

**Sikander Kumar Vs. State**

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**Court :** Delhi

**Decided On :** Mar-20-1998

**Reported in :** 1998IIIAD(Delhi)450; 1998CriLJ3026; 1998(3)Crimes69; 72(1998)DLT547; 1998(45)DRJ360

**Judge :** Dalveer Bhandari, J.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 392 and 397

**Appeal No. :** Criminal Appeal No 173 of 1977

**Appellant :** Sikander Kumar

**Respondent :** State

**Advocate for Def. :** Mr. M.S. Butalia, Adv.

**Advocate for Pet/Ap. :** Mr. Mohit Mathur, Adv

**Judgement :**

ORDER

**Dalveer Bhandari, J.**

1. This appeal is directed against the judgment of the learned Additional Session Judge, Delhi dated 10.11.1976 convicting the appellant under sections 392/397/34, IPC, and sentencing the appellant to undergo seven years R.I. and a

fine of Rs. 500/- and in default thereof, a further R.I. for six months.

2. Brief facts are recapitulated as under:-

A three-wheeler scooter (for short scooter) having registration no.DHB 526 stood registered in the name of Harnam Dass. He was having a permit from the authority for plying the scooter on hire and was later on purchased by Hari Kishan, PW-6, who in turn had given the scooter for plying to Parshotam Lal, complainant, PW-5.

3. In the intervening night of September 12/13, 1972 at about 11.30 P.M. Parshotam Lal's scooter was hired by two boys. According to the description as given by the complainant, one of them was quite tall and was about 26-27 years of age and had a thin physique, dark whitish complexion wearing a pant and shirt having two pockets. The other boy was of a short stature and was about 20 years of age wearing white shirt and pyjama. These two boys asked the complainant Parshotam Lal to take the scooter to Shahdara border and from there asked him to take the scooter to Azadpur. From Azadpur, he was asked to take them to Rajouri Garden to their houses as they did not having sufficient amount to clear the charges. When the scooter had reached 50 yards away from the petrol pump towards Punjabi Bagh, the scooter was stopped and the boys alighted from the scooter saying that he was to urinate while the other boy kept seated on the rear seat of the scooter and the time was around 2 A.M. After urinating, the boy came and he took out a knife and asked his companion also to take out his knife and he also took out his knife and placed it on the back of Parshotam Lal and then the taller boy took out Rs. 50/- currency note and coins worth Rs. 2 or 3 from the pocket of Parshotam Lal and compelled Parshotam Lal to leave his scooter. In these circumstances, Parshotam Lal left the scooter and these boys drove away the scooter. Parshotam Lal went to police station Moti nagar where a daily diary entry was recorded. As the case related to police station Punjabi Bagh, the complainant was then referred there and the case was registered at Police station Punjabi Bagh.

4. The investigation of the case was entrusted to the Sub Inspector R.C. Kalia. On September 14, 1972, at about, 7.30 P.M., the Sub Inspector accompanied by Parshotam Lal and Hari Kishan held a nakabandi at Mayapuri Road. At about 8.15

p.m. the scooter in question was seen coming and was stopped. It was being driven by accused Sikander while accused Siri Ram was sitting in the scooter. The scooter at that time bore registration no. DHR 1426 showing that the figure '1' had been added to the original number.

5. Kuldip Singh PW-4 who is another scooter driver is stated to have also arrived at the spot in his scooter and in his presence personal search of both the appellant was carried out. Insurance certificate is Ex. PM and permit is Ex. PN. pertaining to the scooter in question were recovered from the person of the accused Siri Ram along with Rs. 3/-, Rs. 10/- were recovered from the personal search of Sikander. Open shirt and pant of Sikander and open shirt of Siri Ram were taken into possession. Complainant Parshotam Lal had identified the said two accused as the persons who had robbed him of his scooter and money.

6. The Sub Inspector also made an application to the Magistrate for holding the test identification parade but the accused refused to participate in the identification parade saying that they have already been shown to the witnesses. As a matter of fact, in this case, the accused was arrested in the presence of witnesses, so the question of holding identification parade could not have been of much help. PW-5 complainant deposed to the fact regarding the robbery and his lodging the report and thereafter apprehension of the accused with the case property. PW-2 is Thakurpal Singh who had taken the photographs of the three wheeler scooter at the instance of SI Ratan Chand Kalia on 14.9.1972. PW-3 is Sub Inspector Ram Dayal. He was posted at the relevant time in Police Station Punjabi Bagh end on receipt of rukka Ex. PG. PW-4 is Kuldip Singh. He was driving his three, wheeler scooter and was coming from Mayapuri to Delhi station. He is an independent witness in this case. He had stated in his statement that he could not identify both the boys as he had seen them in the darkness of the night. This witness was declared hostile and the public prosecutor cross examined the witness. PW-6 is Hari Kishan, owner of the scooter in question and PW-7 is S.I. Ratan Chand Kalia, who had investigated the entire case.

7. The most important witness in this case is PW-5 Parshotam Lal, complaint. He had unfolded the entire prosecution version. The learned Additional Sessions

Judge had observed that a clear mistake had been made by both Parshotam Lal, PW-5 and Hari Kishan PW-6, regarding the date on which the accused were arrested. He was the most important witness and the odredibility of the entire prosecution evidence rests on his testimony.

8. The accused denied the prosecution version and stated that he has been falsely implicated in this case. He stated that he used to do the job of scooter repairing at the Red Fort scooter stand and the complainant Parshotam Lal had intended to remove him from there so that he could have his own man in his place but a compromise was brought about with the intervention of Banarsi Lal Sethi and one Siri Ram Sawhney. Parshotam Lal brought Sub Inspector Kalia who sare him beatings and on the third day he was arrested from that scooter stand and was falsely involved in this case.

9. Sri Ram on the other stated in his statement had stated that he had a quarrel with Parshotam Lal as he did not make the payment for the job done by him regarding fixing of punctures and tubes.

10. One defense witness Sri Ram was examined by Sikander who had deposed that he was a scooter driver and used to park his scooter at Red Fort Stand where the accused also used to park his scooter. Parshotam along with his companions used to encourage gambling at the said scooter stand in connivance with the local police particularly Sub Inspector Kalia. Parshotam was an informer of the police, who used to demand money from the scooter drivers for parking their scooters at that particular scooter stand. Accused Sikander used to oppose his demands which had led to enmity between the two.

11. The learned Additional Sessions Judge had discarded the defense version. According to the learned Additional Sessions Judge, the recovery of the scooter corroborates the testimony of complainant regarding his having been robbed of his scooter and money. His testimony finds corroboration from the statement of Hari Kishan PW-6. Though the learned Additional Sessions Judge had observed that PW Kuldip Singh was at the spot when the accused were arrested and the scooter was taken into possession, this witness has turned hostile. The learned Additional Sessions Judge had believed the testimony of Parshotam Lal and Hari Kishan and

convicted the accused for the offence punishable under sections 397/392/34 IPC. The court also observed that there is no justification for convicting the accused for the offence punishable under section 411 IPC, a minor offence, because they had been convicted for actual robbery. The learned Additional Sessions Judge sentenced the accused to undergo RI 7 years and a fine of Rs. 500/- each and in default of payment of fine further RI for six months under section 392 read with section 197 IPC.

12. The appellant Sikander Kumar aggrieved by the order of the learned Additional Sessions Judge has preferred this appeal before this court. The learned counsel appearing for the appellant submitted that the entire prosecution version is inherently improbable, unbelievable and the conviction on the strength of such prosecution witnesses has led to grave injustice in this case. Mr. Mohit Mathur, learned counsel for the appellant submitted that the alleged incident had taken place in the intervening night of 12/13 September, 1972. The complainant went to the Police Station Moti Nagar and DD entry was recorded and he was asked to Police station Punjabi Bagh, where the FIR was recorded.

13. On 14.9.1972 at about 7.30 P.M. Sub Inspector in the presence of Parshotam Lal, Hari Kishan, held a nakabandi at Mayapuri Road. At about 8.15 P.M. this very scooter was seen coming from the side of Bharat Nagar and was driven by the accused Sikander and other accused Sri Ram was seated in the scooter. Mr. Mathur submitted that it is highly improbable and doubtful that after committing the theft of the scooter, both the accused persons would ply the scooter on that very road. It is also beyond comprehension why the nakabandi at Mayapuri Road was set up by the Sub Inspector

14. Even the learned Additional Sessions Judge had observed glaring infirmities in the testimony of both the main prosecution witnesses Parshotam Lal and Hari Kishan as to the date on which the accused were arrested, but did not give benefit of doubt to the accused. Mr. Mathur also submitted that the learned Additional Sessions Judge gravely erred in discarding the defense version which was more probable. It is stated in the defense version that the appellant have been framed in this case falsely because of the previous enmity.

15. Mr. Mathur submitted that DD entry made at the Police Station Moti Nagar at 2 A.M. on 13th September, 1992 ought to have been considered as the FIR and the subsequent FIR registered at the police station Punjabi Bagh cannot be construed as FIR and the same is clearly hit by section 162 of the Code of Criminal Procedure. He has placed reliance on 1996 SCC 713 and 1995 SCC 734.

16. Mr. Mathur also submitted that the weapon of offence i.e. knife has not been recovered from the appellant. therefore, section 392 and 397 of the IPC are not attracted. He further submitted that the prosecution version suffers from material contradictions, inconsistencies and glaring infirmities. The complainant, on whose testimony implicit reliance has been placed by the learned Additional Sessions Judge, is also not without infirmity. He has wrongly stated the date of the incident. This infirmity in his testimony is of serious nature. He further submitted that the manner of arrest and seizure of the vehicle had been differently described by the two main witnesses PW-5 and PW-7.

17. Mr. Mathur submitted that only independent witness in this case is PW-4 Kuldip Singh who has also not supported the case of the prosecution. Mr. Mathur also submitted that the actual owner of the vehicle Harnam Dass has not been examined to support the case of the prosecution that three-wheeler scooter was given to PW-5. PW-5 Parshotam Lal stated that the FIR was not read out to him and he has signed the FIR without reading the same. Mr. Mathur also assailed the testimony of PW-5, who mentioned that he had been running the three-wheeler for over 5 months while PW-6 says that he had given the scooter about one to two months back.

18. The learned counsel for the State admitted that though there are some contradictions and discrepancies yet on all broad aspects, the witnesses have supported the case of the prosecution and no interference in the judgment of the Additional Sessions Judge is called for.

19. I have considered the rival contentions of the parties and perused the entire record of this case. The independent prosecution witness PW-4 Kuldip Singh, who was coming from Mayapuri towards Delhi Station, in his scooter was stopped by the Police and at that time another three wheeler scooter was there which was

being searched by the police. He had stated in his statement that he cannot now identify the boys who were there in the scooter as he saw them in the darkness. This witness did not support the prosecution and was declared hostile. Apart from this witness, there are material contradictions even in the testimony of PW-5 and PW-6. On 13.9.72, the complainant had gone to the Police Station Moti Nagar to lodge the report. The DD entry was made at his behest and from there he was directed to go to the Police Station Punjabi Bagh, where FIR had been lodged. He did not mention the date of lodging the FIR correctly. This serious lapse on his part creates doubt in the credibility of the prosecution version though this fact had been noticed by the learned Additional Sessions Judge but he had justified this lapse on the ground that the witnesses had been examined after 3-1/2 years. Apart from this, there are other material contradictions in the testimony of PW-5 Parshotam Lal and PW-7, SI Kalia, regarding the manner of arrest and seizure of vehicle which also creates doubts in the prosecution version.

20. The entire story of the prosecution looks inherently improbable and unbelievable. Organising of nakabandi at Mayapuri Road and both the accused sitting in the scooter coming at Mayapuri also makes the entire prosecution version rather doubtful particularly in the light of defense version that because of the previous enmity the accused have been falsely implicated in this case. The learned Additional Sessions Judge had recorded the entire conviction on the testimony of PW-5 Parshotam Lal and PW-6 Hari Kishan. There are serious contradictions and infirmities in their statements and it would be unsafe to place total reliance on their testimony.

21. In my considered opinion, because of grave and serious infirmities and contradictions in the testimony of prosecution witnesses and the fact that the only independent witness PW-4 Kuldip Singh has not supported the prosecution and turned hostile, so it would not be safe to base conviction on the statements of these witnesses.

22. In the facts and circumstances of this case, the appellant is entitled to get the benefit of doubt. Accordingly, I set aside the impugned judgment of the Additional Sessions Judge. The appellant is acquitted of the afore said charges, and his bail

bonds shall stand cancelled. The appeal is accordingly allowed and disposed of.

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