

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION  
CRIMINAL APPEAL NO. 1256 OF 2008

RAJIV @ RAJU Appellant(s)

VERSUS

STATE OF HARYANA Respondent(s)

WITH

CRIMINAL APPEAL No. 1345 OF 2008

SUNEET Appellant(s)

VERSUS

STATE OF HARYANA Respondent(s)

O R D E R

On 28<sup>th</sup> October, 1990 on the Jhajjar, Rohtak Highway, a truck was robbed at 1.00 a.m in the night. Rs.86,000/- kept under the seat of the truck were taken away by the robbers. An FIR was lodged at about 5.45 a.m. The truck was said to have been stopped by a Maruti Car which overtook it and blocked its way. The appellants were said to have taken the cash and robbed the complainants.

In the FIR, there was no description given by any of the complainant(s) about any of the appellants. No description was given in any of the statement recorded under Section 161 Cr.P.C.

After nine months, on 9<sup>th</sup> July, 1991, the fourth accused (Daya Chand) was arrested by the Delhi Police in connection with some other offence. He said to have disclosed the names of appellant No.1(Rajiv @ Raju), and appellant no. 2 (Suneet) and accused (Kadam Singh). On 11.7.1991, Delhi police claimed to have recorded the confession of the second appellant, which is produced in Court as Exhibit - 'PBB'. In that confession, statement of second appellant has been recorded to the effect that the said appellant robbed Rs.4000/- and spent it. For reasons best known, another confession was recorded on 12.7.1991 by the Haryana Police i.e. Exhibit - "PN". A statement by the same appellant has been recorded to the effect that the said Rs.4000/- have been kept by him in an almirah in the house of appellant no.1, from where it has been shown to have been eventually recovered. The trial court convicted the appellants and the High Court upheld the conviction of appellant no.1(Rajiv @

Raju), and appellant no.2 (Suneet) and accused no.4 (Daya Chand). Accused no. 3 (Kadam Singh) and accused no. 5 (Jai Bhagwan) were acquitted by the trial court. The conviction of accused no. 4 (Daya Chand) was maintained by this court by dismissal of special leave petition preferred by him. Appellant no. 1 (Rajiv @ Raju) & appellant no.2 (Suneet) have preferred these appeals against the sentence of two years each imposed by the High Court under Section 394 read with 34 of the Indian Penal Code.

Shri Basant R., learned senior counsel and Shri Arvind Kumar, learned counsels for the appellants commonly submitted that the confession and identification both are extremely doubtful and therefore not enough piece of evidence. Two pieces of evidence cannot led support to each other. Therefore, the story against these appellants is little bit doubtful, the benefit of which should be given to both the appellants.

As regards to the identification, learned counsel for the appellants submitted that no test identification parade was conducted at all though an application was made by the prosecution for conducting Test Identification Parade against

accused nos. 4 (Daya Chand) & 5 (Jai Bhagwan). We find that Test Identification Parade should have been conducted in a case like this where the incident took place around midnight and where the only possible source of light was the headlight of the truck before which nobody would have stood so that he could be identified. Moreover, no description of the physical appearance of the so called robbers had been given by the complainant in the FIR nor by any of the witnesses in the statement recorded under section 161 Cr.P.C.

Be that as it may, the only identification is said to have taken place in Court after a period of three years. Rohtash (PW 5) stated that the second appellant is a six footer with broad shoulders and of stout built. PW 5, however, had no explanation why he had not given this description to the police but only gave the range of age as if there could have been a visual input about the age at midnight. PW 5 further stated that he had seen the accused coming to Court on previous dates. Surinder Singh (PW 6) claimed to have seen the faces of all the accused in the head light of the truck, even though there was no light on the driver side. Moreover, PW 6 stated that he had seen the appellants in the Court for the first

time. Mange Ram (PW 7) also claimed that he had seen the faces of all the appellants in the light of the truck and that he had come twice in the Court to see the proceedings of the case. This witness could give no detail about how the attack took place.

As regards the attempt of identification of the appellants, we are doubtful about the accuracy of the witnesses and the manner in which there has been negligence on the part of the investigation for not obtaining the identity of the appellants. There is no evidence or statement of any of the witnesses taken contemporaneously at the time of the occurrence which can be matched with the attempt to identify the accused in court. This creates a doubt which must weigh against the prosecution and in favour of the appellants.

The next point which has been pressed by the learned counsel for the appellants is that of the so called confession. The two confessions on record seem to have been a concocted story. It is not to reconcile the statement of the second appellant as regards the recovery of Rs. 4000/-, which he had said to be allegedly received as part of the booty. In the first confession he stated

that he has spent that amount and in the second confession on the very next day, he stated that he had kept the amount in an almirah in the house of appellant no.1 and that too remained untouched for a period of nine months, this creates a serious doubt about the veracity of the investigation.

Having regards to the above, we find that neither the confession nor the identification raises a serious doubt; the benefit of which must go to the appellants. We accordingly find that the appellants are not guilty. We accordingly acquit the appellants and allow both the appeals. The judgment of the High Court is set aside. Since the appellants are on bail, their bail bonds shall stand discharged.

.....J  
(S.A. BOBDE)

.....J  
(L.NAGESWARA RAO)

NEW DELHI  
DATED: FEBRUARY 7, 2018

ITEM NO.101

COURT NO.7

SECTION II-B

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s). 1256/2008

RAJIV @ RAJU

Appellant(s)

VERSUS

STATE OF HARYANA

Respondent(s)

WITH

CrI.A. No. 1345/2008 (II-B)

Date : 07-02-2018 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.A. BOBDE

HON'BLE MR. JUSTICE L. NAGESWARA RAO

For Appellant(s)

Mr. Arvind Kumar, Adv.  
Mr. Harsh Vardhan Sharma, Adv.  
Mr. Amit Sharma, AOR

Mr. Basant R., Sr. Adv.  
Mr. Kundan Kumar Lal, AOR  
Mr. Alok Kumar, Adv.

For Respondent(s)

Mr. Alok Sangwan AAG Govt. of Haryana  
Mr. Utkarsh Srivastava, Adv.  
Mr. Sunny Kadiyan, Adv.  
Mr. C. Solomon, Adv.  
Dr. Monika Gusain, AOR

UPON hearing the counsel the Court made the following  
O R D E R

Both the appeals are allowed in terms of the signed order.

(KUSUM LATA SYAL)  
SENIOR PERSONAL ASSISTANT

(INDU KUMARI POKHRIYAL)  
ASST. REGISTRAR

(Signed order is placed on the file)