

Joginder Singh Vs. State

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Court : Delhi

Decided On : Sep-09-1978

Reported in : 14(1978)DLT205

Judge : R.N. Aggarwal, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 394

Appeal No. : Criminal Appeal No. 57 of 1978

Appellant : Joginder Singh

Respondent : State

Advocate for Pet/Ap. : J.C. Diggpal, Adv

Judgement :

R.N. Aggarwal, J.

(1) Joginder Singh Alias Joginder Pal, aged 22, was tried in the Court of Mr. T.S. Oberoi, Additional Sessions Judge on the charges under Sections 394 and 397 of the Indian Penal Code. The Additional Sessions Judge found the accused guilty of the offence under Section 394 of the Indian Penal Code and sentenced him to rigorous imprisonment for 3 years. The accused was also found guilty of an offence under Section 27 of the Arms Act and was sentenced to imprisonment for 3 years. However, both the sentences were ordered to run concurrently.

(2) Against his convictions and sentences the accused has come in appeal.

(3) The case for the prosecution is this: On 15th September 1977 at about 2.30 p.m. Surat Singh Mann (P.W. 4) boarded bus No. 131 from Singhu Border for Mandi House. Public Witness . 4 changed the bus at G.P.O. Kashmiri Gate and boarded bus No. 28 for Mandi House. Public Witness . 4 took a seat near the window but as it started raining he got up from the seat and stood in the passage between the seats. Near Darya Ganj Public Witness . 4 felt that some one is picking his pocket. Public Witness . 4 caught the accused by his hand and asked him as to what he was doing. The accused placed an open knife on the right side buttock of Public Witness . 4 and said : 'Chhore Sale'. Public Witness .4. apprehending danger. released the hand of the accused. The accused stabbed Public Witness . 4 at the back of the right thigh. Public Witness . 4 got aside and raised an alarm that he had been injured with the knife and that he should be dropped from the bus. The bus stopped at the I.T.O. Bus stop and the accused, Public Witness . 4 and other passengers got down. Public Witness . 4 raised alarm that the accused should be caught ; V.P. Kohli, Sub-Inspector (P.W. 7), Zorawar Singh, Asi (P.W. 6) and constable Malkhan Singh (P.W. 5) who were on duty at Dayal Singh Building were coming after finishing their duty and they on hearing the alarm apprehended the accused while he was trying to escape.

(4) On a search of the person of the accused 4 currency notes of Rs. 10.00 each and 2 currency notes of Rs. 5.00 each (Exh. p. 2 to p. 7) and Parchi Ex. p. 1 were recovered from the right pocket of the pant of the accused, dagger Ex. P. 8 with the cover Ex. P. 9 were recovered from the left dab of the accused. Rs. 5. 80 P. were also recovered on the search of the person of the accused. The parchi Ex. P. I bore the name of Public Witness .4.

(5) Public Witness . 7 recorded the statement Ex. Public Witness . 2/A of Surat Singh and sent the ruqa to the police station for the formal registration of the case. Surat Singh was medically examined at 6'30 p.m. and the doctor found one incised wound 1x over the left buttock lateral side and another small punctured wound over the left thigh upper part of Public Witness . 4. According to the doctor the duration of the injuries was 3 to 4 hours. The same day at 10 p.m. the accused

was also medically examined and one bruise and two abrasions were found on his body.

(6) The accused in his statement at the trial denied the prosecution case. The accused stated that at the bus stop he was trying to get into the bus and Surat Singh and other passengers were getting down from the bus and that there was a quarrel between him and Public Witness .4 and the police had taken him as well as Surat Singh to the police station but there Surat Singh was let off and he was implicated in a false case. As regards the injuries on the person of Surat Singh the accused gave the Explanationn that Surat Singh had received those injuries while getting down from the bus from a protruding steal sheet of the bus. The accused denied the recovery of the parchi Ex. P. I, currency notes Ex. p. 2 to p. 7 and the dagger Ex. p. 8 from his person. The accused admitted the recovery of Rs. 5.30 which he claimed were his. The accused did not produce any defense.

(7) I have heard the appellant in person, Mr. Diggpaul for the State and have also perused the record. The appellant contended that P. W. 4 deposed that he was arrested at the bus stop whereas Public Witness s. 5, 6 and 7 have given evidence that he was running away when he was caught by the said police officials and that the above discrepancy makes the prosecution case doubtful. P.W. 4 in Court stated that at the I.T.O. bus stop he, the accused and other passengers including the driver and conductor got down and that the accused was threatening the people with knife and saying as to who dare come near him and while the accused was trying to escape from there he was caught by the police officials. P. W. 7 V.P.Kohli gave evidence that on 15th September 1977 at about 4 p.m. he along with Zorawar Singh and a few other police constables was present at the crossing of Bahadur Shah Zafar Marg and Rouse Avenue when they heard the alarm 'Pakro Pakro', that they saw Joginder Singh running with Surat Singh following him and that he went ahead and caught the accused. Public Witness s. 5 and 6 have supported the above statement of Public Witness .7.

(8) I have carefully gone through the 'statements of Public Witness s. 4, 5, 6 and 7 and I do not find any material discrepancy in their testimony. Public Witness . 4 has clearly stated in the Court that the accused was trying to escape when he was

caught by the police officials. It is possible that the police officials had nabbed the accused while he was trying to escape. The first report Ex. Public Witness . 2/A was recorded soon after the occurrence and Public Witness 4 in his report to the police stated that the accused after getting down from the bus had run towards the University Grants Commission building and on his raising the alarm the police officials had apprehended him. I do not find any material discrepancy in the statements of the prosecution witnesses.

(9) The appellant next contended that his right hand does not work according to the medical report and, therefore, he could not have attacked P.W.4 with the knife and snatched the money at the same time. (In the application CrI. Misc. 1130 of 1976) the appellant has written that his left hand does not work properly and is unfit according to the medical report). The doctor who had examined the accused on 15th September had found an operational scare over the front of the right forearm and elbow joint. But there is no evidence that the right arm of the accused is incapacitated.

(10) The accused was caught red-handed at the spot. On the search of his person parchi Ex. P.I bearing the name of Public Witness . 4 and currency notes of the value of Rs. 50/- which the accused had picked from the pocket of Public Witness .4 were recovered. A knife was also recovered from the person of the accused. P.W.4 was medically examined within a few hours of the occurrence and one incised wound over the left buttock and one small punctured wound over the left thigh were found on his person. Public Witness . 4 gave evidence that when he caught the accused from his hand the accused had put an open knife over his buttock and caused the injuries. The Explanationn given by the accused for the injuries on the person of Public Witness . 4 is that he had sustained these injuries from a protruding steel sheet of the bus while he was getting down. This Explanationn does not appear to be true. Nothing has been brought out in the cross-examination of Public Witness . 4 to show that he had any motive to implicate the accused falsely. The version of the accused that when he was getting into the bus and Public Witness . 4 was coming down there was a quarrel between him and P.W. 4 and the police had taken both of them to the police station where P.W. 4 was let off but he was falsely implicated does not appeal to

reason at all. There was no reason at all for Public Witness s. 5, 6 and 7 to have cooked up a false charge against the accused.

(11) On a careful perusal of the record I am of the view that the prosecution case is substantially true. The learned Additional Sessions Judge did not find the accused guilty of the offence under Section 397 of the Indian Penal Code for the reason that the injuries found on the person of Public Witness . 3 were simple whereas Section 397 contemplated an attempt to cause death or grievous hurt by the use of a deadly weapon. In my opinion, the reason given by learned Additional Sessions Judge for not convicting the appellant under Section 397 of the Indian Penal Code is not sound. Section 397 Indian Penal Code is in the following terms:

'397.If, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or cause grievous heart to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years.'

It is clear from a reading of section 397 Indian Penal Code that if during the commission of robbery any deadly weapon is used the person found guilty would be punishable under Section 397 of the Indian Penal Code'. The Supreme Court in Phool Kumar v. Delhi Administration, : [1975]3SCR917 , held :

'WHEREAn accused at the time of committing robbery, carries in his hand a knife open to the view of the victims it is sufficient to frighten or terrories them and he can be convicted under Section 397. Any other overt act such as, brandishing of the knife or causing of grievous hurt with it is not necessary to bring the offender within the ambit of Section 397.'

(12) To my mind on the facts found the accused was guilty of the offence under Section 397 of the Indian Penal Code and he was liable to be punished with a sentence of not less than 7 years. However, keeping in mind that there is no revision on behalf of the State for the enhancement of the sentence, I find no compelling reason to give notice for enhancement. The term of imprisonment imposed on the appellant will meet the ends of Justice. The convictions and sentences of the appellant are upheld and the appeal is dismissed. The appellant

be informed of the judgment in Jail.

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