

Mohd. Nasir Vs. the State

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Court : Delhi

Decided On : Oct-07-1983

Reported in : 25(1984)DLT269

Judge : M.L. Jain, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 392; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 482

Appeal No. : Criminal Appeal No. 173 of 1980

Appellant : Mohd. Nasir

Respondent : The State

Advocate for Pet/Ap. : Neelam Grover and; G.S. Sharma, Advs

Judgement :

M.L. Jain, J.

(1) This order will disposes of three criminal appeals Nos 173/80, 277/80 and 281/80 and two Cr. Misc (M) 466/80 and 511,.81.

(2) By his judgment dated May, 9, 1980 the learned Addl. Sessions Judge convicted and sentenced the appellants as follows .

(1) Mohd. Nasir under section 392 read with Sec. 34 of the Indian Penal Code to sentence of 3' years rigorous Imprisonment, and

(2) Naseem & (3) Rajab under section 392/34 read with Section 397 of the Indian Penal Code to a sentence of seven years rigorous imprisonment.

(3) The above sentences were directed to run concurrently. Hence, these appeals and revisions.

(4) The prosecution case is that Charan Dass, a resident of Mahabir Nagar, who runs a dairy in village Gola Tajpur, came to Delhi on August 26, 1979 at about 9.00 p.m. in order to examine a buffalo for the purpose of purchasing the same from a seller in Turkman Gate and remained there for about one to two hours. The transaction fell through because the owner of the buffalo wanted cash payment in full while Charan Dass wanted to make payment in Installments. Since it became late in the night, the complainant did not proceed to his village out decided to spend his night in the nearby park lying between the Delite cinema and Irwin Hospital. He work up at about 3.30 a.m. and proceeded to the bus stand near Delhi Gate for catching a bus for return journey. When he was waiting at the bus stand, three accused persons came there. One of them, Naseem was armed with a pistol and the other accused Rajab was armed with a Kirpan. Both of them placed their weapons on the chest of the complainant and threatened him that they would kill him. The third accused Mohd. Nasir removed an envelope and a wrist watch from the person of the complaint. The envelope contained two currency notes of Rs. 10.00 each and also bore the name of the complainant. When the accused left him and proceeded towards Income-tax Office, the complainant raised an alarm. The police party which happened to patrol the area at that time, chased the accused in a Jeep. At about 209 yards the accused were seen proceeding towards the Income-tax Office. Upon pointing out by the complainant, they were apprehended. The personal search of the accused was taken. The police recovered a wrist watch of Favre Leuba make, revolver and a cartridge from Naseem. From Rajab, they recovered a kirpan and the currency notes and the envelope.

(5) The prosecution examined Charan Dass and the police Officers. The learned trial Judge believed the story put forward by the complainant and convicted and sentenced the appellants as aforesaid. When their appeals came for hearing on 3-11-1982, it was pointed out that Charan Dass had made a statement earlier on 26-11-1979 in which he had not assigned any role to the appellants while in his statement dated 1-4-1980 he had assigned different roles to the accused persons. He also did not mentioned in his earlier statement about the recovery. This court therefore, directed that Charan Dass be summoned and examined again with reference to his previous statement. When the direction went to the court below, the prosecution failed to produce Charan Dass for additional evidence.

(6) It is now urged that the statement of Charan Dass should be discarded because no full opportunity to the accused was available for cross examination. Apart from this main hurdle in the way of the Prosecution, the story put forward by the complainant is not credible at all. It is pointed out that the complainant instead of spending his night in the park could walk to his relatives who live in the nearby area of Mori Gate. It is also pointed out that the complainant was resident of Mahabir Nagar, a colony of Tilak Nagar to which night bus service was available but instead of proceeding to his village he chose to spend his night in the park. It was next pointed out that the complainant had earlier also come to purchase buffalos and used to return home the same day. If Charan Dass had come to purchase a buffalo, then he would not have come with an amount of Rs. 20.00 but with some more money. His Explanationn that he wanted to purchase the buffalo on Installment basis is not at all a satisfactory one. For all these reasons, it was contended that the story of the complainant is false. Another discrepancy that was noticed was that the Favre Leuba wrist watch belonging to the complainant is alleged to have been removed from his person by the accused Mohd. Nasir, but the recovery was made from the person of Naseem. The prosecution has failed to bring the guilt home of the accused beyond any manner of reasonable doubt.

(7) I have gone through the record of the case and perused the statement of Charan Dass. The main case of the complainant stands corroborated by the recovery of the envelope which contained the address of the complainant and the wrist watch but since the complainant had not in his earlier statement described

any particular use of weapon to any particular accused, it is difficult to fix them up under section 397. I.P. C. but at the same time the story of the complainant that he was robbed as aforesaid cannot be thrown out. The story of the complainant does not seem to be unnatural. The convictions are, therefore, upheld.

(8) As regard the punishments, the sentence of Naseem. and Rajab is reduced from seven years to four years and it is directed that it shall run concurrently with the sentences which they are already undergoing in Fir Nos. 292/77 and 430/78. As regards the sentence of Mohd. Nasir concerned, it seems to be his first offence and he has not welded any weapon. The ends of justice will, therefore, be met if his sentence is reduced to rigorous imprisonment for one year subject to set off under section 428 Cr. P. C. of the undertrial detention period. The three appeals are disposed of accordingly.

(9) In the two revisions, the petitioners Naseem and Rajab have prayed that the sentences awarded to them on 11-2-80 in Fir 299/77 and on 13-2-1980 in Fir No. 430/78 may be directed to run concurrently. They had already filed appeals which were dismissed in which they did not pray for concurrent running of the sentences. therefore, it is not possible to treat their applications under section 482 Cr. P.C. as revision petitions : vide Gopal Dass. v. The state, : AIR1978 Delhi138 . The revisions are, therefore, dismissed.