

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

RESERVED ON : 13th August, 2013
DECIDED ON : 10th September, 2013

+ **CRL.A.574/2011 & CrI.M.A.No.19644/2012**

SANJAY KUMAR VASHISTH

..... Appellant
Through : Mr.Neeraj Bhardwaj, Advocate.

versus

STATE

..... Respondents
Through : Mr.M.N.Dudeja, APP for the State.

+ **CRL.A.44/2010**

DHYAN SINGH

..... Appellant
Through : Mr.M.Shamikh, Advocate.

versus

STATE

..... Respondents
Through : Mr.M.N.Dudeja, APP for the State.

CORAM:
MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Sanjay Kumar Vashisth (A-1) and Dhyan Singh (A-2)
impugn a judgment dated 17.12.2009 of learned Additional Sessions

Judge in Sessions Case No.74/2009 arising out of FIR No.579/2007

registered at Police Station M.S.Park by which they were held guilty for committing offences punishable under Section 392/394/397/34 IPC. By an order dated 21.12.2009 A-1 was directed to undergo (i) RI for ten years with fine ₹20,000/- under Section 392/394/397 IPC; (ii) RI for three years with fine ₹5,000/- under Section 25 Arms Act and (iii) RI for three years with fine ₹5,000/- under Section 27 Arms Act. A-2 was sentenced to undergo (i) RI for seven years with fine ₹10,000/- under Section 392/394/397 IPC and (ii) SI for six months with fine ₹500/- under Section 323 IPC.

2. Allegations against the appellants were that on 13.12.2007 at about 09.45 P.M. in front of Goyal Medicos, Durgapuri Extension, they with their associate (not arrested) in furtherance of common intention voluntarily robbed Hari Kishan Goyal and deprived him of a bag containing keys of the shop. The assailants were armed with deadly weapons and caused injuries to intervener Bhupender. Police machinery came into motion when DD No.23A (Ex.PW-4/B) was written at Police Station M.S.Park at 10.08 P.M. on getting information that an individual had been caught near Goel Medical Store, Durgapuri Chowk and he was in possession of a katta and cartridge. The investigation was marked to SI

U.B.Shankaram who with Ct.Ravinder and Ct.Hukum Singh went to the

spot. Complainant Basant Goyal met and recorded his statement (Ex.PW-2/A). The complainant handed over A-1's custody along with desi katta with two live cartridges. The Investigating Officer lodged First Information Report. Bhupender was taken to GTB hospital for medical examination. Statements of witnesses conversant with the facts were recorded. Pursuant to A-1's disclosure statement during police custody, A-2 was arrested near Hanuman Mandir, Yamuna Bazar and he recorded disclosure statement (Ex.PW-5/C). Bhupender was able to identify Dhyan Singh in the TIP proceedings. During the course of investigation, exhibits were sent to Forensic Science Laboratory. After completion of investigation, a charge-sheet was submitted in the court and the appellants were duly charged and brought to trial. The prosecution examined 14 witnesses to establish their guilt. In their 313 statements, the appellants pleaded false implication. After considering the rival contentions of the parties and appreciating the evidence, the Trial Court, by the impugned judgment held both of them guilty for the offences mentioned previously and sentenced them. Being aggrieved, they have preferred the appeals.

3. Appellants' counsel urged that the Trial Court did not appreciate the evidence in its true and proper perspective. The prosecution did not offer plausible explanation for not associating Hari

Kishan Goyal, complainant's father, from whom the bag was purportedly snatched. No independent public witness was joined during investigation. Only interested and partisan witnesses were produced to falsely rope in the appellants. A-2 was not identified in Test Identification Proceedings by the complainant and crime weapon was not recovered from him. It is unclear why Hari Kishan Goyal who was hale and hearty did not intervene. Learned Additional Public Prosecutor urged that apprehension of A-1 on the spot is a vital incriminating circumstance. A-2 was identified by the injured Bhupender during Test Identification Proceedings and there are no sound reasons to discard reliable testimonies of victims.

4. I have considered the submissions of the parties and have examined the record. The occurrence took place at around 09.45 P.M. on 13.12.2007. Daily Diary (DD) No.23/A (Ex.PW-4/B) was recorded at 10.08 P.M. The Investigating Officer went to the spot; recorded complainant's statement (Ex.PW2/A) and sent rukka (Ex.PW-12/A) for lodging First Information Report at 11.50 P.M. Bhupender was taken for medical examination at GTB hospital where time of arrival has been mentioned as 12.15 A.M. It reveals that there was no delay in lodging FIR with the police. First Information Report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of

corroborating the oral evidence adduced at the trial. The object of insisting upon prompt and early reporting of the occurrence to the police in respect of commission of an offence is to obtain information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eyewitnesses, if any present at the scene of occurrence. Since the FIR was lodged promptly there was least possibility of fabrication of a false story. The complainant in his statement (Ex.PW-2/A) gave vivid details of the incident and disclosed as to how and under what circumstances, three assailants who were armed with country-made pistols robbed his father Hari Kishan Goyal when he was sitting in the car. He also disclosed that when Bhupender intervened to caught hold the first assailant, he was injured with 'butt' of the katta. They were able to apprehend A-1 at the spot. The complainant, PW-2, in his Court statement proved the version given to the police at the first instance without major variations. He deposed that on 13.12.2007 at about 09.45 P.M. he closed his shop being run under the name and style of 'Goyal Medicos' at Loni Road. His father Hari Kishan Goyal had sit in the car. When he opened the gate of the car to sit on the driver's seat, an individual pointed a katta on his head. He turned back and caught hold of

the said assailant. In the meantime, another assailant snatched the bag containing keys of the shop from his father. He threatened to release the first assailant or else he would shot dead. Bhupender rushed to intervene and caught hold the first assailant. At that time, third assailant surfaced and inflicted 'butt' of the katta on his head and warned him to leave his associate. They did not allow the first assailant to flee. A crowd gathered and the police was informed. They handed over the custody of the first assailant to the police. The complainant identified A-1 to be the individual who was apprehended at the spot and was referred as 'first assailant'. He further deposed that Bhupender was taken to GTB hospital and was medically examined. His statement (Ex.PW-2/A) was recorded. He identified katta (Ex.P-1) and cartridges (Ex.P2/1 & 2) recovered from A-1's possession. He was unable to identify A-2. In the cross-examination, he disclosed that there were 20/25 keys in the bag. His father was hale and hearty on the day of the incident. He was unable to tell as to which of the three assailants took away the keys and bag from his father's possession. He denied the suggestion that A-1 was under the influence of liquor and was hit by his car and implicated in this case. No material discrepancy emerged in the cross-examination on vital facts whereby the complainant assigned specific role to A-1 for participation in

the robbery. No injuries were found at A-1's body to believe that he was hit with a car as suggested. Injuries caused to Bhupender were not challenged in the cross-examination. No ulterior motive was assigned to this witness who had no prior acquaintance with the assailants for falsely implicating them in the incident. In the absence of prior animosity or ill-will, the victim/complainant was not expected to fake the incident of robbery and to implicate the assailants. He was fair enough not to recognize and identify A-2 in TIP proceedings and in the court. PW-3 (Bhupender) who intervened to save his employer corroborated PW-1 on material facts. He also implicated A-1 who was caught hold at the spot with the country made pistol. He deposed that A-1's associates threatened to leave him or else he would be killed. He identified A-2 to be the assailant who inflicted injuries to him with the 'butt' of the katta (Ex.P-1). In the cross-examination, he disclosed that the vehicle in possession of the complainant was Tata Indigo and it was parked adjacent to the shop. He fairly admitted that he did not know in which vehicle the assailants had arrived. There were 20/25 keys in the bag. The appellants did not put any suggestion to deny his presence at the spot. PW-3 sustained injuries in the occurrence and was taken to GTB hospital where he was medically examined by PW-1 (Dr.Avinash Tigga) vide MLC (Ex.PW-1/A). He

found lacerated wound on his right parietal region measuring 1 cm X 0.2 cm; abrasion on right little finger and abrasion on left leg. He was not cross-examined to ascertain if the injuries were accidental or self-inflicted. There is no variance between the ocular and medical version. Injuries on the body of the witness confirms his presence at the spot. He had no animosity with the assailants to falsely identify them as culprits. He participated in the Test Identification Proceedings during investigation and was able to identify A-2. In his Court statement also he was certain that A-2 was one of the assailants and ascribed a specific role to him.

5. It is true that Hari Kishan Goyal from whom the bag was snatched was not examined and no explanation has been offered for that. He had witnessed the incident and was a material witness to be examined. At the same time, it is a settled proposition of law of evidence that it is not number of witnesses that matters but its substance. It is also not necessary to examine a large number of witnesses if the prosecution can bring home the guilt of the accused even with a limited number of witnesses. Testimony of PWs-2 and 3 cannot be discredited simply because the Investigating Officer did not opt to examine Hari Kishan Goyal. A-2 voluntarily participated in the TIP proceedings and was identified by PW-3 Bhupender. It makes no difference that complainant

was unable to recognize and identify him in the TIP proceedings and it does not dilute the veracity of his statement. He explained that the person who threatened him was not seen by Basant Goel as he was standing on the opposite side. Non-recovery of weapon of offence from A-2 is not fatal. The appellants did not offer plausible explanation in their 313 statements to the incriminating circumstances proved against them. A-1 did not explain as to when and where he had consumed alcohol. He also did not elaborate as to how and under what circumstances he happened to be present at the place of incident at odd hours without any apparent reason. The discrepancies highlighted by the appellants' counsel do not affect the core issues proved by the independent witnesses. The impugned judgment is based upon proper and fair appreciation of evidence and needs no interference.

6. Reasons were given by the Trial Court while awarding stringent sentences to the appellants. They had no occasion to be in possession of deadly weapons and use them to rob an innocent shop-keeper. The appellants not only robbed the victim but also caused injuries to the person who exhibited exemplary courage to save his employer. The appellants deserve no leniency. The conviction and sentence of the appellants are upheld. The substantive sentences of the convicts, however,

shall run concurrently and they will be entitled to have benefit under Section 428 Cr.P.C.

7. The appellant-Dhyan Singh is directed to surrender before the Trial Court within two weeks to serve the remainder of his sentence. The Registry shall transmit the Trial Court records forthwith to ensure compliance with the judgment.

8. The appeals and pending application are disposed of in the above terms.

(S.P.GARG)
JUDGE

September 10, 2013
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