

Kamal Vs. State

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Court : Delhi

Decided On : Oct-24-2013

Judge : S. P. Garg

Appellant : Kamal

Respondent : State

Judgement :

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

23. d October, 2013 DECIDED ON :

24. h October, 2013 + CRL.A. 288/2000 PRAMOD KUMAR Appellant Through : Mr.Atul Verma, Advocate. versus STATE Respondent Through : Mr.Lovkesh Sawhney, APP. + CRL.A. 262/2000 KAMAL Appellant Through : Mr.M.L.Yadav, Advocate. versus STATE Respondent Through : Mr.Lovkesh Sawhney, APP. CORAM: MR. JUSTICE S.P.GARG S.P.GARG, J.

1. Pramod Kumar (A-1) and Kamal (A-2) impugn a judgment dated 28.02.2000 of learned Additional Sessions Judge in Sessions Case No.138/91, 45/92 & 146/91 arising out of FIR No.149/91 registered at Police Station Badarpur by which A-1 and A-2 were held guilty for committing offences under Sections 397/392/34 IPC and 25 Arms Act and under Section 392/34 IPC respectively. By an order dated 29.02.2000, A-1 and A-2 were awarded Rigorous Imprisonment for seven years with fine `6,000/- and Rigorous Imprisonment for five years with fine

`3,000/respectively. The facts emerging from the record of the case are as under:2. On 28.05.1991 Narinder Singh was robbed of a purse containing `142/-, DTC all-route pass, HMT watch and some papers at about 11.30 P.M. at knife point when he was travelling in TSR No.DL-IR2454 driven by A-2. A-1 and Kanta Giri @ Kanti Giri (since expired) who were made to sit in the said TSR with active connivance of A-2 robbed the complainant. After the incident, the complainant was thrown/pushed out of the TSR and the assailants fled the spot. A police Gypsy happened to reach after about 5/10 minutes and the complainant narrated the incident to police officials on patrolling duty who were able to apprehend the assailants at some distance at his pointing out and recover robbed articles, TSR and knives from their possession. The Investigating Officer recorded Narinder Singhs statement (Ex.PW-3/A) and lodged First Information Report by making endorsement (Ex.PW4/F) thereon. During investigation, statements of the witnesses conversant with the facts were recorded. CrI.A.Nos.288/2000 & 262/2000 After completion of investigation the Page 2 of 8 assailants were charge-sheeted and brought to trial. The prosecution examined four witnesses to establish the appellants guilt. In their 313 statements they pleaded false implication. The trial resulted in conviction of the appellants for offences mentioned previously. Proceedings against Kanta Giri @ Kanti Giri were dropped as abated due to his death.

3. I have heard the learned Additional Public Prosecutor and the learned counsel for the appellants and have examined the record. In their 313 statements, the appellants admitted their presence in the TSR on the date and time disclosed by the complainant. They also admitted their apprehension by the police soon after the occurrence. They pleaded that an altercation/quarrel had taken place with the complainant over sharing of fare. It did not find favour and was outrightly rejected by the Trial Court with cogent reasons. The assailants were named at the first instance by the complainant in the statement (Ex.PW-3/A) and role played by each of them was described with detailed account. The assailants were apprehended by the police on the pointing out of the complainant soon after the incident and the robbed articles were recovered from their possession. The First Information Report was lodged at 12.30 A.M. promptly without delay after the occurrence at 11.30 P.M. FIR in a criminal case is a vital and valuable piece of evidence for the

purpose of appreciating the evidence led at the trial. Early reporting of the occurrence by the informant with all its vivid details gives an assurance regarding truth of the version. In the case of Jail Prakash Singh v.State of Bihar & Anr. 2012 CRI.L.J.2101 the Supreme Court held:

The FIR in criminal case is vital and valuable piece of evidence though may not be substantive piece of evidence. The object of insisting upon prompt lodging of the FIR in respect of the commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of actual culprits and the part played by them as well as the names of eye-witnesses present at the scene of occurrence. If there is a delay in lodging the FIR, it loses the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of large number of consultations/deliberations. Undoubtedly, the promptness in lodging the FIR is an assurance regarding truth of the informants version. A promptly lodged FIR reflects the first hand account of what has actually happened, and who was responsible for the offence in question.

4. The complainant Narinder had no prior acquaintance with the assailants and did not nurture any ill-will or grievance to falsely implicate them in the incident. In his court statement as PW-3 he identified the assailants and proved the version given to the police at the earliest opportunity without major improvement or variation. He stood the test of cross-examination and no discrepancy whatsoever could be elicited to disbelieve/discredit his version. In the cross-examination he revealed that due to fear he left the job and went to his native village in Rajasthan. There are no sound reasons to suspect victim/complainants statement who was not going to be benefited by false implication of the appellants. He was fair enough not to attribute any overt act to A-2. PW-4 (SI Ran Singh and PW-2 (SI Pratap Singh) who succeeded to apprehend the assailants while on patrolling duty corroborated the complainants version in its entirety.

5. Counsel for the appellant-Pramod Kumar urged that the prosecution case cannot be believed as no independent public witness was associated in the investigation and finger prints on the knife were not lifted. He also pointed out that

PW-2 (SI Pratap Singh) falsely claimed recovery of a `50/- currency note from Kanti Giri's possession. In my view these discrepancies highlighted by the counsel are not significant to throw away the cogent and trustworthy testimony of complainant Narinder Singh who had no ulterior motive to fake the incident of robbery. Non-lifting of finger prints from the knife is not fatal. A-1 did not explain the purpose to keep with him a deadly weapon prohibited under Arms Act. He further failed to explain the purpose of his presence in the TSR at that odd hours. Robbed currency notes were recovered from the possession of Kanti Giri who is no more. The Trial Court has dealt with all the relevant contentions of A-1 and has given cogent reasons to discard them. I find no sufficient or good reasons to deviate from the findings which are based on fair appraisal of the evidence.

6. Admittedly, A-2 was a TSR driver who drove TSR No.DL- IR-2454 in which the incident of robbery took place. He was implicated in the incident because the two assailants sitting in the TSR had robbed the complainant by using knives. Learned Additional Public Prosecutor urged that A-2 being TSR driver facilitated the commission of crime by the other assailants as he stopped the TSR on the way. This circumstance itself, in my view, is not sufficient to connect Kamal (A-2) with the commission of crime and to hold that he shared common intention with the other two assailants to rob the complainant. No overt act was attributed/assigned by the complainant to him. There are no allegations that he in any manner assisted the other assailants to rob the complainant or exhorted them to commit the crime. Admittedly, no robbed article or weapon was recovered from his possession at the time of his apprehension. His presence in the TSR being a driver was natural and probable and that per se cannot be a factor to hold him vicariously liable for the acts of other assailants. The Investigating Officer did not collect any evidence during investigation, if A-2 had association with the other assailants prior to the incident. It is not unusual for a TSR driver to allow more passengers to travel to earn more fare. The complainant had not objected to the TSR driver allowing the other passengers to sit in the TSR. PW-3 (Narinder Singh) has given somewhat inconsistent version on this aspect. In the statement (Ex.PW-3/A), he disclosed that when he took the TSR on hire, three boys including the driver were already sitting in it. The said two assailants sat on his left and right sides. However, in the Court Statement, he informed that two boys were made to

sit on the drivers seat. A-2s personal search did not yield recovery of any incriminating article. No adverse inference can be drawn that A-2 being a TSR driver was in hand and glove with other assailants and in any manner facilitated the commission of crime. Since the other assailants were armed with knives possibility of A-2 not to intervene due to fear cannot be ruled out. Since A-2 did not participate in the commission of crime and no overt act was attributed to him and in the absence of any recovery of weapon or robbed article from his possession, his conviction under Section 392/34 IPC cannot be sustained and he deserves benefit of doubt.

7. In the light of the above discussion, the appeal filed by A-2 (Crl.A.No.262/2000) is accepted and his conviction and sentence are set aside. Appeal preferred by A-1 (Crl.A.No.288/2000) is unmerited and is dismissed. A-1 (Pramod Kumar) is directed to surrender and serve the remaining period of sentence. For this purpose, he shall appear before the Trial Court on 6th November, 2013. The Registry shall transmit the Trial Court records forthwith.

8. The appeals stand disposed of in the above terms. (S.P.GARG) JUDGE
October 24, 2013 sa

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