

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

RESERVED ON : 8th APRIL, 2013

DECIDED ON : 26th APRIL, 2013

+ CRL.A.557/2000

SARFU Appellant
Through : Mr.Vivek Sood, Advocate with
Mr.V.P.Singh, Advocate.

versus

STATE (NCT OF DELHI) Respondent
Through : Ms.Fizani Husain, APP.

AND

+ CRL.A.558/2000

RAMRAJ Appellant
Through : Mr.Vivek Sood, Advocate with
Mr.V.P.Singh, Advocate.

versus

STATE (NCT OF DELHI) Respondent
Through : Ms.Fizani Husain, APP.

**CORAM:
HON'BLE MR. JUSTICE S.P.GARG**

S.P.GARG, J.

1. The appellants- Sarfu @ Govinda (A-1) and Ramraj @
Rajesh @ Sagar (A-2) challenge judgment dated 04.08.2000 in Sessions

Case No. 146/1998 arising out of FIR No. 532/1998, PS OKhla Industrial Area by which they were convicted for committing offence punishable under Section 394/34 IPC and sentenced to undergo RI for five years with fine ₹ 2,000/- each.

2. Allegations against the appellants were that on 01.08.1998 at 07.40 P.M. at Service road joining D- block of Okhla Industrial Area to Anandmayi Road, near Water Tank, they and their associates Amar Kumar Gupta, Khem Chand @ Sonu, Dharamvir @ Dharma and Raj Kumar @ Raju hatched conspiracy to commit decoity and pursuant to that robbed Ravinder Chaudhary of cash ₹ 86,000/- and in the process injured him. The prosecution examined twelve witnesses to substantiate the charges. In their 313 Cr.P.C. statements, the accused persons pleaded false implication. DW-1 (Jagdish) and DW-2 (HC Ramesh Chand) were examined in defence. On appreciating the evidence and considering the rival contentions of the parties, the Trial Court, by the impugned judgment, convicted A-1, A-2, Amar Kumar Gupta and Dharamvir @ Dharma for committing offence under Section 394/34 IPC. Khem Chand @ Sonu and Raj Kumar @ Raju were acquitted of the charges. Being aggrieved, A-1 and A-2 have preferred the appeals.

3. Learned counsel for the appellants urged that the Trial Court did not appreciate the evidence in its true and proper perspective and without any valid reasons ignored the vital discrepancies and lacunae in the prosecution's case. There was no cogent evidence to establish that the victim Ravinder Chaudhary had obtained ₹ 86,000/- from his employer as full and final settlement that day. The prosecution did not examine the cashier who handed over ₹ 86,000/- to the complainant. The vouchers on record do not contain the signatures of the concerned cashier. It is doubtful if the complainant was having ₹ 86,000/- in his possession at the time of incident. Counsel further contended that the complainant was unable to identify the currency notes recovered by the police. The appellants justified to decline Test Identification Parade as the complainant was associated during investigation and the accused were shown to him. The appellants' defence that false implication due to revenge was not given weightage by the Trial Court. Learned APP urged that there are no valid reasons to discard the statement of the victim who had no animosity with the accused to falsely implicate them.

4. Star witnesses, PW-1 (Ravinder Chaudhary) who is the victim was deprived of ₹ 86,000/- and other articles. He lodged First Information Report (Ex.PW-12/G) and informed the police that at about

07.40 P.M., he was robbed of cash ₹ 86,000/- and was given beatings. The assailants had come on a motorcycle. He gave description of the assailants and claimed to recognise them. PW-12 (SI Bijender Singh) made endorsement (Ex.PW-12/A) and lodged First Information Report. The occurrence took place on 07.40 P.M. and the FIR was registered at 09.15 P.M. There was no delay in lodging the First Information Report with the police. The assailants were not known to the complainant previously and were not named in the FIR. The complainant had no occasion/ reason to fake incident of robbery.

5. In his deposition before the Court as PW-1, he proved the version given to the police at the first instance without variation and testified that on 01.08.1998, he was working with M/s. Goverdhan Enterprises, S-33, Okhla Industrial Area, Phase-II, New Delhi as a Finishing Supervisor. He went to clear his accounts in the factory and was paid ₹ 86,000/-. He put the said money in a rexine bag. When he was going to his house on foot and reached near Okhla Water Tank at 07.40 P.M., two boys (identified as Dharamvir and Sarfu) came from behind and started beating him. They tried to snatch the bag. He noticed that a motorcycle make Yamaha of black colour was standing near that place. Amar Kumar and Ramraj were standing there. They also came to the spot

and joined in giving beatings. When he raised alarm, all the four assailants snatched his money bag and fled the spot. Amar Kumar started running on foot whereas other three assailants ran away on the motorcycle. He further deposed that he identified Amar Kumar, Sarfu, Ramraj on 07.08.1998 to be the assailants who had robbed him. He also identified motorcycle (Ex.PX) on which the assailants had reached the spot. He identified the bag, I-card, gate-pass and ration card which were robbed along with money. The accused cross-examined him at length. He reiterated that he lodged the complaint with the police at 08.30 P.M. He elaborated as to how pursuant to their statements, robbed cash was recovered at the instance of the accused persons from their jhuggies. He fairly admitted that he was unable to identify the recovered currency notes.

6. No material contradictions or discrepancies have emerged in the cross-examination of the witness to disbelieve his version. He had no prior animosity with any of the assailants and was not acquainted with them. In the absence of any ill-will, it is not believable that he will falsely implicate them for the injuries caused to him during the process of committing robbery. The very fact that none of the assailants was named in the FIR shows that he did not nurture any animosity with them. Description of the assailants was described by him in his statement

(Ex.PW-1/A) and he claimed to identify the assailants. The occurrence had continued for sufficient time and the complainant had an opportunity to recognize the faces of the assailants. After the arrest of the assailants, application was moved for conducting Test Identification Proceedings. However, the accused declined to participate in the proceedings. Adverse inference is to be drawn against them for refusing to participate in the Test Identification Proceedings. They did not produce any cogent evidence that they were shown to the witnesses.

7. The testimony of a stamped witness has its own relevance and efficacy. The fact that the witness had sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. The testimony of the injured witness is accorded a special status in law. This is a consequence of the fact that the injury to the witness is an in-built guarantee of his presence at the scene of crime and because the witness will not want to let the actual assailant to go unpunished merely to falsely involve a third party for the commission of the offence. In the case of '*State of Uttar Pradesh vs. Naresh and Ors.*', (2011) 4 SCC 324, the Supreme Court held:

“The evidence of an injured witness must be given due weightage being a stamped witness, thus, his presence

cannot be doubted. His statement is generally considered to be very reliable and it is unlikely that he has spared the actual assailant in order to falsely implicate someone else. The testimony of an injured witness has its own relevancy and efficacy as he has sustained injuries at the time and place of occurrence and this lends support to his testimony that he was present during the occurrence. Thus, the testimony of an injured witness is accorded a special status in law. The witness would not like or want to let his actual assailant go unpunished merely to implicate a third person falsely for the commission of the offence. Thus, the evidence of the injured witness should be relied upon unless there are grounds for the rejection of his evidence on the basis of major contradictions and discrepancies therein.”

8. In the case of ‘Abdul Sayed Vs.State of Madhya Pradesh’, (2010) 10 SCC 259, the Supreme Court held :

“The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. "Convincing evidence is required to discredit an injured witness".

9. Ocular testimony of the complainant has been corroborated by medical evidence. PW-10 (Dr.S.K.Gupta) proved MLC (Ex.PW-10/A) of the victim Ravinder Chaudhary which was prepared by Dr.Hitesh Vajpayee. PW-2 (Akhilesh Mathur) was categorical about payment of ₹

86,000/- to Ravinder Chaudhary at the time of clearance of accounts. PW-3 (Dalip Gosain) Chief Accountant in Goverdhan Enterprises proved payment of ₹ 86,008/- to the complainant. Omission of the prosecution to prove vouchers containing signatures of the complainant in token of receipt of money is of no consequence.

10. The appellant Ramraj in his 313 Cr.P.C. statement admitted his presence at the spot. He alleged that an accident had taken place between a motorcyclist and the complainant and he intervened to tell that the motorcyclist was not at fault. On that complainant threatened him to take revenge and to falsely implicate him. The defence deserves outright rejection. Nothing has come on record to show if any accident had taken place with a motorcyclist. Rather motorcycle used in the incident was recovered by the police subsequently.

11. In the presence of overwhelming evidence against the appellants, I find no valid / good reasons to interfere in the findings of the Trial Court by which the appellants were held guilty under Section 394/34 IPC. The appeals filed by the appellants lack merits and are dismissed. The sentence and conviction of the appellants are maintained.

12. The appellants are directed to surrender and serve the remainder of their sentence. For this purpose, they shall appear before the

Trial Court on 3rd May, 2013. The Registry shall transmit the Trial Court records forthwith to ensure compliance with the judgment.

(S.P.GARG)
JUDGE

APRIL 26, 2013

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