case. Appeals are disposed of. CRL.A. 1761/2014 & CRL.A. 1302/2015 Page 13 of 14 12. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record.

13. TCR be returned. JUNE01 2017 ga (MUKTA GUPTA) JUDGE CRL.A. 1761/2014 & CRL.A. 1302/2015 Page 14 of 14

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