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Ashok Kumar Alias Ashoki Vs. State

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Court : Delhi

Decided On : Mar-03-1987

Reported in : 33(1987)DLT16

Judge : Malik Sharief-ud-Din, J.

Acts : Indian Penal Code (IPC), 1860 - Sections 392

Appeal No. : Criminal Appeal No. 120 of 1986

Appellant : Ashok Kumar Alias Ashoki

Respondent : State

Advocate for Pet/Ap. : S.T. Singh, Adv

Judgement :

Malik Sharief-ud-Din, J.

(1) This appeal has in fact been filed through Mr. D.R. Sharma, Advocate, but unfortunately he has not appeared despite the matter being shown on the regular board, thereforee, I heard Sodhi Teja Singh, counsel for the State, who has very fairly taken the case.

(2) Three persons including the appellant were convicted by the learned trial judge and the present appellant had been sentenced to undergo rigorous imprisonment

for seven years under Sections 392/397/34 of the Indian Penal Code. Similar sentence was recorded in the case of an other accomplice Ramesh while the third accomplice Rohtas was sentenced to four years rigorous imprisonment under Sections 392/34 of the Indian Penal Code. The court has also directed that the appellants will be entitled to set off for the period during which they were under detention.

(3) The victim of the offence in the present caseis PW-l,Smt. Sushma. On 27th march, 1983, after coming out of her office she in the company of Kumari Yashoda, PW-2 and Smt. Francis Minz, PW12 while proceeding on Raiseena Road, New Delhi in order to reach the bus stop, at about 3.25 p.m. when they were passing through the road, two boys approached them and asked about some address. Showing their inability to help they proceeded when Ashok Kumar, who was described as a tall boy, caught hold of her golden chain from backside and pulled it. She resisted by holding the chain from the front as a result of which she succeeded in extricating a portion of the chain. In the process when all the three of them proceeded further, both of them came from front and the tall boy identified as the appellant, holding a revolver and the other one identified as Ramesh, holding a knife, threatened her to part with the other portion of the chain. An alarm way raised and both these boys including the appellant escaped on a scooter which was parked nearby and was being driven by the third accused Rohtas. It is alleged that the scooter was in running condition at that time.

(4) -IN pursuance of the alarm raised by these ladies, PW-3Avtar Singh who then on duty at the taxi stand nearby came running and saw the appellant and his accomplice escaping on scooter. On his signal to stop, the appellant allegedly showed him the revolver.

(5) Now the appellant and his two accomplice were in fact arrested by the Police Station Kalka Ji, New Delhi in some case where the appellant is said to have made a disclosure statement to PW-6 Sub-Inspector Manjit Singh about the involvement of the appellant and his two accomplice Ramesh and Rohtas in the commission of this offence. Consequently this information was transmitted to Police station Parliament Street, New Delhi.

(6) Soon after Avtar Singh, PW-3 found the accused escaping on a scooter, he informed the Police Station Parliament Street, New Delhi, as a result of which PW-14, Sub Inspector Inder Singh visited the same place of incident. He recorded the statements of the complainant and seized the piece of golden chain from the complainant.

(7) On receipt of information from Police Station Kalka Ji in Police Station Parliament Street, S.I. Inder Singh came to Patiala House Courts where he formally arrested the petitioner and Ramesh who were on the same day remanded to judicial custody. He immediately moved an application for test identification parade of both these. Similarly on the 26th April, 1983, Rohtas was arrested by him in Tees Hazari Courts where he was in the custody of Crime Branch. Rohtas was also remanded to judicial custody and an application for test identification parade was immediately made. The appellant and bids accomplice refused to participate in the test identification parade. After this was over, the police remand of the appellant was procured to Ashok kumar who made a disclosure statement pursuant to which the other part of the golden chain of the complainant Was recovered from PW-7, Raj Kumar, having Jewellary shop at Jahangir Puri. After the appellant and his accomplice declined to be subjected to the test identification parade, the police called the complainant, who is stated to have identified all the three accused persons.

(8) The first and the most important aspect of the case is whether the prosecution has sufficiently established the identity of the appellant and his accomplice as the persons who were involved in the commission of this crime. It may be reiterated that all the accused including the appellant declined to join the test identification parade. The appellant and his accomplice were formally arrested in the court premises and on the same day were remanded to judicial custody. The application for identification parade was made simultaneously. The Magistrate went for identification parade finally to Tihar Jail on 30th April, 1983 when they declined to join the parade. There was, thereforee, on scope for the investigating officer to show the accused persons to the witnesses. PW-14, S.I. Inder Singh has been corroborated byPW19, Shri T.D. Kashav, M.M. Having declined to participate in the test identification parade there is no alternative but to call the complainant and

witnesses and ask them to identify the accused. Having declined to submit to the test identification parade, the presumption would be that had the accused accepted the offer, they would have been identified.

(9) That apart there are four main witnesses who were supposed to identify the appellant and his accomplice in the court. These are PW-1, PW-2, PW-3, and PW-12. PW-I, Sushma is the victim and she is bound to notice the appellant and Ramesh as they have come very close to her thrice, firstly, when they enquired about some address; secondly, when they pulled the chain from behind; and thirdly, when they came from the front armed with weapons. She has also noticed Rohtas who was on the scooter at a distance of five yards. She has clearly identified the appellant and his accomplice in Court. PW-2, Kumari Yashoda has however not identified any one. According to her she felt perplexed and. did not care to notice the features. PW-12,Smt. Francis Minz has identified both the appellant and Ramesh but not Rohtas. She however admits that the two wheeler scooter was at a distance of five yards from them. PW-3, S.I. Avtar Singh has also identified the appellant and his accomplice as the persons whom he saw escaping from the scene. None of these witnesses have any ill will or enmity with the appellant and his accomplice nor is there any motive to falsely implicate an innocent person. These are mostly innocent ladies and there is no question of their unnecessarily implicating these persons falsely. Considering the circumstances on which the offenders came to be convicted they are bound to notice the accused It maybe that PW-2, Kumari Yashoda was perplexed and did not care to notice the broad description of the accused. She cannot be accused of speaking a lie. In fact she may be speaking the truth, but that does not improve the case against the appellant.

(10) The next feature of the case is and from my point of view not of, less importance that half portion of the chain was recovered at the instance of the appellant, after he made the disclosure statement which led to the discovery. The report of the C.F.S.L. is that the discovered portion of the chain forms part of the portion seized from the complainant. The prosecution case is that this portion of the chain was sold to one Raj Kumar, Jeweller of Jahangir Puri by the appellant for a sum of Rs. 522.00 and the said Raj Kumar had procured a receipt for the same.

PW-4, Sh. Prabha Karan, husband of the complainant had accompanied the police party at the time of recovery from Raj Kumar PW-7, and he has testified to this effect.

(11) PW-8, constable Chand Ram, PW-9 Anwar Khan, PW-11 Head Constable Ram Singh, PW-14 S.I. Inder Singh and PW-15, constable Bangali Ram have all testified regarding the correctness of the disclosure statement and the discovery of the portion of the gold chain from PW-7, Raj Kumar. PW-7, Raj Kumar has however declined to support the prosecution case in this regard. His worry not to support the prosecution case and to turn hostile is understandable. Perhaps he does not want to be accused of being a habitual receiver of stolen property. He has however admitted that the police party accompanied by the appellant and his two accomplice did come to his shop in a car. The recovery of a part of the golden chain of the complainant at the instance of appellant Ashok Kumar in the circumstances of this case is a clinching piece of evidence and when considered in the light of the eye witness account their is no escape from the conclusion that the appellant has been rightly convicted for the commission of this offence. There is no ground for assailing the same. The result is that this appeal is dismissed and the conviction and sentence of the appellant is confirmed.

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