

Vishal Vs. the State of Nct of Delhi

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Court : Delhi

Decided On : Jan-20-2014

Judge : S. P. Garg

Appellant : Vishal

Respondent : The State of Nct of Delhi

Judgement :

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

15. h JANUARY, 2014 DECIDED ON :

20. h JANUARY, 2014 + CRL.A. 648/2011 & CRL.M.B. 647/2013 VISHAL Through :Appellant Ms. Garima Bhardwaj, Advocate with Ms.Naiem Jahan Heena, Advocate. VERSUS THE STATE OF NCT OF DELHI .Respondent Through : Mr.M.N.Dudeja, APP. CORAM: HON'BLE MR. JUSTICE S.P.GARG S.P.GARG, J.

1. Vishal (the appellant) seeks to question his conviction for offences under Section 392 read with Section 397 IPC and 27 Arms Act by a judgment dated 04.08.2010 in Sessions Case No.56/10 arising out of FIR No.128/10 PS Sarai Rohilla. By an order on sentence dated 07.08.2010, he was awarded RI for seven years under Section 392 IPC read with Section 397 IPC and SI for three years under Section 27 Arms Act. The factual matrix from which the appeal germinates is as under :

2. On 21.04.2010 at about 12.15 P.M. Surender Kumar boarded a private bus No.3553 on route No.231 from Daya Basti to go Deputy Ganj Market to purchase a dinner set for the marriage of his daughter. He had ` 16,500/- in his pocket. He was robbed of ` 16,500/- by four assailants in the heavily crowded bus. On raising alarm, the assailants alighted from the bus and were chased by the complainant. He was able to apprehend the appellant who attempted to resist by taking out a buttandar knife out of his possession. The complainant overpowered him and informed the police. The Investigating Officer lodged First Information Report after recording his statement (Ex.PW-1/A). Efforts were made to find out the appellants associates but in vain. Statements of the witnesses conversant with the facts were recorded and after completion of the investigation, a charge-sheet was filed against the appellant, in which he was duly charged and brought to trial. The prosecution in all examined six witnesses. In 313 statement, the appellant denied complicity in the crime and alleged false implication. The trial resulted in his conviction as aforesaid.

3. I have heard the learned counsel for the parties and have scrutinized the trial court record minutely. The police machinery was set in motion when Daily Diary (DD) No.36B (Ex.PW-2/B) was recorded at 13.30 hours at PS Sarai Rohilla. The contents of the DD entry, however, reveal that it was an information about a quarrel at jhuggi No.G-307, Daya Basti, RPF Line, Machhi Market. The name of the informant does not find mention in it. This information was recorded on getting intimation from PCR. However, during trial, no such PCR official was examined. The occurrence took place at about 12.15 P.M. and soon thereafter, the appellant was allegedly apprehended at the spot and the complainant informed the police at 100. Complainant did not disclose in the statement (Ex.PW-1/A) if PCR officials had arrived at the spot or that the accused along with weapon was handed over to them. Endorsement (Ex.PW-3/A) over Ex.PW-1/A does not reveal presence of any PCR official at the time of arrival of the Investigating Officer from the local police. The complainant did not offer any explanation as to why the accused apprehended at the spot with a crime weapon was not handed over to PCR officials who allegedly arrived at the spot after about 20 minutes of the occurrence. The local police arrived after about 10 /15 minutes thereafter. In the disclosure statement (Ex.PW-1/D), it was recorded that the appellants associates used to contact him

(the appellant) to pick-pockets in the buses on his mobile. However, no such mobile phone was recovered from the appellants possession soon after his arrest. Disclosure statement (Ex.PW-1/D) records that the mobile phone in possession of the appellant fell on the ground after the crime. However, no such mobile phone was recovered by the police at any stage of the investigation. Despite seeking police remand, the Investigating Agency was unable to ascertain the identity of the appellants associates and apprehend them. The robbed cash could not be recovered. The Investigating Officer did not verify as to from where the complainant had arranged ` 16,500/-. The exact location where occurrence took place could not be ascertained. No independent public witness was associated at any stage of the investigation. It has come on record that the appellant was beaten by the public and was medically examined. Despite availability of the public persons none of them was joined without any plausible reason.

4. The complainant in his earliest version given to the police in his statement (Ex.PW-1/A) disclosed that when he raised alarm in the bus, four assailants alighted and started fleeing the spot. He was able to apprehend one of the assailants who took out a knife. The said boy was overpowered and a buttandar knife was snatched from his right hand. The words khuli halat mei seems to have been inserted subsequently in the statement (Ex.PW-1/A). The complainant did not describe the features of the other associates / companions of the appellant who had pushed him in the bus and had robbed him of cash ` 16,500/-. In his Court statement as PW-1, the complainant did not attribute any specific role to the each assailants and in vague terms disclosed that the four individuals pushed him and asked him to keep hands up on the pretext of rush in the bus. He vaguely stated that they forcibly took out ` 16,500/- from the inner pocket of his wearing pant. He did not describe as to what force was used and in what manner the currency lying in his inner pocket were taken out by any specific individual. No specific and definite role was attributed to the appellant in depriving him of cash from his pocket. The appellant was not apprehended while taking out the currency notes from the pocket of the complainant. It is unclear as to when and at what place the bus stopped and the four assailants alighted from the bus. Driver and conductor or any other passenger in the bus was not associated at the time of conducting search of the accused. After his apprehension, no instrument to

pickpocket was recovered from his possession. The appellant who was allegedly armed with a deadly weapon did not use it to avoid his apprehension. No injuries with knife were inflicted to the complainant or the public giving beatings to him. The complainant himself disclosed that after that the appellant was taken to Murga market, he was made to sit there. He did not attempt to abscond from there. Mere presence of the complainant inside the bus without any specific / overt act attributed to him is not enough to prove or establish his guilt particularly when no robbed article was recovered from his possession. It is true that PW-1 (Surender Kumar) had no ulterior motive to falsely implicate the accused with whom he had no prior animosity. But possibility of mistaken identity cannot be ruled out. There were four individuals who allegedly were instrumental in committing the crime. The police was unable to ascertain the nexus of the present appellant with the other three who fled the spot. Sole testimony of the complainant is not safe to convict the appellant in the absence of any corroboration in the light of various discrepancies and infirmities in the prosecution case. Delay in lodging the FIR has not been explained.

5. Besides above, conviction with the aid of Section 397 IPC was not proper as no deadly weapon was used by the appellant at the time of committing robbery. The incident of alleged robbery had taken place inside the bus where none of the offenders used any deadly weapon to overawe or scare the complainant. The appellant was not found in possession of any robbed / stolen article and did not use knife (a) in order to the committing of the theft; or (b) in committing the theft; or (c) in carrying away or attempting to carry away property obtained by theft, to attract Section 390 IPC when theft becomes robbery under above noted circumstances. The knife was allegedly taken out by the appellant when he was being chased to avoid his apprehension. In *Queen Empress vs. Beni*, (1901) ILR23All 78, wherein Henderson, J.

Held that where several persons were found endeavouring to break into a house, and some of them, being armed, used violence, but only in attempting to escape being arrested it was held that they could not properly be convicted under Section 397 read with Section 511 of the Indian Penal Code.

6. In the light of above discussion, the appeal is allowed. Conviction and sentence passed by learned Addl. Sessions Judge are set aside. The appellant is acquitted of the charge. He be set at liberty forthwith, if not required in any other case. Trial Court record be sent back forthwith. Pending application also stands disposed of. (S.P.GARG) JUDGE JANUARY20 2014/tr

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