

State Vs. Umesh Bhatia Etc.

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Court : Delhi

Decided On : Jan-11-1985

Reported in : 1985RLR153

Judge : G.R. Luthra, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 23

Appeal No. : Civil R. Appeal No. 14 of 1981

Appellant : State

Respondent : Umesh Bhatia Etc.

Advocate for Pet/Ap. : R.P. Lao and; R.N. Kapur, Advs

Judgement :

G.R. Luthra

(1) The present revision petition is directed against an order dated 16.9.80 of a Metropolitan Magistrate, Delhi discharging the respondents, in respect of offences punishable u/s 392 and 394 read with S. 34 Indian Penal Code alleged to have been committed by them.

(2) A report u/s 173 of the Code of Criminal Procedure was sent against the aforesaid respondents. The facts, as narrated by the police, are as follows

(3) On 14.7.77, a Quawali party headed by a lady was giving performance at Hotel Moti Mahal, Darya Gang, to entertain the people who happened to be taking dinner. Nichhater Singh (the complainant) and his two companions, namely, Mohan Singh and Prem Kumar were taking dinner. At that time, the complainant was armed with a revolver loaded with six cartridges which was tied by means of a belt to his waist. There were 8 other live cartridges of the revolver in the space meant for them which was attached to the belt. The respondents along with one Anand Vardhan Aggarwal were also taking dinner on an adjoining table. All of them were unarmed.

(4) At about 10.15 p.m. the complainant offered a ten rupee note to the lady Quawal with the request that quawali of his choice be sung. Immediately, perhaps with a view to exhibit wealth, ego and taste for quawali, one out of the respondents and Anand Vardhan stood up and offered Rs. 20.00 to the lady Quawal for first of all singing another quawali of his choice. It appears that the ego of the complainant and his companions could not tolerate this sort of overbidding and the result was a flare up. Soon grappling started between the respondents and Anand Vardhan Aggarwal on one side and the complainant and his companions on the other side. Three out of the respondent party caught hold of the complainant while the fourth one removed the revolver from its holster. Further, the complainant was given beating and one out of the respondent party snatched the wrist watch tied on the right hand of the complainant. Thereafter all the respondents and Anand Vardhan started running away. But Anand Vardhan was apprehended by Prem Kumar with the help of a constable Suresh Pal who happened to be there,

(5) The respondents fled away in car No. DHD7740 of Anant Vardhan. The complainant chased the respondents in his car No. Pun 5336 but the respondents escaped.

(6) Anand Vardhan was interrogated and he disclosed the names of respondents who were his companions with the result that respondents were arrested. The respondents had abandoned the car Dhd 7740 at Shivaji Park. On July 17, 1977 the revolver was also recovered from the said car. However the wrist watch alleged to have been snatched from the complainant was never recovered.

(7) Anand Vardhan was not prosecuted because he had not taken any part in the snatching of the revolver or the watch. A report u/s 173 Cr. P.C. was filed against the respondents only. The learned Magistrate was of the view that there was hardly any circumstance showing any intention, much less common intention, of the respondents to commit robbery because they had neither come for committing any crime and the removal of the revolver was only with a view to disarm the complainant lest the latter should use the same against the former. He also expressed an opinion that most probably the fight was started by the complainant and his companions and the complainant was threatening the use of the revolver and that with a view to avoid being shouted down, the respondents snatched the revolver.

(8) I am of the opinion that the view taken by the learned Magistrate was quite reasonable and plausible. The respondents never came with an 'intention to commit any crime or robbery or any theft. Their intention simply was to take dinner. It was momentarily that they were overwhelmed with the desire to show their wealth and taste for music that they overbid the complainant to which the complainant party took an offence. thereforee, the snatching of the revolver does not constitute a robbery.

(9) The offence of robbery is defined in S. 390, IPC. A reading of the definition shows that robbery is either theft or extortion if it is under the circumstances mentioned in the definition. The offence of extortion is defined in S 383 Indian Penal Code which reads, '383, Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed sealed which may be converted into a valuable security commits 'extortion'.

(10) It is obvious that the snatching of the revolver by no stretch of imagination could amount to extortion because there was no inducement to the complaint to part with the revolver and according to the prosecution, the revolver was snatched,

(11) The offence of theft is defined in S 378 Ipc, the relevant portion of which reads:

'378. Whoever, intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.'

(12) It is clear from above that so that there may be theft there should be intention to take moveable property dishonestly. The word 'dishonestly' is defined in S. 24 Indian Penal Code and the same reads: '24. Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing 'dishonestly'.

(13) The words 'wrongful gain' and 'wrongful loss' are defined in S 23 Indian Penal Code and they read: '23. 'wrongful gain' is the gain by unlawful means of property to which the person gaining is not legally entitled, 'wrong- loss' is the loss by unlawful means of property to which the person losing it is legally entitled. A person is said to gain wrongfully when such person retains wrongfully, as well as when such person acquires wrongfully. A person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property.'

(14) It is clear from the above definitions of 'theft' the word 'dishonestly' and the words 'wrongful gain' and 'wrongful loss' that so that there may be theft there should be an unlawful intention on the part of the accused to either cause wrongful loss to another or wrongful gain to himself. In the present case, the respondents did not have any wrongful gain because they abandoned the revolver. It appears that they had never intention to cause wrongful loss to the complainant since their motive was to save themselves from being shot down by way of disarming the complainant. When there was no theft, obviously there could not be any robbery and hence on the allegations of the prosecution, offence of robbery is not made out.

(15) Shri R.P. Lao, learned counsel for the State, vehemently argued that snatching away of the wrist watch obviously constituted an offence of robbery. But there is nothing to show as to who of the respondents had snatched the watch. The respondents could be held liable had there been any 'common intention' on their part to commit that act of snatching. But there is no indication that they had

that common intention because they had not come for the purpose of committing any crime and there could not be any meeting of mind for the commission of the alleged robbery of the watch. In fact, none of the respondents, even according to the story of the prosecution, was greedy of obtaining any property. Rather it was their foul exhibition of wealth and egoism which led to the entire occurrence. In their zeal to show their wealth and satisfy ego by having precedence over complaint by the prevailing of their will in respect of singing of a particular quawali, they paid Rs. 20.00 as against Rs. 10.00 paid by the complaint to the lady Quawal. I doubt if any of the respondents was a connoisseur of music. Thus, obviously it was the foolishness of the respondents and not the intention to commit any crime which led their involvement. Hence, no criminal liability can be fastened on them. Petition dismissed.

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