

(2015) 08 DEL CK 0058

In the Delhi High Court

Case No : Criminal Appeal 510, 517 and 622 of 2013

Raj Singh and Others

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 25-08-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 428

Penal Code, 1860 (IPC) — Section 120B, 120-B, 307, 393, 398

Citation : (2015) 08 DEL CK 0058

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : A.S. Kushwaha, Vandana Sharma, Abhigya, for the Appellant; Kusum Dhalla, APP, C.P. Bhardwaj, Inspector and Manoj Kumar, SI, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Indermeet Kaur, J—There are three appellants before this Court namely Raj Singh @ Raju, Ravinder Singh @ Raju and Sunil Kumar @ Sanjeev. They are all aggrieved by the common judgment and order on sentence dated 26.02.2013 vide which each of them had been convicted under Sections 307/393/398/452 read with Section 120-B of the IPC. Each of them had been sentenced to undergo RI for a period of 10 years and a fine of Rs. 20,000/- each for the said offence. In default of payment of fine, each of them was to undergo RI for a period of 2 months. Benefit of Section 428 of the Cr.PC had been granted to the convicts. This Court notes that no separate sentence has been awarded by the trial Judge for their other convictions and as recorded supra, a common sentence period of 10 years RI has been imposed upon each of them.

2. The version of the prosecution is that on 22.05.2010 at about 11:30 am-12:00 noon, Raj Singh went into the house of Rajender Khosla (PW-3). He being the driver asked for the keys of the car. Meanwhile, three other persons entered the house and one of them was Sunil @ Sanjeev. They tried to rob the house of

PW-3 by showing revolvers and a knife. This incident was witnessed by the wife of PW-3 namely, Santosh Khosla (PW-4) as also their daughter-in-law Rekha Khosla (PW-5). PW-3 was assaulted with a katta and the knife. He sustained injuries. His MLC was conducted and eight injuries were noted upon his person. They were proved through his MLC Ex. PW1/A. Accused Sunil @ Sanjeev was apprehended at the spot.

3. The police reached the spot. In the course of investigation the other two accused namely Ravinder @ Raju and Raj Singh @ Raju were also arrested. Further investigation revealed that the accused persons were in contact with one another and this was proved through their call detail records. The mobile record had been obtained by SI Ajay, member of special staff who was entrusted part investigation of this case. He was examined as PW-8. They were proved in the evidence of the Nodal Officer from Tata Tele Services (PW-6) and the Nodal Officer from Aircel Limited (PW-10).

4. The remaining two accused namely Shahid and Azad were declared as proclaimed offenders; they could not be arrested.

5. The prosecution in support of its case has examined as many as 17 witnesses.

6. In the statement of the accused recorded under Section 313 of the Cr.P.C, each of them had pleaded innocence. They had stated that they have been falsely implicated in the present case. No evidence was led in defence.

7. On the basis of the aforementioned evidence, both oral and documentary, the accused were convicted and sentenced as aforementioned.

8. On behalf of three appellants arguments have been addressed separately as the role of each of them has surfaced distinctly. On behalf of appellant Raj Singh @ Raju it is submitted that he was working as a driver in the employment of PW-3. He has been falsely implicated; he was waiting outside near the car; he was admittedly not inside the room where the offence had been committed. Even as per PW-3 Raj Singh had joined duty even on the following day; this was largely for the reason that he was never a suspect in the eye of his employer; he has been falsely implicated.

9. On behalf of appellant Ravinder Singh @ Raju, it is submitted that he was arrested many days after the incident; the arrest memo is not clear on the time; no TIP had been conducted which was mandatory as admittedly PW-3 was not known to the appellant; the other eye witnesses i.e. PW-4 and PW-5 were also strangers to Ravinder and in such an eventuality the Investigating Officer not having conducted a TIP it has committed an illegality. He has placed reliance upon the judgments reported as 2013 Legal Eagle (DHC) 982 Sudhir Kumar Vs. State of NCT of Delhi & Anil Kumar Vs. the State in CrI Rev. P. No. 76/2009 decided on 11.07.2012 to support his submission that where the accused is a stranger to the victim, in the absence of TIP, benefit of doubt on the identity of the accused has to be afforded to the accused. The impugned judgment calls for

an interference qua Ravinder on this ground alone. No recovery has also been effected from him.

10. On behalf of the third appellant Sunil @ Sanjeev, it is pointed out that although the version of the prosecution is that he was caught on the spot yet this is a clear case of false implication; he has been picked up; there is no evidence against him. Even the call details records proved by the prosecution relate only to calls made by the present appellant to Azad (not arrested); whole defence of Sunil @ Sanjeev was that he had borrowed the taxi of his employer (Sunil examined as PW-9) for the purpose of dropping Azad and on the way back after dropping him, he has been falsely implicated in the present case. He is entitled to a benefit of doubt.

11. Needless to state that these arguments have been refuted. It is pointed that on no count, does the impugned judgment call for any interference. The oral and documentary evidence fully establishes the case of the prosecution and the version of the injured witness PW-3 corroborated by the version of PW-4 & PW-5 do not suffer from any infirmity.

12. Arguments have been heard. Record has been perused.

13. The star witness of the prosecution was the injured victim examined as PW-3. He has on oath deposed that sometime in May, 2010 (being a Saturday between 10:30 to 12:00 noon) while he was present in his house along with his wife (PW-4) and daughter-in-law (PW-5) accused Raj Singh who was working as a driver came into the house on the pretext of asking for the car keys. PW-3 was in the bathroom. When he came out, two persons caught hold of him (one of whom was Sunil @ Sanjeev); they put a pistol on both sides of his head and asked him "jo bhi mal hi de de nahi to mar denge". Sunil put a pistol in the mouth of his wife; she became unconscious. PW-3's mouth and neck were also pressed. One of these persons assaulted him by knife whose name later on was revealed as Azad. PW-3 caught hold of the knife to save himself as a result of which he sustained injuries on his left palm. Accused Sunil also bit him with his right arm on his teeth. Accused Ravinder closed his mouth. His daughter-in-law (PW-5) who was in the other room also came inside. Neighbours gathered. Azad ran away leaving his katta on the spot. Accused Ravinder also managed to flee. Accused Sunil @ Sanjeev was caught on the spot. PW-5 had asked Raj Singh to catch hold of Sunil but he did not heed to his request. Accused Sunil and Azad fired from their kattas. Three cartridges fell down on the spot. His clothes had got blood stained. His statement Ex.PW-3/A was recorded.

14. In his cross-examination, PW-3 admitted that accused Raj Singh was his driver and had been employed with him since the last 1- 1/2 years. His wounds were stitched. Documents were signed by him in the police station. His house is situated in a thickly populated area. This witness was confronted with his earlier statement (Ex.PW-3/A). On oath he had stated that the accused persons had put a katta on both sides of his head which did not find mention in his earlier

statement; on oath, he had stated that the accused persons had threatened to kill him but this did not find mention in his statement Ex.PW-3/A. He has denied the suggestion that he had deposing falsely.

15. The wife of PW-3 was examined as PW-4. She also deposed on the same lines as her husband stating that the incident had occurred between 11:30 am to 12:00 am on 22.05.2010 and it was witnessed by herself and her daughter-in-law (PW-5) who was also present in the house. Her deposition is to the effect that three persons suddenly entered the house and one of them had put a pistol in her mouth; the other showed a knife; darkness came in front of her eyes; another person hit the head of PW-3 with a pistol as a result of which he sustained injuries on his head and mouth. Neighbours gathered. Her husband tried to catch one of them; accused Sunil was caught on the spot. He had a pistol with him. Accused Raj Singh was their driver and prior to the entry of thieves in the room, accused Raj Singh had come to collect the keys of the car. He was standing outside their house and was cleaning the car. PW-5 had asked Raj Singh to apprehend the accused persons but he did not catch them.

16. In her cross-examination, she stuck to her stand delineating that Raj Singh was asked to nab the accused but he had allowed them to flee away. He was working with them since the last 1- 1/2 years. She was also confronted with her earlier statement but nothing material has been pointed out which could discredit her version. She denied the suggestion that she is deposing falsely.

17. The daughter-in-law of PW-3 & PW-4 was examined as PW-5. She has corroborated their version that three persons (in the afternoon of 22.05.2010 at about 11:30 AM to 12:00 noon), entered their house. One of them put a katta in the mouth of her mother-in-law and one of them had put a katta on the head of her father-in-law asking them to deliver the cash and jewellery which was with them. She raised alarm. Two persons managed to flee away; one of them was nabbed by her father-in-law. Her father-in-law was bleeding from his hand. The nabbed accused was Sunil @ Sanjeev. Two pistols and 2-3 live cartridges were lying on the spot.

18. In her cross-examination, this witness was also confronted with her earlier statement but again nothing has been pointed out to discredit her cogent version.

19. PW-3, PW-4 and PW-5 are all members of the same family and their presence in the house in the afternoon at the time when the incident had taken place was most normal and natural. Each of them has detailed the manner in which the thieves entered the house, accused Sunil was caught at the spot and others managed to flee away. Accused Raj Singh, their driver, was standing outside and PW-5 asked him to nab the accused persons but he allowed them to flee away. He had come to the house prior to the thieves coming on the pretext of asking for the car keys. Testimony of the aforementioned witness is coherent and credible. They are all corroborative of one another. The minor inconsistencies pointed out in the deposition of PW-3 i.e. as to whether he was given a threat to

kill or whether the kattas were placed on both sides of his head or only on one side are not material to disturb his otherwise cogent version. There was also no reason for them to have falsely implicated the accused.

20. PW-3 had also suffered injuries. His MLC conducted on 22.5.2010 at 1.25 p.m. shows that he has suffered nine injuries which included a lacerated wound on his finger and left hand as also over his parietal region and forehead. He was kept under observation.

21. Testimony of PW-9 Sunil Kumar is also relevant. He was the employer of accused Sunil. He has deposed that his TATA Indica car No.HR51-J-5192 had been borrowed by his employee (accused Sunil) for a period of 2 1/2 hours. This was at 7.00/7.30 A.M. on 21.5.2002. He did not return it till the following day when he learnt that he had been arrested in some matter.

22. Initially the investigation was marked to H.C. Virender Singh (PW-13) who along with Constable Rajesh (PW-7) reached the house of PW-3 where accused Sunil @ Sanjeev was produced. Sunil had two country-made pistols and three live cartridges which were all taken into possession vide separate memos after being sealed. The crime team had also been summoned. SI Sushil Kumar, Finger Print Expert (PW- 14) had visited the spot and had taken three chance prints from the aforementioned TATA Indica car. His report Ex. PW-14/A was however evasive and was not helpful to the version of the prosecution.

23. The Investigating Officer was SI Rohtash. He has been examined as PW-16. He had arrested accused Sanjeev vide memo Ex. PW-7/A. He had taken the TATA Indica car into possession vide memo Ex. PW- 7/C. On 26.5.2010 accused Raj Singh @ Raju was arrested from his house vide memo Ex.PW-12/B. His disclosure statement was recorded. The role of the third accused Ravinder @ Raju surfaced thereafter who was arrested from his village Dhir Pur vide Ex. PW-12/F. His disclosure statement was also recorded. The motor cycle used in the commission of the offence was also recovered pursuant to the disclosure statement which was seized vide memo Ex.PW-12/G.

24. Apart from the aforementioned evidence testimony of PW-6 and PW-10 is very relevant. They were the nodal officers from two different nodal agencies and had brought the call detail record of three mobile numbers i.e. 9211894275, (which mobile number was admittedly in the name of Raj Singh). Mobile number 9211903907 (a mobile belonging to accused Ravinder) and the third mobile i.e. mobile number 9808751592 was in the name of accused Sunil. The call detail record of these mobile numbers reflected the various calls exchanged between the three co-accused and there were w.e.f. 01.5.2010 to 23.5.2010. Even on 21.5.2010 several calls were exchanged inter se the parties. The submission of accused Sunil @ Sanjeev that he had not made any call to Ravinder and co-accused Raj Singh is incorrect; the call detail record evidence otherwise; apart from calls being made from Sunil to Ravinder and Raj Singh he was also continuously in touch with accused Azad. The defense sought to be projected

that he had borrowed the TATA Indica car only for the purpose of dropping Azad did not find mention in the cross-examination of the witnesses of the prosecution and this was obviously for the reason that it is a false defense and had it been an honest defense it would have found mention in the earlier stages of defense i.e. at the stage of cross-examination of the witnesses and even at the stage when his statement under Section 313 Cr. P.C. was recorded. This argument at this belated stage by itself persuades this Court to hold that this defense is not an honest defense.

25. The substantive offence of conspiracy for which the accused persons have been charged has to be gathered from the whole gamut of circumstances which is collected by the prosecution which can never be an eye-witness account; it is the circumstances of the case which will establish this offence.

26. The call detail record showing continuous calls being exchanged between the three accused persons right from 1.5.2010 to 23.5.2010 coupled with the categorical version of PW-3 and PW-4 that when PW-3 asked Raj Singh to nab the accused persons who were trying to flee from the incident, Raj Singh made a drama and did not make any effort to catch them and allowed them to flee away; moreover, Raj Singh was the first person who had come into the room of PW-3 on the pretext of taking the car keys; at that time he must have informed his accomplices that PW-3 was in bathroom and it was a good opportune time to rob PW-3. The conspiracy and the complicity of three accused persons of whom Sunil was caught on the spot and Ravinder having arrested later on and from whose mobile phone his live link and conversations with other accused Sunil @ Sanjeev and Raj Singh @ Raju establishes that each of the accused persons are guilty. Shahid and Azad have not been arrested till date.

27. The Investigating Officer has also proved the recoveries which were made from the accused persons which included the weapon i.e. katta which was recovered from Sunil at the spot. Three cartridges which had fallen from the spot of which one was live was also taken into possession vide a separate memo.

28. The submission of the learned counsel for accused Ravinder that TIP not having been held and he having been arrested at a later point of time and his identification for the first time in the Court of law entitles him to an acquittal is an argument without force. It was pursuant to the disclosure statement of Raj Singh that Ravinder was arrested. He was arrested vide memo Ex.12/A. This was on 26.5.2010. He was arrested from his house pursuant to which his mobile phone had been seized vide memo Ex. PW-12/H and which was admittedly in the name of accused Ravinder @ Raju and call detail records obtained from this mobile number 9211903907 establishes through cogent evidence i.e. from the evidence of the nodal officers of the TATA Teleservices and Aircel Limited that the conversations between all the three accused for the entire month of May and record of calls exchanged between them had rightly persuaded the Trial Judge to hold that the involvement of Ravinder in the present crime was fully established. Moreover, it was also never the defense of the accused Ravinder that he was not

present at the scene of crime; his defense simpliciter being that he is innocent. The judgments relied upon by the learned counsel for accused Ravinder in this context are not applicable.

29. The act of the accused in committing this dacoity while armed with deadly weapon and in conspiracy and complicity with one another holds them liable for the offence under Section 398 of the IPC for which the minimum punishment is 7 years.

30. The impugned judgment calls for no interference. However, this Court notes that the crime relates to the year 2010 and all the appellants have already suffered a protracted trial. They were all young in years and the submission of the learned counsel for the appellants that the period of incarceration which they have already undergone may be treated as a deterrent is a submission which is noted. Thus while maintaining conviction of the appellant under Sections 398 and 452 read with Section 120B of the IPC, this Court is inclined to modify the sentence and RI 10 years is reduced to RI 8 years. Benefit of Section 428 of the Cr.P.C. is also accorded to the appellants.

31. Appeals disposed of in the above terms.