

Jai Veer Singh Vs. State

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Court : Delhi

Decided On : Jul-15-2013

Judge : Sunita Gupta

Appellant : Jai Veer Singh

Respondent : State

Advocate for Def. : Ms. Fizani Husain

Advocate for Pet/Ap. : Mr. Jitender Tyagi

Judgement :

\$~ * IN THE HIGH COURT OF DELHI AT NEW DELHI CrI. A. 249/2003 Date of Decision:

15. h July, 2013 JAI VEER SINGH Through: Appellant Mr. Jitender Tyagi, Advocate. versus STATE Through: Respondent Ms. Fizani Husain, APP CORAM: HONBLE MS. JUSTICE SUNITA GUPTA JUDGMENT : SUNITA GUPTA, J.

1. Challenge in this appeal is to the judgment dated 26.03.2003 and the order on sentence dated 31.03.2003 arising out of Sessions Case No.133/96 in case FIR 310/94 u/s 392/397/34 IPC, P.S. Okhla Industrial Area, vide which the appellant along with his co-accused was held guilty of offence u/s 392 read with Section 34 IPC and was sentenced to undergo 27 months rigorous imprisonment and to pay a

fine of Rs.500/- each, in default of payment of fine to undergo simple imprisonment for 15 days.

2. Prosecution case emanates from the fact that on 8.10.1994, ASI Shiv Singh (PW7) along with Ct. Anand Kumar (PW3) and Ct. Brahm Singh reached Shyam Nagar at about 11.50 a.m where the complainant Ravinder Chetwani (PW1) met them and gave his statement, Ex.PW 1/A regarding commission of robbery of Rs.1,50,000/-. Endorsement Ex. PW 7/A was made by ASI Shiv Singh and the same was sent through Ct. Anand Kumar to police station on the basis of which FIR Ex.PW 2/B was recorded by Ct. Itwari Singh (PW2).

3. It is further the case of prosecution that on 03.02.1995, SI Vimal Kishore Tripathi (PW9) posted at Spl. Staff South District interrogated two accused Ramesh Kumar and Jai Veer Singh who were arrested in case FIR No. 220/94 u/s 457/380 IPC P.S. Mehrauli and recorded their disclosure statements. In pursuance thereof, accused Ramesh got recovered Rs.50,000/- along with gold ornaments whereas accused Jai Veer Singh got recovered Rs.15,000. Insp. Narender Singh (PW10), on receipt of investigation of this case, formally arrested the accused person. The accused refused to join test identification proceedings. After completing investigation, charge- sheet was submitted against them in the Court of learned Metropolitan Magistrate who committed the case to the Court of Sessions since offence u/s 397 IPC was triable by a Court of Sessions.

4. On commitment, charge u/s 392/397 IPC was framed against both the accused persons to which they pleaded not guilty and claimed trial. In order to substantiate its case, prosecution examined ten witnesses. All the incriminating evidence was put to accused persons while recording their statement u/s 313 Cr.P.C wherein they denied the case of prosecution, pleaded innocence and alleged false implication in this case. Vide impugned order referred above, both the accused were held guilty u/s 392 read with Section 34 IPC and were sentenced separately. Since the accused Ramesh had already undergone the sentence, as such he was not taken in custody whereas the present appellant Jai Veer Singh had undergone only 11 months, therefore, in order to serve the remaining sentence, he was taken in custody. Feeling aggrieved by the order, appellant Jai Veer Singh has preferred

the present appeal.

5. I have heard Mr. Jitender Tyagi, learned counsel for the appellant and Ms. Fizani Husain, learned Public Prosecutor for the State and have perused the Trial Court record.

6. It was submitted by learned counsel for the appellant that the complainant did not identify the appellant and in fact was categorical in stating that he was called in the police station on 04.02.1995 where he had identified only one accused and not the second accused. He specifically deposed that accused Jai Veer Singh was not the second accused who had put the country made pistol on his person. That being so, there was no occasion for his being convicted for offence u/s 392 IPC. As regards recovery of Rs 15000/-, it was submitted that recovery was alleged to have been effected in the presence of PW4 Ashok Rana. However this witness has categorically deposed that no recovery was effected in his presence. Although he admitted his signatures at recovery memo at Point A, however he clarified that his signatures were obtained on blank paper. Moreover, the learned Trial Court has convicted the appellant while raising presumption u/s 114(a) of the Evidence Act. However, in this case, that presumption is not available because the alleged recovery which, otherwise, is doubtful was effected after 3 months of the incident. Under the circumstances, it was submitted that no case u/s 392 IPC is made out. In case, it is held that the appellant was found in possession of the stolen money, then, at the most, he can be held guilty u/s 411 IPC. He has already remained in custody for a period of 11 months. The incident took place in the year 1994. The appellant is now well settled in life and has a family to support. As such he be sentenced to the period already undergone.

7. Per contra, it was submitted by learned Public Prosecutor for the State that the appellant refused to join TIP. Moreover, recovery of Rs.15,000/- was effected from him in the presence of an independent witness Ashok Rana. Although this witness has turned hostile but admitted his signatures on the recovery memo. Under the circumstances, it was submitted that there is no infirmity in the impugned order which calls for interference.

8. The most material witness is the complainant Ravinder Chetwani who unfolded that on 08.10.1994, he was working with M/s Infocom Digital Systems Pvt. Ltd having its office at B-285, Okhla Industrial Area, Phase-I as an Accountant. On that day, at about 11.30 a.m, after withdrawing Rs.1,50,000/- from the account of the company held in SBI Okhla,Phase-III he kept the currency notes contained in a polythene bag in the dicky of his scooter bearing not DDP 5339.When he reached near G.B. Pant Polytechnic, since the road was bad, he was driving his scooter at low speed. In the meanwhile, two boys riding a two wheeler scooter DL 3.2208 came from behind and obstructed his way. The front wheel of that scooter touched his scooter and he was forced to stop his scooter since on the other side there was a nallah. Those two boys asked him to open the dicky and when he resisted, one of them who was sitting on the pillion seat of the scooter, put a country made pistol on his backside. The other boy, who was driving the scooter, opened the dicky with a fist blow. They then removed the polythene bag from the dicky of the scooter and fled away. He started his scooter and after covering some distance, he saw two police officials and gave his statement Ex. PW1/A which bears his signatures at Point A. He identified the accused Ramesh as the person who was driving the scooter and who had taken out the polythene bag containing currency notes from the dicky of his scooter. However, he could not identify the other person who was sitting on the pillion seat of the scooter and who had put country made pistol on his back. Currency notes were later on returned to him on Superdari. Since the witness did not support the case of prosecution regarding the present appellant, he was crossexamined by learned Public Prosecutor with the permission of the Court and in cross-examination, he admitted that in his complaint Ex.PW 1/A he had given the description of one accused and had given the age of the other accused. However, he went on stating that he had seen the accused who was driving the scooter and who had taken the currency notes from the dicky of the scooter clearly but he had not properly seen the pillion rider who had put the pistol on his back as he was on one side. He was shown the accused Jai Veer Singh and was asked whether he was the second person who was sitting on the pillion seat of the scooter and who had put the country made pistol on his neck and after looking at accused Jai Veer Singh, he categorically stated that he was not the second accused. He went on stating that accused Jai Veer Singh

does not answer the description of second accused. He admitted that he was shown two persons at the police station on 04.02.1995 but he was able to identify only one accused, whom he identified in the Court also. He had not identified the second accused. He was the solitary witness to the incident and was the best person to identify the accused but he completely exonerated him by deposing that he was not the second accused and in fact he had not even identified him in the police station on 04.02.1995.

9. Learned Public Prosecutor, however, stressed upon refusal on the part of the appellant to join TIP proceedings. Although it is true that the appellant had refused to join TIP proceedings, as such an adverse inference can be drawn against him for his failure to join the proceedings but that, ipso facto, is not sufficient to arrive at the conclusion that he was the person who participated in the commission of crime because it is the statement made by the witness in Court which is of prime importance and, as seen above, the complainant has categorically deposed that the appellant was not the second accused who had put the pistol on his neck at the time of committing robbery, therefore, only on the basis of presumption it cannot be held that appellant was the second accused who had put pistol on the neck of the complainant to committing robbery.

10. It is the case of prosecution that the present appellant along with his co-accused was arrested in case FIR No.220/94 u/s 457/380 IPC P.S. Mehrauli by PW-9 SI Vimal Kishore Tripathi wherein they made disclosure statements. In pursuance thereof, while accused Ramesh got recovered Rs.50,000/- pertaining to this case along with some gold ornaments of some other case, the present appellant got recovered Rs.15,000/- pertaining to this case. The same were seized vide recovery memo Ex.PW 6/C and PW 6/D respectively. The recovery was effected in the presence of H.C Tarachand PW6 and at the time of recovery, one independent witness Ashok Rana PW-4 was also joined. So far as, PW4 Ashok Rana is concerned, this witness has not supported the case of prosecution by deposing that no recovery was effected in his presence. He admitted his signatures at Point A on the recovery memo but went on stating that his signatures were obtained on blank paper. The reason for not supporting the case of prosecution by this witness is quite obvious as he was residing in the

neighbourhood of the present accused. That being so, being neighbour of the accused, he might have chosen not to support the case of prosecution but then there is testimony of H.C Tarachand and SI Vimal Kishore Tripathi, both of whom have deposed about the recovery of Rs.15,000/- at the instance of this accused in pursuance to his disclosure statement. Despite cross-examination, nothing could be elicited to discredit their testimony.

11. The testimony of police personnel have to be treated in the same manner as testimony of any other witnesses and there is no principle of law that without corroboration by independent witnesses their testimony cannot be relied upon. The presumption that a person acts honestly applies, as much in favour of police personnel as of other person and it is not a proper judicial approach to distrust and suspect them without good ground. It depends upon the facts and circumstances of each case and no principle of general application can be laid down as held in Karamjit Singh Vs. State (Delhi Admn.

5. SCC 291.C. Ronald & Anr. Vs. Union Territory of Andaman & Nicobar Islands, (2012) 1 SCC (Crl.) 596. In Sunil Clifford Daniel vs. State of Punjab

11. SCC 205.Apex Court referred to State Govt. of NCT of Delhi v. Sunil and Anr., (2001) 1 SCC 652.wherein Court held as under:20. ... But if no witness was present or if no person had agreed to affix his signature on the document, it is difficult to lay down, as a proposition of law, that the document so prepared by the police officer must be treated as tainted and the recovery evidence unreliable. The court has to consider the evidence of the investigating officer who deposed to the fact of recovery based on the statement elicited from the accused on its own worth.

21. We feel that it is an archaic notion that actions of the police officer should be approached with initial distrust.....At any rate, the court cannot start with the presumption that the police records are untrustworthy. As a proposition of law the presumption should be the other way round. That official acts of the police have been regularly performed is a wise principle of presumption and recognised even by the legislature. Hence when a police officer gives evidence in court that a certain article was recovered by him on the strength of the statement made by the

accused it is open to the court to believe the version to be correct if it is not otherwise shown to be unreliable. It is for the accused, through cross-examination of witnesses or through any other materials, to show that the evidence of the police officer is either unreliable or at least unsafe to be acted upon in a particular case. If the court has any good reason to suspect the truthfulness of such records of the police the court could certainly take into account the fact that no other independent person was present at the time of recovery. But it is not a legally approvable procedure to presume the police action as unreliable to start with, nor to jettison such action merely for the reason that police did not collect signatures of independent persons in the documents made contemporaneous with such actions. Record reveals that no ill-will or animus has been alleged against any of the police officials for which reason they will falsely implicate the accused. Under the circumstance, recovery of Rs.15,000/- at the instance of this accused stands proved. Moreover the accused has not claimed this money in his statement recorded u/s 313 Cr.P.C nor any explanation has been afforded as to how he came in possession of so much currency notes. Under the circumstances it becomes clear that it was a stolen property.

12. Learned Trial Court has convicted the present appellant u/s 392 I.P.C along with the co-accused relying upon the presumption available u/s 114(a) of the Evidence Act on the ground that the appellant was found in possession of the stolen property. Reliance was placed on Sanjay vs. State, AIR 200.SC 97.and Gulab Chand vs. State of Madhya Pradesh, (1995) 3 SCC 574.

13. Illustration (a) of Section 114 of the Indian Evidence Act, 1872 provides that the Court may presume that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession.

14. The words soon after in this illustration are pertinent. In Tulsi Ram Kanu vs. State, AIR 195.SC 1.it was observed: The Supreme Court has indicated that the presumption permitted to be drawn under Section 114, Illustration (a) of the Evidence Act 1972 has to be drawn under the `important time factor. If the ornaments in possession of the deceased are found in possession of a person

soon after the murder, a presumption of guilt may be permitted. But if a long period has expired in the interval, the presumption cannot be drawn having regard to the circumstances of the case.

15. In *Earabhadrapa v. State of Karnataka*, AIR 198.SC 446, the Supreme Court held that the nature of presumption under Illustration (a) to Section 114, must depend upon the nature of the evidence adduced. No fixed time limit can be laid down to determine whether possession is recent or otherwise and each case must be judged on its own facts. The question as to what amounts to recent possession sufficient to justify the presumption of guilt varies according as the stolen article is or is not calculated to pass readily from hand to hand. If the stolen articles were such as were not likely to pass readily from hand to hand, the period of one year that elapsed cannot be said to be too long particularly when the Appellant had been absconding during that period.

16. Following such a reasoning, in *Sanjay*(supra), Honble Supreme Court upheld the conviction by the trial court since disclosure statements were made by the accused persons on the next day of the commission of the offence and the property of the deceased was recovered at their instance from the places where they had kept such properties, on the same day. The Court found that the trial court was justified in holding that the disclosure statements of the accused persons and huge recoveries from them at their instance by itself was a sufficient circumstance on the very next day of the incident which clearly went to show that the accused persons had joined hands to commit the offence of robbery. Therefore, recent and unexplained possession of stolen properties will be taken to be presumptive evidence of the charge of murder as well.

17. In *Gulab Chand* (supra) also, Honble Supreme Court upheld the conviction for committing dacoity on the basis of recovery of ornaments of the deceased from the possession of the person accused of robbery and murder immediately after the occurrence.

18. In both the authorities, *Sanjay*(supra) and *Gulabchand* (supra), since recovery was effected immediately after the incident and the accused were unable to explain the possession of stolen properties, such a presumption u/s 114(a) of the

Evidence Act was drawn. However, things are entirely different in the instant case, inasmuch as the incident had taken place on 08.10.1994 whereas the accused was arrested on 03.02.1995 i.e after almost three months of the incident and the recovery was of cash which can be passed from one person to another without any difficulty.

19. In State of Rajasthan vs. Talewar and Anr., AIR 201.SC 2271.in pursuance to disclosure statement, cash, silver glass, scooter, key of the car were recovered from accused persons. Recovery was not in close proximity of the time from the date of incident. It was observed that recovery is either of cash, small things or vehicles which can be passed from one person to another without any difficulty. In such a situation, no presumption can be drawn against the accused under Section 114 illustration(a) of the Evidence Act. No adverse inference can be drawn on the basis of recoveries made on their disclosure statements to connect them with the commission of crime.

20. In the instant case also, since recovery is only of cash, that too, after about three months of the incident it is not safe to draw an inference that the appellant in possession of the stolen property had committed robbery. In that view of the matter, the conviction of the appellant for the charge of robbery u/s 392 IPC cannot be sustained and is accordingly set aside.

21. However, since the recovery of stolen property was effected at the instance of accused which remains unexplained, as such he is convicted u/s 411 IPC. The incident took place in the year 1994. The appellant remained in custody for a period of 11 months. It was submitted that the appellant is now well settled in life and is now living in his village along with his family. Under the circumstances, the ends of justice will be met, if he is sentenced to the period already undergone. However, the fine of Rs.500/- imposed upon him is enhanced to Rs.5,000/- which be deposited with the learned Trial Court within seven days, failing which he is to undergo S.I for a period of one month. Fine of Rs.500/-, if already deposited, be adjusted. With these observations the appeal stands disposed of. SUNITA GUPTA (JUDGE) July 15, 2013 as