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Rakesh Vs. State

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Court : Delhi

Decided On : Apr-03-2014

Judge : V. K. Jain

Appellant : Rakesh

Respondent : State

Advocate for Pet/Ap. : Mr. Feroz Khan Ghazi, Mr. Feroz Khan Ghazi, Mr. Feroz Khan Ghazi

Judgement :

$~R-13 to 15 * IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision:

03. 04.2014 + CRL.A. 859/2010 RAKESH ..... Appellant Through : Counsel for the appellant with appellant in person. versus STATE ..... Respondent Through : + Mr. Feroz Khan Ghazi, APP. CRL.A. 884/2010 UDAI PAL & ORS. ..... Appellant Through : Counsel for the appellant with appellant in person. versus STATE ..... Respondent Through : + Mr. Feroz Khan Ghazi, APP. CRL.A. 899/2010 RAVI & ANR .... Appellants Through : Counsel for the appellant with appellant in person. versus STATE ..... Respondent Through : Mr. Feroz Khan Ghazi, APP. CORAM: HON'BLE MR. JUSTICE V.K. JAIN JUDGEMENT V.K. JAIN, J.

On 29th October, 2003, on receipt of DD No.27A, SI K.L.Meena of Police Station Malviya Nagar, reached House No.96, Hauz Rani, Malviya Nagar, where the

complainant Shamim Ali Khan was present. The statement of the complainant was recorded by the Police Officer. The complainant told him that he had been residing as a tenant in House No.96, Hauz Rani Malviya Nagar for about 17 years. He further stated that in the night of 29th October, 20003, at about 12.30 AM, when he was sleeping in the room along with his wife Robina Khan and his son Suleman Khan, two boys who had muffled their face, entered his room and requested him to open the door. The person who called him gave his name as Saleem. On the complainant opening the door, 8-10 person entered the room. Out of them, Udai Pal and his son had iron rod in their hands. Surjeet, Naresh and Mohan also had iron rod/saria in their hands. The wife of Udai Pal also entered the room along with those persons. His articles were thrown out from the room. He also alleged that one of the boys, who was in his room, was armed with a sword and many of them were armed with country made revolvers and knives. Accused Vinod put the sword on the neck of his son and threatened to kill him in case the complainant try to raise alarm. The complainant further alleged that they were shut in a room downstairs, his articles were kept in a tempo and they were also made to sit in the said tempo. darkness. On the way to Gurgaon, he was pushed out of the tempo in On the aforesaid complaint FIR under Sections 365/448/452/506/380/342 of IPC read with Section 34 thereof was registered.

2. During the course of investigation, the complainant identified as many as ten persons. Chargesheet against eight of them was filed, namely, Udai Pal, Surjeet, Mohan Singh, Naresh, Vinod Kumar, Kalyani, Ravi and Rakesh initially. Seven out of them were convicted vide judgment dated 16th July, 2010. Thereafter, Sunil @ Sonu @ Sunny was arrested on 16 th May, 2011. Later, it came to be known that Anju @ Manju who had been declared P.O. in the above-referred case had been convicted in the case FIR registered under Section 773/2007 of Police Station Mehrauli under Section 506 of IPC. After obtaining her production warrant, she was interrogated. A supplementary chargesheet against Sunil Dutt @ Sonu, and Anju @ Manju @ Rajesh, son of Tek Chand @ Tek Ram was thereafter filed. Both of them, however, were discharged vide order dated 17th January, 2012.

3. Eight persons were charged under Sections 365/448/452/506/380/342 read with Section 34 thereof. They having been pleaded guilty, as many as nine witnesses

were examined as prosecution, four witnesses were examined in defence. The appellant Rakesh was also charged under Section 412 of IPC. The accused Surjit died during the pendency of trial.

4. Vide impugned judgment dated 07th July, 2010, seven persons were convicted under Section 452/342/34 of IPC. Vide impugned order on sentence dated 16th July, 2010, the appellant Kalyani was granted benefit of probation whereas the convicts Udai Pal, Mohan Singh, Naresh, Vinod, Ravi and Rakesh were sentenced to undergo RI for two years each and to pay fine of Rs.5,000/- each gone to undergo SI for five months each in default under Section 452/34 of IPC. The Court while awarding sentence under Section 452/34 of IPC also noted that the complainant had compounded the offence under Section 342 & 506 of IPC.

5. Mr. Shamim Ali Khan came into the witness box as PW3 and, inter alia, stated that at about 12.30 A.M. in the night of 28-29/10/2003, someone knocked at the door of his house and on inquiry, gave his name as Saleem. When he opened the door, two boys, who were in muffled face and were standing on the door pushed him and entered in the room. When he opened the door, 8-10 persons entered in the room. They were carrying iron rods in their hands. He claimed that the aforesaid persons were Udaipal, his son, Vinod, Ravi, Mohan Singh, Sarjeet, Naresh and Kalyani. According to him, Udai Pal and Vinod had iron rod with them. They started throwing his goods down from the first floor of the house. 8-10 more persons came in the muffled face. One of them was having a sword and some of them were having knife and country-made Katta. Vinod put sword on the neck of his son and threatened to kill him, in the case the complainant raised alarm. They took him, his wife and his son to the ground floor and locked them in a room. Their articles were kept in a tempo. He claimed that they were also taken in the aforesaid tempo and dropped at an unknown place in Gurgaon. They took lift and came back to the house. They found that the house had been demolished. Thereupon, he went to the Police Station and lodged report Ex.PW3/A. He identified the accused persons. He further alleged that the Investigating Officer interrogated the accused Rakesh in his presence. Rakesh disclosed that his household articles were lying at a place in Bhatti Mines. He went there along with the Police and the articles of his household, which were 39 in number, were

recovered by Police and a seizure memo Ex.PW3/B. The witness identified the articles which were seized from Bhatti Mines and they were collectively exhibited as Ex.PW1. He also identified bedsheets, pillow covers, suits salwar, swetters etc, which were taken from his house. The aforesaid articles were collectively exhibited as Ex.P-2.

6. The wife of the complainant Smt. Rubina @ Sunita came in the witness box as PW4 and corroborated the deposition of her husband. She identified the accused Udaipal, Vinod, Sarjeet, Mohan Singh and Naresh and claimed that they had rod and sarias in their hands. She alleged that Kalyani and Ravi had also entered their house along with 8-10 persons. She also corroborated the deposition of her husband with respect to the accused Vinod putting a sword on the neck of her son and threatening to kill him in case they raised alarm. She also claimed that their household articles were taken in a truck and they were also taken in the second truck towards Gurgaon and dropped there, from where they took a lift and went to police station where complaint was lodged by her husband.

7. PW5 S.I. Dharampal inter alia stated that on 6.11.2013, he along with the complainant went to Fateh Pur Beri in search of tempo driver. The complainant Shamim identified the accused Rakesh who was arrested and was interrogated and his disclosure statement Ex.PW3/E was recorded. Thereafter Rakesh took them to Bhati Mines and got recovered household articles which were seized vide memo Ex.PW3/B. PW6 Head Constable Ravinder Kumar also corroborated the deposition of PW5 with respect to recovery of various household articles at the instance of the accused Rakesh from a room situated in a jhuggi. The recovered articles were also identified by him as Ex.P1 (collectively) and Ex.P2 (collectively).

8. In their statements under Section 313 Cr.P.C., the appellants denied the allegations against them and claimed to be innocent. The appellant Udaipal inter alia claimed that the complainant voluntarily, after taking handsome amount from the owner vacated the premises and demanded more money when he found that the owner was constructing a complex. However, when the owner refused to pay more, a false case was got registered by him (the complainant). DW1 Ashok Kumar is the owner of a kerosene depot but his testimony does not seem to be

relevant. DW2 Rakesh Kumar is an official of the District Court who stated that case No.695/2004 under Sections 354/323 of IPC had been compounded between the parties but the court had adjourned the matter for consideration on account of objection by the learned APP on the ground that the offence under Section 354 of IPC was not compoundable. DW3 Shri Deepak Kumar, Assistant Ahlmad in the Court of the learned Additional District Judge stated that case Shamim Malik Vs. Udaipal, PC No.263/2009, had been compounded and the suit had been withdrawn. According to the witness, the suit was for permanent injunction to restrain the defendant from dispossessing the plaintiff from the first floor of property No.96, Houz Rani, Delhi. The appellant Udai Pal came in the witness box as DW4 and inter alia stated that Shamim Ali Khan was tenant of his father prior to 1987. He had vacated the accommodation in the year 2000 after taking Rs.50,000/- and had handed over vacant possession of the same. He further stated that after some time Shamim claimed that lesser amount had been paid to him for vacating the room and demanded Rs.2.00 lakh more. He, however, refused to accommodate him, whereupon a false case was lodged by him. The aforesaid witness also proved the copy of compromise deed Ex.DW4/A and payment of Rs.2.00 lakh to the complainant vide draft dated 19.10.2009.

9. The testimony of the complainant and his wife remained more or less unimpeached during cross-examination. The deposition of PW3 Shri Shamim Ali Khan, which finds full corroboration from the deposition of his wife Smt. Rubina shows that in the night intervening 28/29.10.2003, the appellants acting in concert with one another, entered the room which the complainant was occupying in the house of the appellant Udai Pal, threatened to kill the son of the complainant by putting a sword on his neck, removed all their household articles and threw those articles somewhere on the way to Gurgaon. The articles were later got recovered by the appellant Rakesh from a room in a jhuggi in Bhati Mines area. The complainant thus was dispossessed by sheer use of force.

10. The learned counsel for the appellant submits that the complainant was not in possession of the room in question on 28/29.10.2003, he having already vacated the said room some time in the year 2000, after taking Rs.50,000/- from the appellant Udaipal. However, there is no documentary evidence of the complainant

having taken Rs.50,000/- from Udaipal and having vacated the room which he was occupying in his house. Had the complainant actually taken Rs.50,000/- from Udaipal and vacated the room which he had taken on rent in his house, the aforesaid appellant would certainly have obtained documentary proof of his (the complainant) having received Rs.50,000/- and having surrendered vacant possession of the tenanted premises to him.

11. Admittedly the appellant Udaipal compromised with the complainant in the civil suit which the complainant had filed seeking stay against his forcible dispossession from the aforesaid premises and a payment of Rs.2.00 lakh was also made to him. This is yet another indicator that the aforesaid appellant, along with his accomplices had actually committed criminal trespass in the room which the complainant was occupying in his house and had removed his household articles to a distant place and that is why he chose to settle with him.

12. It would be difficult to accept the plea that having taken Rs.50,000/- sometime in the year 2000 and having handed over vacant and peaceful possession of the tenanted premises to Udaipal, the complainant would come again, not immediately, but after three (3) years, demand more money and would go to the extent of lodging a false FIR, on account of his demand having not been met.

13. Thought had the complainant raised alarm, the neighbours would probably have come there and intervened, but since the appellants had threatened to kill his son, he had no option, but to remain a mute spectator to his forcible dispossession. For the reasons stated hereinabove, I find no ground to interfere with the conviction of the appellants. The learned counsel for the appellants seeks benefit of probation on the ground that the complainant compromised with Udaipal during the pendency of the trial and, in fact, the parties also made a joint attempt to get these proceedings quashed. Considering the settlement between the complainant and Udaipal, I am of the view that this is a fit case where benefit of probation can be granted to the appellants subject to their suitably compensating the complainant. The appellant Udaipal who is present in the Court undertakes to pay for all the appellants, compensation amounting to Rs.1.00 lakh to the complainant Shamim within one (1) month from today. Subject to the appellant

Udaipal furnishing a written undertaking to pay Rs.1.00 lakh as compensation to the complainant Shamim Ali Khan and his complying with the said undertaking, the appellants shall be released on furnishing personal bond of peace and good conduct in the sum of Rs.10,000/- each with one surety each of the like amount, for a period of two (2) years. During the period of bond, they shall maintain good conduct and peace. They shall appear as and when directed to receive the sentence imposed on them. In the event of default in paying the compensation and/or furnishing bond of peace and good conduct within one (1) week from today, the appellants shall undergo the sentence already awarded to them by the trial court. The pay order of Rs.1.00 lakh in the name of the complainant shall be deposited by the appellant Udaipal with the learned Trial Judge within one (1) month from today. The learned Trial Judge shall then summon the complainant and hand over the said pay order to him. The appeal stands disposed of. LCR be sent back, with a copy of this order. APRIL03 2014 sn/bnesh Crl. A. No859/2010

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