

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Judgment delivered on: June 01, 2011

+ **CRIMINAL APPEAL NO.810/2003**

MUNESH KUMAR & ANOTHER **....APPELLANTS**

Through: Ms. Shuchita Srivastava, Advocate/
Amicus Curiae for appellant No.1.
Mr. Rajesh Kumar Kadyan, Advocate for
appellant No.2.

Versus

STATE **.....RESPONDENT**

Through: Mr. Sunil Sharma, APP.

WITH

CRIMINAL APPEAL NO.826/2003

SUMER SINGH **....APPELLANT**

Through: Mr. Prag Chawla, Advocate
Versus

STATE **.....RESPONDENT**

Through: Mr. Sunil Sharma, APP.

AND

CRIMINAL APPEAL NO.844/2003

VIJAY KUMAR **....APPELLANT**

Through: Mr. M.L. Yadav, Advocate

Versus

STATE **.....RESPONDENT**

Through: Mr. Sunil Sharma, APP.

CORAM:

HON'BLE MR. JUSTICE AJIT BHARIHOKE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in Digest ?

AJIT BHARIHOKE, J.(ORAL)

1. Above three appeals are preferred against the impugned judgment dated 15th November, 2003 in Sessions Case No. 35/01, FIR No. 16/98, P.S. Narela, whereby appellant Vijay Kumar has been convicted for the offences punishable under Sections 399/402/411 IPC & Section 25 of the Arms Act, appellant Munesh @ Munna has been convicted for the offences punishable under Sections 399/402 IPC & Section 25 of the Arms Act and appellants Sumer @ Malhotra and Naresh Kumar have been convicted for the offences punishable under Sections 399/402 IPC as also the consequent order on sentence dated 21st November, 2003.

2. Briefly stated, case of the prosecution is that on 13th January, 1998 at around 6.30 p.m., SI Munshi Ram (PW9) received a secret information in the police station that some boys are gathering in the Cremation Ground, Saboli Narela Road to plan a dacoity. Those boys, as per the informer, were having unlicensed arms as well as a stolen Maruti Car. SI Munshi Ram organized a raiding party by joining the police officials and left the police station after informing the SHO. On the way to Cremation Ground, SI Munshi Ram requested 10/15 passersby to join the raiding party but they all refused. The raiding party reached Cremation Ground, Saboli Narela Road at about 07.00 p.m. SI Munshi Ram instructed the members of raiding party to take suitable positions and told them that after

hearing the conversation of those persons, he would give a signal by lighting a matchstick and on the receipt of signal, they should apprehend those persons. Thereafter, on the pointing of the informer, SI Munshi Ram went near the boundary wall of the Cremation Ground near the gate to overhear the conversation of persons sitting within the premises of Cremation Ground. There was a Maruti Car No. DAQ-2359 parked outside the Cremation Ground. It is alleged that those persons were planning a dacoity and their boss seemed to be the appellant Vijay. They were planning that they would go in Vijay's Car to the petrol pump at GTK Road and would loot the cash. Vijay explained the plan that accused Munesh, Naresh, Sumer & Anupam would go inside the room of the petrol pump and he would stand outside with pistol to prevent anyone from entering the room. He also told Munesh, who was having a knife and accused Naresh and Sumer, who were having iron rods to ensure that nobody was permitted to come outside the room and if anybody tries to come out of the room he should be attacked. Anoop was directed to take possession of the money kept in the room. SI Munshi Ram gave signal to the raiding party by lighting the matchstick and on this, members of the raiding party rushed to the spot and apprehended all five of them. On search, Vijay was found in possession of the country-made pistol and Munesh was found in possession of 'Churi'. Other accused persons were found in

possession of iron rods. The weapons recovered from their possession were converted into sealed packets after preparing the sketches and taken into possession. Vijay Kumar, on interrogation, stated that he had purchased the Maruti Car parked outside for ₹ 15,000/- from one Dinesh. A disclosure memo in this regard Ex.PW4/H was prepared. Car was also taken into possession vide memo Ex.PW6/A. SI Munshi Ram prepared 'rukka' Ex.PW2/A at the spot and sent it to the police station through Contable Rajpal Singh for the registration of the case. On the basis of said 'rukka', FIR Ex.PW2/B was registered and investigation was entrusted to SI Munshi Ram, the Investigating Officer. SI Munshi Ram arrested the accused persons and conducted their personal search vide respective memos Exs. PW4/G1 to 4/G5. Investigation revealed that Maruti Car No. DL-1CE-4420 was stolen property belonging to PW3 Mahavir Prasad. On completion of investigation, the appellants and their co-accused were sent for trial.

3. Learned Additional Sessions Judge charged the appellants for the offences punishable under Sections 399/402 IPC. He also charged the accused Munesh for the offence punishable under Section 25 of the Arms Act and accused Vijay for the offences punishable under Section 411 IPC and Section 25 of the Arms Act. The appellants pleaded not guilty to the charges and claimed to be tried.

4. In order to bring home the guilt of the appellants, prosecution has examined nine witnesses.

5. PW9 SI Munshi Ram, Raid-cum-Investigating Officer has testified that on 13th January, 1998 at about 6.30 p.m., his informer contacted him at the police station and told that some boys were planning to commit dacoity in the Cremation Ground, Saboli Narela Road and that they were carrying unlicensed arms and they were also in possession of a stolen car No. DAQ-2359. He apprised the SHO about the information and organized a raid party by joining Head Constable Joginder, Head Constable Yogender, Head Constable Hawa Singh, Constable Bhagwan Sahai and Constable Rajpal Singh. On the way to Cremation Ground, he requested 10/15 passersby to join the raiding party but they declined. SI Munshi Ram claimed that the raid party reached the Cremation Ground at about 7.00 p.m. He instructed the staff to wait and went ahead towards gate of Cremation Ground to overhear the conversation of the persons sitting in the Cremation Ground. He overheard that they were planning to commit dacoity at petrol pump, GTK Road. On this, he gave pre-appointed signal by lighting a matchstick. On the receipt of signal, the members of the raiding party rushed to the spot and apprehended the appellants as well as their co-accused Anoop (P.O.). SI Munshi Ram claimed that on search, a pistol with one cartridge was recovered from the appellant Vijay, a 'churri' was

recovered from the appellant Munesh and iron rods were recovered from the possession of appellants Sumer and Naresh, which were taken into possession after completing necessary formalities vide memos Ex.PW4/B to Ex.PW4/F. SI Munshi Ram further stated that a Maruti Car No. DAQ-2359 was found parked outside the Cremation Ground which was also taken into possession vide memo Ex.PW6/A. PW9 stated that he prepared 'rukka' Ex.PW2/A detailing the facts and sent it to the police station for registration of the case. PW9 further claimed that on interrogation, appellant Vijay made a disclosure statement Ex.PW4/H wherein, he stated that he had purchased aforesaid Maruti Car from his friend Dinesh for ₹ 50,000/-. He identified the car Ex.P1, pistol as Ex.P2, cartridge as Ex.P3, dagger as Ex.P4 and iron rods as Exs. P5 & P6. PW4 Constable Bhagwan Sahai, PW6 ASI Hawa Singh and PW7 Constable Rajpal Singh, who were the members of the raiding party have also deposed to similar effect.

6. The appellants, when examined under Section 313 CrPC denied the prosecution version in totality and claimed that they have been picked up by the police and falsely implicated in this case. No witness in defence has been examined.

7. Learned Ms. Shuchita Srivastava, Amicus Curiae appearing for the appellant Munesh has assailed the impugned judgment on the

ground that it is based upon incorrect appreciation of the facts. Learned amicus curiae has submitted that the trial court has failed to appreciate that the story of the prosecution is highly unnatural to be believed. There is no public witness to support the version of police officials. The case of the prosecution is essentially based upon the testimony of the raid officer PW9 Munshi Ram who alone, as per the case of prosecution is sole witness of conversation between the appellant planning to commit dacoity and he also is the Investigating Officer. This practice, according to learned amicus curiae, is highly unfair and against the principle of natural justice, as such, the appellants are entitled to acquittal. Thus, she has strongly urged for acceptance of the appeal.

8. Learned Sh. Rajesh Kumar Kadyan, Advocate appearing for the appellant Naresh Kumar, learned Sh. Prag Chawla, Advocate for the appellant Sumer Singh and learned Sh. M.L.Yadav, Advocate for the appellant Vijay Kumar have also argued on the same lines.

9. Learned Sh. Sunil Sharma, APP, on the contrary, has argued in support of the impugned judgment. He submitted that the learned Additional Sessions Judge has rightly relied upon the testimony of PW4 Constable Bhagwan Sahai, PW6 ASI Hawa Singh, PW7 Constable Rajpal Singh and PW9 SI Munshi Ram, which is consistent with the case of prosecution and does not suffer from material

contradictions. Learned APP contended that absence of public witnesses in this case is of no consequence for the reason that all the above witnesses have categorically stated that effort was made to join independent witnesses by requesting 10/15 passersby. If they did not agree to join the raiding party, the raid officer cannot be faulted. Learned APP submitted that otherwise also, there is no law which provides that in absence of a public witness, testimony of police officials cannot be relied upon if otherwise found suitable. Thus, learned APP has urged for dismissal of the appeals.

10. I have considered the rival contentions and perused the record. It would be seen that appellant Vijay has been charged for the offence under Section 411 IPC for having possession of stolen car belonging to PW3 Mahavir Prasad on the basis of his disclosure statement made to the police during investigation. Obviously, the disclosure statement being confession made to the police is inadmissible in evidence in view of Section 26 of the Evidence Act, 1872. There is no other evidence on record to link the aforesaid car with accused Vijay. It is the case of the prosecution that the aforesaid car was found parked outside the cremation ground. Appellant Vijay was sitting within the cremation ground. Keys of the car are not stated to have been recovered from the possession of Vijay. Therefore, there is no evidence to link Vijay with aforesaid abandoned car claimed to be a stolen property. Further, the number

of the car allegedly seized at the spot is DAQ-2359, whereas according to PW3 Mahavir Prasad registration number of his stolen car is DL-1CE-4420. No witness has testified about the engine number and chassis number of recovered car so that it could be linked with the engine number and chassis number of the stolen car of PW3 Mahavir Prasad. On this count also, it is doubtful whether or not the car recovered by the police was the stolen car belonging to Mahavir Prasad. Thus, the conviction of appellant Vijay cannot be sustained under Section 411 IPC.

11. Case of the prosecution is that the raid party led by PW9 SI Munshi Ram left the Police Station on the receipt of secret information at 6:30 pm for cremation ground, Saboli, Narela Road. However, prosecution has failed to prove on record the departure entry of the raid party recorded in the daily diary register maintained at the Police Station. This circumstance raise suspicion against the correctness of prosecution version. The doubt against prosecution version is further compounded by the fact that there is no independent witness in this case. SI Munshi Ram (PW9) has tried to explain the absence of public witnesses by stating that on the way to the cremation ground, he requested 10/15 passersby to join the raiding party but no one agreed. I do not find the explanation plausible for the reason that SI Munshi Ram (APW9) in his cross-examination has admitted that there were many residential houses

and market in the way, but he did not request any shopkeeper or resident from those houses to join the raiding party. The fact that the Investigating Officer did not care to request the shopkeepers or residents whose addresses were certain and proved, chose the passersby for making a request gives rise to an inference that he was not sincere in his effort to join public witnesses and a possibility cannot be ruled out that the explanation given by the raid officer is a make believe story. Further, the story of the prosecution is highly unnatural. If prosecution witnesses are to be believed that appellants were armed with a pistol, dagger and iron rods. None of the witnesses has stated that the appellants tried to resist their arrest and run away, which conduct is highly unnatural to be believed. Not only this, this is a clear case of unfair investigation. Admittedly, as per the version of SI Munshi Ram (PW9) and other prosecution witnesses, SI Munshi Ram alone had gone towards the main gate of cremation ground to overhear the conversation of the appellants. Munshi Ram SI is the author of rukka/complaint which formed basis for registration of FIR. Despite that the investigation of the case was entrusted to SI Munshi Ram. Above procedure adopted by the police, to my mind, is unfair and against the principle of natural justice. The purpose of the investigation is to inquire into the correctness of the allegations made in the complaint. When a complainant is entrusted with the responsibility

of investigation into allegation, as per the natural course of human conduct, he is not expected to conclude against the allegation in the complaint. This infirmity in the investigation further compounds the doubt against the prosecution case, particularly, in view of the fact that there is no other witness to corroborate the version of the Investigating Officer/Raid Officer SI Munshi Ram that the appellants were planning to commit dacoity.

12. In view of the discussion above, I do not find it safe to base conviction of the appellants on the testimony of the police officials, namely, PW4 Constable Bhagwan Sahai, PW6 ASI Hawa Singh, PW7 Constable Rajpal Singh and PW9 Munshi Ram in absence of corroboration by any independent witness. Thus, I find it difficult to sustain the conviction of the appellants under Sections 399/402 IPC, Section 411 IPC and Section 25 of the Arms Act.

13. Appeals are, therefore, accepted and appellants are acquitted on the charges giving them benefit of doubt.

14. Appeals are disposed of accordingly.

(AJIT BHARIHOKE)
JUDGE

JUNE 01, 2011/_{akb/pst}