

Hoshiar Singh Vs. State

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Court : Delhi

Decided On : Jan-31-2000

Reported in : 2000IIAD(Delhi)321; 83(2000)DLT669; 2000(56)DRJ75

Judge : R.S. Sodhi, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 392 and 451

Appeal No. : Crl. R. 254/83

Appellant : Hoshiar Singh

Respondent : State

Advocate for Def. : Mr. Anil Soni; Mr. Naveen Thakur, amices Curiae

Judgement :

ORDER

Crl. R. 254/83

1. This revision petition is directed against the judgment and order dated 24.9.1983 of the learned Additional Sessions Judge in Criminal Appeal No. 40 of 1982 whereby the learned Additional Sessions Judge has affirmed the conviction of the petitioner while reducing the sentence to two years and pay a fine of Rs. 1,000/-.

2. When the matter was called up, none appeared for the petitioner. Since the matter is an old one and has been pending in this Court since 1983, no useful purpose would be served in adjourning the same. I, therefore, appoint Mr. Naveen Thakur as amicus Curiae to assist the court.

3. The facts leading to this case are that the complainant, Khem Chand, who was employed in the DSIDC was posted as a clerk on the check post at Deoli on the night of 19.10.1979. It is the case of the prosecution that the petitioner entered the room where Khem Chand was on duty and demanded money from him by threatening him with a knife. The petitioner is accused of snatching a sum of Rs. 378/- purportedly lying in the drawer of the table at which Khem Chand was working. The accused is also alleged to have snatched a gold chain worn by Khem Chand and thereafter managed to escape in the darkness along with others. The prosecution, in order to prove its case, examined seven witnesses and the accused in defense examined two witnesses primarily to establish that there was previous enmity between PW-1, Khem Chand and the accused. PW-1 is the complainant who, in support of his case, has narrated the entire incident as recorded in the complainant. PW-6, who was the security guard at the relevant time, has been introduced in order to corroborate the testimony of PW-1 while PW-4 and PW-5 to the effect that PW-1 was on duty at the relevant time at the check post.

4. Learned amicus Curiae has taken me through the record of the case and argues that the courts below have not appreciated the effect of delayed FIR. He argues that delay in recording the FIR is 19 hours which ought to have been properly explained. Learned amicus Curiae also argues that no recoveries were effected from the accused and the prosecution case lacks credibility.

5. From the statements of the witnesses it appears that PW-1 is the sole eye-witness. He is also the complainant. In his deposition he has stated that he is Junior Assistant in DSIDC and was posted at the check post on the night intervening 19/20th October, 1978. He further states that Phool Bahadur, PW-6, was posted as Security Guard at the barrier and was present in the adjacent room at the time of the incident. This witness further states that at 10.00 p.m. on the

night intervening 19/20th October, 1979 the accused suddenly barged into the room where PW-1 was sitting and asked him to bring out money. PW-1 questioned the accused as to what money he was claiming, upon which the accused drew a knife from the pocket of his kurta and forcibly removed Rs. 378/- from the drawer of the table at which PW-1 was working. PW-1 further states that after having collected the money from the drawer, the accused snatched the gold chain weighing three-and-half tolas from his neck and while running away, threw down the kerosene lamp. Phool Bahadur, PW-6 Security Guard, is stated to have come there, both PW-1 and PW-6 chased the accused towards the jungle but lost him in the darkness of the night. PW-1 reported the matter to Jagdish Kumar, In-charge, Check Post, on the next morning, thereafter on his advice lodged a report, Ex. PA with the police. PW-1 has also stated that Pratap Singh, PW-4, another Security Guard, was also present in front of the room of the check post. PW-1, when cross-examined, was confronted with his previous statement as regards pulling out a knife from the pocket of the kurta, which fact was not mentioned in the previous statement. On further cross-examination, the witness stated that when the chain was snatched from his neck, no injury was caused to the neck and that the witness did not raise hue and cry nor protested because he was shown the knife by the accused. This witness claimed that the gold chain had been given to him in his marriage. PW-6, Phool Bahadur, was the Security Guard on duty at the time of occurrence. He explained that his attention was drawn by a hue and cry raised from the check post and, accordingly, he went to the check post and Khem Chand, PW-1 narrated the incident to him. He also states that he chased the accused as he was running towards the jungle. He further testifies that there were two other persons along with Hoshiar Singh. He states that Khem Chand and he were posted on separate duties and that he reached the check post within five minutes of his hearing the noise and when he went inside the room, Khem Chand, was looking in the drawer. There was darkness in the room as the lamp had broken. It is stated by him that Khem Chand had told him that all the three persons had grappled with him and taken the money. Pratap Singh, PW-4, is another Security Guard who states that he was also on duty on that day from 8.00 a.m. to 8.00 p.m. However, he finished his duty at about 9.30 p.m. and was relieved by PW-6. After having been relieved from duty, he went to sleep in a school situated nearby and

in the morning he came to know about the aforesaid incident. PW-5, Jagdish Kumar, is a clerk who deposed from the record that Khem Chand, PW-1, was posted on duty at Check Post, Deoli on 19.10.1978 and that a collection of Rs. 378/- as made from various truck operators. He proved the dispatch report Ex. PW-5/A. This is the entire evidence upon which the prosecution rests its case. The accused in his defense pleaded previous enmity with PW-1 and led evidence by examining Narain Singh, DW-1 and Suraj Mal, DW-2 in support of his case. He put up a case of being falsely implicated due to enmity.

6. A perusal of the evidence of PW-1 shows that it lacks credibility. This witness is supposed to be on duty on the night of the incident and is assisted by a Security Guard. The Security Guard does not see the accused going into the room, grappling with him and is attracted only upon a hue and cry being raised by him during the grappling whereas PW-1 states that the moment the accused showed him the knife, question of his raising protest did not arise. Further PW-1, while stating that the accused also snatched away the chain, did not care to establish the factum that such a chain was indeed worn by him on that night. Merely stating that a chain was given in his marriage does not per se prove that it was worn on that evening and consequently snatched by 'the accused. The testimony of PW-6 would be at cross purpose inasmuch as he arrived at the check post five minutes after hearing the noise emanating from the check post which was in total darkness due to the lamp having broken and yet he saw Khem Chand looking in the drawer and Khem Chand then told him that all the three persons had grappled with him. There is certainly more to this case than meets the eye; but suffice it to say that it lacks the hallow of truthfulness. PW-1 in his exuberance has stated that Pratap Singh, PW-4, also came to the spot during the night while PW-4 does not support him in this.

7. With this background one has to look at the implication of an FIR which has been filed after a delay of 19 hours. It could very well have been the result of careful planning and does not inspire confidence. Further, coupled with existing enmity, the delay is fatal to the case. Having, therefore, gone through the evidence as also through the reasoning of the learned Additional Sessions Judge, I am of the opinion that the prosecution has miserably failed to discharge its duty

to establish its case beyond doubt. In this view of the matter, I acquit the petitioner of all charges, set aside the conviction and sentence as also the judgment of the learned Additional Sessions Judge dated 24.9.1983 in Criminal Appeal No. 40 of 1982.

8. The revision petition is allowed. The bail bond and the surety bond shall stand discharged.

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