

Sher Singh Alias Shera, in Person (In Custody) Vs. State

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Court : Delhi

Decided On : May-02-1991

Reported in : 1991CriLJ2612

Judge : S.C. Jain, J.

Appeal No. : Crl. Appeal No. 54 of 1989

Appellant : Sher Singh Alias Shera, in Person (In Custody)

Respondent : State

Advocate for Def. : Mr. R.N. Kapoor, Adv.

Judgement :

1. The charge against this appellant Sher Singh alias Shera is that on 20-5-84 at 4.30 a.m., in Janta Jayanti Express train, between Gandhi Dham and Delhi Railway Station, he in furtherance of common intention with the other co-accused robbed Alok Verma, the complainant, at the point of knife and took away his wrist watch, purse containing Rs. 400/-, railway ticket and one VIP bag containing his clothes and a personal diary by putting him in fear of instant death or instant hurt. He was charged with an offence punishable under section 392/34 read with S. 397, IPC. He pleaded not guilty to the said charge and claimed trial.

2. During the trial, the prosecution examined as many as nine witnesses including the complainant Alok Verma in support of its version. The defense taken by the

appellant in his statement under section 313, Cr.P.C. is that of denial. According to him he is innocent and has been falsely implicated in this case. However, he did not lead any evidence in his defense.

3. The main points raised by the appellant in this appeal are that the robbery, is alleged to have taken place in a second class railway compartment (sleeper) where other passengers were present but no other person from that coach, except the complainant has been, examined as a witness. In the absence of evidence of an independent person, the conviction on the sole testimony of the complainant is bad. According to him, he was not apprehended on the spot and his arrest on the basis of some documents alleged to have been recovered from a bag allegedly left by him in the railway compartment after committing robbery is doubtful. His refusal to participate in the identification parade is justified because he was shown to the witness Alok Verma earlier. No presumption can be drawn against him on his refusal to participate in the identification parade. It has also been pointed out that no recovery has been made at his instance of the robbed property. In the absence of any cogent evidence against him, non recovery of the robbed property from him, showing him to the complainant before he was asked to participate in the parade, he cannot be convicted in this (Sic) only on account of his past criminal history. Evidence on record is full of contradictors and improbabilities. As per the prosecution version, one of the co-accused had demanded the purse from the complainant and later on that accused asked his accomplice to take out the knife. When the complainant did not resist in handing over the purse, there was no occasion for taking out the knife and using the same for committing robbery. The theory of giving fist blow on the eye of the complainant is also contradictory to the facts available on record. When there was no resistance, question of giving fist blow could not have arisen. In the absence of recovery of knife and the robbed property the connection of the appellant with the incident is ruled out. The alleged railway ticket shown in the name of the appellant and the fine receipt in the name of the appellant were planted later on just to implicate the appellant in this case. The genuineness of the fine receipt and the thumb impression on its back could not have been proved as the register of summary trial of Railway Magistrate Jaipur was not produced. The disclosure statement allegedly made by the appellant and the co-accused cannot be used against him as no recovery was made on the

basis of the disclosure statement. This disclosure statement is hit by S. 25 of the Indian Evidence Act.

4. The APP countered the contention raised by the appellant and submitted that from the evidence on record and particularly from the statement of the complainant Alok Verma, who has no enmity with the appellant, and the charge against the appellant stands proved beyond reasonable doubt. The arrest of the appellant on the basis of documents recovered from the handbag left by him in the railway compartment after committing robbery is probable and cannot be said to be under some misapprehension. He was given a chance but his refusal raises presumption against him. It is nowhere on record that he was shown to the witness earlier. He was produced before the concerned Metropolitan Magistrate with muffled face as is apparent from the judicial record but he refused to participate in the identification parade. Further, he has been correctly identified by the complainant in the court. There is nothing on record to indicate that the complainant knew this accused earlier or that he has any enmity or he has any reason to falsely implicate him in this case. The complainant has given the description of the robbers in the FIR. He stated that he could identify the accused if produced before him and he correctly identified the appellant in the court. According to the APP, the complainant has proved his report Ex. PW 1/A. At the time of the report he handed over a VIP bag left behind by the robbers when they ran away after committing robbery. In that bag, besides a railway ticket in the name of the appellant, a fine receipt dated 18-5-84 issued in the name of Sher Singh under section 118 of the Railways Act (Ex. P 9) was found. APP drew my attention towards the evidence on record to the effect that during investigation, it was revealed that on 18-5-84, Sher Singh and three other persons were fined Rs. 20/- each, at Jaipur under Section 118 of the Railways Act and vide receipt Nos. 16, 19, 20 and 21 Raju, Sher Singh Mangat Singh and Jabbar had deposited the fine amount. On the reverse side of the counterfoils of the receipts thumb-impressions of the accused were there. P.W. 5 Radhey Sham reader of the court of the Railway Magistrate, Jaipur, proved all these receipts and the thumb impressions on the back of the counterfoils. According to him, the convict is required to sign/thumbmark on the back of the counterfoil of the receipt. He further deposed that the counterfoils of receipts No. 16, 19, 20, 21 bear the thumb marks of the respective convict. The learned APP

drew my attention towards the report from the Director fingerprint Bureau, Phillaur, in support of this contention that on comparison the finger-impressions of Sher Singh appellant on the back of the counterfoil of the fine receipt and his specimen finger-impressions were found to be identical and of the same person. The learned APP further argued that this incident took place in the early hours of the day i.e. at 4.30 a.m. and it was a sleeping coach and all other passengers were sleeping at that time. All the accused persons surrounded the complainant and one of them sat at his seat giving no chance to others to see the incident. In these circumstances, it is not expected that any other person in the compartment had seen the incident. Even otherwise, if it is presumed that some of the passengers had seen the occurrence. It is a common know]edge that no one would like to come forward to risk his limb or life at the hands of armed robbers. The sole testimony of the complainant which stands unshattered and unrebutted is more than sufficient to convict the appellant for the said offence.

5. I have given my considered thought to the submissions made by the appellant and the APP and gone through the record. As a general rule, the court can and may act on the uncorroborated testimony of a single witness. However, in order to sustain an order of conviction on the basis of the testimony of a solitary witness, the evidence must be clear and convincing and should be of unimpeachable character. This incident of robbery took place at 4.30 a.m. when the other passengers in the railway compartment were sleeping. The accused were four in number and one of them sat on the upper berth where the complainant was sleeping just to give an impression that the accused was traveling with him. The other three accused stood around him and in that process the complainant was robbed. In such circumstances, the testimony of the complainant should be appreciated and his testimony cannot be discarded merely on the ground that no other passenger from the compartment was cited as a witness to corroborate his testimony. The complainant, who appeared as P.W. 1 has unfolded the prosecution version on all material particular. Though he was cross-examined at length, he stood the test of touchstone of probabilities in his cross-examination. No suggestion was put to him that he was deposing falsely on account of enmity with the appellant. He has stated the truth and nothing but the truth. He has no reason to depose falsely. He gave the description of the robbers in the FIR and he

identified the appellant in the court at the time of evidence.

6. The question of identity is a preliminary matter for consideration in a case of dacoity or robbery by unknown persons. No hard and fast rule can be laid down that in every case of dacoity if there is identification by only one witness that should not be accepted. In this case immediately after the arrest of the appellant a request was made to the Magistrate to arrange for identification parade of the accused persons. This appellant was produced before Shri Z. S. Lohat, Metropolitan Magistrate with muffled face with a request for arranging an identification parade but the appellant refused to participate in the identification parade by saying that he was shown to the witness earlier. The Magistrate though gave him statutory warning that in case he refuses to join the identification parade a presumption can be raised against him, but he refused to join the identification parade. Shri Z. S. Lohat, M. M. Proved the application Ex. PW 4/D, statement of the appellant Ex. PW 4/E and the proceedings recorded by him Ex. PW 4/F. Though the prosecution requested for identification parade at the earliest opportunity, but the petitioner did not avail of the same despite the statutory warning given to him and it raises a presumption against him. There is nothing to show that he was, shown earlier to the complainant. Identification of the appellant by the complainant in the court carries weight particularly when he has refused to participate in the identification parade and in such circumstances the prosecution has succeeded in proving that it was appellant who was one of the robbers and he made use of the knife, a deadly weapon, at the time of committing robbery. Besides this oral testimony of the complainant, the other circumstances also connect this appellant with the crime. The version of the complainant that after committing the robbery when the robbers jumped out of the running train which was in slow motion near the railway station Delhi Cantt., they left their bag Ex. P. 1 which he produced before the police when he lodged the report Ex. PW. 1/A. On the search of that bag, one receipt for payment of the fine issued by the railway Magistrate Jaipur (Ex. P. 9) relating to accused persons including Sher Singh was recovered. It was taken into possession vide memo Ex. PW 1/B. Shri Radhey Sham, reader of the Rly. Magistrate Jaipur, who appeared as PW 5 brought the original receipt book No. 1664 for issuing receipts in respect of fine paid by the convicts. He proved the receipt No. 19 dated 18-5-1984 in respect of deposit of

fine in the name of Sher Singh. According to him the convict is required to sign/thumb mark on the back of the counterfoil of the receipt. He stated also deposed about the thumb impression on the back of the counter-affidavit of receipt No. 19 in the name of Sher Singh appellant. The thumb mark on the back of counterfoil of receipt No. 19 was sent for comparison to the Director of Fingerprint Bureau, Phillaur along with the specimen thumb impression of Sher Singh. As per the report, from the Director Fingerprint Bureau Phillaur (Ex. PW 7/A) the thumb impression on the back of the counter foil of the receipt in the name of Sher Singh and his specimen thumb impression on comparison were found to be identical and of the same person. The trial court has correctly appreciated the facts and law while convicting this appellant under section 392/34, IPC read with Section 397 and I find no illegality or infirmity in the order passed by the Addl. Sessions Judge and confirm the finding of conviction against the appellant Sher Singh under section 392/34 and S. 397, IPC.

7. On the point of sentence also the minimum sentence provided for the offence under section 397, IPC is seven years rigorous imprisonment. The manner in which this robbery has been committed in a railway compartment of the running train, armed with a deadly weapon and keeping in view the past antecedents of the appellant, I feel that there is no justification in showing any leniency to the appellant on the point of sentence. The trial court has already taken a lenient view while sentencing him to undergo rigorous imprisonment for three years and a fine of Rs. 500/- under section 392/34, IPC and for seven years under S. 397, IPC and both the sentences were ordered to run concurrently. This sentence cannot be said to be disproportionate with the offence committed by the appellant and I, therefore, confirm the finding of the Addl. Sessions Judge on the point of sentence also. This appeal having no merit is dismissed. A copy of this judgment be also sent to the appellant through Suptd. Jail.

8. Appeal not allowed.