
(2013) 09 DEL CK 0014
In the Delhi High Court
Case No : Criminal Appeal 90 of 2013

Sanjay @ Rohtash

APPELLANT

Vs

The State (Govt. of NCT) Delhi

RESPONDENT

Date of Decision : 03-09-2013

Acts Referred:

Arms Act, 1959 — Section 25, 27

Penal Code, 1860 (IPC) — Section 120B, 395, 397

Citation : (2013) 09 DEL CK 0014

Hon'ble Judges : S.P. Garg, J

Bench : Single Bench

Advocate : S.K. Sethi, for the Appellant; M.N. Dudeja, APP., for the Respondent

Final Decision : Dismissed

Judgement

S.P. Garg, J.—Sanjay @ Rohtash (the appellant) challenges a judgment dated 15.09.2010 in Sessions Case No. 47/2007 arising out of FIR No. 361/2007 PS Subzi Mandi by which he was held guilty for committing offences punishable u/s 120B IPC, 395 read with Section 397 IPC and u/s 25 /27 Arms Act. By an order dated 23.09.2010, he was sentenced to undergo RI for seven years with fine Rs. 5,000/- u/s 120B IPC, seven years with fine Rs. 5,000/- u/s 395 read with Section 397 IPC and two years with fine Rs. 1,000/- u/s 25 /27 Arms Act. Allegations against the appellant were that on 20.07.2007, at Sonu's jhuggi at Basti Seelampur, he, Hari Om, Sonu, Kalu @ Saleem and Mahender Singh entered into a criminal conspiracy to rob the complainant Ashok Kumar Jain. On 25.07.2007 at about 08.10 P.M. at Anand Service Station, near petrol pump, Malka Ganj, Subji Mandi they pursuant to the criminal conspiracy committed dacoity and robbed Ashok Kumar Jain of bag containing Rs. 2,50,000/-, documents, mobile No. 9810212250 and Santro Car bearing No. DL-2CW-8053. The assailants were armed with deadly weapons and they used it to commit the dacoity. The Investigating Officer lodged First Information Report after recording complainant - Ashok Kumar Jain's statement in which he disclosed that on

25.07.2007 at about 07.50 P.M. he was present in Santro Car being driven by accused Mahender Singh and was returning from his shop. The car was stopped at Malka Ganj Petrol Pump for fuelling. Thereafter, Mahender Singh started the vehicle. He again stopped it after about 4/5 paces on the pretext of bearing seatbelt. In the meantime, the assailants forcibly entered inside the car through the rear doors. Kalu was having a knife in his hand while Sonu and co-accused were having country made pistols. They asked the driver to take the vehicle to Alipur by-pass. The vehicle was taken there and stopped. Rs. 20,000/- to Rs. 25,000/- and other articles were robbed from the victim. Thereafter, the victim and his servant Raj Kumar were forced to get down from the vehicle. Battery of the mobile phone was removed so that it could not be used by the victim. Thereafter, the assailants took Mahender with them in the said Santro car. During the course of investigation, Hari Om was apprehended on the basis of secret information and his disclosure statement was recorded. Rs. 35,000/- cash was recovered and seized. The other assailants were apprehended and part of the cash looted, pistol and churi were recovered from their possession. Applications were moved for holding TIP proceedings but the accused persons declined to participate in the TIP proceedings. After completion of investigation, a charge-sheet was submitted against the five assailants in the Court. The prosecution examined eighteen witnesses. In their 313 statements, the accused persons pleaded false implication. On appreciating the evidence and considering the rival contentions of the parties, the Trial Court, by the impugned judgment, held all of them guilty for the offences mentioned previously and sentenced them.

2. It is relevant to note that co-convicts Kalu @ Saleem, Sonu, Hari Om and Mahender Singh preferred Criminal Appeals No. 1431/2011, 1306/2010, 183/2011 and 1244/2010 to challenge their conviction and sentence. These appeals were disposed of by this Court on 14.12.2012. The convicts in the said appeals opted not to challenge their conviction under Sections 120B and 395 IPC. They emphasized that ingredient of offence u/s 397 IPC were not attracted as none of them used a deadly weapon at the time of committing the offence. This Court accepted their submissions and acquitted them u/s 397 IPC. They were ordered to be released for the period already undergone by them in the case.

3. Sanjay @ Rohtash is the 5th convict whose appeal is under consideration. He was apprehended on 01.08.2007 when co-convict Hari Om led the police team to Seelampur and pointed at him. Complainant - Ashok Kumar Jain was also with the police and identified him as one of the assailants. PW- 18 (SI Bharat Bhushan) recorded his disclosure statement (Ex. PW-7/E). Pursuant to disclosure statement Rs. 80,000/- along with some visiting cards were recovered from a trunk box and seized vide seizure memo (Ex. PW-7/F). He further led the police team near a boundary wall ahead of Unsmampur Police Station and recovered one loaded katta from inside the garbage. It was unloaded and one cartridge was recovered out of it. The necessary proceedings were conducted vide memos (Ex. PW-7/G & Ex. PW-7/H). On 09.08.2007, PW-18 (SI Bharat Bhushan) moved

application for holding TIP proceedings for the appellant but he refused to join it.

4. While appearing as PW-1, complainant-Ashok Kumar Jain proved the version given to the police at the first instance without major variations. He identified Sanjay @ Rohtash to be among the assailants who had entered forcibly inside the car. He elaborated that Sanjay and Sonu had entered into the car from the left side. He further disclosed that the assailant who had entered from the left side had told Mahender Singh to take the car to by-pass. One of them had placed a churri on his back. The vehicle was taken through Kirori Mal College to Khalsa College. He further deposed that near petrol pump at Libaspur, Sanjay and Sonu asked him about the contents of the bag and he told them that there were Rs. 4,80,000/-. He volunteered to add that he had told the police in his complaint that the cash was Rs. 20,000/- or Rs. 25,000/-. He explained that he had done so as he was under fear and was frightened. He attributed specific role to Sanjay and Sonu who had snatched his bag when the vehicle was moving in between Libaspur and Khera. Sanjay and Sonu also took out his mobiles and cash from his pocket. Batteries of the mobiles were taken out. Sanjay also put a katta on his back and took him for about 25-30 steps. He and the child were left there. Sanjay returned to the vehicle and it was taken away. In the cross-examination, the witness was confronted with his statement where he had not disclosed certain facts testified before the Court.

5. Overall testimony of the complainant reveals that he was certain that Sanjay @ Rohtash was one of the assailants who had entered forcibly inside the car and had snatched the bag containing cash from his possession by using a deadly weapon i.e. katta which was subsequently, recovered at his instance. Appellant's counsel has highlighted some discrepancies and improvements in the statement of the complainant regarding the exact cash in his possession at the time of occurrence or the assailant who used the weapon. In my view, these discrepancies are trivial in nature and do not go to the root of the case to discard the testimony of the complainant who had no prior animosity with the appellant and was not acquainted with him. Complainant was not expected to fake an incident of dacoity. He had direct confrontation with the assailants who took him to Libaspur side. The complainant remained in their company for long duration and had ample opportunity to recognize and identify them. He had no ulterior motive to falsely implicate the appellant and his associates for the gruesome incident. He was the victim of circumstances as the driver Mahender Singh employed by him betrayed and conspired with his associates including his brother Hari Om to rob him. The co-convicts have already confessed their guilt and have not opted to challenge their conviction. They were given benefit u/s 397 IPC as the prosecution was not able to establish use of a deadly weapon at the time of committing the crime. In the instant case, there is specific assertion of the complainant that the appellant used the country made pistol at the time of incident. It was also recovered at his instance during the course of investigation. There are no sound reasons to disbelieve the complainant's version. Recovery of Rs. 80,000/- was effected from the possession of the accused. The police officials

are not expected to plant a huge amount of Rs. 80,000/- upon the appellant to falsely implicate him. Adverse inference is to be drawn against the appellant for not participating in the Test Identification Proceedings. He did not produce any evidence to show that he was shown to the complainant prior to the holding of TIP proceedings to justify refusal to participate in the proceedings.

6. All the relevant contentions of the appellant have been considered by the Trial Court in the impugned judgment. It is based upon fair appraisal of the evidence. I find no good reasons to interfere with it. In the light of above discussion, the appeal filed by the appellant is unmerited and is dismissed.