

Suresh Kumar Vs. State

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Court : Delhi

Decided On : Jan-27-1989

Reported in : 38(1989)DLT25

Judge : P.K. Bahri, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 394

Appeal No. : Criminal Appeal Nos. 81 and 121 of 1988

Appellant : Suresh Kumar

Respondent : State

Advocate for Pet/Ap. : Anjana Gosain,; Maldeep and; K.K. Bakshi, Advs

Judgement :

Bahri, J.

(1) These two appeals have been filed by Suresh Kumar who has been convicted by the Additional Sessions Judge, Shahdara for an offence punishable under Sections 3901 39213941397 Indian Penal Code . and under Section 27 of the Indian Arms Act and has been sentenced to undergo rigorous imprisonment for 7 years and to pay a fine of Rs. 1,000.00 , in default of payment of fine, to further undergo rigorous imprisonment for six months under one count and sentence of rigorous imprisonment for two years under, the second count under the Arms Act

with the directions that both the sentences are to run concurrently. Public Witness -1 Smt. Vijya Lakshmi, the complainant of this case accompanied by her mother-in-law Public Witness -2 Smt. Vidya Wati on September 5, 1986 had come to Daryagani for consulting some doctor and after taking medicines from the doctor they proceeded to the Fountain on Chandni Chowk, from where they boarded a four wheeler scooter being driven by PW-8 Jagdish bearing No. DLR-214 for coming back to their house in Shahdara and at the time Suresh accused also boarded that four wheeler. At about 2.30 P.M. the said four wheeler reached Dharampura Bus Stand, G.T. Road, Suresh alighted from the said vehicle and paid his fare and immediately he snatched a golden chain being worn by Public Witness -1, in the process causing injuries to her neck and he started running away and was being followed of Public Witness -1 Smt. Vijay Laxmi and at that time fortunately enough constable Vijender Singh, Public Witness -7 who was just on routine patrolling duty arrived at the spot and he, on hearing the cries of the complainant, proceeded to follow the appellant and with the help of Public Witness -3 Sukhpal Singh, a public witness the appellant was apprehended. Before the appellant could be nabbed, the appellant had taken out a dagger with which he inflicted the injury on the hand of the constable threatening to kill him. The golden chain which was snatched from Smt. Vijay Laxmi's neck Ex. Pi was recovered from the pocket of the trousers of the appellant and the dagger was also seized. The appellant was brought to the police station Along with the said dagger and the golden chain and witnesses. The case was registered on the statement of Smt. Vijay Laxmi by the duty officer A.S.I. Rajinder Singh, Public Witness -6 and Ex. Public Witness 1/A is the copy of the FIR. A.S.I. Rajinder Singh also prepared the sketch of the dagger Public Witness 1/C and converted the golden chain as well as dagger into the separate sealed parcels and took them in possession by Memos Public Witness 1/B and Public Witness 1/D and deposited the case property in the Malkhana. The investigation was entrusted to S.I. Parkash Chand, Public Witness -9 who recorded the statements of the witnesses, visited the spot and prepared the site plan Public Witness 9/A and also arrested the appellant and prepared the personal search memo of the appellant Ex. Public Witness 9/A. He took into possession the document Ex. Public Witness 41A. a copy of the receipt showing the purchase of the golden chain. Public Witness 5 Ramesh Chand is the

goldsmith. All these witnesses duly proved the case against the appellant. The story which was suggested by the appellant in cross-examination of the main witnesses is that he in fact had got into that four wheeler Along with the other passengers including Public Witness -1 and Public Witness -2 and had alighted at the Dharampura Bus Stand. According to him the golden chain of Public Witness 1 was snatched by some other person who escaped from the spot while he was unnecessarily taken to the police station and was falsely implicated in this case. So, the appellant did not dispute the factum of his being present at the spot and that the robbery having taken place but he only set up the plea that he was falsely implicated. In the cross-examination of Public Witness -1 nothing was suggested to show as to why the complainant should have falsely implicated the appellant. Admittedly she had been robbed of her golden chain and there was no reason turn her to .falsely implicate the appellant if the appellant was not the culprit. Secondly, the golden chain which was robbed from the complainant, was recovered at the spot from the appellant. If some other person had committed the robbery and taken away the robbed golden chain, there could be no occasion for the golden chain being found on the person of the appellant. In the grounds of appeal the appellant had come up with a new story that in fact the constable Vijender Singh was traveling in the same vehicle and there took place some altercation between him and the constable Vijender Singh and police man and Sukhpal, Public Witness unnecessarily dragged the appellant to the police station. This is a new story which has not been suggested to the prosecution witnesses nor it has been mentioned by the appellant in his statement under Section 313 Criminal Procedure Code . and thus cannot be given any credence. At any rate even if the appellant had any altercation with the constable, there is no reason why Public Witness -1 Sim. Vijay Laxmi, the complainant and Sukhpal, Public Witness and even Jagdeesh the driver of the vehicle should have unnecessarily falsely implicated the appellant. There had not appeared any serious contradictions in the statements of the main witnesses except for few in consequential variations here and there which are even not been referred to by the learned counsel for the appellant who argued the appeal with lot of vigour and efforts. It is also pertinent to mention that Dr. S. Kurnar, Public Witness -10 of the hospital at Shahdara had examined Vijay Laxmi at about 6 P.M. on the same day and had found two abrasions on both

sides of the complainant's neck and prepared the Mlc Ex. Public Witness Iojia which corroborates the testimony of the prosecution witnesses that in fact the golden chain was snatched from the neck of the complainant and the medical examination of Virender Singh done by The same doctor at very time shows vide Mld, Ex. Public Witness 10/8 that he had Ciw 3 CM. long lateral side left wrist, an injury possible with sharp weapon which corroborates the case of the prosecution that this injury was inflicted by the appellant with the said dagger. It has been mentioned in the grounds of appeal that the prosecution witnesses do not say as to from where the appellant had taken out the dagger. It is true that at the time of commission of the robbery the witnesses do not say that appellant was having any dagger in his hand visible to the victim or to the witnesses. It is only when appellant had run away from the spot, was being followed and had readied near the railway lines that appellant had threatened the pursuing constable and the public witness with the dagger in his hand and had also caused injury to the constable with that dagger. So. nothing turns on the fact that the witnesses had failed to prove as to from where the appellant produced the dagger. Danger could have been kept concealed by the appellant in the dub of his trousers and he could have taken out the dagger in order to avoid his being caught by the constable and the said public witness who were pursuing him. The contention that the dagger could not have been kept by the appellant in the trouser's dub does not convince me at all. So, it is proved beyond any shadow of doubt that appellant had committed this robbery and had caused injury with the said dagger on the person of the said constable and while committing the robbery he had caused hurt to the complainant and the golden chain in question and the dagger in question were recovered from the appellant.

(2) The learned counsel for the appellant Ms. Anjani Gosain who appeared as amicus curiae in support of one appeal and Ms. Maldeep Sidhu who appeared as amicus curiae in support of the other appeal have argued that no offence under Section 397 Indian Penal Code . is made out in as much as at the time of the commission of the robbery the appellant was not shown to have used the deadly weapon. Section 397, Indian Penal Code . clearly lays down that if at the time of committing robbery or dacoity. the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any

person, the imprisonment with which such offender shall be punished shall not be less than seven years. This is not a substantial offence which is punishable under Section 397 Indian Penal Code . The offence committed by the appellant must be either under Section 392, 394 or 395 Indian Penal Code . before the provisions of Section 397 Indian Penal Code . could be made applicable. As far as the substantial offence committed by the appellant is concerned the same is obviously under Section 394 Indian Penal Code . Simple offence of robbery is punishable under Section 392 Indian Penal Code . but if at the time of committing or in attempting to commit robbery, the accused voluntarily causes hurt to the victim or any other person then the offence is punishable under Section 394 Indian Penal Code . In the present case the appellant had while snatching the golden chain from the complainant's, neck had voluntarily caused hurt to Public Witness -1. Thus he has definitely committed an offence punishable under Section 394 Indian Penal Code . Provisions of Section 397 Indian Penal Code . would not be applicable to the facts of the present case because at the time of committing the robbery the appellant had not used the dagger. Appellant could be guilty of such culpability if the appellant was carrying the dagger in the full view of the victim at the time of the commission of the robbery. Such was the cases of Phool Kumar versus Delhi Administration, 1975 Cri. Law Journal.(I) In the said case the accused at file time of committing the robbery was earning in his hand knife open to the view of the victims and it was held that it was sufficient to bring homo the culpability of the accused under Section 397 Indian Penal Code . It was also held that any other ever overt act such as brandishing of the knife or causing of grievous hurt with it is not necessary to bring the offender within the ambit of Section 397 Indian Penal Code . In Thavasi and another versus 1972 Cri. Law Journal 445(2) the facts were that no deadly weapon was used at the time of committing the robbery but the said weapon was used for inflicting injuries only when. the accused was about to be apprehended by an overwhelming crowd. It was held that provision of Sections 397 of the Act were not applicable in as much as the deadly weapon was not used while committing the robbery. This judgment on all fours applies to the facts of the present case. The dagger in. question was not open in the hand of the appellant at the time of committing the robbery, so he cannot be punished with the help of Section 397 Indian Penal Code .

(3) So, I hold that the Additional Sessions Judge was not legally right in sentencing the appellant under Section 397 I.P.C. The appellant has committed the offence punishable under Section 394 Indian Penal Code .

(4) A half hearted contention was raised on behalf of the appellant that being a young person aged about 22 years or so at the time of commission of the offence, should have been given the benefit of Sections 4 and 6 of the Probation of Offenders Act. The counsel for the appellant forget that under Section 394, Indian Penal Code , an imprisonment for life is also prescribed as a sentence and where such sentence is prescribed, provisions of Probation of Offenders Act are not applicable. It has been held in *Jogi Nahak versus The State*: : AIR1965 Ori106 that the provisions for punishment in Section 394. Indian Penal Code . for imprisonment for life or imprisonment for 10 years and fine cannot be read conjunctively so as to mean that it provides an alternative sentence for the offence concerned. It was held that where the accused is convicted under Section 394, Indian Penal Code . he cannot be given the benefit of provisions of Sections 4 and 6 of the Probation of Offenders Act. As far as the conviction of the appellant under Section 27 of the Arms Act is concerned, the same is well based because the appellant had used the said dagger for inflicting injury on the person of the constable when he was being apprehended by him. I hence confirm the conviction of the appellant for offences punishable under Section 394 Indian Penal Code . and Section 27 of the Arms Act and maintain the sentence given under Section 27 of the Arms Act but I modify the sentence under Section 394. Indian Penal Code to four years rigorous imprisonment. Both the sentences shall run concurrently as directed by the Additional Sessions Judge. The appellant be informed about this judgment through Superintendent of Jail. Both the appeals are dismissed with above modification.