

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

**RESERVED ON : 30th MARCH, 2016
DECIDED ON : 18th APRIL, 2016**

+ CRL.A.1257/2014

BHAGAT SINGH @ SONU Appellant

Through : Mr.Vimal Puggal, Advocate.
versus

THE STATE Respondent

Through : Mr.Raghuvinder Varma, APP.

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

S.P.GARG, J.

1. Challenge in this appeal is a judgment dated 28.07.2014 of learned Addl. Sessions Judge in Sessions Case No.19/2013 arising out of FIR No.47/2011 PS Prashant Vihar by which the appellant – Bhagat Singh @ Sonu was convicted for committing offences punishable under Sections 365/392/328/506-II/34 IPC. By an order dated 30.07.2014, he was awarded various prison terms with fine. The substantive sentences were to operate concurrently.

2. Allegations in brief as stated in the charge-sheet were that on 29.01.2011 at around 05.30 p.m. near Gate No.5, Main Road Metro Walk, Sector 12, Rohini, the appellant and his associates Gurnam Singh and P.P.Singh (not arrested) in furtherance of common intention robbed

complainant Brij Mohan of vehicle bearing registration No.DL-4C-AE-2290 belonging to his employer Sachin Goel, driving licence, ₹1000/- and a mobile phone while armed with deadly weapons. The complainant was abducted and taken to Samalkha. He was criminally intimidated and forced to consume alcohol.

3. On 29.01.2011, Sachin Goel along with his wife and children had gone to Metro Walk, Rohini, in his Innova car bearing No.DL-4C-AE-2290 driven by his driver Brij Mohan. At about 05.30 p.m., after leaving Innova car outside the Metro Walk main road, he along with his wife went inside for shopping. After about 30 – 45 minutes when they came out, the vehicle and the driver were not found there. Sachin Goel tried his best to search the car and driver but in vain. He made call at 100. The Investigating Officer from Prashant Vihar recorded his statement (Ex.PW-1/A). Initially, the Investigating Officer suspected Brij Mohan, the driver of the vehicle, to have misappropriated the vehicle and case under Section 408 IPC was registered. Subsequently, it revealed that Brij Mohan was a victim and was abducted by the appellant and his associates while armed with deadly weapons. He was taken to a secluded place near Samalkha (Haryana) and was robbed of the vehicle. The assailants fled the spot along with vehicle. ASI Balraj Singh and Const.Kartar Singh from PS Samalkha while on patrolling duty met Brij Mohan and on enquiry, he disclosed about robbery by three individuals including one sikh gentleman. He was brought to PS Samalkha where his statement vide DD No.42 (PW-5/A) was recorded. He was asked to lodge the report with the concerned police station of PS Prashant Vihar. The Investigating Officer after recording his statement (Ex.PW-2/A) registered the case. Efforts were made to find out

the assailants but to no effect. Sketches (Marks PW-2/A1 to PW-2/A3) were prepared for identification purpose.

4. The appellant was arrested in case FIR No.93/2011 PS Crime Branch on 04.04.2011. Pursuant to the disclosure statement recorded in the said case, his involvement emerged in this case. Statements of the witnesses conversant with the facts were recorded. Upon completion of investigation, a charge-sheet was filed against the appellant in the Court. His associates - Gurnam Singh and P.P.Singh could not be arrested during investigation. In order to prove its case, the prosecution examined eleven witnesses. In 313 Cr.P.C. statement the appellant denied his involvement in the crime and pleaded false implication without examining any witness in defence. The trial resulted in his conviction as aforesaid. Being aggrieved and dissatisfied, the instant appeal has been preferred.

5. I have heard the learned counsel for the parties and have examined the file thoroughly. Appellant's counsel urged that the Trial Court did not appreciate the evidence in its true and proper perspective and fell in grave error in relying upon the testimony of Brij Mohan who was suspected to have misappropriated the vehicle in question. It was urged that the vehicle was sold by Brij Mohan and his brother-in-law Bhopal Singh and the appellant was falsely named to be one of the assailants. The vehicle in question could not be recovered during investigation. The appellant was justified to decline participation in the TIP proceedings as his photographs had already been shown to the complainant by the police; his sketches were already on record. Submission was made that ingredient of Section 328 IPC are not attracted as the complainant was not medically examined. Learned Addl. Public Prosecutor urged that the Trial Court has discussed all these

contentions exhaustively in the impugned judgment and it needs no intervention.

6. Admitted position is that the vehicle No. DL-4C-AE-2290 belonged to PW-1 (Sachin Goel) who along with his family had gone to Metro Walk, Rohini and the said vehicle was being driven by Brij Mohan. After coming out, they did not find the vehicle as well as its driver. The matter was reported at 100 and statement (Ex.PW-1/A) came into existence. While appearing as PW-1, Sachin Goel did not suspect if his driver was involved in the crime or had misappropriated the vehicle. In the cross-examination, Brij Mohan disclosed that he had joined as driver with Sachin Goel on 23.04.2010 and was still working with him on the day his statement was recorded on 29.11.2011. Apparently, Sachin Goel did not find any foul play and continued to employ Brij Mohan as his driver subsequent to the incident.

7. Brij Mohan after abduction by three assailants using deadly weapons was taken to a far away place near Samalkha. Testimony of PW-5 (ASI Balraj Singh) is crucial as he had found Brij Mohan at Manana Mod when he along with Const.Kartar Singh was on patrolling duty. He came to know on enquiry from Brij Mohan that three individuals including one sikh gentleman had committed robbery upon him. They brought Brij Mohan at PS Samalkha and recorded his detailed statement vide DD No.42 (Ex.PW-5/A). In this statement, Brij Mohan gave detailed account as to how and in what manner, he was abducted and abandoned at that place after depriving him of his Innova vehicle and other articles. Brij Mohan was lying alone at the spot and the vehicle was not in his possession. It is highly unbelievable that during the short period, he along with his brother-in-law had disposed of

the vehicle to any particular individual as alleged. PW-5 (ASI Balraj Singh) advised him to lodge the complaint with the concerned police station where the occurrence had taken place. Brij Mohan thereon lodged complaint (Ex.PW-2/A) and gave vivid description of the entire episode which is in consonance with the version given by him at first instance to ASI Balraj Singh of PS Samalkha. The assailants were unacquainted with the complainant and he had no prior animosity. In the FIR, he did not name any culprit; it shows that he did not nurture any grievance against the appellant or his associates. He gave description of the alleged assailants and assisted the Investigating Officer to prepare their sketches (Marks PW-2/A1 to PW-2/A3). The appellant's involvement emerged only when he was arrested in case vide FIR No.93/2011 under Sections 411/34 IPC PS Crime Branch on 04.04.2011. The Investigating Officer moved application for conducting Test Identification proceedings for his identification but for the reasons known to him, he declined to participate in it allegedly on the ground that his photos were shown to the complainant. Nothing has come on record to show when the accused or his photographs were shown to the complainant. Moreover, the complainant having no prior history of hostile relations with the appellant is not expected to falsely identify and recognize him. In his statements (Ex.PW-5/A and Ex.PW-2/A), he had specifically referred to the involvement of one sikh gentleman in the incident. Adverse inference is to be drawn against the appellant for not joining the Test Identification proceedings.

8. In '*Rabinder Kumar Pal @ Dara Singh vs. Republic of India*', (2011) SCC 490, the Supreme Court held :

“.....Photo identification and TIP are only an 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 the 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.”

9. Moreover, the appellant was identified by the complainant in his Court statement as PW-2 without any inhibition. He assigned specific and definite role to the appellant in the occurrence and deposed that he had lifted his leg which was on the road and had pushed him inside the car on the conductor's seat. He further disclosed that the accused had driven the vehicle after the key was snatched by his associate from him. The appellant had received phone call to which he had responded, *“Saleem bhai kaam ho gaya hai aur hum 10 – 15 minutes main Noida (Ghaziabad) pahuch jayenge”*. Similar call was received by him after 2 or 3 minutes. He deposed that after he was forced to consume liquor, he became unconscious. The assailants had thrown him on the way in the jungle. As he had fallen in the water, he regained consciousness and came on the highway. He came to know from the passengers in the TSR that he was in Samalkha. He requested them to make a telephone call to his brother-in-law. He further deposed that Sachin Goel's relative who lived in Panipat came to Samalkha and took him to a doctor, from where he was taken to police station

Samalkha. On 30.01.2011 at about 02.30 a.m. he was brought to Delhi where his statement was recorded.

10. Despite lengthy and searching cross-examination, no material infirmities could be extracted to disbelieve the version narrated by the witness. No ulterior motive was attributed to him in implicating the appellant with whom there was no prior animosity. He denied the suggestion that after stealing Innova along with his brother-in-law, Bhopal Singh, he had sold it to someone else.

11. This Court finds no valid reasons to suspect the testimony of the victim who was abducted by the assailants including the appellant with the sole motive to rob the vehicle which he had taken to Metro Walk and his employer along with his family had gone inside it for shopping. The complainant was taken to a far away place near Panipat and was thrown at a secluded place. The occurrence was reported promptly without any delay by the complainant firstly at PS Samalkha and thereafter at PS Prashant Vihar. There was no possibility of any manipulation or concoction of false story in such a short period.

12. Certain discrepancies and contradictions highlighted by the appellant's counsel have no impact as they do not go to the root of the case and discredit the victim's clinching statement. Non-recovery of the vehicle is inconsequential as appellant's associates - Gurnam Singh and P.P.Singh could not be arrested and have since been declared Proclaimed Offenders. The appellant himself was arrested after a gap of two months; possibility of the vehicle to have been disposed of at an unknown destination during this period cannot be ruled out. The prosecution has thus established that the appellant and his associates not only abducted the complainant Brij Mohan

but also robbed him of his vehicle. The complainant was also criminally intimidated and the accused was rightly convicted under Sections 365/392/506-II IPC.

13. I find sufficient force in the appellant's contention that Section 328 IPC is not attracted in this case as nothing has emerged on record if any stupefying substance was administered to the appellant. There is contradictory and inconsistent version if the victim was medically examined or not. In his Court statement PW-2 (Brij Mohan) claimed that after the arrival of the Sachin Goel's relative at Panipat, he was taken for medical examination and from there to PS Samalkha. PW-5 (ASI Balraj Singh) did not state so and claimed that they had met the appellant at the spot while patrolling. He admitted that the victim was not medically examined. Even the police of PS Prashant Vihar did not get victim's medical examination conducted to find out if he was under the influence of liquor or was forced to consume it. In the absence of any cogent evidence on record, it cannot be inferred that the victim was administered any stupefying substance, and if so, by whom. The appellant deserves benefit in this regard and his conviction under Section 328 IPC is set aside.

14. In 313 Cr.P.C. statement the appellant did not give plausible explanation to the criminal circumstances proved against him. He did not produce any evidence in defence to show if on the relevant time, he was not present at the spot.

15. The Trial Court has appreciated the entire evidence fairly and conviction under Sections 365/392/506-II/34 IPC deserves no intervention. The conviction under those Sections is affirmed.

16. Sentence Order is based upon fair reasoning and needs no intervention except that the default sentence for non-payment of fine under each heads would be one month instead of three months.

17. The appeal stands disposed of in the above terms. Trial Court record be sent back forthwith with the copy of the order. Intimation be sent the Superintendent Jail for information.

(S.P.GARG)
JUDGE

APRIL 18, 2016 / *tr*

