

Darshan Singh Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Dec-10-1986

Reported in : 1987(1)WLN526

Judge : Milap Chand Jain, J.

Appeal No. : S.B. Criminal Appeal No. 266 of 1985

Appellant : Darshan Singh

Respondent : State of Rajasthan

Advocate for Pet/Ap. : Mr. M.L. Garg, Mr. Bhagwati Prasad

Judgement :

Milap Chand Jain, J.

1. These appeals are directed against the judgment of the Additional Sessions Judge, Raisinghnagar dated April 26, 1985, whereby, the appellants have been convicted of the offences under Sections 452 and 392, I.P.C. read with Section 397 and Section 27, Arms Act. Under Section 452 I.P.C., the appellants have been sentenced to 2 years rigorous imprisonment and to pay a fine of Rs. 200/- in default of payment of fine to further undergo one month's rigorous imprisonment. Under Section 392, I.P.C. read with Section 397, they have been sentenced to 10 years' rigorous imprisonment and to pay a fine of Rs. 2000/-, in default of payment

of fine to further undergo six month's simple imprisonment and under Section 27 Arms Act, two years rigorous imprisonment and to pay a fine of Rs. 200/-, in default of payment of fine to further undergo one month's simple imprisonment. Jogendra Singh and Mithu Singh have been further convicted under Section 25 Arms Act and have been sentenced to 2 year's rigorous imprisonment and to pay a fine of Rs. 500/-, in default of payment of fine to further undergo two months' simple imprisonment. The appellants Jogendra Singh and Mithu Singh in criminal appeal No. 166 of 1985 and Darshan Singh in Criminal Appeal No. 200/85 have been convicted of the aforesaid offences, as they committed Bank robbery on 6-9-83 at about 12.40 p m.

2. The prosecution case is that on 6-9-83, eight employees of the State Bank of Bikaner and Jaipur, Raisinghnagar Branch were working in the Bank. At about 12 40 p.m. three accused-persons entered into the Bank. First two Sardars entered into the Bank and asked the Bank employees to raise their hands, else they will fire shots. They were driven in the strong-room. The third miscreant looted the cash from the counter. One Hardayal Mochi entered into the Bank after hearing commotion and he opened the strong room, whereby, the employees came out. Amrik Singh Radio-wala and other persons rushed to the scene of occurrence. These persons had seen the three robbers running away. They made their escape good on 'Yezdi' motor cycle PW 1 Santlal, Bank Manager gave telephonic message to the police station, Anupgarh, on which message, Shri Mahavir Prasad, ASI (PW 13) reached the place of occurrence. A written report was then lodged by the Bank Manager Shri Santlal. It was reported that some vouchers, withdrawal forms etc. were not found and cash amounting to about Rs. 15,289/- was missing, when the Bank Manager and Shri Brij Mohan went to the cash cabin; they found one 100 currency note, 78 notes of Rs. 5/- denomination in a bundle and eight currency notes of Rs. 10/-denomination and some change PW 13 Mahavir Prasad prepared the site-plan and site-notes and recorded the First Information Report Ex. i 9. The Bank Manager had also informed on telephone to the police stations, Raisingh Nagar as well as Vijaynagar. Mahavir Prasad ASI then also send messages through wireless to the surrounding police stations On receipt of information on phone, PW 14 Shri Maniram SHO, Vijaynagar proceeded towards Bajuwala and he observed, three persons coming on a motor cycle from towards

Salimpur. He proceeded in jeep when he was at a distance of two furlongs the two pillion-robbers ran away from the motor cycle and when the driver of the motor cycle was running, an alarm was given that he will be shot dead. Thereupon he stopped. He was arrested. He discloses his name as Jogendra Singh. Near the motor cycle a bag was also found, which was full of currency notes. A 12-bore loaded pistol and 4 live cartridges were recovered from Jogendrasingh. Maniram then returned to the police station, Vijaynagar along with Jogendrasingh. While he was so returning, the Circle Officer, Raj Singhnagar met him on the way. The Circle Officer then took him to the police station, Vijaynagar, where Jogendrasingh was handed-over to him along with recovered articles Jai Narain ASI (PW 16) also proceeded from the police station after receipt of the information. He reached at about 2 45 p.m. On Salimpur-Jaitsar road, he observed two persons running. They were then surrounded and arrested. One of them disclosed his name as Mithusingh and other as Darshansingh From the person of Mithusingh, one loaded pistol was recovered. Thereafter, at the instance of the accused Darshansingh, motor cycle was recovered. Thus within about 1-1/2 hour, the accused-persons were arrested and the bag containing the currency notes, pistol and motorcycle etc. were recovered. Necessary investigation was conducted and there-after, a charge-sheet was presented against the accused-persons. Later on, the case was committed and ultimately tried by the Additional Sessions Judge, Raisinghnagar. Necessary charges were framed to which the accused pleaded not guilty and claimed trial. As many as 18 witnesses were examined by the prosecution. Statements of the accused-persons were recorded in which they denied the prosecution case. No evidence was led in defence. After hearing the arguments, the learned Additional Session Judge found the accused guilty: He convicted and sentenced them as aforesaid.

3. I have heard Mr. M.L. Garg, learned Counsel for the petitioners Jogendrasingh and Mithusingh and Mr. Bhagwati Prasad, learned Counsel for the petitioner Darshansingh and Shri L.S. Udawat, learned Public Prosecutor for the State and have perused the record of the case.

4. It may be stated at the very out-set that there is overwhelming satisfactory and credible evidence, on the basis of which, the appellants have been found guilty of

the various offences, of which they have been Convicted. The robbery was committed in broad-day light at 12.40 p.m. in the presence of the Bank employees after putting them in the instant fear. In a case of such a nature the question of identity is the only most material question, which is required to be taken consideration. The learned Additional Sessions Judge, has dealt with the evidence regarding identification. The prosecution examined four witnesses, who are the Bank employees PW 1 Santlal, PW 2 Lalchand, PW 3 Surendrasingh and PW 4 Brij Mohan. There is evidence to the effect that the accused-persons were kept 'baparda' till the identification parade was conducted. The identification parade was conducted by the Additional Chief Judicial Magistrate, Raisinghnagar (PW 18) and at the identification parade, all the three accused-persons were identified by the witnesses Sher Singh, Santlal, Brij Mohan, Surendrasingh, Amriksingh and Shivdayal. The witness Shankarsingh identified Mithusingh and Darshan Singh, witness Omprakash identified Mithusingh and Kulwantsingh also identified Jogendra Singh. The witnesses also identified the accused-persons in the court. The Bank employees state that two persons were armed with pistol and they were responsible for putting them inside the strong room and the act of robbery is attributed to Darshansingh as he took away the cash from the counter and put the same in the bag. It may be stated that all the three accused-persons were arrested soon after commission of robbery within an hour or so, The two accused-persons were found having pistols and a bag containing currency notes were also recovered along with the motor cycle. Necessary description of the accused-persons was also mentioned by the Bank Manager in the First Information Report. The witnesses had the opportunity to seeing them with the motor cycle. They were inside the Bank for some time with regard to the identification evidence. One of the grounds of criticism is that the witness Yudhisthar Kumar PW 6 has stated that the faces of the robbers were muffled and that identification parade was conducted after a lapse of eight days. It may be mentioned that the accused-persons were sent to the judicial lock up and identification was conducted on 16th September, 1983. What ever be the reason for conducting the identification on 16-9-1983, the evidence regarding identification, to my mind, is credible and it inspires confidence. On the basis of the statement of PW 6 Yudhisthar Kumar, the evidence of other witnesses in my opinion, is not rendered doubtful or

unbelievable. Yudhisthar Kumar had seen the accused according to him, when they were running away from the Bank. Other witnesses had seen the accused-persons, entering into the Bank and observed them conducting in the manner as stated by the witnesses, so, they had ample opportunity to observe the accused-persons. There are absolutely no reasons in any way to discredit the testimony of the witnesses, who have identified the three accused-persons. To my mind the case is fully proved and they have been rightly convicted by the Additional Sessions Judge.

5. The learned Counsel for Darshansingh submitted that Darshansingh was not armed with any deadly weapon. The allegations of use of deadly weapon is made against the other two accused-persons viz. Jogendrasingh and Mithusingh.

6. Mr. M.L. Garg and Mr. Bhagwati Prasad, learned Counsel for the appellant however, submitted that the sentence awarded is severe and so far as the appellant Darshansingh, is concerned Section 397, I.P.C. would not be applicable to him and so a lenient view may be taken in the matter of sentence. In my opinion, so far as the accused Jogendrasingh and Mithusingh are concerned, it would be proper to sentence them to 7 years' rigorous imprisonment under Section 392, read with Section 397, I.P.C. would not be attracted in respect of the accused Darshansingh, so, it would be proper to sentence him to 5 years rigorous imprisonment under Section 392. As no arm was found with Darshan Singh his conviction for the offence under Section 27 Arms Act cannot be sustained. He deserves to be acquitted of that offence.

7. Accordingly, these appeal are partly allowed. The convictions of Jogendrasingh and Mithusingh for the various offences are maintained. How ever their sentences for the offence under Section 392 read with Section 397, I.P.C. are reduced to 7 years' rigorous imprisonment. With regard to all other offences, the sentences are also maintained. The conviction of the appellant Darshansingh for the offence under Section 27 Arms Act is set aside. His conviction for the offence under Section 397, I.P.C. is also set aside, and his sentence for the offence under Section 392, I.P.C. is reduced to 5 years' rigorous imprisonment. All the substantive sentences of the appellants shall run concurrently.

