

Sandeep @ Sanjeev Vs. State

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Court : Delhi

Decided On : Nov-28-2013

Judge : Siddharth Mridul

Appellant : Sandeep @ Sanjeev

Respondent : State

Judgement :

IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment reserved on:

25. 11.2013 Judgment pronounced on:

28. 11.2013 CRIMINAL APPEAL No.396/2012 SANDEEP @ SANJEEV Through:
..... Appellant Mr. Arnayak Pathak, Advocate versus STATE Through:
Respondent Mr. Manoj Ohri, APP CORAM: HON'BLE MR. JUSTICE SIDDHARTH
MRIDUL

JUDGMENT

SIDDHARTH MRIDUL, J.

1. Appellant Sandeep @ Sanjeev, by way of the present appeal, has assailed the judgement and order on sentence dated 29.04.2011 and 13.05.2011 respectively whereby the appellant has been convicted under Section 397 of the Indian Penal Code, 1860 (IPC) and Section 25 of the Arms Act, 1959. The appellant has been

sentenced to Rigorous Imprisonment for seven years under Section 397 IPC and for the offence under Section 25 of the Arms Act, he has been sentenced to undergo RI for one year and fine of `1000/-. In default of payment of fine, he has to further undergo Simple Imprisonment for a period of 10 days. Both the sentences have been directed to run concurrently and benefit of Section 428 of the Criminal Procedure Code, 1973 (Cr.P.C.) has been granted to the appellant.

2. The prosecution case in brief is under:(i) On 22.10.2010, a PCR information was received and recorded vide DD No.30A. On receipt of DD No.30A, Sub Inspector Gaje Singh (PW-5) along with Ct. Satish (PW-4) proceeded to Pankha Road flyover, Delhi Cantt, where complainant Raghunath Giri (PW-2) and his associate namely Ram Pravesh Mehto (PW-3) were present. PW-5 SI Gaje Singh recorded the statement (Ex PW-2/A) of the complainant Raghunath Giri (PW-2) to the effect that he and his associate Ram Pravesh Mehto were returning to their house after delivering goods at Sangam Vihar, Delhi. At about 11:00 PM when they reached the middle of Pankha Road Flyover, a young boy sitting on the slab of the flyover immediately came in front of him. The said boy was holding a churra (knife) in his right hand and on the point of the churra asked the complainant to part with his belongings and removed the purse containing Rs 550/- and one diary from the pocket of the pant of the complainant. On seeing this, complainants associate Ram Pravesh, raised alarm and consequently the young boy along with stolen articles tried to flee from the spot but fell on the stairs of the flyover. Thereafter, some public persons detained the young boy at the stairs of the flyover along with stolen belongings. The name of the boy on enquiry was revealed as Sandeep @ Sanjiv, the appellant herein. Complainant further stated that appellant along with churra and purse containing `550/- and diary was handed over to the police on their arrival at the spot. (ii) On the basis of the statement made by Complainant Raghunath Giri, PW-5 SI Gaje Singh prepared the rukka, proved as Ex PW-5/A, and despatched the same through PW-4 Ct. Satish Kumar. Thereafter, FIR No.165/2010, marked as Ex PW-1/A, was registered with PS Delhi Cantt under Section 392 IPC. (iii) The appellant was arrested by PW-5 SI Gaje Singh vide arrest memo Ex PW-2/E and personal search of the appellant carried out vide Ex PW-2/F. The churra was seized vide Ex PW-2/D and the sketch of the churra (Ex PW-4/A) was prepared at the spot. The currency notes worth `550/-

and one diary allegedly stolen by the appellant were seized vide Ex PW-2/C. (iv) On completion of the investigation, the appellant was charged and sent for trial under Sections 392/397/411 IPC. The prosecution in order to prove its case examined five witnesses. None appeared in defence. The statement of the appellant was recorded under Section 313 Cr.P.C. in which he pleaded false implication and innocence. (v) After appreciating the evidence on record, the trial court convicted the appellant as mentioned above.

3. In the present appeal, the learned counsel for the appellant has challenged the impugned judgments on three counts. Firstly, it has been urged that there are material contradictions in testimonies of the two eye witnesses namely Raghunath Giri (PW-2), the complainant himself and Ram Pravesh Mehto (PW-3) which the Trial Court has failed to appreciate. The Learned Counsel pointed out that PW-3 Ram Pravesh in his testimony has stated that after being attacked with the knife by the appellant PW-2 Raghunath Giri fell unconscious. However, at a later stage in his deposition PW-3 states that PW-2 only got frightened but was not unconscious. Accordingly, the testimony of PW-3 deserves to be disbelieved and ignored. Secondly, it is submitted that no public witness have been joined in investigation or produced during the trial as witnesses to the incident. Lastly, Counsel for the appellant has urged that charge under Section 397 IPC cannot be sustained as the prosecution has failed to prove that the weapon (churra) allegedly used by the appellant was a deadly weapon. In this behalf, it is further submitted that no injuries have been caused with the said churra and therefore, the offence would not fall within the ambit of Section 397 IPC.

4. Per contra, the Mr. Manoj Ohri, learned Additional Public Prosecutor has submitted that there are no material discrepancies in versions deposed by the two eye witnesses. Furthermore, the appellant was apprehended at the spot itself and the same is proved beyond doubt by depositions of police witnesses as well as the eye witnesses. The recovery of the churra from the appellant has also been proved. The sketch of the churra proved as Ex PW4/A reveals that the length and breadth of the churra is 34cm and 5 cm respectively. Therefore, the size of the churra as indicated by Ex PW-4/A is sufficient to bring the said weapon within the purview of deadly weapon. As regards charge under Section 397 IPC, the learned

APP submitted that from the language of Section 397 IPC, it is manifest that mere use of deadly weapon is sufficient to attract a charge/conviction under Section 397 IPC and it is not necessary for the prosecution to establish that injury was inflicted on the victim. In this behalf, he has placed reliance on the decision of the Supreme Court in Ashfaq vs. State (Govt. of NCT of Delhi) reported as (2004) 3 SCC116. The learned APP has further invited my attention to the statement made by the appellant under Section 313 Cr.P.C. to contend that contradictory answers have been furnished by the appellant to the questions suggesting his presence at the spot.

5. I have heard the rival contentions and perused the record.

6. The complainant Raghunath Giri was examined before Court as PW-2. In examination-in-chief, PW-2 supported the statement Ex PW-2/A made before the police officials. PW-2 categorically identified the appellant as the person who robbed him on the point of a churra. In cross examination, PW-2 stated that Ram Pravesh (PW-3) was 10-15 paces behind him when he reached the flyover of Pankha Road. There was sufficient electricity on the flyover. He first saw the appellant at a distance of 10 ft. The appellant after snatching his purse stopped for two minutes and when Ram Pravesh reached near him, the appellant was still standing by his side. The appellant was apprehended by public. The appellant had shown churra to Ram Pravesh as well when he reached near the spot. Ram Pravesh ran away from the spot and raised the alarm at which public persons gathered. PW-2 categorically denied the suggestion that the appellant was not present at the flyover and he had not robbed his purse on the point of churra.

7. The other eye witness who deposed about the incident is PW-3 Ram Pravesh Mehto. In examination in chief, PW-3 stated that on 22.10.2010, at about 11:00 PM, he along with PW-2 Raghunath Giri was returning from Sangam Vihar after delivery of goods. PW-3 stated that PW-2 was at some distance from him as they were on two separate rickshaws. On reaching middle of Pankha Road flyover, one boy sitting on the flyover jumped in front of the rickshaw of PW-2. The said boy was holding a big knife which he kept on the chest of PW-2 and asked him to take out the money. PW-3 further stated the boy took away the purse of PW-2 from

back pocket of his pant. Thereafter, PW-2 fell unconscious and when PW-3 reached near PW-2, the boy threatened him with knife and asked him to run away. On this PW-3 raised alarm, on which some motor cyclist and car drivers stopped. 10-20 persons collected at the spot. The boy fell down on the stairs of the flyover and was apprehended by the public and knife from the hand of the boy was snatched. The knife was handed over to PW-3. On seeing public, PW-2 mustered courage who was earlier frightened but not unconscious. When the police arrived at the spot, the boy along with the knife was handed over to the police. At the instance of PW-2, the purse was recovered from the boy. PW-3 identified the appellant as the culprit of the crime. PW-3 identified the knife as well.

8. On being cross examined, PW-3 stated that he was seven paces behind PW-2 and when he reached near PW-2, he saw churra in the hand of the appellant. The appellant threatened him to run away from the spot otherwise he would kill him. On raising alarm public gathered there and nabbed the appellant who was in the process of fleeing away from the spot. There was no one else beside the appellant on the flyover. The appellant along with churra was handed over to the police officials on their arrival.

9. I have gone through the testimony of PW-2 Raghunath Giri and PW-3 Ram Pravesh. In my opinion PW-2 and PW-3 have given a graphic description about the manner in which the incident took place. Their testimonies are credible and trustworthy as no significant contradiction has emerged in their cross-examination either. The ocular testimonies of the both witnesses unerringly point towards the fact that the appellant robbed PW-2 by using a churra on the 22.10.2010. Thus, testimonies of both the eye witnesses establish beyond reasonable doubt that the appellant is the perpetrator of the crime in question. The contention raised by the Counsel appearing on behalf of the appellant regarding material discrepancies in statements of PW-2 and PW-3 deserves to be rejected. There are no material contradictions or inconsistencies in their testimonies. Minor discrepancies are bound to occur. The Supreme Court in Sunil Kumar Sambhudayal Gupta (Dr.) vs. State of Maharashtra, (2010) 13 SCC657 while dealing with the issue of minor inconsistencies in testimonies of witnesses held as under:

Material contradictions:30. While appreciating the evidence, the court has to take into consideration whether the contradictions/omissions had been of such magnitude that they may materially affect the trial. Minor contradictions, inconsistencies, embellishments or improvements on trivial matters without effecting the core of the prosecution case should not be made a ground to reject the evidence in its entirety. The trial court, after going through the entire evidence, must form an opinion about the credibility of the witnesses and the appellate court in normal course would not be justified in reviewing the same again without justifiable reasons. (Vide State v. Saravanan [(2008) 17 SCC587 (2010) 4 SCC (Cri) 580 : AIR 2009 SC152 .) Therefore, it is settled law that witnesses are not required to depose in a parrot-like manner and minor variations in testimonies of eye witnesses which do not go to the root of the prosecution version cannot be a ground to throw out the entire prosecution case. Furthermore, there is no evidence to suggest that the two witnesses bore any ill-will or spite towards the appellant so as to falsely implicate him in a criminal offence. It may be true that PW-3 Ram Pravesh has in early part of his statement stated that PW-2 fell unconscious after the incident from which he retracted later on. But according to me this is not a material contradiction which shakes the core prosecution case. The deposition of PW-3 was recorded nearly six months after the incident. Human memory is not infallible and it tends to fade away with time. In any case it is a minor inconsistency which cannot be made the ground to reject the entire prosecution version. It is also relevant to note that the appellant was arrested at the spot along with the knife and stolen articles. The same is proved beyond reasonable doubt by testimonies of police officials namely PW-5 SI Gaje Singh and PW-4 Ct. Satish. I have gone through their depositions and find the same to be reliable. No material contradictions have been cited in this behalf. Therefore, in view of above, it can be concluded without reasonable doubt that the appellant was the author of the crime alleged.

9. As regards the contention of non-joining of public witnesses during investigation, it is noted that the Supreme Court in a number of decisions has held that members of public do not want to be dragged into criminal trials because of the protracted nature of such trials and undue harassment and therefore, non joining of public witnesses would not be fatal to the prosecution case in case

testimonies of police witnesses/eye witnesses otherwise inspire confidence and are worthy of credence.

10. Now advertent to the contention regarding use of deadly weapon, it is pertinent to note that in *Charan Singh vs. The State* 1988, CrI. L.J.

NOC28(Delhi) it was held that in order to bring home a charge under Section 397 IPC, the prosecution must produce convincing evidence that the knife used by the accused was 'deadly weapon'. What would make a knife deadly is its design or the method of its use such as is calculated to or is likely to produce death. It is, therefore, a question of fact which is required to be proved by the prosecution that the knife used by the appellant was a 'deadly weapon' and in absence of such evidence and particularly non-recovery of the weapon, would certainly bring the case out of the ambit of Section 397. In the case at hand there is ample evidence of the fact that knife alleged to be used by the appellant was not a small pen knife. In fact, PW-3 Ram Pravesh has testified to the effect that the appellant was holding a big knife. The sketch of the knife Ex PW-4/A shows its length as 34 cm and it has got a blade of 5cm. Thus, from the size of the knife it is apparent that if such a knife is used to cause injuries on vital parts of the body, it can definitely produce injuries sufficient to cause death. In view of above discussion, the prosecution has successfully established that the weapon of offence recovered from the appellant would fall within the ambit of a deadly weapon.

11. The last contention that the knife in question was not used by the appellant as no injuries have been caused to the complainant victim cannot be sustained. In *Ashfaq vs. State (Govt. of NCT of Delhi)*, (2004) 3 SCC116 the Supreme Court while interpreting the word uses employed in Section 397 IPC has held as under:7. So far as the contention urged as to the applicability of Section 397 IPC and the alleged lack of proof of the necessary ingredients therefor is concerned, it proceeds, in our view, upon a misconception that unless the deadly weapon has been actually used to inflict any injury in the commission of the offence as such, the essential ingredient to attract the said provision could not be held to have been proved and substantiated. We are of the view that the said claim on behalf of the appellants proceeds upon too narrow a construction of the provision and meaning

of the word uses found in Section 397 IPC. As a matter of fact, this Court had occasion to deal with the question in the decision reported in Phool Kumar v. Delhi Admn. [(1975) 1 SCC797:

1975. SCC (Cri) 336 : AIR 1975 SC905 and it was observed as follows: (SCC p. 800, para 6)

6. Section 398 uses the expression armed with any deadly weapon and the minimum punishment provided therein is also seven years if at the time of attempting to commit robbery the offender is armed with any deadly weapon. This has created an anomaly. It is unreasonable to think that if the offender who merely attempted to commit robbery but did not succeed in committing it attracts the minimum punishment of seven years under Section 398 if he is merely armed with any deadly weapon, while an offender so armed will not incur the liability of the minimum punishment under Section 397 if he succeeded in committing the robbery. But then, what was the purport behind the use of the different words by the legislature in the two sections viz. uses in Section 397 and is armed in Section 398. In our judgment the anomaly is resolved if the two terms are given the identical meaning. There seems to be a reasonable explanation for the use of the two different expressions in the sections. When the offence of robbery is committed by an offender being armed with a deadly weapon which was within the vision of the victim so as to be capable of creating a terror in his mind, the offender must be deemed to have used that deadly weapon in the commission of the robbery. On the other hand, if an offender was armed with a deadly weapon at the time of attempting to commit a robbery, then the weapon was not put to any fruitful use because it would have been of use only when the offender succeeded in committing the robbery.

8. Thus, what is essential to satisfy the word uses for the purposes of Section 397 IPC is the robbery being committed by an offender who was armed with a deadly weapon which was within the vision of the victim so as to be capable of creating a terror in the mind of the victim and not that it should be further shown to have been actually used for cutting, stabbing, shooting, as the case may be. (Underlining added) Thus, from the ratio in Ashfaq (supra), it is clear that for the purpose of

attracting Section 397 IPC actual use of the deadly weapon is not required. Even brandishing and showing the deadly weapon so as to instil fear and threat in the mind of the victim so that he does not resist, fearing danger, is sufficient. In the present appeal, both the eyewitnesses have stated with conviction that the appellant threatened PW-2 Raghunath Giri to part with his belongings at knife point which frightened and terrorised him. Therefore, from the ocular evidence of PW-2 Raghunath Giri and PW-3 Ram Pravesh it is established beyond any doubt that the appellant in committing robbery used a knife which was a deadly weapon in the instant case. Therefore, the appellant has been rightly convicted and sentenced under Section 397 IPC.

12. Therefore, in the facts and circumstances of the case, I find no merit in the present appeal. The appeal is dismissed and the impugned judgment and order on sentence are accordingly upheld.

13. A copy of this order be sent to the Superintendent, Central Jail, Tihar for necessary information. SIDDHARTH MRIDUL (JUDGE) NOVEMBER28 2013 dn

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