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Ajay Sethi vs.state

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Court : Delhi

Decided On : Aug-30-2017

Appellant : Ajay Sethi

Respondent : State

Judgement :

$~14 * % + IN THE HIGH COURT OF DELHI AT NEW DELHI CRL.A. 788/2017 AJAY SETHI Date of Judgment:

30. h August, 2017 ..... Appellant Through : Mr.Sumeet Verma and Mr.Aman Chaudhary, Advocates STATE versus Through : Mr.Rajat Katyal, APP ..... Respondent CORAM: HON'BLE MR. JUSTICE G.S.SISTANI HON'BLE MR. JUSTICE CHANDER SHEKHAR G.S.SISTANI, J.

(ORAL) 1. Present appeal has been filed under Section 374 (2) of the Code of Criminal Procedure, 1973 (Cr.P.C.) against the impugned judgment dated 26.08.2016 passed in Sessions Case no.40/2014 FIR no.08/2009 P.S. Vasant Kunj, by which the appellant has been convicted under Section 413 of the Indian Penal Code. Challenge is also laid to the order on sentence dated 01.10.2016 by which appellant Ajay Sethi has been sentenced to the period already undergone by him which is 07 years 05 months and 09 days for the offence under Section 413 of the Indian Penal Code.

2. The case of the prosecution, as noticed by the learned Trial Court, is as under: 1. DD No.8A(Ex.PW-11/A) was received in Police Station Vasant Kunj on 08.01.2009 conveying the information that a dead body is lying near Spinal Hospital, Vasant Kunj Enclave, New Delhi. The said DD was entrusted to Sub Inspector Sukram Pal(PW-11) who rushed to the spot. Information was also conveyed to Inspector Randhir Singh(Ist Crl. A. 788/2017 Page 1 of 9 Investigating Officer) who also rushed to Nangal Dewat Road, Vasant Kunj. An unknown dead body of a male aged about 24 years was found near the boundary wall of jungle of Airport Authority of India near electric pole no.701. The deceased was wearing cream & black colour sweater, white shirt, vest, sky blue colour jeans pant, blue underwear. Deceased was also wearing a metallic chain having locket of 786 and black thread around his neck. Dog squad and Crime Team also reached the spot. Passersby were shown the dead body to identify the same but identity of dead body could not be established. Thereafter, Inspector Randhir Singh (Ist Investigating Officer) prepared the ruqqua and sent the same through HC Thawar to the Police Station and got the case registered under section
of The Indian Penal Code. The spot from where dead body was found was photographed. Site plan was prepared and inquest proceedings were undertaken. Dead body was sent to the mortuary of Safdarjung Hospital. As photographs of deceased were being pasted near Mahipalpur Chowk, PW-3 Subhash Chand Yadav, after seeing the photograph identified the photograph as that of his driver Nadeem. Police with the assistance of PW-3 Subhash Chand Yadav and other persons reached the house of Md. Saleem, brother of deceased, who also identified the body.

2. Wearing clothes and metallic chain with 787 locket and black thread worn by deceased, were seized by Autopsy Surgeon. The Doctor who prepared the post-mortem report opined that the cause of death is shock and hemorrhage as a result of antimortem injury to the heart and right lung produced by projectile of rifle fire arm. Statement of Subhash Chand Yadav, employer of

3. deceased, was recorded wherein Subhash Chand Yadav stated that his driver Nadeem was working on his taxi Tavera no.HR55HT7278 Md. Saleem, brother of deceased, stated that his brother Nadeem was carrying black purse, golden chain,

voter identity card, cash, watch, etc. During the course of investigation of FIR No.481/08, Police Station Vasant Kunj, accused Ravi Kapoor, Ajay Kumar @ Ajay @ Bhenga, disclosed that they have murdered the driver of Tavera vehicle no.HR55HT7278in the intervening night of 07- 08.01.2009 in the jungle of Airport Authority of India. Accused Ravi Kapoor and Ajay Kumar @ Ajay @ Bhenga, Crl. A. 788/2017 Page 2 of 9 further disclosed that driver of Tavera vehicle was looted before the murder. Accused Ravi Kapoor and Ajay Kumar @ Ajay @ Bhenga, further disclosed that golden chain of deceased was kept by accused Ravi Kapoor while watch and purse with documents were kept by accused Ajay Kumar @ Ajay @ Bhenga. Accused Ravi Kapoor disclosed that Tavera vehicle was sold to co-accused Ajay Sethi informing him that driver of the said vehicle was killed before the loot. Accused Ajay Sethi who was in custody of Anti Theft

4. Squad in a vehicle theft case bearing FIR No.64/09, under section 379 of the Indian Penal Code, Police Station Vasant Kunj, disclosed that he has sold Tavera vehicle to accused Md. Arif.

3. Mr. Sumeet Verma, learned counsel appearing for the appellant submits that the judgment passed by the learned Trial Court is based on mere conjectures and unsubstantiated grounds and digresses from the factual circumstances of the case. Learned counsel contends that no case under Section 413 of the Indian Penal Code is made out against the appellant as there is no judgment of conviction against the appellant under Section 411 of the Indian Penal Code. The learned counsel has placed reliance on Section 413 of the Indian Penal Code, which is reproduced below: in stolen property.-Whoever 413. Habitually dealing habitually receives or deals in property which he knows or has reason to believe to be stolen property, shall be punished with 1[imprisonment for life]., or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

4. Mr.Verma, learned counsel for the appellant, contends that merely because FIRs have been registered against the appellant that by itself cannot be a ground to convict the appellant under Section 413 of the Indian Penal Code. Mr.Verma has placed strong reliance on the judgment in the case of Banne Singh @

Pahalwan v. State of Crl. A. 788/2017 Page 3 of 9 Rajasthan of the Jaipur Bench of Rajasthan High Court decided on 15.1.2014.

5. Per contra, Mr. Rajat Katyal, learned counsel for the State submits that there is no infirmity in the judgment passed by the learned Trial Court. The appellant is a habitual offender and ingredients of Section 413 of the Indian Penal Code are made out, thus there is no cause of interference in the impugned judgment and order on sentence passed by the learned Trial Court.

6. We have heard the learned counsel for the parties and considered their rival submissions.

7. The role of the appellant herein has been taken into consideration by the learned Trial Court in paragraphs 65 to 71 of the impugned judgment. We deem it appropriate to reproduce the afore-stated paragraphs: 65. As discussed above, PW-16 Dr. Upender Kishore in his post-mortem report Ex.PW-16/A has opined that firearm injuries as mentioned in his report to the heart and lungs were collectively and independently sufficient to cause death in ordinary course of nature. Therefore, act of accused Ravi Kapoor and Ajay Kumar @ Ajay @ Bhenga is covered by clause thirdly of Section 300 of the Indian Penal Code.

66. PW-26 HC Bishambar Dayal brought the record of case FIR No.643/01, Police Station Rajouri Garden, under section 379/420/467/468/471/120-B of the Indian Penal Code and proved the copy of FIR as Ex.SPW-26/A. PW-26 HC Bishambar Dayal further deposed that as per record, accused Ajay Sethi, son of Shri Tara Chand Sethi, was arrested in the said case. PW-27 HC Mukesh Kumar brought the record of case 67. FIR No.184/97, Police Station Connaught Place, under section 420/465/468/471 of the Indian Penal Code, proved the copy of FIR as Ex.PW-27/A and deposed that as per the record, three persons namely J.B. Goyal, Mrs. Rajni Goyal, and A.K. Sethi sons of Tara Chand, were arrested in the said case. Similarly, Crl. A. 788/2017 Page 4 of 9 PW-28 HC Bhupinder brought the record of case FIR No.43/90, Police Station Defence Colony, under section 392/397/4
of the Indian Penal Code and proved the copy of FIR as Ex.PS- 28/A-1. PW-28 HC Bhupinder deposed that as per record accused Gurdeep Singh, Hafiza, Ajay

Sethi and Gullu @ Jafar Hanif, were arrested in this case. In cross examination, PW-28 HC Bhupinder deposed that all the accused persons were discharged in case FIR No.43/90. PW-29 Ct. Rahul brought the record of FIR No.281/02, 68. Police Statin Vasant Kunj (North), under section 379 of the Indian Penal Code, registered against five accused persons namely Md. Arif, Jasim, Ajay Sethi, Ajay and Ravi Kapoor. PW- 29 Ct. Rahul proved the copy of FIR as Ex.PW-29/A.

69. Similarly, PW-35 Ct. Sunil brought the summoned record pertaining to FIR No.278/09, under section 379 of the Indian Penal Code and deposed that name of accused in this case is Arif and the said FIR was registered for theft of Santro car bearing no.HR51 AD5580 PW-35 Ct. Sunil deposed that as per the record, this case was decided on 09.05.2013 and accused has been acquitted.

70. It is clear from the deposition of PW-26 HC Bishambar Dayal, PW-27 HC Mukesh Kumar, PW-28 HC Bhupinder, PW- 29 Ct. Rahul and PW-35 Ct. Sunil that accused Ajay Sethi is habitual in receiving or dealing in properties which he knew or had reasons to believe to be stolen properties. Therefore, charge under section 413 of Indian Penal Code is proved against accused Ajay Sethi beyond all reasonable doubt. It is clear from the above discussion that all the 71. circumstances mentioned in para 16 have been proved on record. The chain of circumstances is so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and it has been proved from the chain of evidence that in all human probability, accused Ravi Kapoor, Ajay Kumar @ Bhenga, Ajay Sethi and Md. Arif, committed the crime with which they have been charged with. (underline added) 8. A careful reading of the aforesaid paragraphs of the impugned judgment would show that the learned Trial Court has relied upon the testimony of PW-26 Head Constable Bishambar Dayal, who produced Crl. A. 788/2017 Page 5 of 9 the record in the case FIR no.643/2001, P.S. Rajouri Garden under Sections 379, 420, 467, 468, 471 and 120-B of the Indian Penal Code. The testimony of PW-26 also shows that the appellant was arrested in the aforesaid matter. The learned Trial Court has placed reliance on the testimony of PW-27 Head Constable Mukesh Kumar, who brought the record in the case FIR no.184/1997, P.S. Connaught Place under Sections 420,465,468,471 IPC. Reliance was also placed on the testimonies of PW-28

Head Constable Bhupinder, PW-29 Constable Rahul and PW-35 Constable Sunil. Taking into consideration the evidence of the aforesaid witnesses, the learned Trial Court has returned the finding that the appellant is a habitual offender in receiving or dealing in properties which he knew or have reason to believe to be stolen property, thus convicted the appellant under Section 413 of the Indian Penal Code.

9. The short question which arises for consideration before us is whether merely because of pendency of an FIR under Section 379 of the Indian Penal Code and in the present case and under Section 411 of the Indian Penal Code would be a ground enough to convict the appellant under Section 413 of the Indian Penal Code. An identical question was raised before the Jaipur Bench of High Court of Rajasthan. Paragraphs 47 to 51 of the judgment in the case of Banne Singh @ Pahalwan(supra) read as under: the offender has 47. But the moot question is whether in order to establish habit or habitually receives or deals with, one needs mere existence of FIRs, or to be convicted of offense under Section 411 IPC, two or more times, in order to infer habit?. As mentioned above, there is a clear cut distinction between preventive detention and punitive one. In preventive detention, considering the previous conduct of a person as reflected in a series of FIRs, the Executive can safely infer that Crl. A. 788/2017 Page 6 of 9 to proof. For, charge-sheet the person is dangerous or habitually deals with stolen property, or is anti-social in his conduct or behaviour. Drawing this inference on a subjective basis, the Executive can detain the person preventively.

48. However, the same inference on subjective manner cannot be applied in punitive detention for the following reasons: firstly, the function of preventive detention and punitive detention are different. Secondly, preventive detention is based on suspicion, punitive detention, on proof or evidence produced during a full- fledged trial. Thirdly, in punitive detention the offender is presumed to be innocent till proven guilty. It is the bounden duty of the State to prove the guilt of the offender. Moreover, the proof has to be beyond a reasonable doubt. Mere existence of series of FIRs does not amount to proof, as a FIR is nothing but allegations made by the complainant. Allegations are not proof of the fact. The allegations have to be established and proved through cogent and convincing

evidence. Further, a series of charge-sheets for offence under Section 411 IPC would not tantamount is nothing but conclusions drawn by the investigating agency. It is not even binding on the trail court. Thus, a series of FIRs or a series of charge-sheets would not ipso facto establish habit or habitually dealing with or receiving stolen property.

49. Something more is required to establish that the offender is in the habit of dealing with or receiving stolen property. Since the offence under Section 413 IPC is inter-related with and is an aggravated form of Section 411 IPC, the State would have to prove and establish that the offender was convicted repeatedly, twice or more than twice, for offence under Section 411 IPC so as to establish beyond a reasonable doubt that he is in the habit of dealing with or receiving stolen property. Therefore, the conviction under Section 413 IPC is based on repeated convictions for offence under Section 411 IPC. Due to previous conviction, a punishment of different kind is prescribed in Section 413 IPC which the accused is required to undergo.

50. Hence, while prosecuting a person for offence under Section 413 IPC, the prosecution has to prove the following factors: firstly, the property in question has been stolen from a place. Thus, the prosecution must bring the property within the ambit of Crl. A. 788/2017 Page 7 of 9 Section 410 IPC within the definition of stolen property. Secondly, the offender has been dealing with or receiving stolen property. Thirdly, the offender knew or had a reason to believe the property to be stolen. Fourthly, he has been repeatedly convicted, i.e twice or more than twice, of offence under Section 411 IPC. It is only after the prosecution establishes these factors that the court would be legally justified in concluding that the offender is habitually dealing with or receiving stolen property and in imposing the punishment as prescribed by Section 413 IPC.

51. Admittedly, the appellant was involved in six different FIRs. Undoubtedly, so far the appellant has been convicted only by the learned trial court at Jaipur. He continues to face the trials in the other FIRs mentioned above. Hence, prior to his conviction by the learned Judge, the appellant was never convicted for offence under Section 411 IPC. Therefore, there is no evidence to infer that the appellant

is in the habit of receiving stolen property. Hence, his conviction for offence under Section 413 IPC is clearly unjustified. 10. In the present case, the State has relied upon the evidence of PWs-27, 28, 29 and 30, who have produced the relevant record of the Police Stations whereas FIRs stand registered against the appellant. Based on the record produced and the evidence of PWs-27, 28, 29 and 30 there is no room for doubt that four FIRs stand registered against the appellant.

11. It is not in dispute before us that the appellant has not been convicted in a case FIR no.643/2001 registered at P.S. Rajouri Garden or FIR no.184/1997, P.S. Connaught Place, nor he has been convicted in FIR no.43/1990, P.S. Defence Colony, FIR no.281/2002 P.S. Vasant Kunj and FIR no.278/2009, P.S. S.G.M. Nagar. In fact we are informed by the learned counsel for the appellant that the appellant has been discharged in FIR no.43/1990 and FIR no.278/2009 does not pertain to this appellant. Crl. A. 788/2017 Page 8 of 9 12. There is no evidence on record to show that the appellant herein has been convicted in any of the FIRs and in fact stands discharged in FIR No.43/1990. In order to convict a person under Section 413 of the Indian Penal Code, the most important ingredient is that a person must be a habitual receiver of stolen goods. He must be a person, who is in the habit of receiving stolen properties and this Section cannot be applied in case of a single act. The element of repetition is mandatory. Mere pendency of FIRs or a person facing trial but in the absence of a conviction, a conviction under Section 413 of the Indian Penal Code would be unjustifiable.

13. For the reasons stated above, we see no reason to take a different view to the view taken by the Rajasthan High Court. Accordingly, the appeal is allowed. The conviction under Section 413 of the Indian Penal Code is set aside and the appellant would stand convicted under Section 411 of the Indian Penal Code for which he has been sentenced to 03 years. The order pertaining to fine shall remain unchanged.

14. The appeal is disposed of in above terms. AUGUST30 2017 pst G. S. SISTANI, J.

CHANDER SHEKHAR, J.

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