

Sharwan Kumar Vs. State

Sharwan Kumar Vs. State

SooperKanoon Citation : sooperkanoon.com/688919

Court : Delhi

Decided On : Mar-03-1987

Reported in : 32(1987)DLT32

Judge : Malik Sharief-ud-Din, J.

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

Appeal No. : Criminal Appeal No. 41 of 1986

Appellant : Sharwan Kumar

Respondent : State

Advocate for Pet/Ap. : Nitya Ramakrishna,; amices Curiae and; S.T. Singh, Advs

Judgement :

Malik Sharief-ud-Din, J.

(1) The learned Additional Sessions Judge by his order dated 10/01/1986 found the appellant along with one Sita Ram and Arjun guilty under Sections 392/394 of the Indian Penal Code and after convicting them of the offences sentenced each one of them with rigorous imprisonment for five years and to the payment of fine of Rs. 500.00. In default of payment of which they were to undergo further rigorous imprisonment for three months. All the three convicts have filed separate appeals. Criminal Appeal No. 20 of 1986 filed by Arjun was disposed of on 31/03/1986.

(2) The prosecution case in brief is that on 20/05/1982, the appellant along with his co-accused Sita Ram and Arjun committed robbery by causing hurt voluntarily and in the process they are said to have caused injuries to PW-6, one Chhotey Lal.

(3) They are further alleged to have deprived the complainant of his wristwatch, Rs. 12.00 in cash and the identity card which the complainant was holding as a Chowkidar. The matter was reported to the police patrol party within minutes of the incident and all the three accused including the appellant were allegedly apprehended on being identified by PW-6 Chhotey Lal. After their arrest search of Sita Ram has resulted in seizure of the identity card of the complaint, and Rs. 12.00 in cash. It is alleged that a wrist watch was also recovered from the appellant which belongs to the complainant. On the disclosure statement made by Arjun, one razor was recovered.

(4) There is no evidence on the record to connect the razor with the injury sustained by the complainant. The evidence tendered by PW-6, Chhotey Lal clearly indicates that it was dark hour of the night when the incident took place and he did not know any one of the accused before hand. He has failed to notice the nature of the weapon, that was used to inflict injury. There has been no test identification parade. It is, therefore, absolutely doubtful as to whether the complainant has rightly identified the accused as those who voluntarily caused hurt to him at the time of commission of the offence. The least that can be said is that in the absence of test identification parade it is not proper to rely on this type of testimony. Prosecution witnesses -PW-6, Chhotey Lal, PW-7 Ramesh Chander, PW-8, Mahinder Singh Sub-Inspector have all stated that the wrist watch was recovered from the appellant while identity card and the cash were recovered from Sita Ram. PW-5 Bala Dhar however is confused in this regard as he has deposed firstly, that wrist watch was not recovered from the Sharwan and only identity card was recovered from him about which he also says it was recovered from Sita Ram. Regarding wrist watch he says that it was recovered from Arjun. In persuance of the testimony of other threewitnesses, it is obvious that he is confused. Unfortunately even during these recoveries no public witness was associated even though as stated by PW-9some people were passing by.

(5) As stated earlier, it is difficult to say with certainty that the injuries sustained by PW-6 Chhotey Lal have been caused by the razor recovered at the instance of Arjun. In the absence of test of identification parade the prosecution has failed to establish the identity of the culprits particularly in view of the darkness and the fact that complainant did not knew these people. The injury could be caused by the seized razor is not conclusive evidence. It is only an opinion.

(6) After giving my careful consideration to the facts of the case, I, however find that there is nothing in the testimony of PW-6, Chhotey Lal to render him untruthful. It is a different matter that he has tried to exaggerate his evidence by identifying the persons whom it was difficult to identify in view of the peculiar features of this case. But in so far the recovery is concerned, there is no reason to disbelieve that it was not made from the appellant and his accomplice Sita Ram. In fact all the evidence establishes beyond any doubt that the recoveries were made from them. The appellant or his accomplice Sita Ram have not owned any one of these Articles. In fact they have denied the recovery. Admittedly the wrist watch and identity card belongs to the complainant and the appellant along with Sita Ram was found to be in wrongful possession of these Articles. The case, in my view, therefore, at the most falls under Section 411 of the Indian Penal Code. The appeal is as such dismissed.

(7) The order of the trial court is however modified to the extent that the conviction and sentence passed under Sections 392/394 is set aside. The appellant and Sita Ram in Criminal Appeal No. 70/86 are instead convicted under section 411 of the Indian Penal Code. The maximum punishment for an offence under Section 411 of Indian Penal Code is three years. The appellants have been sentenced on 16/01/1986. They are as such sentenced to undergo imprisonment already undergone.