

Mohd. Iqbal Vs. State

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Court : Delhi

Decided On : Oct-04-2013

Reported in : (2013) 14 SCC481

Judge : S. P. Garg

Appellant : Mohd. Iqbal

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI RESERVED ON :

27. h SEPTEMBER, 2013 DECIDED ON :

4. h OCTOBER, 2013 + CRL.A. 781/2001 MOHD. IQBAL Through :Appellant Mr.Deepak Tyagi, Advocate. versus .Respondent STATE Through : Mr.M.N.Dudeja, APP. CORAM: HON'BLE MR. JUSTICE S.P.GARG S.P.GARG, J.

1. Mohd. Iqbal (the appellant) challenges correctness of a judgment dated 09.10.2001 in Sessions Case No.3/2000 arising out of FIR No.108/2000 PS Tilak Marg by which he was held guilty for committing offence punishable under Section 392/34 IPC. By an order dated 10.10.2001, he was awarded RI for four years.

2. Allegations against the appellant were that on the night intervening 25/26.02.2000 at about 01.45 A.M. he and his associates (not arrested) robbed

Nahar Singh of ₹ 15,215/-, gold chain, gold ring and wrist watch when he was travelling in TSR No.DL-1R-1351 driven by him. The police machinery was set in motion when Daily Diary (DD) No.23A (Ex.PW-2/A) was recorded at PS Lajpat Nagar on information that 4 or 5 boys had fled after robbing an individual from TSR No.DL-1R-1351. The investigation was assigned to HC Gopi Chand who with Const.Mahesh went to the spot and found the complainant and PCR officials present there. The complainant - Nahar Singh gave detailed account of the incident. HC Gopi Chand recorded DD No.24A (Ex.PW1/C) and sent the complainant to PS Tilak Marg in whose jurisdiction the incident had taken place. PW-8 (Ravinder Malik) took over the investigation. PW-1 (Harvinder Singh) was found to be the registered owner of the vehicle which he had been given to Mohd. Iqbal on hire. It lead to Mohd.Iqbals arrest. Application for Test Identification Proceedings was moved and Mohd. Iqbal declined to participate in it. The Investigating Officer recorded statements of the witnesses conversant with the facts. Attempts were made to find out the appellants associates but in vain. After completion of investigation, a charge-sheet was filed in the Court against the appellant. He was duly charged and brought to trial. In his 313 statement, he pleaded false implication. On appreciating the evidence and after considering the rival contentions of the parties, the Trial Court, by the impugned judgment, held the appellant guilty for the offence mentioned previously.

3. Appellants counsel urged that the Trial Court did not appreciate the evidence in its true and proper perspective. The appellant was falsely implicated on suspicion and was not driving the TSR at the time of incident. There was no occasion for the complainant to have substantial cash with him on his first trip to Delhi to meet his brother in Delhi Police. The Trial Court did not appreciate that robbed article were not recovered from the appellant and the identity of the other assailants could not be established. Mohd. Iqbal was not kept in muffled face at the time of arrest and was justified to decline to participate in Test Identification Proceedings and was shown to the witness before he was produced in the Court. The delay in lodging the FIR was not explained. Complainants brother who was posted in Delhi Police was instrumental in implicating him. Learned Addl. Public Prosecutor urged that the complainant had no prior animosity with the appellant to falsely implicate him in the case. PW-1 (Harvinder Singh) has corroborated his version.

4. I have heard the submissions of the parties and have examined the record. Complainant - Nahar Singh who was coming to Delhi for the first time to take exam of Delhi Police where his brother was a constable in Delhi Police is not expected to fake a false incident of robbery. Daily Diary (DD) No.23A (Ex.PW-2/A) was recorded at 01.40 A.M. at PS Lajpat Nagar. It records the incident of robbery in TSR No.DL-1R-1351 by 4 or 5 boys. This DD was assigned to PW-2 (HC Gopi Chand) who with Const.Mahesh went near Tara Taxi Stand and met Nahar Singh, the complainant there. Statement of the complainant (Ex.PW-1/B) was recorded and Nahar Singh was brought to the Police Station. It transpired that the occurrence had taken place within the jurisdiction of Police Station Tilak Marg. DD No.24A (Ex.PW-1/C) was recorded at 03.30 A.M. (night) and the complainant was sent to Police Station Tilak Marg. The contents of both the DD entries lend credence to the complainants version that he was robbed by 4 or 5 boys when he was travelling in TSR No.DL-1R-1351. The investigation was taken over by PW-8 (SI Ravinder Malik, PS Tilak Marg). He lodged First Information Record on making endorsement (Ex.PW-3/A). Attempts were made to find out the registered owner of TSR whose number was disclosed by the complainant at the first instance and it revealed that Harvinder Singh S/o R.D.Ahuja was its registered owner. PW-1 (Harvinder Singh) in his Court statement revealed that the TSR No.DL-1R-1351 was given on hire in the month of February, 2000 to the appellant and he used to pay ` 90/- per day. Mohd. Iqbal used to park the scooter at his house and it was seized from there. The testimony of PW-1 (Harvinder Singh) remains unchallenged. No suggestion was put to him that on that night Mohd. Iqbal was not having the possession of the TSR. There is no denial that the appellant did not use to ply TSR on hire. Subsequently, this TSR was released on superdari to the registered owner Harvinder Singh.

5. Complainant - Nahar Singh in his statement (Ex.PW-1/A) made to the police at the first instance narrated vivid description of the incident and disclosed as to how and under what circumstances, he was robbed of cash and gold articles when he was travelling in TSR No.DL1R-1351. He claimed to identify the assailants. While appearing in the Court he fully proved the version given to the police without any major variation. He identified Mohd.Iqbal to be an individual who was among the assailants and was driving the TSR. He ascribed a specific role to him about

pushing him. Despite searching cross-examination, the appellant was unable to elicit any material discrepancy / contradiction in his version to disbelieve him. No ulterior motive was assigned to the complainant to falsely implicate him in the incident. He explained that Mohd. Iqbal was seen by him, firstly, on the day of incident, secondly in the Police Station on 04.03.2000 and thereafter, in the Court on the date of his examination. Prosecution examined PW-6 (Sh.G.S.Gupta, MM) who conducted Test Identification Proceedings. Application (Ex.PW-6/A) reveals that the appellant was produced in muffled face before the Magistrate but he declined to participate in the Test Identification Proceedings (Ex.PW6/B). The appellant did not offer reasonable explanation for not participating in the Test Identification Proceedings. The application for holding TIP was moved on 29.02.2000 before the Magistrate soon after his arrest on 28.02.2000 and was produced in muffled face. It makes no difference that after the police got his police remand, on 04.03.2000, he was identified in the Police Station by the complainant. An adverse inference is to be drawn against the appellant for refusing to participate in Test Identification Proceedings. In his 313 statement, the appellant could not give plausible explanation to the incriminating circumstance proved against him. He did not controvert that the TSR No.DL-1R-1351 was not hired by him from PW-1 (Harvinder Singh). It is not believable that PW-1 (Harvinder Singh) would falsely claim that this TSR was on hire with the appellant on the night of incident. There is no substance in the appellants plea that TSR number was noted on guess basis. He did not examine any witness from his family or in the neighbourhood to show his presence at any other specific place at the time of incident. Non-recovery of robbed articles is not material as the appellant alone could be arrested on 28.02.2000. Delay in lodging the FIR has been explained. The complainant had approached the police soon after the incident and DD No.23A (Ex.PW-2/A) was recorded at 01.40 A.M. itself. Since there was some controversy as to the jurisdiction, lodging of FIR was delayed. There is no substance in the plea that complainants brother had influenced the investigation and falsely implicated him. It has come on record that complainants brother was a constable in Delhi Police and apparently, had no role to play to influence the investigation. He had no prior acquaintance or animosity with the appellant to drag him in a false case. The complainants brother was not going to be benefited by

false implication as no robbed article was even recovered from the appellant. The conviction of the appellant is based upon fair appreciation of the evidence and requires no interference.

6. Appellants counsel in the alternative adopted an argument to release him on probation as he has remained in custody for about six months and has clean antecedents. The facts and circumstances of the case show that the crime committed by the appellant is serious and grave. An innocent visitor to Delhi for the first time was robbed not only of his valuable articles and cash but educational certificates. The complainant was to appear in an exam on the next day. Court can well understand his mental condition after the incident. The appellant who was a TSR driver betrayed the trust of the passenger. His associates could not be identified/ arrested to bring them to justice. Taking into consideration the period of detention already undergone by the appellant, his age and previous antecedents and the fact that the occurrence took place about thirteen years before, Sentence order is modified to the extent that substantive sentence under Section 392/34 IPC RI for four years is reduced to RI for two years.

7. The appellant - Mohd.Iqbal is directed to surrender before the Trial Court on 14th October, 2013 to serve the remainder of his sentence. The Registry shall transmit the Trial Court record forthwith to ensure compliance with the judgment. The appeal stands disposed of in the above terms. (S.P.GARG) JUDGE
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