

Deepak Anand Vs. State

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Court : Delhi

Decided On : Dec-13-2013

Judge : G. S. Sistani

Appellant : Deepak Anand

Respondent : State

Judgement :

\$~R-28. * IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.A. 243/2005
% Judgment dated 13.12.2013 DEEPAK ANAND Through : Appellant
Mr.Varun Tankha, Adv. versus STATE Through : Respondent Mr.Feroz Khan
Ghazi, Adv. CORAM: HON'BLE MR. JUSTICE G.S.SISTANI G.S.SISTANI, J
(ORAL) 1. The appellant is unserved. On the last date of hearing, counsel
appearing in the connected matter had stated that the appellant, Deepak Anand,
has died. Mr.Ghazi, learned counsel for the State, submits that it could not be
verified as to whether the appellant is alive or not.

2. Connected appeal, being Crl.A.271/2005, has already been heard and disposed
of by this Court vide order dated 11.12.2013. Accordingly, I deem it appropriate to
appoint Mr.Varun Tankha, Advocate, (Mobile No.9899991976), who is present in
Court, to appear as an Amicus Curiae on behalf of the appellant in this matter.

3. Present appeal, filed by the appellant under Section 374 Cr.P.C., is directed
against the judgment dated 4.3.2005 and order on sentence dated 5.3.2005

whereby the appellant has been sentenced to undergo RI for two years with fine of Rs.5,000/- for the offence punishable under Section 392 IPC and in default of payment of fine to further undergo SI for two months. The appellant was further directed to undergo RI for six months under Section 411 IPC with fine of Rs.1,000/- for the offence punishable under Section 411 IPC and in default of payment of fine to undergo further SI for fifteen days.

4. Brief facts of the case, as noticed by the trial court, are as under. On receipt of DD No.2A dated 2.11.03 SI. K.K. Mishra along with Baney Singh reached the place of occurrence where PCR Van Z71 was present and its in-charge produced Complainant Ombir Singh before them. The said Ombir Singh stated that he works at an Export factory in Kirti Nagar and on 1.11.03 he was on duty from 9.30 A.M. To 5.30 P.M., thereafter he had worked overtime and finished his duty at about 1 A.M. in the night. He along with one Jainuddin Ansari were going home on their respective bicycles. When they reached near India Govt. Press four boys on two motor cycles came towards them from the wrong side of the road. Two boys riding one of the Motor Cycles stopped their Motor Cycle in front of them. One of those boys was 58 tall and fair complexioned. The other person was about 6 ft. and also fair complexioned. The shorter person felt the pocket of Jainuddin Ansari and asked him to leave. The taller boy caught hold of complainant by his hand and placed a knife on his neck. The other person took out Rs.210/- his I-Card, Election Card and Telephone Diary from his pocket. He also removed his wrist watch of the make Rado. The boys on the second Motor Cycle asked them not to do so. The complainant then noticed PCR Van and signaled it to stop and narrated them the occurrence. The PCR officials made him sit in their Gypsy and when they returned to the spot both the boys were in the process of robbing another cyclist. The complainant pointed out to the PCR officials towards the boys to be their robbers. They both ran away leaving behind their Motor Cycle bearing No.DL1 L4390 The other two Motor Cycle riders also ran away. The other victim who was still present at the spot revealed his name as Umesh Kumar. He stated that he had been robbed of Rs.420/- and certain documents.

3. On this statement FIR u/s.392/397/34 IPC was got registered. The ownership of Motor Cycle bearing No.DL1 L4390 was verified and found to be that of one S.C.

Anand r/o. 7E LIG Flat Hari Nagar. The complainant along with the IO went to the house of above said Anand where accused Deepak Anand was identified by the complainant and he was arrested. He also got recovered some robbed articles. Thereafter some robbed articles were recovered from the custody of Aman Grover. He was also arrested, Challan u/s. 392/397/411 IPC r/w. 34 IPC was framed against both the accused persons.

4. After complying with provisions of Section 207 Cr.P.C. case was committed to the court of Sessions which in term was assigned to the court.

5. Charge was framed against both the accused u/s.392/397 r/w. 34 IPC and also u/s.411 IPC. Both the accused pleaded not guilty and claimed trial.

6. Prosecution in support of its case examined 11 witnesses and closed the P.E.

5. Learned Amicus Curiae appearing on behalf of the appellant submits that the impugned judgment and order on sentence are contrary to the facts and against the law; the same has been passed without any application of judicial mind and in haste; and the judgment suffers from surmises and conjectures. Amicus Curiae further submits that the learned trial court has failed to appreciate that the prosecution has not been able to prove its case beyond any shadow of doubt, which is the basic principle of criminal jurisprudence. In support of this contention learned Amicus Curiae has relied upon Swarn Singh Ratan Singh v. State of Punjab, reported at AIR 1957 SC637 wherein the Apex Court has held that in criminal cases mere suspicion however, strong cannot take the place of proof. The court must be satisfied that the case of the prosecution is not only substantially proved, but the guilt of the accused has also been established beyond reasonable doubt. It is only when the prosecution has proved its case beyond reasonable doubt the conviction cannot be disturbed in appeal.

6. Learned Amicus Curiae for the appellant submits that the appellant has been falsely implicated in this case. It is further submitted that the trial court has failed to consider that the public witnesses i.e. PW-3, PW-6 and PW-7 have not supported the case of the prosecution and they have not identified the appellant in Court.

7. Learned counsel for the State submits that the motorcycle, which was used for the commission of crime, was seized at the spot and the same belongs to the brother of the appellant. Counsel further submits that the robbed articles were recovered from the possession of the appellant on the very next morning and the appellant was unable to explain the source of articles including a wrist watch.

8. I have heard learned counsel for the parties and considered their rival submissions. Before dealing with the arguments of the parties it would be appropriate to examine the testimonies of material witnesses.

9. In this case, the prosecution has examined 11 witnesses. PW-1, HC Raj Pal Singh, P.S. Mayapuri, has proved the FIR No.266/2003 being Exhibit PW-1/B.

10. PW-2, SI Raghbir Singh, has testified that he was posted in PCR and was on duty when Ombir Singh signalled him to stop PCR vehicle and he informed that two persons had robbed him of his cash and watch. PW-2 took Ombir in his PCR vehicle to the place of occurrence where two boys were found standing, near a motor cycle bearing No.DL1 L4390 and the said two boys were wrongfully restraining a cyclist. On seeing the Police gypsy both the boys started running. PW-2 informed the control room about the incident. The motorcycle was left at the spot and enquiries were made.

11. PW-3, Ombir, has testified that on 2.11.2003 he was returning from his factory at about 1.30 a.m. along with Jainuddin Ansari. When they reached the Government Press beyond Mayapuri Chowk, four boys on two motor cycles came near them and they removed his wrist watch and Rs.210/- from his pocket, however, PW-3 could not identify the boys as it was dark. It may be noticed that this witness has not supported the case of the prosecution.

12. Testimony of PW-4 is material and relevant, and the same is reproduced below:

2. On 2.11.2003, I was posted at P.S. Mayapuri Delhi on that day I remained with IO of this case. During the course of investigation I alongwith ASI Prakash Chand complainant Ombir and Umesh reached the house of Surinder Aggarwal i.e.

H.No.1447, Shastri Nagar, Delhi where Surinder Aggarwal met us and I.O. verified regarding the motor cycle bearing no.DL1L4390 and who told to IO that he has already sold the said motor cycle to Graduate Scooter Palace. Thereafter we went to M/s.Gruaduate Scooter Palace at Rajouri Garden, Delhi. From where it was verified by the IO that the said motor cycle was sold to one S.C. Anand r/o. JC-7E - LIG Flats, Hari Nagar, Delhi. Thereafter we reached at the said house, where Deepak Anand present in the court was found present at his house, and he was identified by Ombir and Umesh Kumar who was also with us. Umesh also told that accused Deepak had also robbed his Rs.420/-. Ombir also told that his watch and Rs.210/- were also snatched. Thereafter, we went to house of Aman Grover at H.No.B-3/12, Rana Partap Bagh, Delhi as Deepak has disclosed his name and address in his disclosure statement, where Ombir and Umesh also identified the accused Aman Grover and Ombir told that he is the same person who had put the knife on my neck and robbed my watch and Election Card and telephone diary. The articles were seized by the I.O. vide memo Ex.PW-3/F, G respectively. I signed at point B on the same respectively. Accused also pointed out the spot, pointing out memo was prepared by the IO and same is Ex.PW-4/A. Disclosure statement of both the accused was recorded by the IO vide memo Ex.PW-3/D and 3/E respectively. Both accused persons were also arrested and personal search was conducted by the IO vide memo Ex.PW-3/D and C respectively, I signed at point B on the same respectively. I can identify the case property the same is produced and shown to the witness. Witness correctly identify watch make Rado Ex.P1, one Election card Ex.P2 and telephone diary Ex.P3. Currency notes Rs.210/- in the denomination of note of Rs.100/- each and one of Rs.10/- which are Ex.P-4 collectively. At this stage Rs.420/- shown to the witness which is correctly identified as Rs.400/- in the denomination of Rs.100/- each and two coins of Rs.5/-, three coins of Rs.2/- four coins of Rs.1/-denomination which are exhibited collectively as Ex.P5. Both the accused present in the court are the same who were arrested on the instance of complainant Ombir and Umesh. xxxxxxxxxxxx by Sh.S.C. Chakrawarty, Adv. for accused Aman Grover. I was on duty at 1.30 A.M. when the call was received by the IO. I remained on duty with the I.O. I remained on duty with the I.O. and on investigation of present case till about 9.00 p.m. on 2.11.2003. Rs.210/- and Rado watch was got recovered from Aman and sealed

pulanda thereof was made by IO. Thereafter Rs.420/- were recovered and same were also sealed by the IO. Same were sealed with the seal of KKM. The recovered articles were kept in a cloth pulanda. The seal was of brass. Again said the articles were sealed collectively. The witness has been asked four times as to where the articles were sealed by the IO but he has not been able to answer the question. It is incorrect to suggest that I did not join the investigation and no articles were seized in my presence. No knife was recovered in my presence from the accused persons. xxxxxxxxxxxx by Sh.Raman Rai Handa, Adv. for accused Deepak Anand. I cannot tell the exact time when I reached Shastri Nagar alongwith the I.O. but it was during the day. We remained at Shastri Nagar for about half hour to 45 minutes. We must have reached Graduate Scooter Palace, Rajouri Garden at about 1:30 in the afternoon. We stayed at that place for about one hour. I.O. had recorded statement of Prop. Of Graduate Scooter Palace. I do not know the name of said person. It is wrong to suggest that I have not joined the investigation and that I am deposing falsely.

13. PW-5, Ct. Bani Singh, had deposed that on 4.2.2004, on receipt of the information, he had gone along with SI K.K. Mishra at the spot where a motorcycle was parked and one person was present there. The I.O. recorded the statement of the complainant. Thereafter the I.O. prepared rukka and handed over the same to PW-5 for registration of FIR.

14. PW-6, Umesh Kumar, has testified that on the date of the incident, when he reached behind Metal Forging Factory he was stopped by two persons on a motorcycle. They hit his cycle by their motorcycle and took away Rs.420/- from his pocket. It may be noticed that this witness has also not supported the case of the prosecution and he did not identify the accused persons in the Court.

15. PW-7, Jainuddin Ansari, also did not identify the accused persons in the court and also did not support the case of the prosecution.

16. The trial court has convicted the appellant on the basis of circumstantial evidence.

17. In this case, the motorcycle, which was used by the appellant and the coaccused, was recovered at the spot of the incident. The testimony of PW2, SI Raghuvir Singh, would show that on the day of incident he was on duty at PCR, Zebra-VII. While he was on patrolling duty at Mayapuri road, Ombir Singh had signalled to stop PCR vehicle, who informed him that he had been robbed of his cash and a wrist watch. PW-2 accompanied Ombir Singh to the spot of the incident where two boys were present. On seeing the PCR gypsy the said boys slipped away leaving behind the motorcycle, which belonged to the brother of the appellant herein.

18. Although, PW-8, the brother of the appellant, has not supported the case of the prosecution but he has admitted that he is the owner of the motorcycle bearing registration no.DL1L4390 PW-8 has also testified that he was called to the police station and his signatures were obtained on certain papers. Thereafter his motorcycle was released on superdari from the court.

19. The motorcycle was found at the place of occurrence, which belonged to the brother of the appellant herein, which finds corroboration by the evidence of the brother of the appellant, who has admitted that he is the owner of the motorcycle. The evidence of PW-2 read with evidence of PW-6 would show that they were present at the spot of the incident soon after the incident took place. There is no reason to disbelieve the testimony of these two witnesses as also the testimony of PW-10, ASI Prakash, who had joined the investigation on 2.11.2003 for verifying the true ownership of motorcycle.

20. The trial court has rightly taken into consideration that no complaint regarding theft of motorcycle was lodged by the owner and nor it is the case of the appellant or his brother that the said motorcycle had been borrowed by some other person. Stolen articles were recovered from the appellant the very next morning which is a strong circumstance against the appellant.

21. In the case of Shri Bhagwan vs. State of Rajasthan, reported at (2001) 6 SCC296 the Supreme Court of India has observed as under:

The possession of the fruits of the crime, soon after it has been committed, affords a strong and reasonable ground for the presumption that the party in whose possession they are found is the real offender, unless he can account for such possession in some way consistent with his innocence. It is founded on the obvious principle that if such possession had been lawfully acquired, that party would be able to give an account of the manner in which it was obtained. His unwillingness or inability to afford any reasonable explanation is regarded as amounting to strong, selfinculpatory evidence. If the party gives a reasonable explanation as to how he obtained it, the courts will be justified in not drawing the presumption of guilt. The force of this rule of presumption depends upon the recency of the possession as related to the crime and that if the interval of time be considerable, the presumption is weakened and more especially if the goods are of such kind as in the ordinary course of such things frequently change hands. It is not possible to fix any precise period in this regard. The Supreme Court has drawn similar presumption of murder and robbery in a series of decisions especially when the accused was found in possession of these incriminating articles and was not in a position to give any reasonable explanation.

22. In view of the testimony of PW-2, I find there is no infirmity in the judgment and order on conviction of the trial court. The appeal is without any merit and the same is dismissed.

23. Amicus Curiae shall be paid fee as per the Schedule of Delhi High Court Legal Services Committee. G.S.SISTANI, J DECEMBER msr CRL.A.No.243/2005

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