

Deepak Vs. State

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Court : Delhi

Decided On : Jan-17-2014

Judge : V. K. Jain

Appellant : Deepak

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % Date of Decision:

17. 01.2014 + CRL.A. 166/2010 DEEPAK STATE Appellant Through: Mr Medhanshu Tripathi, Adv. versus Respondent Through: Mr Feroz Khan Ghazi, APP CORAM: HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J.

(Oral) On 28.06.2004, the complainant Manoj, who at that time used to work with CMS Security Limited and collect cash from different organizations was robbed of Rs 4,00,000/- on Press Enclave Road at about 2.00 PM. Two persons travelling on a motorcycle were involved in the robbery. The case of the prosecution is that on 29.06.2004, three persons, travelling in a car, were stopped on suspicious, were interrogated and arrested and pursuant to the disclosure statements made by two of them, namely, Manjit Singh and Naresh Kumar, Rs 10,000/were recovered. This

is also the case of the prosecution that the third person Rishi Pal took them to his house No.7, Humayunpur and got recovered a raxin bag, containing Rs 30,000/- and I-card of the complainant Manoj. One bloodstained knife was also alleged to have been recovered at the instance of one of them, namely, Manjit Singh. The number plate of the motorcycle involved in the robbery was alleged to have been recovered from the possession of another accused namely Shiv Shakti and this is also the case of the prosecution that another sum of Rs 10,000/- was recovered from his house. The prosecution claims that the appellant Deepak Kumar was arrested in another case registered at Police Station New Friends Colony, where, he made a disclosure statement with respect to his involvement in the above-referred case of robbery. He was arrested in this case and the case set out by the prosecution is that he led the police party to house No.7, Humayunpur and got recovered a bag containing Rs 4,00,000/-. All the accused were charged under Sections 395/397 of IPC.

2. Vide impugned judgment dated 16.01.2010, all the accused except the appellant Deepak were acquitted. The appellant was convicted under Section 411 of IPC and was sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs 25,000/- or to undergo SI for six months in default.

3. PW-1 Constable Ramesh Chand is a witness to the recovery of Rs 30,000/- from house No.7, Humayunpur at the instance of Rishi Pal, a resident of the aforesaid house who is stated to be cousin of the present appellant. According to him, the aforesaid recovery was effected on 28.06.2004. In cross-examination by the counsel for Rishi Pal, he expressly stated that it was a two floor house and search in other parts of the house were also made. This would clearly means that the whole of house No.7, Humayunpur was searched on 29.06.2004 and no cash other than Rs 30,000/- which Rishi Pal got recovered from the first floor were found. I fail to appreciate how a sum of Rs 4,00,000/- lying in a bag under a cot could have been found on 11.08.2004, i.e., after about 1 months, particularly when they were not found concealed anywhere. It is highly improbable that the police officers searched the entire house looking for the cash on 29.06.2004, but did not notice the bag lying under a cot and containing cash amounting to Rs 4,00,000/-. According to SI Manish Joshi, the iron box in which the bag had been kept was not

locked. Therefore, in ordinary course of conduct, the police officers looking for the cash would certainly have opened the box lying on the ground floor and checked the bag kept in the said box.

4. Even otherwise, it would be highly unrealistic to believe that despite the police searching their house and recovery of Rs 30,000/- on 29.06.2004, the appellant would have kept Rs 4,00,000/- stolen from the possession of the complainant in that very house and in an unlocked box.

5. The learned APP submits that since the appellant Deepak was not in Delhi before he was arrested by the staff of Police Station New Friends Colony on 10.08.2004, he may have brought the cash to the house after Rs 30,000/- had already been seized at the instance of Rishi Pal. I, however, find no merit in this contention for two reasons, firstly there is no evidence that the appellant was absconding and was out of Delhi before he was arrested in the case registered vide FIR No.375/2004 of Police Station New Friends Colony. Moreover, even if he was not living in the aforesaid house, he could not have been unaware of the police searching their house and recovering Rs 30,000/- at the instance of his cousin Rishi Pal on 29.06.2004. Therefore, he could not have been such a foolish as to keep Rs 4,00,000/- in the same house which the police was likely to visit again and again, searching for him. This is more so, when he knew that his cousin Rishi Pal was in police custody and could reveal his name to the police, whereupon the police was bound to search his house in an attempt to arrest him and recover the stolen property. The case of the prosecution is that Rishi Pal, on interrogation by police in this case, had disclosed the involvement of the appellant Deepak in the robbery and had also stated that part of the robbed money was with him. Being in possession of this information, the police officers, who recovered Rs 30,000/- from house No.7, Humayunpur on 29.06.2004 would certainly have searched the entire house, including the ground floor, where the appellant Deepak is stated to be residing and not only its first floor. The recovery of Rs 4,00,000/at the instance of the appellant from house No.7, Humayunpur in these circumstances become highly doubtful.

6. If the appellant Deepak came to the house after recovery of Rs 30,000/- on 29.06.2004, he in the normal course of conduct, would not have kept the cash amounting to Rs 4,00,000/- in the same house and that too with the paper slips which would link the aforesaid cash with the robbery intact on them. He knew that the police was looking for him, his cousin brother was already in police custody, and the police had already seized Rs 30,000/- from their house. Therefore, he would keep the cash at some place other than the house No.7, Humayunpur and would in all probability also remove the paper slips which would establish the identity of the currency. For the reasons stated hereinabove, the appellant is given benefit of doubt and is hereby acquitted. V.K. JAIN, J JANUARY17 2014 BG

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