

Haseen Miya Vs. State

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Court : Delhi

Decided On : Apr-21-2014

Judge : S. P. Garg

Appellant : Haseen Miya

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI RESERVED ON : March 28, 2014 DECIDED ON : April 21, 2014 + CRL.A. 1037/2011 HASEEN MIYA Appellant Through : Mrs.Nandita Rao, Advocate. versus STATE Respondent Through : Mr.M.N.Dudeja, APP for the State. SI Raj Pal Singh, PS Anand Vihar. CORAM: MR. JUSTICE S.P.GARG S.P.GARG, J.

1. The appellant-Haseen Miya impugns his conviction under Section 392 read with Section 397 IPC recorded by a judgment dated 10.11.2010 of learned Additional Sessions Judge (East) in Sessions Case No.29/10 arising out of FIR No.560/09 registered at police station Anand Vihar. By an order dated 16.11.2010, the appellant was sentenced to 2. Allegations against the appellant, as set up in the charge- sheet, were that on 29.12.2009 at about 03.00 p.m. at Birla Land near Karkardooma Metro Station, he and his three associates (who faced proceedings before Juvenile Justice Board) in furtherance of common intention robbed Bhuvneshwar of `12,000/- and mobile phone at knife point. The police machinery was set into motion when information about the incident was conveyed and Daily

Dairy (DD) No.18A was recorded at 15:06 hours at Police Station, Anand Vihar. It was recorded therein that four assailants had fled after snatching `12,000/- near Karkardooma Metro Station. The investigation was marked to HC Pushpender Singh (PW-11) who went to the spot and came to know that the injured had already been taken to Hedgewar hospital by PCR. Information Report after recording He lodged First complainant-Bhuvneshwars statement (Ex.PW1/A). The complainant disclosed as to how and under what circumstances, he was robbed of `12,000/- by four assailants at knife point. He further disclosed that he and his cousin Pintu were injured by the assailants and claimed to identify them. The occurrence took place at around 03.00 p.m. and FIR was lodged in promptitude at about 05.40 p.m. Efforts were made to find out the culprits. The appellant and his associates were apprehended on 30.12.2009 at about 05.30 p.m on the basis of secret information during their presence at Sharab Theka, Karkardooma Village. An ustra (Ex.P-3) and one mobile phone make Nokia 1209 (Ex.P-1) were recovered from his possession. Statements of witnesses conversant with the facts were recorded. After completion of investigation, a charge-sheet was submitted against the appellant; he was duly charged and brought to trial. In 313 statement, the accused denied his involvement in the crime and stated that he and his friends were picked up by the police at Sharab Theka on 29.12.2009 at about 2 p.m. They were shown to the witnesses in the police station. He did not prefer to lead any evidence in defence. The trial resulted in his conviction as aforesaid. Being aggrieved and dissatisfied, the appellant has preferred the appeal.

3. I have heard the learned counsel for the parties and have examined the record. Appellants counsel urged that the trial court did not appreciate the evidence in its true and proper perspective. The complainant has admitted in cross-examination that appellants photo was shown to him in the police station. The prosecution witnesses have given inconsistent version about the colour of the mobile phone recovered. The appellant has remained in custody for about four and a half years. Learned Additional Public Prosecutor urged that there are no sound reasons to disbelieve the complainant.

4. Crucial testimony to infer the appellants guilt is that of PW-1A (complainant-Bhuvneshwar), author of the FIR, who categorically deposed that on 29.12.2009 at

about 03.00 p.m. he was robbed of cash `12,000/- and a mobile phone when he was going along with his cousin Pintu after collecting `12,000/- from his cousin Ganesh. When they reached just in the middle of the way, they were surrounded by four individuals. One of them assaulted him by an ustra on his face and he became semi-unconscious. He identified the appellant- Haseen Miya to be the assailant who inflicted injuries to him by an ustra. He further deposed that mobile phone and cash were removed from his shirt and the assailants fled the spot. He further deposed that he identified the appellant in Tihar Jail in Test Identification Parade. Mobile phone (Ex.P-1) was purchased by him from one Vijay Kumar and he had given copy of the bill to the police. In the cross-examination, he disclosed that the assailants remained at the spot for 2-3 minutes. The assailants were not shown to him by the police. He fairly admitted that he was shown some photographs after two days of the incident and out of those photographs, he suspected Haseen Miya who could be one of the assailants. He denied the suggestion that on the basis of photograph shown to him, the accused was identified. On scanning the testimony of the complainant, it reveals that he had proved the version narrated to the police at the first instance without any variation. He had no extraneous consideration to fake the incident of robbery and to falsely implicate the accused with whom he had no prior acquaintance. The complainant not only identified the appellant in court during his deposition but also recognized him in TIP proceedings conducted at Tihar Jail. The appellant had voluntarily participated in the Test Identification Proceedings and was correctly identified by the complainant as one of the assailants. At that stage, the appellant did not inform the concerned Metropolitan Magistrate conducting TIP proceedings that his photo was shown to the witness and he could identify him on that basis. PW-7 (Pintu) also supported the complainant to the extent that four boys had demanded money from him. Since he was not having any money, he was stabbed on his back. The statement of this witness remained unchallenged in the cross-examination. Complainants version is in consonance with the medical evidence. PW-4 (Dr.Abhishek) medically examined Bhuvneshwar on 29.12.2009 by MLC (Ex.PW-4/A) and found three incised wounds of various dimension on left cheek, lower left lip and right hand. Injuries were caused by sharp object. He also examined Pintu by MLC (Ex.PW-4/C) and one stab wound about 3cm x 1cm was

found on his body.

5. Mobile phone (Ex.P-1) recovered from the appellant was identified by the complainant. The prosecution also examined PW-5 (Arun Sharma) who proved that cash memo No.720380737 dated 25.04.2009 pertaining to mobile phone make nokia 1209 was issued for the sale of mobile phone to one Vijay and its IMEI number was 353224031784514. The complainant had no ulterior reasons to identify mobile (Ex.P-1). Recovery of crime weapon ustra (Ex.P-3) also connects the appellant with the crime. The appellant did not give plausible explanation to the incriminating circumstances. He did not examine any witness to prove his defence. Nothing has come on record to show that the appellant and his friends were lifted by the police on 29.12.2009 at about 02.00 p.m. from Sharab Theka, Karkardooma. The appellant did not examine his friends Darshan and Babloo who were allegedly lifted along with him at that time. No such suggestion was put to the prosecution witnesses.

6. All the relevant contentions of the appellant have been dealt with by the learned trial court in the impugned judgment which is based upon fair appraisal of the evidence and no interference is warranted. An innocent victim was robbed of his hard earned money by the appellant and his associates while they were armed with deadly weapons. Not only that, injuries were also caused to the complainant and his companion Pintu. The minimum sentence prescribed under Section 397 IPC is seven years which cannot be altered or modified.

7. In the light of the above discussion, the appeal being unmerited is dismissed. The appellant is directed to surrender before the Trial Court on 29th April, 2014 to serve the remaining period of sentence. The Registry shall transmit the Trial Court records forthwith along with the copy of this order. (S.P.GARG) JUDGE APRIL21 2014 sa

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