

Rajinder Kumar vs the State

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Court : Delhi

Decided On : May-20-2026

Judge : Hon'Ble Mr. Justice Vimal Kumar Yadav

Appeal No. : CRL.A./654/2003

Appellant : Rajinder Kumar

Respondent : The State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of reserving Judgment: 05th February, 2026 Date of decision: 20th May, 2026

IN THE MATTER OF:

+ CRL.A. 654/2003 RAJINDER KUMARAppellant Through: Mr. Vipin Kumar Gupta and Mr. Rahul Kumar, Advs.

versus

THE STATERespondent Through: Ms. Kiran Bairwa, APP for State with SI Tamanna PS Vasant Vihar.

CORAM:

HON'BLE MR. JUSTICE VIMAL KUMAR YADAV

JUDGMENT

VIMAL KUMAR YADAV, J.

1. Travelling through 10 witnesses during the trial, the DD No. 13A,

which laid the foundation of the instant case shaped up in FIR No. 7/2001, which was registered on the complaint of one Gaje Singh. It albeit culminated into a chargesheet, containing allegations under Section resulted into conviction of the Appellant Rajinder herein under Section 394, 397 IPC and Section 25 of the Arms Act, 1959. The case under Section 25 Arms Act was separately registered. The charge was framed under Section 411 IPC also in which he was given the benefit of doubt and acquitted.

2. It so happened that a robbery near Munirka Bus Stand was committed

by a group of pick-pocketers on 13.01.2001 at about 11:00 AM in a bus plying on route no. 764. In fact, complainant Gaje Singh was carrying a sum

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of Rs. 1,10,000/- in a bag, which he wanted to deposit in Corporation Bank, Vasant Vihar and while he was about to get down from the bus at Munirka, he realized that his bag was cut open. He immediately raised

alarm and 5-6 boys got down from the bus, he suspected them to be the persons responsible and caught hold of one of them. He had to let go of that boy inasmuch as those 5-6 boys surrounded him and threatened him of bodily harm by knives. The person caught by him too whipped out a knife and threatened him which deterred him from any further action. The victim raised alarm while the assailants were making their escape good from the spot. The matter was reported to the police telephonically and DD No. 13A was recorded in Police Station Vasant Vihar. Subsequently, FIR No. 7/2001 on the complaint of victim Gaje Singh was registered.

3. A breakthrough to the case came on 10.02.2001 when a secret

informer passed on the information about the movement of the Appellant herein as one of those pick pocketers / robbers together with others being available in the area of Munirka. Police laid a trap and 03 boys were seen coming towards the Munirka bus stand. On the pointing out by the secret informer, all three were apprehended including the present Appellant, who was found carrying a button actuated knife, which was seized and formalities thereafter were completed. An FIR under Section 25 of the Arms Act, 1959, bearing registration no. 31/2001 was registered.

4. Subsequently trial of the Arms Act case was also joined with the Trial

of case FIR No. 7/2001 in which charge under Section 394, 397, 411 IPC and 25 of the Arms Act was framed on 27.08.2001 to which the Appellant pleaded not guilty.

5. As referred above, the trial resulted into conviction under Section 394,

397 IPC and 25 of Arms Act. The Appellant / accused was sentenced to

undergo RI for a period of 07 years under Section 394 and 397 and was ordered to pay a sum of Rs. 1,000/- as fine, in default of which to undergo RI for a period of 01 month and under Section 25 of the Arms Act, 1959 he was sentenced to RI for a period of 01 month.

6. Against the backdrop of the aforesaid facts, while assailing the

impugned judgment it is contended on behalf of the Appellant that the learned Trial Court has erred in basing its judgment only on the testimony of victim Gaje Singh without looking for any corroboration. The refusal on the part of the Appellant to participate in the TIP and its implications and attending circumstances should have been given due consideration. The joint trial of Sessions Case No. 24/2001 with 25/2001 i.e. FIR Nos. 7/2001 and Cr.P.C. In addition to that it is also submitted that the Appellant had valid reasons to refuse the TIP as he was in police custody for a day and the record nowhere reflects that he was kept in muffled face during the police custody remand. There was thus, every possibility of him being shown to the complainant and therefore based upon these facts and identification in the docks for the first time is not sufficient to connect the Appellant with the offence.

7. Additionally, it is submitted that there are certain vital improvements

in the testimony of the Gaje Singh and so is the case with regard to the police witnesses, who had allegedly recovered knife from the possession of the Appellant, which contravened the specifications of the Gazette Notification dated 17.02.1979 in this context under the Arms Act, 1959.

8. The Appellant was apprehended from a public place, that is, a bus

stop and he was allegedly found in possession of a button-actuated knife, but there is no independent public witness to the apprehension, arrest or seizure

of knife and there is no record as to what all documentation was done and at what place. Thus, it is submitted that where possession of a particular thing in itself is an offence, then the possession should be established cogently and convincingly beyond any doubts and in such cases independent public witnesses are mandatory. It is this witness who lends the kind of credibility required.

9. Why do the system / defence counsels invariably argue the absence of

independent Public Witness as a cause to disbelieve the case? What is so sacrosanct about Independent Public Witness and why does the legal system recognise it as a vital aspect, though not indispensable when the cases have a chequered history of Public Witnesses, with even near relatives, turning hostile. The sanctity and credibility which an Independent Public Witness brings and can bring is very important. Independent Public Witness essentially means/ refers to an individual who has no personal concern with the events, except as a responsible, law-abiding citizen who wants that law should not feel crippled due to the absence of independent and unbiased witness so as to uphold the social order and truth. Such a bonafide witness lends credibility that is why such a witness is sought for. However, the legal history, as is contemporary legal system, has seen numerous examples where the so called independent trustworthy, reliable Public Witness; ruined the deposition and case beyond repair. So having them and not having, has no impact rather, having them and they turning hostile would do more harm than good. The emphasis, thus, should be on having a truthful witness.

10. In order to strengthen the arguments on behalf of the Appellant,

learned counsel for the Appellant has placed reliance on the following judgments:-

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i) Nazim Khan @ Guddu vs State, 2014 SCC OnLine Del 2938, held that the evidentiary value of TIP is destroyed if photograph of the accused is shown before the TIP.

ii) Gireesan Nair & Ors. Etc vs. State of Kerala, (2023)1 SCC 180, wherein the Apex Court held that if the victim had seen the accused physically prior to the TIP, it renders the entire process meaningless.

iii) Rajesh & Ors vs. State of MP, (2024) SCC OnLine SC 2006, wherein it was held by the Apex Court that any information leading to a discovery is admissible only when it is given by a person who is both an accused of an offence and in police custody, otherwise protection under Section 25-26 of the Evidence Act would bar its use; and

iv) Arjan Singh vs. State, 1965 SCC OnLine Punj 48, held

that under Section 233 Cr.P.C., distinct offences are to be tried separately unless they form a part of the same transaction.

11. Learned APP on the other hand, contended that in the absence of any

ill-will or motive established against the complainant, his testimony cannot be doubted so as to falsely implicate the Appellant. Thus, in the absence of any evidence to the contrary, no reason is there to disbelieve the complainant. The TIP refusal is another factor qua which the Appellant has no cogent answer. Merely saying that his photographs were taken and shown to the complainant without there being any date,

time or place makes it a bald argument which cannot be accepted. The impugned judgment is, thus, in consonance with the facts and circumstances and the applicable law on the subject.

12. The assertion on behalf of the Appellant that joint trial of two or more

separate incident / offences vitiates the trial, unless it is permitted by law in terms of Section 219, 223 Cr.P.C. In the instant case, two separate FIRs and offences qua the Appellant have been jointly tried without there being any

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relation with each other as both the FIRs of the offences are separate and distinct, having no relation with each other, therefore, the joint trial was not proper.

13. However, learned counsel for the Appellant has not been able to show

as to what prejudice was caused to the Appellant by virtue of or on account of this joint trial. There is no confusion or mix-up in the evidence. The defence of the Appellant has not been affected adversely, it was not unfair to the case or his cause, nor has it resulted into any miscarriage of justice. In the absence of any prejudice caused to the Appellant, even if it is presumed that joint trial should not have been there, still if it has taken place and has not affected the Appellant in any manner then the joint trial is not fatal to the case of the prosecution.

14. The purpose of joint trial is to facilitate the trial, comprehensively and

in order to save time and effort. In the instant case, the FIRs are under robbery and the other one is for illegal possession of the knife of proscribed specifications, in violation of the Notification issued by the Government of Delhi under the Arms Act, 1959. There is, apparently, no

connecting material except that the Appellant happens to be involved in both the cases and that a knife was used while the robbery was being committed by the Appellant and his associates. It is not clear as to whether the same knife, which was used in robbery was recovered, but then it is a fact that the robbers, including the Appellant, used a knife to intimidate and subdue the victim Gaje Singh. The knife recovered is not such which is easily available over the counter in the shops, therefore there is every possibility that it was the same knife which was used by the Appellant while committing the robbery. This links the two offences and if a joint trial has taken then no illegality can be attributed primarily for the reason that no prejudice was

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caused to the Appellant. In any case, the Appellant should have taken the objection at the outset during the trial itself, but no such objections seem to have been taken by the Appellant.

15. Therefore, raising such an objection at the appellate stage and when

the Appellant is unable to show that any prejudice was caused in that eventuality, this anomaly can at the most be considered to be an anomaly, but not a fatal one. Both the offences of robbery and recovery of knife took place within a space of a month or so where the Appellant was involved. The close proximity of time and location i.e. Munirka Bus Stop gives reasons to connect these offences as a cause and effect because a knife was recovered and a knife was used. So, the knife becomes common in both the FIRs together with the Appellant therefore, trial of two separate cases together does not vitiate the trial. As such, the argument is brushed aside.

16. Next argument put forth is with regard to the recovery of the knife

which, according to the counsel for the Appellant, is doubtful and becomes more susceptible to doubt and suspicion when there is no independent public witness to such recovery. Where possession of a particular object in itself is an offence then Investigating Agencies are supposed to come clean on the aspect of recovery of that particular object. And to make it more credible, it is advisable to have independent public witnesses. Incidentally, in the instant case possession of proscribed variety of knife is an offence in itself. Thus, the policemen were supposed to make the recovery aboveboard. However, in the absence of public witness, according to the Appellant, crisis of credibility occurs and therefore, the recovery of the knife cannot be attributed to the Appellant.

17. Additionally, it is submitted that the witnesses are at variance with

regard to the place from where the knife was recovered. All the prosecution

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witnesses related to the recovery have stated that a knife was recovered. However, one of the witnesses saw that recovery of the knife was affected from the right side pocket of the pant of the Appellant whereas that very knife was recovered from the right side dub of the Appellant. On the strength of this mix-up, the counsel by the Appellant has tried to take mileage that recovery of the knife was not there, rather the knife was planted upon the Appellant.

18. The witnesses have maintained that knife was recovered from the

Appellant and from his right side pocket of the pant / dub. The right side and recovery of knife from the Appellant are constant factors. In such circumstances, whether it was recovered from the pocket of the pant or

dub of the pant looses significance and merely on the basis of this fact alone, the case of the prosecution cannot be disbelieved or thrown out.

19. The mix-up with regard to the preparation of Memos relating to the

arrest, personal search etc. has been further put forth on behalf of the Appellant to assert that the Appeal deserves to be allowed. The same is inconsequential in the given set of facts and nature of the offence.

20. Additionally, it is submitted that there is no proper identification and

therefore, it cannot be said that it was the Appellant, who had committed the robbery. The only person who had identified the Appellant as the assailant, who along with his associates had committed robbery, is the complainant Gaje Singh.

21. In the given set of facts and circumstances of the case, what is of

utmost importance is the identification of the Accused / Appellant. On this count, so far as the case of robbery is concerned, there is no other witness except the victim Gaje Singh. He has, though, identified the Appellant in the Court, but then his testimony has certain aspects, which makes this

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identification questionable.

22. The circumstances further reflect that it would not be easy if not

impossible, for anybody placed in such circumstances in which victim Gaje Singh was placed during the robbery to maintain his composure and keen observation. He was surrounded by five-six individuals and was robbed. Thus, pin-pointing anybody or identifying anybody would

require something which stands out and have something unique attached with the person concerned. No such fact has been deposed by the victim except may be that the person who was having a knife stands out. But the evidence reflects that there were more than one person who was carrying knife during the time of robbery. And about two of them he is specific as one put knife on his throat and other on his stomach. Out of those five-six persons, none else could be arrested except the Appellant. The victim has an unclear stand about how many of those 5-6 assailants were carrying knives. The relevant portion of the testimony of the victim examined as PW-1 is as below: I had incorporated in Ex.PW1/1 that I had caught that person from the collar(collared). I had incorporated in Ex.PW1/1 that 5/6 boys got down from the bus and they had whipped out the knife.

The Appellant has disclosed about his associates involved in the robbery as Nanak, Haramvir, Pappu & Raju as can be seen from the testimony of PW-5: The accused further disclosed that the victim of that theft had caught hold of his hand while he was getting down from the bus. He further disclosed that his companions Nanak, Haramvri (Haramvir), Pappu and Raju had shown knives to him (the victim).

But it seems that police did not make any effort to apprehend them. There is no explanation coming forward on the part of the prosecution or the

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Investigating Officer as to why the other two persons who were apprehended along with the Appellant were not subjected to TIP, despite the fact that same kind of case was there against them also i.e. they too were found in possession of knives. How can a policeman blindly believe the disclosure statement of an accused. The Modus Operandi of the Appellant and his associates was clear that they were committing

offences together and there was every possibility that these two i.e. Yashwant and Rajesh were also involved in the robbery. The best course was to subject them to TIP as was done / proposed about the Appellant. Although, the disclosure statement is not admissible except in terms of Section 27 of the Indian Evidence Act, still it reflects that four more persons were involved with the Appellant in the robbery as per the disclosure of the Appellant, who could not be arrested or apprehended. According to the disclosure statement they too had flashed the knives while robbing the victim. The aforesaid facts are clear to show that the victim was not in a position to pin-point the identification inasmuch as practically every person involved in the robbery was using knife in one or the other way although he has clarified about the Appellant that it was he who had put the knife on his neck. This in a way gives reason to the victim to identify the Appellant but then in any case it was a fleeting look and when they were not known to each other, then in that situation the TIP was the confirmatory test. It was proposed by the Investigating Officer but was refused by the Appellant and the reason given, as detailed herein below justify the refusal to some extent.

23. The aspect of identity, notwithstanding the fact that victim had

identified the Appellant is, thus, doubtful for three reasons:-

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i) Appellant was allegedly part of the group of 5-6 persons which committed the robbery, thus making the identification difficult.

ii) Appellant was identified by the victim Gaje Singh for the first time in the dock, which is not considered to be a proper identification.

iii) The deposition of victim Gaje Singh himself, where he has categorically admitted that he was called in the Police Station to identify

the Appellant. This puts his testimony qua identification in a doubtful circumstance. The relevant part of the testimony is reproduced as under:-

It is correct that I was not knowing the accused from before. I had told the description of culprits to the police officials. I had not told the facial description, heights, ages etc. of all culprits. I had told the description only of two culprits. After the occurrence, I was called by the police to the police station to identify the culprits. I had gone to the police station and identified the accused present in the court. I cannot tell as to after how many days or months of this occurrence I had gone to the police station to identify the accused.

24. The evidence and the documents do not clearly reflect that the

identification of the Appellant in the police station was carried out prior to the proposed TIP, or after the TIP, which renders the TIP useless. As such, the identity of the Appellant and his complicity in the offence coupled with the recovery, all comes under a big question mark.

25. The arrest of the Appellant is also after about a month of incident of

robbery, when the Appellant was found in possession of a proscribed category of knife. It was his disclosure which connected him with the case of robbery. A sum of Rs. 3700/- which was recovered from the possession of Appellant and was treated as part of the robbed cash. However, there cannot be any identification of the currency notes, except that the numbers of the

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notes are mentioned, which is not the case here. In such circumstances, identification which is of utmost and primary importance comes under

cloud.

26. The most important aspects which were to be established against the

Appellant have not been cogently brought on record. The identity of the Appellant himself and his complicity in the incident is not clear and so is the fate of the so called recovery of the robbed money of Rs.3,700/- out of Rs.65,000/-. As such, in view of the forgoing discussion hereinabove in the preceding paragraphs, the Appellant cannot be held responsible for the offence of robbery for the want of clear, cogent and convincing evidence. As such, he is extended the benefit of doubt and acquitted of the charges except for the charge under Section 25 of the Arms Act, 1959.

27. As regards the recovery of knife, there is no confusion or mix up

either about the identity of the Appellant or about the recovery of a knife of specification which was in violation of the notification issued by Delhi Government under the provision of the Arms Act, 1959. The deposition of the witnesses are there which establish the recovery of knife of proscribed category, that is, a button actuated knife and from the Appellant. As he was arrested at the spot thus no doubt about the identity is there. Thus, requisite ingredients-to hold the Appellant guilty are there on record. He has, as such rightly been held guilty and convicted under Section 25 Arms Act, 1959. Appeal to that extent is dismissed.

28. However, considering the age of the Appellant the period spent in

facing criminal proceedings, spanning for quarter of a century, the period of custody i.e. 09 months and 21 days undergone by Appellant, for an offence

committed when he was 24 years of age, is deemed sufficient to meet the ends of justice. As such, sentence of one month Rigorous Imprisonment (RI) under Section 25 of the Arms Act, 1959 awarded by the learned Trial Court is maintained.

29. Resultantly, the appeal is partly allowed in terms of the above

conclusions, and accordingly stands disposed off.

VIMAL KUMAR YADAV, J

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