

Vinod Kumar Vs. State

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Court : Delhi

Decided On : Oct-23-2013

Judge : S. P. Garg

Appellant : Vinod Kumar

Respondent : State

Judgement :

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

22. d October, 2013. DECIDED ON :

23. d October, 2013. + CRL.A.310/2000 VINOD KUMAR Through : Appellant
Mr.Sumeet Verma, Advocate. VERSUS STATE Through : Respondent
Mr.Lovkesh Sawhney, APP. CORAM: MR. JUSTICE S.P.GARG S.P.GARG, J.

1. Vinod Kumar (the appellant) challenges a judgment dated 27.11.1999 in Sessions Case No.74/1995 arising out of FIR No.189/1992 registered at Police Station Shahdara by which he was convicted for committing offences punishable under Section 397 IPC and 25/27 Arms Act. By an order dated 29.11.1999 he was awarded Rigorous Imprisonment for seven years with fine `5,000/- under Section 397 IPC and Rigorous Imprisonment for two years with fine `2,000/- under Section 27 Arms Act. Both the sentences were to operate concurrently.

2. Allegations against the appellant-Vinod were that on 03.06.1992 at about 12.10 P.M. at House No.1/7060A, Gali No.5, Vishnu Park, Shivaji Park, Delhi, he and his associates Naresh Sharma and Pappu committed robbery using deadly weapons and deprived inmates of golden ornaments and cash `20,000/-. After the robbery, the assailants attempted to flee the spot but two of them i.e.Vinod Kumar and Naresh Sharma were apprehended after chase and recover weapons used in the incident and robbed articles. Pappu succeeded to escape. The police machinery was set in motion after recording Sanjeev Walias statement (Ex.PW-5/A). The Investigating Officer lodged First Information Report. During investigation, attempts were made to find out Pappus whereabouts. Statements of witnesses conversant with the facts were recorded. After completion of investigation a charge-sheet was submitted in the court against Vinod Kumar and Naresh Sharma. The Trial Court separated Naresh Sharmas trial due to non-production from Lucknow Jail. The prosecution examined 10 witnesses to substantiate the charges against Vinod. In his 313 statement, the appellant pleaded false implication after he was lifted from bus stand Seelam Pur at 09.00 P.M. on 02.06.1992. On appreciation of the evidence and after considering the rival contentions of the parties, the Trial Court, by the impugned judgment held Vinod Kumar perpetrator of the crime mentioned previously. It is relevant to note that subsequently the proceedings against Naresh Sharma were dropped as abated due to his death.

3. Learned counsel for the appellant urged that the Trial Court did not appreciate the evidence in its true and proper perspective and fell in grave error in relying upon the testimonies of interested witnesses. PW-8- Sandeep Walias statement was not recorded under Section 161 Cr.P.C. during investigation. PW-2 (Smt.Pushpa) gave inconsistent version regarding use and recovery of pistol by the appellant at the time of committing robbery. The prosecution was unable to establish use of deadly weapon to sustain the conviction under Section 397 IPC. Learned Additional Public Prosecutor urged that the Trial Court has appreciated the statements of the victims with proper reasons and there are not good grounds to interfere in the impugned judgment.

4. I have considered the submissions of the parties and have examined the record. The occurrence took place at 12.10 P.M. on 03.06.1992. Naresh Sharma and Vinod Kumar were apprehended at the spot by the victim with the assistance of public persons soon thereafter. First Information Report was lodged promptly at 03.00 P.M. without any delay on the statement of the victim (Ex.PW-5/A). Sanjeev Walia gave detailed account as to how Vinod Kumar, Naresh Sharma and their associate Pappu (who succeeded to escape) barged in their house and committed robbery at the point of pistol and knife. He further disclosed that his mother Pushpa Walia was deprived of her golden chain and earrings and Pappu took away `20,000/- from the almirah in the house. In his court statement PW-5 (Sanjeev Walia) proved the version given to the police at the first instance without any major variation/improvements. He assigned specific role to each of the assailants in committing robbery and identified Vinod Kumar to be the assailant who used knife and threatened to kill if he attempted to raise alarm. Despite lengthy cross-examination, no material discrepancy emerged to suspect the veracity of his statement. The accused did not assign any ulterior motive to the witnesses to falsely implicate him. PW-5 (Sanjeev Walia) had no prior acquaintance with the accused persons to falsely rope them in the incident. In the absence of any prior ill-will or animosity the inmates of the house who were the victims were not expected to fake the incident of robbery. When PW-5 (Sanjeev Walia) raised alarm, the assailants attempted to flee the spot and were given chase. Naresh Sharma even fired at the chasers to escape. However, both of them were apprehended at the spot and the robbed articles along with weapons were recovered from their possession. There are no sound reasons to discard the testimony of independent public witness. PW-2 (Pushpa) also identified the present appellant as one of the robbers. She, however, gave inconsistent statement regarding recovery of pistol from Vinod. This inconsistency, however, is not significant to give clean chit to the appellant as his presence along with Naresh Sharma and Pappu in the house was deposed by the witness. She was examined after a lapse of about six years and possibility of her describing the role as to which of the assailants was in possession of which weapon differently cannot be ruled out. Presence of PW-2 and PW-5 in the house was natural and probable. PW-6 (Chander Kant) has strengthened the version of both these witnesses. He

was among the chasers and was able to apprehend both Vinod and Naresh Sharma. He also deposed about the recovery of the weapons and stolen articles from the possession of Vinod after his apprehension. Vinod did not produce any evidence in defence to show if he was lifted from bus stand Seelampur on 02.06.1992. He did not examine any witness from his place of work to prove his presence on that day in the factory. Neither he nor his family member ever lodged any complaint for his illegal detention. Vinod was charged under Section 25/27 Arms Act and was convicted. Apparently, the knife recovered from his possession was in contravention to the notification whereby possession of a knife without licence is prohibited. It can safely be inferred that the knife recovered from Vinod's possession was deadly in nature to base conviction with the aid of Section 397 IPC. Minor contradictions, inconsistencies or improvements highlighted by appellants counsel are inconsequential as they do not affect the core of the prosecution case. The judgment is based upon fair appraisal of the evidence and requires no interference.

5. The appeal is unmerited and is dismissed. The appellant is directed to surrender before the Trial Court within fifteen days to serve the remaining period of sentence. The Registry shall transmit the Trial Court records forthwith. (S.P.GARG) JUDGE October 23, 2013 sa

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