

Raj Kumar Vs. State

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Court : Delhi

Decided On : Apr-24-2014

Judge : S. P. Garg

Appellant : Raj Kumar

Respondent : State

Judgement :

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

23. d April, 2014 DECIDED ON :

24. h April, 2014 + CRL.A. 1308/2011 & CRL.M.B.No.626/2014 RAJ KUMAR
Through : Appellant Mr.Saurabh Kansal, Advocate with Ms.Pallavi Kansal,
Advocate. versus STATE Through : Respondent Mr.Lovkesh Sawhney, APP.
CORAM: MR. JUSTICE S.P.GARG S.P.GARG, J.

1. Raj Kumar (the appellant) challenges the correctness and legality of a judgment dated 28.07.2011 of learned Additional Sessions Judge-I (East) in Sessions Case No.26/2011 arising out of FIR No.664/2007 registered at Police Station Kalyanpuri by which he was convicted under Section 392 read with Section 397 IPC; 411 IPC; and 25 Arms Act. By an order dated 29.07.2011, he was awarded various prison terms.

2. The prosecution case, as set up in the charge-sheet, was that on 25.09.2009 at around 09.30 pm near Telco T-Point, Gazipur, the appellant robbed complainant Shailender Rathore of his purse containing `500/-, RC of motor cycle No.DL-7SAH-2101 and documents at knife point. When the complainant raised alarm, the appellant was apprehended by public and was given beatings. The Investigating Officer lodged First Information Report after recording complainant-Shailender Rathores statement (Ex.PW-2/A). Statements of witnesses conversant with the facts were recorded. After completion of investigation, a charge-sheet was submitted against the accused; he was duly charged and brought to trial. The prosecution examined six witnesses to substantiate its case. In 313 statement, the appellant denied his complicity in the crime and claimed that he was falsely implicated by HC Raj Kumar when he declined to pay `5,000/- demanded by him as illegal gratification. He, however, did not examine any witness in defence. The trial resulted in his conviction as aforesaid. Being aggrieved and dissatisfied, the appeal has been filed.

3. I have heard the learned counsel for the parties and have examined the record. The occurrence took place at around 09.30 pm and the appellant was apprehended at the spot by public and was given beatings soon thereafter. Crl.A.1308/2011 FIR was lodged promptly after recording Page 2 of 5 complainants statement by sending rukka. The robbed articles were recovered from appellants possession. While appearing as PW-2, the complainant-Shailender Rathore proved the version given to the police at the earliest available opportunity without any variation. He identified the appellant as the assailant who robbed him of his purse containing `500/(5 notes in the denomination of `100 each), RC of his bike No.DL-7SAH2101 and Pan Card at knife point. These articles were handed over to the appellant when he was put in fear. When he raised alarm, the accused was apprehended at the spot and was beaten by the public. In the cross- examination, the witness produced the bus ticket to show that he had travelled from Muradabad to Delhi that day. He denied the suggestion that he was having previous enmity with the accused. It reveals that no material contradictions or discrepancies could be elicited or extracted in the cross-examination to disbelieve the version narrated by the witness who had no prior acquaintance with the accused and had travelled from Muradabad on the day of

incident. The accused was apprehended at the spot and the robbed articles were recovered from his possession along with crime weapon i.e. knife. PW-3 (HC Raj Kumar) and PW-4 (Ct.Rajesh Kumar) have corroborated the version given by the complainant. Their statements are consistent. PW-3 (HC Raj Kumar) denied the suggestion that `5,000/- were demanded by him from the appellant to drop the proceedings. In the absence of prior enmity, the complainant had no ulterior consideration to falsely implicate the accused. The appellant has taken inconsistent and conflicting defence. In 313 satmeent, he pleaded that he had consumed liquor with HC Raj Kumar, thereafter, he demanded `5,000/- from him. When he did not accede to his demand, he was falsely implicated. However, no such suggestion was put when PW-3 (HC Raj Kumar) appeared in the witness box. Rather it was suggested that he demanded `5,000/- to drop the proceedings. The appellant did not examine any witness to substantiate his plea. Minor contradictions highlighted by the appellants counsel are not enough to shake or discredit the complainants version. The impugned judgment is based upon proper and fair appraisal of the evidence and no interference is warranted.

4. Since the appellant was convicted under Section 392 read with Section 397 IPC for robbing the purse containing cash and other articles, conviction under Section 411 IPC to receive or retain those robbed articles dishonestly was not permissible and is set aside.

5. In the light of the above discussion, appeal is partly allowed. The conviction and sentence of the appellant under Section 392 read with Section 397 IPC and 25 Arms Act is upheld. Conviction and Sentence under Section 411 IPC is set aside. The appeal stands disposed of in the above terms. Trial Court record be sent back forthwith along with the copy of this order. (S.P.GARG) JUDGE24h April, 2014 sa

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