

\$~R-35

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 12th December, 2018

+ CRL.A. 727/2001

RAJIV alias SHIVA

.... Appellant

Through: Mr. Randhir Kumar, Advocate with
Ms. Amrita Chatterjee & Mr. Kumar
Vaibhav, Advocates/DHCLSC

versus

STATE (N.C.T. OF DELHI)

..... Respondent

Through: Mr. Sanjeev Sabharwal, APP for the
State with ASI Tuli Ram, PS Badar
Pur & Mr. Surender Kumar Dagar,
Assistant Superintendent Central Jail
No.4, Tihar New Delhi.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The appellant was arrested after personal search (memo vide Ex.PW-3/C4) by SI Akhilesh Yadav (PW-7) in charge of the police post Gobind Puri, in the presence of Head Constable Naresh Kumar (PW-6) and Constable Mahesh Kumar (not examined), with reference to first information report (FIR) No.303/1998 (Ex.PW-5/A), registered by Head Constable Abdul Kayum, duty officer (PW-5) at 4:45 p.m. on the said date it, in turn, being based on the *rukka* of PW-7 founded on the statement (Ex.PW-3/A) of Om Prakash (PW-3), the offence of which police took cognizance being one punishable under Section 395 of Indian Penal Code, 1860 (IPC). Five other persons were arrested around the same time, they being Amit Kumar (A2), Amar Singh

(A3), Manoj Kumar (A4), Anil Kumar (A5) and Avinash Anand (A6), all including the appellant (A1), described to be residents of the locality known as Garhi in Lajpat Nagar, New Delhi. Arrests statedly had been made from near police picket in the area of Pul Prahlad Pur within the jurisdiction of Police Station Badarpur where Constable Rakesh Kumar (PW-9) was on duty.

2. At about 4:30 p.m., the vehicle described as Tata Sumo bearing registration No.HR-26F-1199 (Tata Sumo) was intercepted, the appellant and the other arrestees being found travelling therein, on the allegations that the appellant and his said associates, while travelling in the said Tata Sumo, had earlier committed dacoity by forcibly taking away four television sets from the possession of Om Prakash (PW-3), after first abducting him and then committing physical assault by using fists on Mathura road opposite Okhla tank at about 2:15 p.m. Upon the disclosure allegedly made during interrogation, A1 had led to the recovery of the said stolen property from a rented room in the house of Kanhiya Lal (PW-1) in premises described as B-99, Jaitpur Extension, Badarpur, New Delhi.

3. Report (charge sheet) under Section 173 of the Code of Criminal Procedure, 1973 (Cr.P.C.) was presented in the court seeking prosecution of the said persons including the appellant. The case eventually came to be committed and was tried as Sessions Case (No.100/1999), the appellant and the said others having been put on trial on the charge for the offence punishable under Section 395 IPC.

4. At the stage of prosecution evidence, nine witnesses were examined. They would include Kanhiya Lal (PW-1), landlord of the property from rented room of which the stolen articles were recovered; Rajinder Kumar (PW-2) brother of the owner of the stolen property; Om Prakash (PW-3), first informant, from whose possession the property was stolen as a result of dacoity, he being a rickshaw-puller who was taking the said articles along with a refrigerator from his employer for delivery to a dealer in the area of Ashram; Head Constable Abdul Kayum (PW-5), the duty officer, who registered the FIR; Head Constable Naresh Kumar (PW-6), who was with the investigating officer in the wake of initial information about the crime through DD No.14; Sub-Inspector Akhilesh Yadav (PW-7), the investigating officer; Constable Veer Singh (PW-8), who proved the DD entry No.14; and Constable Rakesh Kumar (PW-9), the police official manning the picket where the Tata Sumo used in the crime was allegedly intercepted leading to the arrests.

5. The trial court recorded the statements of the accused persons under Section 313 Cr.P.C. in which they denied the evidence about their alleged role, pleading innocence, no evidence having been led in defence.

6. By judgment dated 22.09.2001, all other accused persons were acquitted, benefit of doubts having been extended to them. The appellant, however, was held guilty primarily on the basis of evidence showing recovery of the stolen property from his possession. He was convicted for the offence under Section 394 IPC read with Section 34

IPC. By subsequent order passed on the same date, the trial court awarded rigorous imprisonment for three years with fine of Rs.10,000/- and in default simple imprisonment for six months.

7. The appeal at hand challenges the said judgment of conviction and order on sentence, the prime submission of the appellant being that the prosecution had miserably failed to bring home the charge, there being no cogent evidence as to his participation, the solitary witness to the alleged dacoity (PW-3) not having identified any of the arrestees including the appellant, the sequence of events leading to the stated recovery of the stolen articles being not credible, owner of the property in whose premises the rented accommodation is stated to have been taken for storing the stolen property from where it was allegedly recovered, they not having supported the prosecution version.

8. This court having heard both sides at length and having gone through the record carefully finds merit in the contentions raised by the appellant. Indeed, the evidence presented is wholly disjointed. There are many a gap which give rise to serious doubts as to the complicity of the appellant in the crime. Much has been left to imagination which itself is a reason why the evidence does not deserve to be acted upon. These reasons may be elaborated hereinafter.

9. In the FIR, it was stated that PW-3 was carrying the cargo which included four televisions set and a refrigerator on his rickshaw. He would also describe it as a cart (*rehri*). His employer is PW-4 who

runs his business in the name and style of Subhash Electronic at Tajpur Pahari, Badar Pur. The duty assigned to PW-3 was to take this cargo for delivery to a dealer named Mohini Electronic Shop in the area of Ashram Chowk. PW-3, per the FIR, had reached Mathura road (national highway) and was proceeding North towards Ashram chowk when he was intercepted in the vicinity of Okhla tank. A Tata Sumo statedly came from behind it carrying several persons who forcibly took Om Prakash (PW-3) into confinement in their vehicle. They forcibly seized four television sets, loaded them into their vehicle and started moving away, throwing PW-3 out after some distance.

10. It is the version of PW-3 in the FIR that he was helped by a public person who was moving in the same direction in a maruti car. The said Maruti car driver gave him lift and chased the Tata Sumo. The Tate Sumo took a cut, somewhere in the area of Ashram, and started moving in reverse direction. The Maruti car driver thereafter abandoned PW-3. But, before doing so, he noted down the registration number of the vehicle and gave it to PW-3. The said slip has been proved in the trial as Ex.PW-6/7. Undoubtedly, it bears the registration number of the Tata Sumo which was eventually seized vide Ex.PW-2/A.

11. But, there are two difficulties in this regard. In the *rukka* (Ex.PW-3/A), this description is given as that of the car and not of Tata Sumo. Even if that were to be ignored, the fact remains that the identity of the author of this slip of paper is not even investigated.

The driver of the Maruti car, if he had given such help, would have been a good witness to confirm the involvement of the Tata Sumo in the crime.

12. Be that as it may, the Tata Sumo, per the evidence of PW-9 came to be stopped and intercepted in the area of police picket in Pul Prahlad Pur where PW-9 was on duty. Police picket of Pul Prahlad Pur is concededly located away from the Mathura road in the direction of Mehrauli-Badarpur-Road. If one goes by the evidence of PW-9, he had been informed by PW-2 about the involvement of this particular Tata sumo in the crime. But, if one reads the evidence of PW-2, he had no way of knowing all these facts inasmuch as only the broad fact which had come to his knowledge was that the articles of the shop of his brother (PW-4) had been looted while being transported on Mathura road, the information about the incident having come to his knowledge by telephonic call. There is nothing in his testimony to indicate that the information which was conveyed to him included the description of the vehicle which had been used in the crime, or that it was he who had passed on the said information to the police picket official. There is no explanation as to how he would know the route taken by the vehicle so as to impel him to go to the police picket where PW-9 was stationed to inform him ahead of the arrival of Tata Sumo.

13. The receipt of information by PW-2, at any rate, would have been with sufficient gap during which there was no guarantee that the Tata Sumo could possibly be intercepted in the area of Pul Prahlad Pur

on Mehrauli-Badarpur-Road, the only information till that time available being from the version of PW-3 that it had taken a U-turn from the vicinity of Ashram and was proceeding southwards towards Badarpur.

14. The interception of Tata Sumo by itself, or presence of the appellant in such vehicle, cannot clinch the issue in favour of the prosecution. PW-3 (the first informant) does not corroborate the prosecution case about use of this particular vehicle in the incident. He would also not confirm the involvement of the appellant in the crime. He was declared hostile. But the endeavor made by the prosecution to elicit information in support of its case through his cross-examination was not fruitful.

15. Against the above backdrop, the only link on the basis of which the prosecution could connect the crime with the appellant would be the recovery of the stolen articles. As noted above, the stolen articles were not recovered from Tata Sumo. But, from a room allegedly taken on rent by A-1 in the house of PW-1. PW-1 was also hostile in this regard. He refused to identify any of the arrestees including the appellant. There is nothing on record to show that PW-1 had been won over or was deliberately withholding the facts. There is no documentary proof or any witness worth the name to connect the appellant with the accommodation in question, even remotely.

16. For the above reasons, the benefit of doubts are bound to be extended to the appellant. Consequently, the appeal is allowed. The

impugned judgment and order on sentence are set aside. The appellant is acquitted. Bail bonds and surety bonds are discharged.

R.K.GAUBA, J.

DECEMBER 12, 2018

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