

Deepak @ Rohit Vs. State

Deepak @ Rohit Vs. State

SooperKanoon Citation : sooperkanoon.com/1126507

Court : Delhi

Decided On : Feb-13-2014

Judge : S. P. Garg

Appellant : Deepak @ Rohit

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI RESERVED ON : February 12, 2014 DECIDED ON : February 13, 2014 + CRL.A. 1444/2011 DEEPAK @ ROHIT Through : Appellant Mr.Bhupesh Narula, Advocate. versus STATE Through : Respondent Mr.M.N.Dudeja, APP. SI Manu Kumar, PS Pandav Nagar. CORAM: MR. JUSTICE S.P.GARG S.P.GARG, J.

1. Deepak @ Rohit is aggrieved by his conviction under Section 392 read with Section 397 IPC by a judgment dated 23.11.2010 in Sessions Case No.112/10 arising out of FIR No.185/10 registered at Police Station Pandav Nagar. By an order dated 25.11.2010, he was awarded RI for seven years with fine `500/-.

2. The prosecution case, in brief, as projected in the charge- sheet was that on 30.05.2010 when complainant-Rakesh Kumar was travelling in a private bus, at about 1.45 p.m. at bus stand, Block 13, Trilok Puri, the appellant and his associate (not arrested) in furtherance of common intention robbed him of `4,000/- and a mobile phone make Nokia by using a knife and inflicted injuries to him. On his

raising an alarm, the appellant was apprehended by the public at some distance and given beatings. Lalit Kumar (PW-4) made a telephone call at 100 and the police machinery came into motion by recording Daily Dairy (DD) No.16A (Ex.PW-8/A), at 13.59 hours at Police Station Pandav Nagar. The investigation was assigned to SI Krishan Pal who with Const.Munesh Kumar went to the spot. The victim was taken to Lal Bahadur hospital, Khichripur, Delhi and was medically examined. The investigating officer lodged First Information Report after recording victims statement (Ex.PW-1/A). Statements of witnesses conversant with the facts were recorded. Efforts were made to find out the appellants associate but in vain. After completion of investigation, a charge-sheet was filed in the court; the accused was duly charged and brought to trial. The trial resulted in the conviction for the offences mentioned previously.

3. Appellants counsel urged that it was a case of mistaken identity as the appellant was apprehended at a distance of 200-300 meters away from the bus in which the complainant was travelling. The complainant had only a fleeting glimpse of the culprit and was not in a position to identify and recognize him. No robbed article was recovered from his possession. MLC of the accused whereby he sustained head injuries was not placed on judicial file. Learned Additional Public Prosecutor urged that the complainant and PW-4 (Lalit Kumar) have implicated the appellant who was arrested at the spot and without valid reasons, their reliable testimony cannot be discarded or doubted.

4. The appellant was apprehended at a short distance after he alighted from the private bus in which he and his associate were travelling soon after the incident by the public when complainant raised an alarm. The occurrence took place during day-time at about 01.45 p.m. on 30.05.2010. The complainant was not only robbed of his mobile and cash `4,000/- but was also injured. Apparently, he had ample and sufficient opportunity of seeing the accused with whom he had direct confrontation and there was no chance of mistaken identity. In the statement (Ex.PW1/A) given to the police at the first instance, the complainant gave detailed account of the occurrence and identified Deepak @ Rohit (the appellant) to be the assailant who was caught hold by public immediately after the incident. In his Court statement, he fully proved the version given to the police and identified the

appellant for robbing him of `4,000/- and mobile and also causing injuries with a knife on his person when he was present at the front door of the bus to get-down at bus stand 13 Block, Trilok Puri. He further deposed that the robbed articles were handed over by the appellant to his associate who succeeded to flee the spot. In the crossexamination, no material discrepancies emerged to disbelieve the version narrated by the complainant. Nothing was suggested to him that it was a case of mistaken identity. PW-4 (Lalit Kumar), complainants companion in the bus, also corroborated his version and identified the appellant as one of the assailants who had committed robbery and caused injuries to PW-1 (Rakesh Kumar). The ocular testimony is in consonance with the medical evidence. MLC (Ex.PW-2/A) records arrival time of the patient at the hospital as 02.45 p.m. PW-2 (Dr.O.S.Tomar) medically examined the patient vide MLC (Ex.PW-2/A) and found one incised wound on the back buttock upper part. The nature of injuries was ascertained as simple by PW-3 (Dr.Jugal Kishore Goyal). Non-recovery of the robbed articles is not vital as the prosecution case from the very inception was that the appellant after committing robbery, handed over the robbed articles to his associate who was able to flee from the spot. Though the appellant was given beatings by the public, it is not clear as to what was the nature of injuries sustained by him. No reasons were asked from the Investigating Officer in the cross-examination as to why the MLC of the appellant was not placed on record. In 313 statement, the accused did not give plausible explanation to the incriminating circumstances appearing against him and took conflicting and inconsistent defences. In the crossexamination, he put suggestions that he was lifted from his house and falsely implicated in this case. However, in the statement under Section 313, he alleged that he was apprehended from outside Chand Cinema, Kalyan Puri when he was not in his senses after consuming smack and had fallen on the road. He also claimed that due to beatings by the police, he admitted his involvement in the case. This version does not inspire confidence as nothing was suggested to the investigating officer regarding the beatings given by the police. PW-1 and PW-4 had no prior animosity to falsely identify and recognize him as one of the assailants. The findings of the trial court are based upon fair appraisal of the evidence and warrant no interference.

5. The appeal is unmerited and is dismissed. Trial Court record be sent back forthwith. A copy of the judgment be sent to the Superintendent Jail for information. (S.P.GARG) JUDGE February 13, 2014/sa

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com