

Ladoo Vs. the State

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Court : Delhi

Decided On : Jul-13-1984

Reported in : 26(1984)DLT254

Judge : D.R. Khanna, J.

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

Appeal No. : Criminal Appeal No. 168 of 1983

Appellant : Ladoo

Respondent : The State

Advocate for Pet/Ap. : B.K. Sarin and; D.R. Sethi, Advs

Judgement :

D.R. Khanna, J.

(1) Rajesh Kumar aged about 19 years, his brother Sudhir Kumar aged about 16 years and Mahender Kumar aged about 15 years, all residents of a house near clock tower Subzi, Mandi Delhi, were returning at about 11.00 p.m. on 5-10-1981 to their house after seeing Ramlila at Rana Pratap Bagh, Delhi. They, however were waylaid by four persons who made them to accompany them to a nearby school by threatening them with a knife and lathis. There Rajesh Kumar and Sudhir Kumar were robbed of their clothes which they were wearing except the

underwears, and also Rs. 60.00 and Rs. 11.00 respectively which they possessed, Mahender Kumar was similarly deprived of Rs. 7.00 and a wrist watch, which, he possessed. He was required to hand over his clothes as well, but when he resisted, he was given beating. On alarm being raised by them, the assailants fled. Ladoo amongst them, was apprehended at some distance. The others were arrested on different dates subsequently. One of them, namely, Ram Kumar on interrogation made a disclosure Statement and as a result got the clothes so robbed of Rajesh Kumar and Sudhir Kumar recovered from an unused water tank on the roof of a house in Sangam Park. These three accused who had been later apprehended, declined to take part in identification parade.

(2) With these allegations, prosecution was launched against all the four accused persons and they were tried by Sh. R.C. Jain, Additional Sessions Judge. However, Ladoo alone was convicted under Section 394 Indian Penal Code and sentenced to undergo rigorous imprisonment for five years. The other three accused were acquitted after observing that they appeared to have been shown to witnesses before the identification parade, and so far as Ram Kumar, the recovery could not be given much credence as the water tank was not shown to be in his exclusive possession.

(3) It is as such that Ladoo feeling aggrieved has now moved the present appeal before the Court.

(4) The evidence of both Rajesh Kumar Public Witness . 1 and Sudhir Kumar P.W. 2 substantially proves the prosecution version. They were young boys who had not known Ladoo appellant earlier nor were inimical in any manner towards him. Nothing has been besides brought on record which should have induced them to falsely implicate Ladoo who was apprehended just about 20 or 25 paces away while attempting to run away. They were both young boys and have been straight forward in their evidence, and I have nothing to disbelieve them.

(5) Two other witnesses examined have been Public Witness . 7 Mahender Kumar who was accompanying the two brothers while returning from Ramlila, and Virender Kumar who was passing that side and on hearing noise went to the place of occurrence. They too corroborate the apprehension of Ladoo at the spot. The

former deposed how they had been robbed of and the clothes of the said two brothers removed. He himself, however, resisted the removal of this own clothes, and was, therefore, given beating by a danda. His wrist watch and Rs. 7.00 were as well taken away while Sudhir Kumar was robbed of Rs. 11.00. Virender Kumar has stated that when he reached the spot along with some others, he saw two of the victims without clothes excepting their under-wears and was informed that their clothes etc. had been robbed by the culprits. They have also added that the culprits had committed sodomy on Rajesh Kumar and his brother Sudhir Kumar. The statement of Virender Kumar in this regard is of what he had been informed by the victims when he reached there. This part of the evidence of these two witnesses is certainly beyond the case set up by the prosecution and an improvement. The question to be considered is whether on this score their testimony deserves to be rejected, and on that account the evidence of Rajesh Kumar and Sudhir Kumar should also be disbelieved. The learned trial court has not done so, and I too after giving my due consideration to the circumstances, am inclined to do so. Whether it has been an exaggeration or that Rajesh Kumar and Sudhir Kumar who were young boys at that time, out of shame and fear of publicity did not like this fact to come on record, is difficult to say. Nonetheless the testimony about the waylaying and robbing of clothes, money and watch remains beyond shadow of doubt, and there is no reason why conviction cannot be sustained on Ladoo at least who was apprehended at the spot. Rather it must be said that the reason which seems to have prevailed with the learned trial court in disbelieving the recovery of clothes at the instance of Ram Kumar, are somewhat peculiar. There is no such rigid expectation for judicial satisfaction that the place from where the stolen property is recovered must be in exclusive possession of the accused. The question to be considered is whether his knowing that the articles are lying at a particular place reflects his connection with their placement there by him. An unused empty water tank on the roof of a house is the least common place where wearing apparels would be kept, and the fact that a particular person gets recovered from there becomes relevant, specially when he is not able to show that his knowledge was otherwise acquired.

(6) The medical evidence of Public Witness . 5, Dr. J.K. Handa, who examined Mahender Kumar on the next morning, brings out abrasions and contusions which

he received on being assaulted by the assailants when he refused to part with his clothes. It is significant that three of the abrasions were on his things, one on the chin and the fifth on his chest.

(7) Public Witness . 2 Sudhir Kumar has stated that the knife too was recovered from Ladoo when he was apprehended. That knife has not, however, been produced. This has not been so stated by any other witness. It appears that Sudhir Kumar has been confused in this regard because of his young age.

(8) Ladoo appellant in his statement under Section 313 Cr. P.C. just denied everything that was put to him. He did not even state anything on the circumstances of his arrest at the spot. No defense evidence was led by him.

(9) Considering all the circumstances, I have no reason to interfere in the conviction of Ladoo appellant by the trial court under Section 394 Indian Penal Code . The witnesses have stated how knife and lathis were shown and used in the course of robbery. The offence is/therefore, clearly one under Section 394 I.P.C. The sentence awarded has been of rigorous imprisonment for five years. It is, however, not shown that he is a previous convict or has any other case pending against him. He is a young man. I as such reduce the sentence to rigorous imprisonment for four years.