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Court : Delhi

Decided On : Apr-09-1987

Reported in : 32(1987)DLT159

Judge : M.K. Chawla, J.

Acts : [Indian Penal code, 1860](#) - Sections 392

Appeal No. : Criminal Appeal Nos. 4 and 205 of 1986

Appellant : Pawan Kumar @ Pawan

Respondent : State

Advocate for Pet/Ap. : Mohinder Saini and; R.P. Lao, Advs

Judgement :

M.K. Chawla, J.

(1) By this Judgment, I propose to dispose of Criminal Appeal no. 205/86- Pawan Kumar vs. State, and Criminal appeal no. 4/87-Sandeep Kumar vs. State, as they arise out of common Judgment of Shri Sagar Chand Jain, Additional Sessions Judge, New Delhi, dated 9-12-1986. Even though two separate challans under Sections 392/34 and 397 Indian Penal Code against both the accused and the other under Section 27/54/59 Arms Act against Pawan Kumaraccused, were filed but the learned lower court ordered their consolidation as they related to the same

incident. Accused Suresh Kumar has since been given the benefit of doubt and acquitted.

(2) As per the prosecution case, on the intervening night between 31/01/1980 and 1/02/1980, Mustkin(PW-3) Along with his friend Rauf(PW-4) were returning to their home after seeing a night show at Alankar Cinema. When they reached near over-bridge of Nehru Nagar adjoining Ring Road within the jurisdiction of P.S. Sri Niwaspuri, all the three accused persons in furtherance of their common intention committed robbery on the person of Must kin son of Mohd. Ali, by putting him/under fear of death or hurt and robbed him of one wrist watch make Teknika 17 jewels and cash amounting to Rs. 345.00. It has also been alleged that accused Pawan at that time was armed with spring-actuated knife and he used the same while committing robbery.

(3) Accused Pawan and Sandeep were apprehended at a distance of about 20 paces from the place of occurrence by the Police party which was on patrol duty at that time. The third accused Suresh managed to escape. It is the further case of the prosecution that from the possession of Sandeep, the wrist watch belonging to Mustkin was recovered. The knife which accused Pawan Kumar was holding was also taken into possession. Its sketch was prepared and later on both the articles were converted into separate sealed parcels.

(4) The prosecution version further goes to say that on the next day i.e. 2-2-1980, accused Pawan Kumar led the Police party for the search of accused Suresh. He was expected to come from Faridabad and alight near the Ashramchowk. At about 7.05 P. M. Suresh K.umar came there and on the pointing of accused Pawan, he was arrested. From his personal search, the sum of Rs. 250.00 was recovered from his pocket. This was taken into possession vide the recovery memo prepared there and then and sealed into separate parcels.

(5) On the basis of these allegations, all the accused were charged for having committed offence punishable under Section 392 read with Section 34 Ipc, accused Pawan Kumar was also charged under Section 397 Indian Penal Code for having used the spring-actuated knife in the commission of the said offence of robbery. Accused Pawan Kumar was also charged u/s 27 of the Arms Act for

illegally possessing the spring-actuated knife without any permission or license, which he allegedly used in the commission of the robbery.

(6) The accused persons denied the charges leveled against them and claimed, that they have been falsely implicated in this case. Accused Suresh took up the defense that he along with his father were summoned to the Police Station where they were compelled to pay a sum of Rs. 250.00 and nothing was recovered from them. None of them, however, led any evidence in their defense.

(7) In support of its version, the prosecution examined as many as 12 witnesses out of which PW-3 Mustkin and PW-4 Rauf are the victims of the robbery while PW-5 Constable Satbir Singh, PW-8 Constable Azad Singh, PW-9 SI Ram Parkash, PW-11 SI Sarwan Singh and PW-12 S.I. Nirmal Singh are the Police Officers who were on patrolling duty in that area on the date, time and place of the occurrence. PW-7 Shiv Kumar is a witness in whose presence accused Suresh Kumar was arrested at Ashram chowk on 2-2-1980. The rest of the witnesses are of formal nature.

(8) The learned Additional Sessions Judge on consideration of the oral as well as documentary evidence placed and proved before him acquitted accused Suresh Kumar after giving him benefit of doubt while convicting the rest of the two accused. Both of them were sentenced to undergo R.I. for 5 years and a fine of Rs. 500.00 each under Sections 392/34 IPC. In default of payment of fine, they were further directed to undergo R.I. for 3 months. Pawan Kumar was also sentenced to undergo R.I. for 7 years under Section 397 IPC. Accused Pawan Kumar was further sentenced to undergo R.I. for one year under Section 27/54/59 of the Arms Act. All the sentences, however, were directed to run concurrently. This very finding is under challenge in the two appeals of Pawan Kumar and Sandeep.

(9) The first and foremost contention of the learned counsel for the appellants that none of the victims of the alleged robbery has identified any of the appellants responsible for depriving them of their watch and cash. According to the learned counsel, the incident took place at the dead of the night and it was just not possible for Mustkin and Rauf to remember the features of the accused persons

and for that reason, their description was not mentioned in the first information report. Learned counsel also pointed out that the accused were shown to the witnesses outside the court room before their examination and this admission is fatal to the prosecution case. Further more, according to learned counsel, Mustkin has not identified the watch alleged to have been recovered from Pawan Kumar inasmuch as its strap is not the same which was with it when he was wearing it at the time of the incident. Similarly, there are material contradictions in between the statement of the prosecution witnesses with regard to the recovery and identification of the knife. In view of these facts) the offences against any of the accused have not been proved beyond any reasonable doubt which entitles them to be acquitted. Learned counsel for the State mainly relies upon the evidence of the victims and the Police Officers who were able to apprehend the accused at the spot. The recovery of the articles, according to the learned counsel further supports the prosecution version. There is no reason for the prosecution witnesses nor it has been pointed out as to why the accused have been falsely implicated. The impugned judgment is well-reasoned and no ground has been made out to arrive at a different conclusion.

(10) The identity of the accused persons is the most material aspect of this case. PW-3 Mustkin and PW-4 Rauf are the only witnesses who can throw light on this issue. While under examination before the Court, both the witnesses failed to identify any of the accused persons responsible for depriving them of their belongings, and for that reason, they were declared hostile and cross-examined on the point of identity of the culprits. Mustkin even then admitted that two of those three persons who had been apprehended at the spot soon after the incident, gave their names which he in turn stated before The police. On being pointed out, this witness identified accused Pawan and Sandeep as the persons who were apprehended at the spot. Even this identification to my mind is of no avail to the prosecution when Mustkin further on admitted that the Police had shown these two accused persons before he entered the court room for his statement.

(11) On this aspect, the evidence of PW-4 Rauf is much worse. In examination-in-chief, his version is:

'I am not able to say who were those boys who were apprehended(the witness has replied on seeing at the accused persons standing in the court room, that he cannot identify the two boys apprehended that night.) Out of the two boys apprehended that night, one had wrist watch and other had a knife. They did not give their names but I do not remember.'

In view of this version, he was rightly declared hostile and was allowed to be cross-examined on the point of identity. Here also, his stand is,

'I do not remember that the person now shown to me as Pawan in Court was the person from whom knife Ex. P-1 was recovered. I cannot say so because it was night time and long time had elapsed.For the same reason I am not able to identify the other accused,whose names I do not remember.'

In the face of this evidence, it is just not possible to fix the identity of any of the accused responsible for and charged for the commission of the offence of robbery. It may be that Pawan and Sandeep were apprehended by the Police at a distance of about 20 to 30 paces from the place of occurrence along with the articles but they cannot be associated with the commission of the offence in face of the non-co-operative attitude of the complainants.

(12) Admittedly, the incident took place on the night of 31/01/1980.The spot was lonely one. It was pitch-dark as deposed by the complainant. As deposed by them, neither Mustkin nor Rauf were able to see their faces clearly After their apprehension, the accused disclosed their names in the presence of PW-3 and PW-4 In order to be on the safer ground, it was not only the duty of the Police Officers but it was also desirable that the accused persons should have been joined in the identification parade. If this precaution had been taken their identity would have been fixed. This has not been done for which no plausible Explanationn is forthcoming. This lapse, by itself, has proved costly for which the benefit must go to the accused persons.

(13) It is the case of the Mustkin, Public Witness that at the time of the incident, he was wearing a wrist watch and was carrying Rs. 345.00 in his pant pocket. One of those persons removed his wrist watch as well as the amount. After the

apprehension of the accused the knife was recovered from Pawan while his watch and the cash were found in possession of the other accused. This witness while in the witness box, identified his watch after it had been taken out of a cloth bundle. So far so good. This witness however, turned turtle while undercross-examination. His material evidence is :

'THE strap of the watch was a little loose on my wrist. (Volunteered :The strap which the wrist watch Ex. P-2 now has, is not the original strap which was at the time of the incident but some other strap).At the time it was recovered from the accused, it had my originalchain. That strap was also of white metal but with some engraving on it of flowery design. I do not know who has changed this strap.I do not know whether the Police noted the number of the wristwatch recovered at that time or not.'

This admission as well as the fact that the watch was taken out of a cloth bundle without seals goes to show that the Police has either planted this watch on the accused persons or at least has changed it. This discrepancy has not been resolved by the prosecution. This is yet another circumstance which throws doubt on the authenticity of the prosecution version.

(14) Almost similar is the case with regard to the recovery of a graridar knife from accused Sandeep. PW-5 Constable Satbir Singh Along with PW-8 Constable Azad Singh were the first who apprehended the accused immediately after the occurrence. Even according to Satbir Singh, Pawan Kumar was found holding an open knife which was recovered from him. But he failed to identify the said knife as according to him he had seen it only once. He Along with PW-8 admits that such like knives are easily available in the market. Even if it be assumed for the sake of arguments that the knife Ex. P-1 is the same which was recovered from the possession of one of the accused but there is no evidence to connect it with the robbery. It is nobody's case that under the fear of the knife the accused persons deprived the complainants of their watch and cash.The possibility of its having been foisted on the accused persons under the circumstances cannot be ruled out.

(15) Besides the discrepancy in the material circumstances pointed out above, there is yet another circumstance, though minor but relevant. According to PW-3. Mustkin immediately after the apprehension of the accused persons, his wrist watch as well as Rs. 345.00 were found in possession of one of the accused. However, in cross-examination he admits that the currency notes were sealed in a separate parcel in his presence. There is no identification mark on any of the currency notes. This version is quite contrary to the prosecution case itself inasmuch as Suresh accused was apprehended on the next day and only a sum of Rs. 250.00 was recovered from his possession. It appears that on this discrepancy, the accused Suresh was given the benefit of doubt. If the statement of the prosecution witnesses on this aspect has not been believed qua Suresh accused, the possibility of the false implication of the present accused by these very witnesses cannot be ruled out.

(16) Keeping in view the circumstances of the case, it can safely be said that the prosecution witnesses have not been able to identify any of the two appellants responsible for the commission of robbery. The recovery of watch, knife and currency notes is also doubtful, for which the benefit must go to the accused persons.

(17) As a result of the above discussion, I accept the appeals, set aside their conviction and sentences by extending them the benefit of doubt. the accused be released immediately if not wanted in any other case.