

Rakesh Kumar Vs. the State and anr.

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Court : Delhi

Decided On : May-07-2014

Judge : S. P. Garg

Appellant : Rakesh Kumar

Respondent : The State and anr.

Judgement :

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

25. h APRIL, 2014 DECIDED ON :

7. h MAY, 2014 + CRL.A.573/2012 & CRL.M.B.No.392/2014 RAKESH KUMAR Through : Appellant Mr.Rajiv Sirohi, Advocate with Mr.Rambir Singh Kundu, Advocate. versus THE STATE & ANR. Through : + Respondents Mr.Lovkesh Sawhney, APP. CRL.A.574/2012 & CRL.M.B.No.1144/2013 JOGINDER SINGH Through : Appellant Ms.Mallika Parmar, Advocate. versus THE STATE & ANR. Through : AND + Respondents Mr.Lovkesh Sawhney, APP. CRL.A.575/2012 K.DEEP SINGH Appellant Through : Crl.A.No.573/2012 to 575/2012 Mr.Rajiv Sirohi, Advocate with Mr.Rambir Singh Kundu, Advocate. Page 1 of 12 versus THE STATE & ANR. Through : Respondents Mr.Lovkesh Sawhney, APP. CORAM: HON'BLE MR. JUSTICE S.P.GARG S.P.GARG, J.

1. The appellants, Rakesh Kumar (A-1), Joginder Singh (A-2) and K.Deep Singh (A-3) question the correctness and legality of a judgment dated 02.03.2012 of

Addl. Sessions Judge in Sessions Case No.07/11 arising out of FIR No.251/10 PS Kashmere Gate by which they were convicted under Sections 365/392/307/34 IPC. A-1 and A-2 were further convicted under Section 397 IPC. By an order dated 12.03.2012, they were awarded various prison terms with fine.

2. Briefly stated, the prosecution case as reflected in the charge- sheet, was that on 20.12.2010 at around 06.30 P.M. in front of Star Banquet Hall, near Metro Gate No.1, the appellants in furtherance of common intention kidnapped Sanjay Kumar at knife point and took him to Bawana canal. After inflicting injuries by a knife and depriving him of Accent car bearing No.DL8W0011 cash ` 2,200/- and two mobile phones, they threw him in the canal in an attempt to murder him. The police machinery was set in motion when the incident was reported and Daily Diary (DD) No.26A (Ex.PW-2/A) was recorded at 20.54 hours at PS Kashmere Gate. The victim was taken to Sonipat Hospital where he was medically examined vide MLC (Ex.PW-6/A). The First Information Report was lodged on 26.12.2010 after recording complainant - Sanjay Kumars statement (Ex.PW-1/A). On 10.01.2011, the appellants were arrested at around 07.30 P.M; an air pistol from the left-side dub of A-2; a mobile phone make Nokia-1209 from A-3 were recovered. Pursuant to A1s disclosure statement, CNG kit fitted in the robbed car was recovered from his residence. Statements of the witnesses conversant with the facts were recorded. After completion of investigation, a charge-sheet was submitted against the appellants; they were duly charged and brought to trial. The prosecution examined nine witnesses to substantiate the charges. In 313 statements, the appellants denied their complicity in the crime and pleaded false implication without examining any witness in defence. The trial resulted in their conviction as aforesaid. Being aggrieved and dissatisfied, they have preferred the appeals.

3. I have heard the learned counsel for the parties and have examined the record. The incident took place on 20.12.2010 at around 06.30 P.M. and the information was conveyed in promptitude to the police. Daily Diary (DD) No.26A (Ex.PW-2/A) was recorded at 8.54 P.M. by PW-2 (HC Rajesh Kumar), Duty Officer, Kashmere Gate about the snatching of the car and taking it away along with the driver at revolver point. It appears that no sincere efforts were made by the police of Kashmere Gate to find out the culprits. PW-5 (SI Purshottam) to whom the

investigation was assigned merely went to the spot and finding no eye witness returned to the police station. He did not explain as to what steps were taken by him to find the whereabouts of the victim. It shows casual approach of the concerned Investigating Officer in the investigation of the case. Despite specific information with the police, no concrete steps were taken to investigate it.

4. On 26.12.2010, the victim Sanjay Kumar recorded statement (Ex.PW-1/A) and gave detailed account as to how and under what circumstances, he was abducted by the assailants while they were armed with pistol/knife and inflicted injuries to him in the car. He further disclosed that attempt was made by the assailants to throw him in the river / canal after robbing him of his car, mobile phones and cash ` 2,200/-. While appearing as PW-1, the complainant identified the appellants as assailants who had abducted him on 20.12.2010 at 06.30 P.M. when he was waiting outside Star Banquet Hall, Metro Station, Kashmere Gate while sitting in the car No.DL8W0011 Accent, black colour belonging to his employer Anil Kumar Sharma, Advocate. He further deposed that in the meanwhile, an individual came and knocked the window pane. When he opened the window pane assuming that the individual must be asking for the way / direction, the said man put revolver on his head and assaulted him on his left hand by a knife. He was pushed inside the car and his associates caught hold of him from behind. He identified A-1 to be the assailant who had put revolver on his head; A-2 and A-3 had caught hold of him in the car. He further testified that A-2 and A-3 took out his mobile phones and purse which contained ` 2,200/-. He was assaulted and injured by a knife on his hands and feet on the rear seat. After abducting him, the appellants stopped the car at Bawana road towards Sonipat near a river; pulled him out of the car and threw him in the river having deep water. When the assailants left the spot, he came out; stopped a motorcyclist; requested him to call his employer Anil Kumar Sharma, Advocate and reported the incident to him. He identified the mobile phone robbed by the assailants. In the cross-examination, the witness was confronted with the statement (Ex.PW-1/A) on certain facts which were omitted therein. He disclosed that he was working with Anil Kumar Sharma, Advocate for the last ten years. He was thrown in the river at around 09.00 or 09.30 P.M. There was no light near the river and it was complete dark. The motorcyclist to whom he requested to assist came from Sonipat side. He was unable to disclose the number of the motorcycle.

He denied the suggestion that he had sold the car (Ex.P2) without permission of his employer.

5. Scrutinizing the testimony of this crucial witness, it reveals that despite searching cross-examination no material discrepancy could be extracted to dent the version narrated by him before the Court. No ulterior motive was assigned to the complainant for falsely implicating the appellants with whom he had no prior acquaintance or animosity. There are no valid reasons to discard the statement of the witness who reported the incident in promptitude to the police without any delay. He identified the appellants in the Court without hesitation and ascribed a specific and definite role to each of them. He sustained injuries in the occurrence and was taken to Sonipat hospital far away from the place of his abduction. MLC (Ex.PW-6/A) records the arrival time of the patient at 10.45 P.M. in casualty. It further records the alleged history of assault at Kashmere Gate, Delhi. PW-6 (Dr.Deepak Arora) medically examined the victim and found the following injuries on his body :

1. 1 cm x 1 cm wound over the right thigh for which X-ray right thigh was advised and Ortho opinion was asked for.
2. 1 cm x 1 cm wound over the right knee for which Xray right knee was advised and Ortho opinion was asked for.
3. 1 cm x 0.5 cm wound over the right hand for which X-ray right hand was advised and Ortho opinion was asked for.
4. 1 cm x 0.5 cm wound over the left hand for which Xray left hand was advised and Ortho opinion was asked for.

In the cross-examination, the doctor disclosed that the injured was brought to the hospital at about 10.45 P.M. by police officials of PS Kundli, Sonipat, Haryana. The medical evidence fully corroborates the ocular version narrated by the victim regarding his abduction and infliction of injuries. There is no conflict between the two. It is true that there is delay of about five days in lodging the First Information Report. But for that, the complainant cannot be faulted. He had given due

intimation about the incident to the concerned Police Station Kashmere Gate at the earliest and it was recorded by Daily Diary (DD) No.26A (Ex.PW-2/A) at 20.54 hours. Again, he had met the police officials at Sonipat. They had taken him to the hospital where he was medically examined. It appears that Sonipat police did not initiate any proceedings as the incident did not occur in their jurisdiction. For lapses on the part of the Investigating Officer, the cogent and reliable testimony of the complainant cannot be discredited. He had no axe to grind to falsely implicate the appellants with whom he had no ill-will or animosity.

6. The robbed vehicle was recovered from the possession of the accused by the Special Staff West District, Delhi on 10.01.2011. They had no concern with the FIR in question registered at PS Kashmere Gate. After the arrest of the accused persons, their involvement in the present case emerged and the intimation was given to the concerned Investigating Officer. All the three accused persons were present inside the robbed vehicle which was being driven by A-1. PW-3 (Cont.Devender) and PW-8 (SI Manoj Kumar) have given consistent version about the recovery of the vehicle (Ex.P2) from the appellants possession and their testimony remained un-shattered in the examination. The appellants did not explain as to how and under what circumstances, the vehicle which did not belong to them came into their possession. The police is not expected to plant the vehicle of substantial value on their own. In 313 statements, the appellants for the first time pleaded un-believable defence. They claimed that on 08.12.2010, A-3 had come to Delhi; A-1 and A-2 had come at ISBT to receive him. A-3 disclosed that on seeing him, A-1 screamed in excitement. Four or five police officials apprehended and took them to the police station where complainant was present. Police officials told them that they have been implicated in a liquor case and assured that on pleading guilty, they would be fined only. He confessed his fault of taking liquor before the Magistrate. No such defence was taken by A-1 and A-2 though they claimed that they were falsely implicated. No such suggestion was put to the prosecution witnesses in the cross-examination. It has come on record that when the accused persons were produced before the Court concerned for participation in Test Identification Proceedings, they declined to participate. Ex.PW-4/B rather records that A-1 admitted his guilt while declining to participate in the TIP Proceedings. Similar is the plea by the other appellants. They failed to

explain how and under what circumstances, they admitted their guilt.

7. The prosecution has established beyond reasonable doubt that the appellants sharing common intention abducted the complainant Sanjay Kumar and took him to Bawana canal. After depriving him of the car and other valuable articles, he was abandoned there. Apparently, the offences committed by the appellants were punishable under Sections 365/392/34 IPC. The prosecution was, however, unable to establish beyond doubt that the appellants were liable to be convicted with the aid of Section 397 IPC. In Daily Diary (DD) No.26A (Ex.PW-2/A) there is no mention if the victim was robbed of his vehicle No.DL8W0011at revolver point. In Ex.PW-1/A, the complainant did not specifically mention if any revolver was placed on his temple while abducting him. He merely disclosed that it was some weapon like object. In his Court statement, he described it as pistol. However, no such pistol or revolver was recovered during investigation. After the arrest of the assailants on 10.01.2011 after a considerable delay of about twenty days, an air pistol was allegedly recovered from the left side dub of A-2. It cannot be termed a deadly weapon. The complainant disclosed that injuries were inflicted to him by a knife. However, no such knife was recovered from the possession of any of the accused persons. In the MLC (Ex.PW-6/A), the injuries sustained by the victim were described to be caused by blunt object. It is not the prosecution case that only blunt side of the knife was used to inflict injuries. The complainant did not describe the size and dimension of the knife. Hence conviction with the aid of Section 397 IPC cannot be sustained. Similarly, the evidence is lacking for conviction under Section 307 IPC. In the complaint (Ex.PW-2/A), the victim merely stated that after he was abducted, he was left near a canal at Sonipat. There is no mention that he was thrown inside the river. Soon after the complainant was abandoned near the canal he met one motorcyclist who has not been examined. In the MLC (Ex.PW-6/A), the injuries found on the body were not on vital organs. The complainant was fully conscious and oriented. He was not hospitalized for any treatment. It cannot be inferred that the injuries were caused with the avowed object or intention to cause death. Conviction under Section 307 IPC is not permissible and is set aside. In the light of above discussion, the appellants are held guilty for committing the offence under Section 365/392/34 IPC. Their conviction under Section 307/397 IPC is set aside.

8. All the appellants have been sentenced to undergo RI for four years with fine ` 5,000/- under Section 365 IPC and RI for five years with fine ` 10,000/- under Section 392 IPC each. A-1s nominal roll dated 06.03.2014 reveals that he has already undergone three years, one month and twenty four days incarceration besides remission for eight months and seven days as on 06.03.2014. It further reveals that he is not a previous convict and is not involved in any other criminal case. His overall jail conduct is satisfactory. He was aged about 21 years on the day of incident. A-2s nominal roll dated 13.08.2013 reveals that he has already undergone two years, seven months and eight days incarceration besides remission for five months and eight days as on 20.08.2013. He is also not a previous convict and is not involved in any other criminal case. His overall jail conduct is satisfactory; he is a first offender and was aged about 21 years on the day of incident. A-3s nominal roll dated 14.08.2012 shows that the custody period already undergone is one year, seven months and eight days besides remission for twenty days as on 20.08.2012. He is not a previous convict and is not involved in any other criminal case; his overall jail conduct is satisfactory; is a first offender and was aged about 22 years on the day of incident. Taking into consideration all these mitigating circumstances, the substantive sentence of the appellants is reduced to RI for four years instead of five years under Section 392 IPC. Other terms and conditions of the sentence order are left undisturbed.

9. Appeals stand disposed of in the above terms. Pending applications also stand disposed of. 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 MAY07 2014 / tr

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