

# State vs Deshraj & Anr on 26 March, 2025

**Author: Neena Bansal Krishna**

**Bench: Neena Bansal Krishna**

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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 26th Mar

CRL.L.P. 574/2017

STATE

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Through: Mr. Yudhvbir Singh  
Ld. APP for State w  
Bahadur Singh.

Versus

1 DESHRAJ  
S/o Shri Mool Chand  
R/o H.No.F-505, JJ Colony,  
Madipur, Delhi.

2. SUNIL @ SAGAR @ SETTY  
S/o Mohan Lal  
R/o H.No.F-528, JJ Colony,  
Madipur, Delhi.

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Through: None

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. A Petition under Section 378 (3) read with Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C.") has been filed on behalf of the Petitioner to seek Leave to Appeal against the Judgment dated 31.05.2017, whereby the Respondent has been acquitted for the offences under Section 392/394/397/34 Indian Penal Code, 1860 (hereinafter referred to as "IPC") in FIR No.1108/2015, Police Station Shalimar Bagh.

2. It is submitted in the Leave to Appeal Application that the Complainant/Irfan had duly identified Respondent/Sunil @ Sagar and had even given the description of Respondent No.1/Deshraj, on the basis of which his portrait was drawn. The Complainant had also identified both the Respondents in his testimony in the Court despite which the Respondents have been acquitted. Hence, the Leave to Appeal has been sought.

3. For the reasons stated above and in the totality of circumstances, the Leave to Appeal is allowed.

Crl.A.\_\_\_\_\_/2025 (To be numbered by the Registry)

4. An Appeal under Section 378(1) Cr.P.C has been filed against the acquittal of the Respondents/Deshraj and Sunil @ Sagar @ Setty for the offences punishable under Section 392/394/397/34 IPC vide judgment dated 31.05.2017.

5. The case of the prosecution is that M/s World Class Automobile Pvt. Ltd. was having its godown in Shalimar Bagh area and was the authorized dealer of Volkswagen cars.

6. On 22.09.2015, one trailer containing five new cars of Volkswagen (POLO) reached Delhi, which were to be delivered at the godown. At about 12 midnight, the trailer was parked near Ring Road, Shalimar Bagh and the cars were de-loaded and Irfan and Shahid took one car each for driving them to the godown. While Irfan was driving this new POLO Car, another vehicle overtook him. Two tall boys aged about 30-32 years having good built, alighted from the car and picked up quarrel with Irfan on false pretext and then pulled him out. In the meanwhile, one of them put a katta (pistol) on his belly and robbed the POLO Car, which was driven away by one of them. Irfan shouted and even tried to chase them, but was not successful. He could not also note the number of the Car in which the two offenders had come.

7. Irfan then came to the godown and told about the incident to Shahid, who called the Police at No.100. The present FIR was thus, registered on the statement of Irfan. Irfan helped the Police to prepare the sketch of the suspect, but the Police was unable to trace the Respondents/robbers.

8. Approximately after about six months, both the Respondents were arrested in FIR No.58/2016P.S. Crime Branch, in which they made the disclosure about their involvement in the present robbery. They were accordingly arrested in the present case and their judicial TIP was conducted. Respondent No.2 Sunil was duly identified in the TIP, but Respondent No.1 Deshraj could not be identified. The Respondents revealed in the Disclosure Statement that they have sold the robbed car to one Gurjeet Singh in Amritsar. However, despite best efforts neither Gurjeet Singh could be apprehended nor the car could be recovered.

9. After completion of the investigations, the Chargesheet was filed in the Court. The Charges under Section 392/34 IPC and Section 397 IPC were framed against the Respondents to which they pleaded not guilty.

10. The Prosecution in support of its case examined 12 witnesses, out of whom PW2 Irfan was the Complainant, PW3 Shahid was the companion of the Complainant, and PW11 was ASI Raj Bahadur Singh, the Investigating Officer.

11. The Statement of the Respondents were recorded under Section 313 Cr.P.C. in which they pleaded their innocence.

12. The Learned ASJ referred to the entire evidence and to the statement of the Complainant/PW2 Irfan, and observed that his statement suffered from contradictions in regard to the identity of the two accused. Giving the benefit of doubt, the two Respondents were acquitted of the Charges.

13. Aggrieved by the said acquittal, the present Appeal has been preferred, wherein the grounds of challenge essentially are that the testimony of the sole eye witness PW2 Irfan has not been appreciated in the right perspective.

14. It is averred that over emphasis has been laid on the minor contradictions which were not sufficient to demolish the case of the prosecution. Essentially, Shahid was identified not only in TIP but even during the course of recording of evidence. The portrait of Deshraj had been prepared at the instance of the Complainant at the initial stage, which also has not been considered by the learned ASJ.

15. Reliance has been placed on C. Muniappan & Ors. vs. State of Tamil Nadu, JT 2010 (9) SC 95, wherein the Supreme Court had observed that even if there are some omissions, contradictions and discrepancies, the entire evidence should not be discarded. Every care and caution and sifting through the evidence to separate truth from untruth, exaggerations and improvements to consider whether the residuary evidence is sufficient to convict the accused. Undue importance cannot be attached to contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution witnesses. Having regard to the mental abilities of a human being who cannot be expected to absorb all the details of the incident; minor contradictions are bound to occur in the statements of the witnesses.

16. It is, therefore, submitted that the impugned judgment is liable to be set aside.

17. The Respondents were appearing for some time through their counsel, but thereafter, they have stopped appearing in the Court.

18. Submissions heard and the record perused.

19. The entire case of the prosecution essentially rests on the testimony of PW2 Irfan, the Complainant. He, in his testimony, narrated the incident as was stated in his Complaint. He explained that on the night of the incident two cars had been brought down from the trailer and he and his colleague Shahid decided to drive one car each to the godown of M/s World Class Dealer which was at a distance of about 2½ to 3 Kms, from where they had parked the Trailer. They dropped one car in the showroom and then returned to the Trailer for the other car. In the similar manner, the three cars were dropped in the showroom and then brought out the fifth and the last car to be driven to the godown in the similar manner. Shahid was driving in front of him in the fourth car while he was following him. One car overtook him from the left side and blocked his car. One person alighted from the car and started abusing him for not giving side. Even though the Complainant lamented that he had not done any such thing, the said person took out one pistol and kept it on his belly and pushed him out of the car and gave him beatings. That person then drove away in the new POLO car.

20. Another person in the meanwhile, alighted from the car which had overtaken his car. He was also carrying a pistol and pushed him to the ground and threatened him that he would kill him if he made any noise. The Complainant was able to reach his mobile in his pocket and he hurled it towards the other person, however, it hit the car and broke the glass. The other person also then sat in the car in which they both had come, and had overtaken the car and fled away.

21. Shahid who was ahead of him was unaware of the incident which had taken place with him. He reached the showroom on foot and thereafter, informed Shahid as well as the watchman who then called the Police, who recorded his statement, Ex.PW2/A. The FIR Ex.PW1/A was registered on the statement of PW2 Irfan.

22. In so far as the entire narration of the incident by PW2 in his examination-in-chief is concerned, essentially it is in consonance with his Complaint and there are no material contradictions. However, the main ground of challenge is the identity of the two Respondents/assailants.

23. PW2 Irfan deposed that he could identify the accused and correctly identified Sunil @ Sagar in the Court as the one who had alighted from the Car first and taken away the new POLO car. He also pointed towards Deshraj claiming him to be the second person on whom he had hurled the mobile phone.

24. He further deposed that he had gone to Tihar Jail for TIP where he identified accused Sunil, but was unable to identify the other accused, because he had grown the beard.

25. The first pertinent thing for consideration is that the incident had happened at about 12 midnight i.e. when it was absolutely dark. This assumes importance to ascertain whether the identity of the two Respondents was correctly established. Pertinently, it is not in dispute that the two accused could not be traced nor the car be recovered. It is only after about six months they were arrested in another FIR No.58/16 in which they made a Disclosure Statement admitting their involvement in the present case and were, therefore, arrested in this case and the Chargesheet was filed.

26. Pertinently, the two accused were neither named in the FIR nor were arrested soon after the incident which had happened in the middle of the night.

27. PW11 ASI Raj Bahadur Singh has admitted in his cross-examination that when he reached the scene of the incident at 02:30 AM, he did not meet any person whom he could join as a witness. He interrogated the Bad Characters of the area to trace out the robbed vehicle, but did not succeed. There was no clue of the robbed vehicle or the accused for seven months, while there was pressure on him to trace the accused persons.

28. Pertinently, the sketch of the robber/suspect, Ex.PW11/DA was prepared on 28.09.2016 i.e. after about six days of the incident at the instance of the Complainant. PW2 in his cross-examination also corroborated in his testimony, that one sketch was prepared by the Police at his instance and when the accused were arrested after about six months, he identified one accused as the same person who

had robbed the car.

29. In this context, it becomes significant to refer to the testimony of PW11 ASI Raj Bahadur Singh, the I.O who in his cross-examination also admitted that only one sketch was prepared as the Complainant was not very sure about the features of the other robber.

30. Pertinently, after the two Respondents were arrested, the sketch was found to match with the features of the accused, Deshraj. Interestingly, the Complainant was able to identify the accused, Sunil in the TIP conducted, whose features also he could not disclose soon after the incident when the sketches were to be prepared. Rather, he gave the features of Deshraj on the basis of which the sketch was prepared, but he could not identify Deshraj in the TIP.

31. It is strange that the Complainant, according to his testimony, was able to see the accused persons and was able to give the sketch of Deshraj, while he could not identify him in TIP. No sketch at the instance of the Complainant could be prepared of the accused Sunil since he was not able to disclose the features, which reflects that the accused Sunil had not been seen well by the Complainant.

32. The learned ASJ has rightly observed that there is a huge discrepancy in regard to the preparation of the sketch and the identification of the two accused persons, which cannot be termed as a minor contradiction.

33. Furthermore, as per DD No.5A, Ex.PW4/A on the basis of which the First Information Report was registered, there were allegedly four persons in a white colour car who had robbed the Complainant of the car. Significantly, this 'four' number of the assailants got reduced to 'two' at the time when the FIR was registered.

34. The learned ASJ has also referred to the testimony of the Complainant/PW2 who had deposed that while Sunil took the car from him and sat in it, the other co-accused Deshraj got out of his car and gave him kicks, threatened him and even pointed out the pistol at him. He was able to take out his mobile phone and throw it at him, though instead of hitting him, it hit the screen of the car and the mobile phone broke. Pertinently, as per the I.O/PW11 on the next day, when they went to the site for investigations, they found the broken mobile.

35. PW2 Irfan in his cross-examination had stated that he took the I.O to the scene of crime, where the broken mobile had fallen and only the display part was lying on the spot. PW3 Shahid also admitted that the Police had seen the broken mobile at the spot, but was not aware if it was seized by the Police. However, the I.O has been totally silent about it and there is no evidence to show that when the I.O went to the spot he made any endeavour to seize it. It was a significant corroborative evidence about the happening of the incident, which has not been collected or investigated by the I.O. Moreover, the call details have also not been examined to ascertain the authenticity of the happenings of the incident as claimed by the Complainant.

36. In view of the contradictions in regard to the identity of the accused, the benefit has rightly been given to the accused persons/respondents who have been acquitted for the offence under Section 392/304/397/34 IPC.

37. There is no merit in the present Appeal, which is hereby dismissed.

(NEENA BANSAL KRISHNA) JUDGE MARCH 26, 2025 va