

HIGH COURT OF DELHI AT NEW DELHI

Crl. A. No. 612/2009

Date of Decision: 29.4.2010

SURJIT SINGH & ANR.

... Appellants

Through: Ms. Neelam Grover, Adv.

Versus

STATE OF DELHI

... Respondent

Through: Mr. Navin Sharma, Adv.

CORAM:

HON'BLE MR. JUSTICE S.L. BHAYANA

1. Whether reporters of local paper may be allowed to see the judgment? Yes
2. To be referred to the reporter or not? Yes
3. Whether the judgment should be referred in the Digest? Yes

S.L. Bhayana, J.

The present appeal arises out of judgment/order of learned ASJ dated 25.7.2009 and 04.8.2009 wherein the learned ASJ has convicted the accused persons under Section 395/34 IPC and sentenced them to undergo RI for five years each and also a fine of Rs.1000/- each, in default SI for one month each for the offence under Section 395/34 IPC.

2. The brief facts of the prosecution case are that the complainant Sunil Aggarwal made a statement before the police on 26.8.2003 that

he is running companies under the name and style of Meridian Fin West Pvt. Ltd. and Hilltop Cabfin Pvt. Ltd. at East Patel Nagar. He recovers the loan amount given to the public by the banks and he collects that amount from the public from morning till 3.00 PM. After making recoveries of these amounts from the public, he deposits the same in the bank. He further stated before the police that whatever amount is recovered by him from the public is taken by him to his house and he deposits the same in the bank on the following day at 3.00 PM. On 26.8.2003, the complainant was carrying a sum of Rs.2,99,460/-, out of which Rs.1,99,997 was the recovery amount of the bank whereas, Rs.99,463/- was the expenses of his office. He was carrying this amount on his motorcycle and when he reached near Rama road, near Factory no. 17 at 9.15 PM, one Maruti car came from behind and cornered him. He tried to take his motorcycle in the corner but he could not find any space and he fell down along with his motorcycle. Two persons got down from the Maruti car with revolvers in their hands and one of them put revolver on his head and another snatched the bag from him which was containing money. That person also snatched the mobile phone (Nokia) of the complainant & also his spectacles. He further stated that, in the meantime, two more persons came on the motorcycle and they tried to take away his motorcycle and when they tried to start his motorcycle, it did not start and both of

them left the motorcycle on the spot and ran away. The police recorded his statement and registered a case under Section 392/34 IPC.

3. Charge under Section 395/34 IPC was framed against all the accused persons while charge under Section 412 IPC was also framed against the accused Mukesh to which they pleaded not guilty and claimed trial.

4. The prosecution has examined 12 witnesses in all in this case. Out of these 12 witnesses, PW8/Sunil Aggarwal is the star witness of the prosecution. He has deposed before the Court that he was working for banks for recovering their outstanding dues from the various loanees and he was running companies under the name and style of Meridian Fin West Pvt. Ltd. and Hilltop Cabfin Pvt. Ltd. At present, he is practicing as an advocate at Tis Hazari Courts, Delhi. On 26.8.2003, at about 9.15 PM he left his office with a cash amount of Rs.2,99,460/- in a bag. He hanged that bag on his shoulder and left the office on his motorcycle no. DL-4S-AA-5765 for Shalimar Bagh. When he was passing through Rama Road and reached near factory no. 17, one white colour Maruti car came from behind. That said Maruti car came near to his motorcycle, as a result of which he slowed down his speed. The said Maruti car did not leave any space on the road and covered the whole space, as a result of which, he fell down from the

motorcycle. The two gates of the said car opened and one person from each gate came out armed with revolvers. The person who got down from the rear gate of that car caught hold of him from his collar and forcibly made him to sit on the pavement. He removed the money bag from his shoulder on the point of revolver. He handed over the said money bag to one of his associates sitting in the Maruti car. He also snatched his mobile phone and spectacles. He saw one person sitting on the driver seat of the car. Thereafter, two more persons came on motorcycle and they overtook the Maruti car and came to his side. The Maruti car in the meantime left the spot and went to the opposite side of the road. The person who was driving the motorcycle came down from the motorcycle and tried to start his motorcycle and when he moved towards his motorcycle, the said person pointed revolver towards him. The person tried to start his motorcycle but he failed to do so. Thereafter, they both and also the person sitting in the Maruti car on the opposite side of the road ran away from the spot.

5. The witness/PW8 pointed out to the accused named, Surender Singh who got down from the front gate of the white Maruti car with a revolver. He also identified the accused Mukesh who got down from the rear gate of that car with a revolver and snatched his money bag along with his mobile phone and spectacles. The witness further identified the accused Ravinder Paswan who was sitting on the driver

seat of that car and accused Kuldeep Singh who was driving the motorcycle and tried to start complainant's motorcycle after pointing revolver at him. The witness also identified the accused Surjit Singh who was sitting on the pillion seat of the motorcycle. The witness has also identified the bag of money, exhibited as 'Ex. P.1'. The witness was cross-examined at length but nothing came in the cross-examination which could impeach the credibility of this witness and I have not found any material discrepancy in the cross-examination of this witness. After examining 12 witnesses, the prosecution closed their evidence.

6. Statements of all the accused persons were recorded under Section 313 Cr.P.C wherein they all have denied their involvement in this case and they claimed to be innocent. One of the accused Mukesh chose to lead evidence in defence and he examined one DW1/Satyawan.

7. I have heard the arguments from both the sides at length and perused the records carefully. Learned counsel for the appellant has submitted that the prosecution has failed to prove its case against the accused beyond reasonable doubts. She has further submitted that since accused Surjit Singh was only the pillion rider of the motorcycle which was being driven by accused Kuldeep Singh and no role has been assigned to Surjit Singh, he is therefore liable to be acquitted.

She has further submitted that not a single independent public witness has been joined/examined by the police in this case and the testimony of Sunil Aggarwal has not been corroborated by any independent public witness.

8. I have gone through the statement of PW8/Sunil Aggarwal wherein he has categorically stated that two more persons came on the motorcycle which was being driven by accused Kuldeep Singh and accused Surjit Singh who was sitting on the pillion seat of the motorcycle and they both tried to rob him of his motorcycle as accused Kuldeep Singh tried to start his motorcycle but they could not start the same, therefore they left the motorcycle at the spot and ran away. Therefore, it cannot be said that accused Surjit Singh has not played any role in this robbery as he was one of the members of the gang of robbers who had come to rob the complainant and his associates had successfully robbed the complainant's bag containing Rs.2,99,460/- and they also robbed his mobile phone and spectacles. Even these two persons tried to rob complainant's motorcycle but accidentally the motorcycle did not start and they had to leave the spot.

9. I also do not agree with the contention of learned counsel for the appellant on the point that simply because no public witness has been joined by the police in this case, so the accused persons are liable to be acquitted. This view finds support from the observations

made by the Supreme Court in the following cases:-

(i) The Hon'ble Supreme Court in the case of **Vithal Pundalik**

Zendge Vs. State of Maharashtra - AIR 2009 Supreme Court

1110, has held as under:-

"6. On a consideration of the relevant authorities and the provisions of the Indian Evidence Act, 1872 (in short the 'Evidence Act') the following propositions may be safely stated as firmly established:

(1) As a general rule, a court can and may act on the testimony of a single witness though uncorroborated. One credible witness outweighs the testimony of a number of other witnesses of indifferent character.

(2) Unless corroboration is insisted upon by statute, courts should not insist on corroboration except in cases where the nature of the testimony of the single witness itself requires as a rule of prudence, that corroboration should be insisted upon, for example in the case of a child witness, or of a witness whose evidence is that of an accomplice or of an analogous character.

(3) Whether corroboration of the testimony of a single witness is or is not necessary, must depend upon facts and circumstances of each case and no general rule can be laid down in a matter like this and much depends upon the judicial discretion of the Judge before whom the case comes.

7. Therefore, there is no hesitation in holding that the contention that in a murder case the court should insist upon plurality of witnesses, is much too broadly stated.

8. x x x x x x x x x

9. Vadivelu Thevar case (supra) was referred to with approval in Jagdish Prasad Vs. State of MP (AIR 1994 SC 1251) This Court held that as a general rule the court can and may act on the testimony of a single witness provided he is wholly reliable. There is no legal impediment in convicting a person on the sole testimony of a single witness. That is the logic of Section 134 of the Indian

Evidence Act, 1872 (in short 'the Evidence Act'). But, if there are doubts about the testimony the courts will insist on corroboration. It is for the court to act upon the testimony of witnesses. It is not the number, the quantity, but the quality that is material. The time honoured principle is that evidence has to be weighed and not counted. On this principle stands the edifice of Section 134 of the Evidence Act. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy, or otherwise".

(ii) The Hon'ble Supreme Court in another case of **Chacko alias Aniyam Kunju and others, Vs. State of Kerala- AIR 2004 Supreme Court 2688**, has held as under:-

"7. Coming to the question whether on the basis of a solitary evidence, conviction can be maintained. A bare reference of Section 134 of the Indian Evidence Act, 1872 (in short 'the Evidence Act') would suffice. The provisions clearly states that no particular number of witnesses is required to establish the case. Conviction can be based on the testimony of single witness if he is wholly reliable. Corroboration may be necessary when he is only partially reliable. If the evidence is unblemished and beyond all possible criticism and the Court is satisfied that the witness was speaking the truth then on his evidence alone conviction can be maintained. Undisputedly, there were injuries found on the body of the accused persons on medical evidence. That per se cannot be a ground to totally discard the prosecution version. This is a factor which has to be weighed along with other materials to see whether the prosecution version is reliable, cogent and trustworthy. When the case of the prosecution is supported by an eye-witness who is found to be truthful, as well, mere non-explanation of the injuries on the accused persons cannot be foundation for discarding the prosecution version. Additionally, the dying declaration was found to be acceptable."

Keeping in view, the above said guidelines, I therefore hold that non-joining of independent public witness is not fatal to the case of the prosecution. The prosecution case cannot be thrown out simply because no independent public witness has been examined. I do believe that the occurrence took place at about 9.15 PM and it is quite possible that public witnesses may not be available at the spot at the time of incident. So, the argument of learned counsel for the appellants on this ground is without merit and the same is, therefore, rejected.

10. Learned counsel for the appellants has further submitted that no recovery of any incriminating material has been made from both the accused and therefore they are liable to be acquitted. I do not agree with the contention of learned counsel for the appellants on this point. PW8/Sunil Aggarwal has identified these two accused persons as the associates of robbers who had robbed the complainant's bag along with his mobile phone and spectacles. Even these two persons tried to rob him of his motorcycle. Simply because no recovery has been made from these two persons, it does not make them entitled to be acquitted. There is no merit in the submission made by learned counsel for the appellants and the same is, therefore, rejected.

11. Learned counsel for the appellants has further submitted that the prosecution has not placed on record any documents to show that the

money which the complainant was carrying was collected by him from various persons who had taken loan from the banks. I do not agree with the contention of learned counsel for the appellants on this issue since it is not a case of recovery of money but a case of robbery committed by the accused persons.

12. I have very carefully gone through the records of the case, particularly the statement of PW8/Sunil Aggarwal wherein he has deposed that he was going on the motorcycle with a bag containing a sum of Rs.2,99,460/- when it was robbed by the accused persons at the point of revolver who came in a Maruti car. He has further categorically stated that immediately thereafter both appellants came on a motorcycle and they tried to rob him of his motorcycle and tried to start the same but they failed to do so and fled away from the spot alongwith the robbers who had come in a Maruti car. I have also gone through the cross-examination of PW8/Sunil Aggarwal and I have not found any material discrepancy in the same, which could impeach the credibility of this witness. I have also gone through the statement of other witnesses examined by the prosecution and all the witnesses have supported the case of the prosecution.

13. Keeping in view the aforesaid discussions, I do not find any infirmity in the judgment/order dated 25.7.2009 and 04.8.2009 passed by the learned ASJ.

14. There is no merit in the appeal. The same is therefore dismissed.

S.L.BHAYANA,J

April 29, 2010

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