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Naresh Vs. State of Delhi

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Court : Delhi

Decided On : Apr-01-2014

Judge : S. P. Garg

Appellant : Naresh

Respondent : State of Delhi

Judgement :

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

26. h MARCH, 2014 DECIDED ON :

1. t APRIL, 2014 + CRL.A.867/2012 & CRL.M.B.No.453/2014 NARESH ..... Appellant Through : Mr.A.K.Chadha, Advocate. Versus STATE OF DELHI Through : ..... Respondent Mr.Lovkesh Sawhney, APP. CORAM: HON'BLE MR. JUSTICE S.P.GARG S.P.GARG, J.

1. Naresh (the appellant) challenges his conviction under Sections 392/34 IPC recorded by a judgment dated 18.05.2012 in Sessions Case No.268/10 arising out of FIR No.266/07 PS Uttam Nagar. By an order dated 25.05.2012, he was awarded RI for five years with fine ` 10,000/-. Allegations as projected in the charge-sheet were that on 28.03.2007 at about 11.00 P.M. near Aggarwal Sweets Shop, Balaji Chowk, Uttam Nagar, the appellant - Naresh, driver of TSR No.DL1RD3218 with his associates Rajender Singh @ Monu and Vijay robbed complainant - Rakesh of cash ` 250/- and mobile phone at knife point. During the

course of investigation, statements of the witnesses conversant with the facts were recorded. On 29.03.2007 at about 05.10 P.M. near Metro Station Uttam Nagar (West) all the three assailants were apprehended while travelling in the said TSR. The robbed mobile phone was recovered from Vijay. At their instance SIM was also recovered. It reveals that they had robbed the complainant - Rakesh on the previous night. After completion of investigation, a charge-sheet was filed in the Court; they were duly charged and brought to trial. The prosecution examined nine witnesses to substantiate the charges against them. The trial resulted in their conviction as aforesaid.

2. I have heard the learned counsel for the parties and have examined the record. The occurrence took place on 28.03.2007 at about 11.00 P.M. However, the complainant did not lodge any report with the police about the incident. After the incident, he went to his house and narrated the incident to his wife - PW-2 (Prabha Devi). He did not get himself medically examined. After the arrest of the appellant and his associates on 29.03.2007 at about 05.10 P.M., their involvement in the incident emerged and the complainant - Rakesh was called in the police station where he identified the three assailants. While appearing as PW-1 Rakesh identified Naresh as the driver of the TSR in which the incident of robbery had occurred. However, he did not attribute any role whatsoever to him (the appellant) in committing robbery. There are no allegations if he in any manner assisted or exhorted his associates to commit robbery. He was not armed with any weapon. PW-1 (Rakesh) revealed that the TSR was stopped near Baljit Nagar, half kilometer away from his house by the driver at the instance of one of the two boys sitting on the rear seat who gave him beatings. Only fault of the appellant being driver of the TSR was that he did not raise alarm or reported the incident to the police. Even after his alleged apprehension on 29.03.2007 at about 05.10 P.M. he was not found in possession of any robbed article. Nothing incriminating was recovered pursuant to his disclosure statement. The complainant did not give number of the TSR in which he had travelled on the previous night. At the time of apprehension of A-1 on 29.03.2007, he was found in possession of only cash ` 28/-. Appellants conviction is based upon the presumption that he had shared common intention with his associates and took them away in the TSR after the occurrence. For omission not to inform the police, the appellant has already

suffered custody in this case including remission for about two years, nine months and fifteen days. His wife who got the TSR released on superdari had to pay ` 30,000/- in the Court for her inability to produce it during trial. Nominal roll of the appellant does not show his involvement in any other criminal case. The Investigating Officer did not collect any cogent evidence if the appellant being the TSR driver used to be in the company of Vijay and Rajender Singh @ Monu who robbed the complainant. Nothing has come on record as to how and when the appellants associates had occupied the seats to go in the TSR. All of them were residents of Uttam Nagar. The apprehension of the appellant on 29.03.2007 during routine checking by the police of PS Uttam Nagar is doubtful. Even at that time, the appellant had not attempted to flee. There was no incriminating material against him (the appellant) at that time to arrest under Section 411 Cr.P.C. The Investigating Officer did not move any application for holding Test Identification Proceedings. The complainant was called in the police station and the appellant was shown to him. The only evidence that appeared against him was that he was the TSR driver in which the occurrence took place. This circumstance by itself is not enough to establish that he shared common intention with his associates to commit robbery. Presence of the appellant with his associates in the same TSR without any specific purpose in the area of police station Uttam Nagar on the next day with robbed mobile of insignificant value without SIM appears doubtful and the story presented by the prosecution regarding his apprehension in the alleged manner inspires no confidence. The SIM is alleged to have been recovered at around 09.30 P.M. PW-4 (Inderjeet Singh) in his testimony disclosed that he received a telephone call from the police station on 29.03.2007 at about 08.00 P.M. No call details were placed on record. Nothing has come on record to show that the appellant shared the booty.

3. In the light of above discussion, I am of the view that the prosecution has failed to establish appellants involvement in the incident beyond reasonable doubt. Benefit of doubt is given to him and the appeal is accepted. Conviction and sentence awarded by the Trial Court are set aside. He shall be released forthwith if not required to be detained in any other case. Pending application also stands disposed of as infructuous. Trial Court record be sent back forthwith with the copy of the order. A copy of the order be sent to the Superintendent Jail for information.

(S.P.GARG) JUDGE APRIL01 2014/tr

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