

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

RESERVED ON : 28th OCTOBER, 2013

DECIDED ON : 20th NOVEMBER, 2013

+ CRL.A. 606/2000

AMAR KUMAR GUPTA Appellant

Through : Mr.R.D.Rana, Advocate.

versus

STATE OF DELHI Respondent

Through : Mr.Lovkesh Sawhney, APP.

AND

+ CRL.A. 607/2000

DHARAMVEER @ DHARMA Appellant

Through : Mr.R.D.Rana, Advocate.

versus

STATE OF DELHI Respondent

Through : Mr.Lovkesh Sawhney, APP.

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

S.P.GARG, J.

1. Ram Raj @ Rajesh @ Sagar; Amar Kumar Gupta (A-1); Khem Chand @ Sonu; Sarfu @ Govinda; Dharamvir @ Dharma (A-2) and Raj Kumar @ Raju were arrested in case FIR No. 532/98 PS Okhla Industrial Area and sent for trial for committing offences under Sections 394/34, 120-B & 411 IPC, on the allegations that on 01.08.1998 at 07.40 P.M. at Service road, D- block, near Water Tank, Okhla Industrial Area, they hatched criminal conspiracy to commit dacoity and pursuant to that conspiracy, robbed Ravinder Chaudhary of cash ₹ 86,000/- after inflicting injuries to 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 dated 04.08.2000 in Sessions Case No. 146/98 convicted A-1, A-2, Ram Raj @ Rajesh @ Sagar and Sarfu @ Govinda under Sections 394/34 IPC. Khem Chand @ Sonu and Raj Kumar @ Raju were acquitted of the charges. It is apt to note that the State did not challenge their acquittal. It is further relevant to note that Sarfu @

Govinda and Ram Raj @ Rajesh @ Sagar had preferred Crl.A.Nos. 557/2000 & 558/2000 before this Court which were disposed of on 26th April, 2013.

2. I have heard the learned Addl. Public Prosecutor and Mr.R.D.Rana, Advocate, Counsel for the appellants and have examined the record. During the course of arguments, appellants' counsel emphasized to take lenient view and modify the sentence order as the A-1 and A-2 had already remained in custody for about three years and have clean antecedents. The crime weapon was not recovered and the recovery of the robbed cash is suspicious. Learned Addl. Public Prosecutor urged that there are no valid reasons to discard the victim's statement who had no prior animosity with the accused to falsely implicate them.

3. Crucial testimony to infer the appellants' guilt is that of PW-1 (Ravinder Chaudhary) who was deprived of ₹ 86,000/- and other articles on 01.08.1998 at about 07.40 P.M. He went to the police post and lodged First Information Report (Ex.PW-12/G) without any delay and informed the police about the incident. He was taken to AIIMS and was medically examined. The injuries were described 'simple' in nature caused by blunt object. In the statement (Ex.PW-12/G), Ravinder Chaudhary gave vivid description of the incident and attributed specific role to the assailants

who had come on a motorcycle and had snatched a bag containing ₹86,000/-, ration card, I-card and gate pass from him though, he could not note down the registration number of the motorcycle on which the assailants had arrived at the spot. He claimed to identify the assailants and described their broad features in the complaint. During the course of investigation, all the assailants declined to participate in Test Identification Proceedings alleging that they were shown to the witnesses in the police station. PW-1 (Ravinder Chaudhary) identified all of them in the Court without hesitation and implicated them for the incident of robbery in which he was beaten. The complainant who had no prior ill-will or grievance against any of the appellants proved the version given to the police at the first instance without any variation or improvements. Despite searching cross-examination, his testimony could not be shattered on the material aspects. No ulterior motive was assigned to the witness to depose falsely. It has come on record that none of the assailants was known to him and was not named in the FIR. It shows he did not nurture any grievance against them. The victim had direct confrontation with the assailants for sufficient duration and had clear opportunity to observe their broad features to identify them in the Court. The occurrence took place at about 07.40 P.M. and the police machinery was set in motion promptly.

The Investigating Officer after recording victim's statement lodged First Information Report by making endorsement (Ex.PW-12/A) over the same at 09.15 P.M. Early reporting of the occurrence by the informant with all its vivid details gives an assurance regarding truth of the version. In the case of '*Jai Prakash Singh v.State of Bihar & Anr.*', 2012 CRI.L.J.2101, the Supreme Court held :

“The FIR in criminal case is vital and valuable piece of evidence though may not be substantive piece of evidence. The object of insisting upon prompt lodging of the FIR in respect of the commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of actual culprits and the part played by them as well as the names of eye-witnesses present at the scene of occurrence. If there is a delay in lodging the FIR, it loses the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of large number of consultations/deliberations. Undoubtedly, the promptness in lodging the FIR is an assurance regarding truth of the informant's version. A promptly lodged FIR reflects the first hand account of what has actually happened, and who was responsible for the offence in question.”

4. No infirmity has emerged in the testimony of the complainant to disbelieve or discard the version narrated by him and the evidence has a ring of truth, is cogent, credible and trustworthy.

5. The testimony of the injured witness is accorded a special status in law. 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.”

6. 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".

accused, he could not have been permitted to decline from participating in the test identification parade from which adverse inference can surely be drawn against him at least in order to corroborate the prosecution case.

14. In the matter of Shyam Babu v. State of Haryana : AIR 2009 SC 577 where the accused persons had refused to participate in T.I. parade, it was held that it would speak volumes, about the participation in the Commission of the crime.”

9. In ‘*Rabinder Kumar Pal @ Dara Singh Vs. Republic of India*’, (2011) SCC 490 the Supreme Court held that “photo identification and TIP are only aides in the investigation and do not form substantive evidence. The substantive evidence is the evidence in the court on oath. The logic behind TIP, which will include photo identification lies in the fact that it is only an aid to investigation, where an accused is not known to the witnesses, the IO conducts a TIP to ensure that he has got the right person as an accused. The practice is not borne out of procedure, but out of prudence. At best it can be brought under Section 8 of the Evidence Act, as evidence of conduct of a witness in photo identifying the accused in the presence of an IO or the Magistrate, during the course of an investigation.”

10. 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. A-1 in 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 appellants were sentenced to undergo RI for five years with fine ₹ 2,000/- each. While dismissing the appeals of co-convicts Ram Raj @ Rajesh @ Sagar and Sarfu @ Govinda, sentence order was not modified and they were directed to surrender and serve the remaining period of

sentence awarded to them. In the instant case, the appellants had not only robbed a poor worker of his hard earned money of ₹ 86,000/- which he had got in full and final satisfaction at the time of clearance of the accounts with the company but was also given beatings. The entire robbed amount could not be recovered and wrongful loss was caused to the victim. The offence committed was deliberate and pre-planned. Considering the gravity of the offence, the sentence awarded to the appellants cannot be considered excessive and no interference is called for.

12. The appeals are unmerited and are dismissed. The appellants are directed to surrender before the Trial Court on 27.11.2013 and serve the remaining period of their sentence. Trial Court record be sent back forthwith with the copy of the order.

(S.P.GARG)
JUDGE

NOVEMBER 20, 2013/*tr*