

Arjun Vs. State

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Court : Delhi

Decided On : Mar-03-1986

Reported in : 30(1986)DLT98

Judge : Charanjit Talwar, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 392

Appeal No. : Criminal Appeal No. 20 of 1986

Appellant : Arjun

Respondent : State

Advocate for Pet/Ap. : B.B.P. Singh, Adv

Judgement :

Charanjit Talwar, J.

(1) The appellant was convicted for offences under Sections 392 and 394 Indian Penal Code Along with two others namely Sita Ram and Sharwan Kumar. He has been sentenced to undergo rigorous imprisonment for 5 years. He has also been directed to pay a fine of Rs. 500.00 . In default of payment of fine he has been directed to undergo further rigorous imprisonment for three months. The co-accused were also imposed the same sentence.

(2) By this appeal the appellant is challenging the legality and validity of the judgment of conviction 'as well as of the order of sentence. The appellant and two others, Sita Ram and Sharwan Kumar, were tried for offences under Sections 392/394/397 Indian Penal Code read with Section 34 of the Ipc for having committed robbery and also for having caused injuries to one Chottey Lal. After trial the offence under Section 397 Indian Penal Code has not been held to have been proved against any one of the accused. However, as noticed above, they have all been convicted for the offence under Section 392 read with Section 394. According to Chottey Lal, the victim, who has appeared as PW-6, he was accosted by three youngmen at about 9.30 P.M. at a place known as Nabi Karim. He said that at a point of knife, his identity card and 10 to 12 rupees were removed from his pocket by one of the robbers. His wrist watch was removed by another and the third one gave him a knife blow on his buttock to immobilise him. Thereafter the robbers ran away. His case was that there was a police party on patrol duty nearabout the place of incident to whom the matter was reported who chased the robbers and arrested them.

(3) The finding of the learned trial court is that nothing was recovered from the possession of the appellant herein. From the possession of Sita Ram, the identity card of Chottey Lal, in which the amount of 12 rupees had been kept was recovered and from the possession of Sharwan Kumar, the watch alleged to have been robbed from Chottey Lal was recovered, There is no controversy regarding the identity of the watch as the name of the victim was embossed on its reverse. With the help of the learned counsel for the petitioner I have gone through the evidence recorded. The complainant Chottey Lal was found to have received one knife injury. In his deposition he firstly stated that the injury was given by the appellant herein and then stated that the knife blow was given by Sharwan Kumar. Both these versions were given by him in examination-in-chief itself. He said:

'THOSE two boys then asked Arjun to stab me I only heard them taking the name of Arjun on which that Arjun gave knife blow on my left side and after robbing me of the articles they fled away.'

Afterwards the witness stated :

'ACCUSED Sharvan gave me knife blow. Accused Sita Ram took out the identity card from my pocket. Accused Sharvan Kumar had removed watch and the third accused also helped them in removing these articles. Identity card and money was recovered from accused Sita Ram and watch was recovered from the possession of Sharvan Kumar. I identify the articles'

The prosecution allegation in its report under Section 173 of the Code seems to be that the appellant herein had made a disclosure statement and it was due to that statement that a razor had been recovered but this part of the prosecution case has not been proved. After analysing the evidence on the record the learned trial court has found that the allegation that Arjan (.appellant) made a disclosure statement was not to be believed. The evidence regarding recovery of the articles from this appellant is also contradictory. Bala Dhar, Public Witness who was said to be a member of the patrol party stated that the wrist watch was recovered from Arjun whereas the complainant state that the wrist watch was recovered from Sharwan Kumar. The learned trial court has discarded the version given by Bala Dhar and has found that the wrist watch was in fact, recovered from Sharwan Kumar. Thus the appellant has been convicted on the ground that he had joined the commission of the robbery which had not only resulted in depriving Chottey Lal of some articles but also resulted in an injury to him (the victim). The version about the apprehension of this appellant thus has only to be examined. For this purpose statement of Chottey Lal may be seen again. According to him after the report he went towards the police post and on the way met police official to whom he made statement Ex. PW-6/A. Thereafter the police ran after the accused. They were apprehended while purchasing 'Bidis'. It is useful to quote that witness :

'THE accused were running and on seeing them the police also ran after them. They were purchasing biri from the shop and on seeing the police they started running and on my pointing out as I could identify them the police apprehended them. The police arrested first one accused and apprehended another after some distance and third person after again some distance. I can identify those persons. The three accused persons present in the court are the same persons.'

(4) The above version shows that after the robbery and before the chase was given to the robbers, a little time had elapsed and that was the time in which the statement was made to the police A.S.I. Ramesh Chand- PW-7 in fact says that Chottey Lal told them that the incident occurred about 5 minutes prior to his reporting it. According to him on Chottey Lal's complaint the police party was split into two. One went towards Idgah side and the other towards Qutab Road in search of the robbers. He deposed:

'WHEN we were coming from the Idgah Road side we saw three boys coming running towards us. They were chased by S.I. Mahender Singh and other police officers. We apprehended all the three about 100 yds. away from Singhara Chowk. Chottey Lal identified all the three as those who had robbed him and accused Arjun had stabbed him.'

(5) It is clear that after apprehension of the robbers, the victim had pointed to Arjun (appellant) as the person who had stabbed him. This fact that Arjun was the one who stabbed the complainant has been proved to be false. As noticed above nothing was recovered from the appellant. The disclosure statement and consequently the recovery of the razor has not been believed. The appellant was not arrested at the spot ; not even immediately after the occurrence. He was arrested after a little while of the occurrence Along with two persons who were possibly the robbers. That fact alone cannot be made the basis for holding that he was accompanying those two when the robbery was committed. The prosecution evidence, as discussed above, is contradictory on all material facts. Thus the result of the above discussion is that the appellant is entitled to the grant of the benefit of doubt. The appeal is allowed. The conviction and the sentence imposed on him are set aside. If not required in any other case he is directed to be set at liberty.