

Ram Kumar Vs. State

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Court : Delhi

Decided On : Oct-11-2013

Judge : S. P. Garg

Appellant : Ram Kumar

Respondent : State

Judgement :

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

11. h October, 2013 + CRL.A.520/2000 RAM KUMAR Appellant Through : None. versus STATE Respondent Through : Mr.M.N.Dudeja, APP for the State. CORAM: MR. JUSTICE S.P.GARG S.P.GARG, J.

(ORAL) 1. Ram Kumar (the appellant) and Udai Bhan were arrested and sent for trial in case FIR No.298/1997 registered at Police Station Pahar Ganj with the allegations that on 21.04.1997 at about 07.30 a.m. at staircase of Pul Pahar Ganj they along with two other companions robbed Anil of `45,000/- at knife point. During the course of investigation, the police was able to apprehend and arrest only Udai Bhan and Ram Kumar. After completion of investigation, a charge-sheet was submitted against them and they were duly charged and brought to trial. The prosecution examined eleven witnesses. In their 313 statements, the accused persons denied their complicity in the offence. The Trial Court by the impugned judgment dated 04.08.2000 found them guilty for committing offence under

Section 392 read with Section 397 IPC and sentenced them to undergo Rigorous Imprisonment for seven years with fine `100 each. It appears that Udai Bhan did not challenge the judgment.

2. During the course of arguments, Ram Kumar opted to give up his challenge to conviction under Section 392 IPC and confined argument to urge that Section 397 IPC was not attracted and proved. Learned Additional Public Prosecutor conceded absence of sufficient material for conviction with the aid of Section 397 IPC. The prosecution witnesses have given inconsistent version as to which of the assailants was armed with deadly weapon or who actually used it at the time of committing robbery. The complainant in the statement (Ex.PW-2/A), recorded soon after the incident, disclosed that two of the assailants put knives on his stomach. The other two assailants put knives on the chest of Chander Mohand and Mahavir. PW-4 (Mahavir Singh), however, contradicted him and deposed that no knife was put on his person by any of the assailants. He identified only Udai Bhan as one of the assailants in the court and was unable to identify Ram Kumar (the appellant). In the cross-examination by learned Additional Public Prosecutor, with courts permission, he informed that Udai Bhan was identified by him at the instance of police officials. PW-3 (Chander Mohan) was not specific as to which of the assailants used the knife to rob the complainant. He gave a general and vague statement that two of the boys put knife on the stomach of Anil and did not assign any specific role to Ram Kumar. In the crossexamination he clarified that the Nepali boy (who could not be arrested) had put knife on Anils abdomen. PW-2 (Anil Kumar), the complainant, merely deposed that all the four assailants had come along with long knives. He, however, was not specific if Ram Kumar had used the knife to rob him. In the cross-examination he implicated Ram Kumar and one Nepali boy who put knives on his abdomen. Ram Kumar was arrested after more than three months of the incident with a knife a separate case under Section 25 Arms Act was registered which has resulted in acquittal. Moreover, no worthwhile evidence was collected to ascertain if the knife recovered was the crime weapon and was used at the time of committing robbery. No such knife was shown to the complainant for identification. Ram Kumar was not even implicated under Section 25 Arms Act in this case for using a deadly weapon. No such weapon was recovered from coconvict Udai Bhan who was arrested after three days of the

incident. The prosecution has thus miserably failed to establish if Ram Kumar used a deadly weapon at the time of committing robbery. Conviction with the aid of Section 397 IPC, thus, cannot be sustained and is set aside.

3. Since the appellant (Ram Kumar) has opted not to challenge the findings of the Trial Court under Section 392 IPC and the complainant and other prosecution witnesses have attributed specific role to him in snatching the bag containing `45,000/- the findings of the Trial Court on conviction under Section 392 IPC are affirmed. Ram Kumar was sentenced to undergo Rigorous Imprisonment for seven years with fine `100/-. Nominal roll dated 21.05.2001 reveals that he remained in custody for one year, eight months and two days as on 18.05.2001, besides earning remission for one month and twenty days. At the time of enlargement on bail and suspension of sentence on 08.10.2001 he had already spent more than two years in custody. He has clean antecedents is not involved in any other criminal case and has a family with four small children to take care of them. He is suffering from HIV (+ive) and has produced medical documents on record. Taking into consideration the mitigating circumstances, Ram Kumar is sentenced to undergo the period already spent by him in custody in this case.

4. The appeal stands disposed of in the above terms. Trial Court record along with copy of this order be sent back to the Trial Court. A copy of the order be also sent to Jail Superintendent, Tihar Jail. (S.P.GARG) JUDGE OCTOBER11 2013 sa

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