

Sukhdev Singh Vs. the State (Delhi Administration)

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Court : Delhi

Decided On : Jul-23-1992

Reported in : 1992(2)Crimes1175; 48(1992)DLT236; 1992(24)DRJ104

Judge : Usha Mehra, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 374; [Evidence Act, 1872](#) - Sections 26

Appeal No. : Criminal Appeal No. 26 of 1992

Appellant : Sukhdev Singh

Respondent : The State (Delhi Administration)

Advocate for Pet/Ap. : S. Wasan and; S.C. Jain, Advs

Judgement :

Usha Mehra, J.

(1) Four appeals have been filed by S/Shri Sukhdev Singh, Sukhwant Singh. Khalil and Amrit Pal Singh, against the judgment passed by Shri S.L. Bhyana, Addl. Sessions Judge, Delhi, dated 16.1.92, convicting the appellants and Sentencing them to undergo Rigorous Imprisonment for a period of five years each, and further to pay a fine of Rs. 500.00 each and in default of payment of fine, to undergo further R.I. - for one month each. Since the appeals are against one

common judgment and the question of law and facts in all the appeals are similar, therefore, they are being disposed of by one common order.

(2) It is against this judgment that the appellants have come up in the appeal challenging the order of their conviction dated 16.1.92, passed by Shn S.L. Bhyana, Addl. Session Judge, Delhi, inter alias on the ground that they have been convicted and sentenced on the basis of their confessions which are not admissible in law. Moreover on account of the refusal of Test Identification Parade, the appellants could not have been convicted. The Driver of the vehicle was discharged by the Court and thereafter the prosecution never took any step to summon him as a witness. The Test Identification Parade is never held in the Court. The complainant was brought in Court and was made to sit in verandah so that he could recognise the appellants. Similarly, other relevant evidence have not been produced by the prosecution to link the appellants with the alleged crime.

(3) In nut shell the case of the prosecution was that on 28.7.87 at about 10.25 p.m. Sh.Kuldeep Singh, an employee/salesman of M/s Transport Center, Rohtak Road, left Mayapuri Shopping Complex in a Nishan Truck, driven by Ram Kumar S/o Kedar Nath. When the said truck reached on Ring Road, opposite Sarla Marble Shop, Rajouri Garden, New Delhi, two persons who were on two-wheeler scooter, stopped the truck. The said scooter was driven by one sikh gentleman and a clean shaved person was sitting on the pillion seat. When the truck was stopped another two-wheeler scooter driven by Sikh gentleman and a clean shaved person was sitting on the pillion seat, also reached there. Kuldeep Singh was sitting on the left side of the driver. He was carrying a bag containing Rs. 48,000.00 three Bill books and two cheques worth Rs. 11,000.00 , which were issued by various customers. The said bag was snatched from Kuldeep Singh by one of those persons. Kuldeep Singh instead of lodging the report with the Police Station went to the house of the owner at Punjabi Bagh and reported the incidence. Kuldeep Singh could not note down the number of the scooters because of darkness. Along with the owner Kuldeep Singh went to the Police Station and lodged the report at 10.55 p.m'. on the same date. On 8.3.88 appellant Sukhdev Singh was arrested in another case and on his disclosure statement the present case was registered under Section 392/34 Indian Penal Code . by the Police Station Rajouri Garden, New Delhi.

Sukhdev Singh refused the T.I.P. on the allegation that he was produced in unruffled fact in the Court on 11.4.88, when the complainant was admittedly present Along with the 1.O., in the varranda of the Court Similarly, Khalil was also arrested on 8.3.88 in connection with another case, who also alleged to have made the disclosure statement about his involvement in the present case and so is the case of Sukhwant Singh. As regards Amrit Pal Singh it is the case of the prosecution that he made a disclosure statement before the police at Police Station Kamla Market, Delhi. On the basis of these disclosure statements the appellants were arrested.

(4) On behalf of the prosecution six witnesses were examined and the relevant witness for consideration of this appeal is the complainant himself, i.e. Kuldeep Singh, who appeared as PW-5. So far as PW-1 is concerned he only recorded the formal F.I.R. and PR-2 is the witness of arrest of these four persons in another case at Police Station Kamla Market and that disclosure statement by the appellants was made before him. PW-3 is the Metropolitan Magistrate who testified that appellants refused the Test Identification Parade. PW-6, recorded the Fir in this case and Inspector Gurcharan Dass, PW-4, is the 1.O. of this case at P.S. Kamla Market. Whether the case fails or succeeds will depend upon the testimony of PW- 5. because he is- the only eye witness produced by the prosecution, thereforee, his testimony assumes importance for determination of these appeals.

(5) Kuldeep Singh, appearing as PW-5, had stated that instead of going to the Police Station after the incident, he went to the house of the owner at Punjabi Bagh. This is a strange behavior of Kuldeep Singh. Normally, if a person is robbed first thing he will do is to raise alarm to seek public support and then run to the police station to inform the police and seek the police help. But in this case even after the bag was snatched, Kuldeep Singh did not make any effort to raise the alarm to attract the passers-by. thereforee, the action of Kuldeep Singh does not appeal to be normal. His story that he went straight to his-owner does not inspire confidence. It appears that he was more concerned to inform this incident to his employer rather than trying to get the culprit apprehended through public help or police help.

(6) His version that since the lights were dim, therefore, he could but record the number of the scooter, but when confronted as to how could he recognise the accused sitting on the pillion seat of the scooter pet came the answer, the accused he could recognise but not the scooter. If there was a dim light as stated by him then he also could not have seen clearly the persons sitting on that scooter. That person, according to Kuldeep Singh, remained sitting on the scooter which was parked in front of the truck or on the side. He in reply to Court question admitted that he was shown the accused persons when they were brought in Court.

(7) The Test Identification Parade was ordered to be fixed on 11.4.88. It is the case of the appellants that on that very day Kuldeep Singh was called by the 1.0. and made to sit in the Varandah of the Court so that he could see the accused persons. Kuldeep Singh admits that on 11.4.88 he was brought to Tis Hazari Courts where he identified the accused Sukhdev Singh and Khalil besides Ram Kumar, Driver. The Trial Court has over looked this aspect of the matter that on 11.4.88 these accused persons were shown to Kuldeep Singh in the Court. The production warrants of the accused were issued for 7.4.88 but the accused were not produced on that date. Case was adjourned to 11.4.88 for which Kuldeep Singh was called. What was the necessity of calling Kuldeep Singh on 11.4.88 has not been explained by the prosecution nor the learned Addl. Sessions Judge has dealt with this aspect of the matter. I have perused the order passed by the Metropolitan Magistrate, dated 7.4.88. Production warrants of the accused were issued but it was no where mentioned that the Test Identification Parade will take place on the said date. The application for Test Identification Parade was not moved in the presence of the accused persons, therefore, they could not have known that on 11.4.88, the Test Identification Parade will take place, nor they were asked to come in muffled face.

(8) Having seen the accused persons in the Court there could not have been any question of Test Identification Parade. Kuldeep Singh admits that he was asked by the police to come to the Court room because the accused have been arrested and have to be identified by him in the Court. In fact it is a novel procedure of Test Identification Parade adopted by the prosecution in this case. If Kuldeep Singh had identified the accused persons in Test Identification Parade' things would have

been different, but he was made to see accused persons outside the Court Room by the police. For these reasons no reliance can be placed on the testimony of Kuldeep Singh. Counsel for the appellant contended that after recording of the Fir no action was taken by the police in this case because police officials were not satisfied with the Version given by Kuldeep Singh, thereforee. Police did not pursue the matter. The version given by Kuldeep Singh was doubted by his employer. Appellants refused to join the Test Identification Parade, particularly when they had already been shown to Kuldeep Singh in the verandah of the Court itself. It is the version of the prosecution that they were shown after they refused to join Test Identification Parade, but the case of the defense is that the accused were shown to Kuldeep Singh before they were taken inside the Court. The facts which have come on record show that it is more probable that these persons were shown to Kuldeep Singh before they were taken inside the Court. Kuldeep Singh who was sitting in the Varandah could have seen the accused persons while entering in the Court. thereforee, in this view of the matter, no adverse presumption could have been drawn when they refused to join the Test Identification Parade.

(9) Except the testimony of Kuldeep Singh and the Confession of accused persons there is no other, cogent or reasonable evidence produced by the prosecution linking the accused persons with the offence charged. The prosecution has failed to bring home the guilt of the accused persons, and has relied upon the fanciful testimony of Kuldeep Singh. Neither the employer of Kuldeep Singh has been adduced in the witness box, to prove that the story of the complainant, Kuldeep Singh, is truthful. Nor any evidence has been adduced to prove that Kuldeep Singh was carrying the bag containing Rs. 48,000.00 , three bill books and cheques worth Rs. 11,000.00 . Mr. Wasan pointed out that prosecution has not laid any basis of robbery having been committed of Kuldeep Singh. 'The story of robbery given by Kuldeep Singh is nothing but pigmentation of his imagination. Kuldeep Singh actually misappropriated the amount of his employer and in order to defraud his employee he concocted this story. That is the reason his employer requested the police of Police Station Rajouri Garden not to investigate this matter because he was doubting the version given by Kuldeep Singh. Mr. Wasan further contended that the place where the alleged incident took place is quite a crowded

road. It is the main ring road. The main ring road is having lights all round. The complainant never bothered to raise the alarm even after the said four boys ran away, nor took prompt action of reporting the matter to the police. therefore, the testimony of Kuldeep Singh is nothing but a fanciful story of his own imagination to link these appellants with the crime. The case of the prosecution is based on the confessional statements of the accused persons. So far as the confessional statement is concerned, the same is hit under Section 26 of the Evidence Act, because the said confession was obtained while appellants were in custody of the police of Police Station Kamla Market. The said confession of the accused persons is inadmissible and cannot be relied upon. It is not the case of the prosecution that anything was recovered pursuance to the confession made by the accused persons.

(10) Taking the over-all view of the matter and also the fact that Kuldeep Singh identified these appellants after having been shown, I consider that prosecution has failed to bring home the guilt of these appellants. The statement of Kuldeep Singh does not inspire confidence. He had given a very vague description of the boys who hold up the truck and snatched his bag. According to him the boy who snatched the bag was of whitish complexion but when confronted he admitted that Amrit Pal Singh who is alleged to have snatched the bag was not whitish but of fair complexion. Even otherwise the callous manner in which he behaved after the alleged robbery cases a doubt about the authenticity of the alleged incident. For all these reasons I hold that no credence can be attached to the testimony of Kuldeep Singh. Moreover nothing was recovered pursuance to the confessional statement of accused persons, hence the same cannot be the base of conviction as the same is not admissible.

(11) In view of the observations made above the appeals are allowed, conviction and sentence is hereby set aside and the appellants are set at large, if not required in any other case.