

Inder and anr. Vs. State

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Court : Delhi

Decided On : Feb-25-1983

Reported in : 23(1983)DLT428

Judge : N.N. Goswamy, J.

Acts : Indian Penal Code (IPC) - Sections 34, 392 and 397

Appeal No. : Cr. A. No. 2 of 1982

Appellant : Inder and anr.

Respondent : State

Advocate for Def. : Harish Gulati and ; I.U. Khan, Advs.

Advocate for Pet/Ap. : S.K. Sharma and; Talewar Singh, Advs

Disposition : Appeal dismissed

Judgement :

N.N. Goswamy, J.

1. This judgment will also dispose of Criminal Appeal No. 69 of 1982 as both these appeals arise out of the same trial and judgment. The appellants, Inder and Bishamber in Cr. A. No. 2/82 and Karan in Cr. A. No. 69 of 1982 have been convicted under Section 392 read with Section 34 and 397 of the Indian Penal

Code and have been sentenced to 7 years rigorous imprisonment and a fine of Rs. 500/- each.

2. The prosecution case in brief is that on 22nd March, 1980 at about 3.00 p.m., a mini bus No. DHP 145 was proceeding from Tis Hazari to Inter State Bus Terminus. Between Tis Hazari and Novelty Cinema, the three accused along with one Ramesh boarded the bus. One of the accused had put a knife at the back of the driver of bus and ordered him to continue to drive as per his orders. One of the other accused robbed the passengers of their watches and cash at the point of the knife. The remaining two accused were guarding the bus by standing with open knife at the back of the bus. The bus was overcrowded. The accused who was directing the driver asked him to stop the bus near Novelty Cinema and all the accused got down from the bus and ran away. The specific charges of robbing are in respect of Ricoh watch of Satish PW, a GDR watch and Rs. 275/- of Sohan Singh, P.W., Rs. 50/- of Dhanesh P.W. and Rs. 20/- of one DES Raj.

3. The accused except Ramesh were arrested on 28th March, 1980 in a lane adjoining Bulward Road and Ring Road in front of a Church at night time. At the time of arrest, Inder accused was found to be wearing a Ricoh make watch and Bishamber was found to be wearing a GDR watch. The watches were seized from them. Inder accused was interrogated by the appellants and he made a disclosure statement about some other watches in his house. He led the police party to his house in Jahangir Puri and got recovered six other watches. The watches Ricoh make and GDR were later identified by Satish and Sohan Singh as their watches looted from them in the bus. At the time of arrest of these accused, AST Ram Singh : PW 6 and ASI Mahabir Singh--PW 7 and S.I. Krishan Lal PW 11, were some of the members of the police party. The arrest had been made after the police had got secret information about these accused and several others had gathered near Church in order to loot people. The appellants were produced before the Magistrate and were remanded to judicial custody. The identification parade was fixed for 14th April, 1980. On 14th April, 1980, Shri R.K. Yadav, Metropolitan Magistrate, Delhi went to Tihar Jail for holding the identification proceedings. However, all the accused refused to participate in the identification proceedings on the plea that they had been shown to the witnesses at the police

station. The Metropolitan Magistrate recorded their statements and returned without there being identification parade.

4. The accused pleaded not guilty and were thus tried. The prosecution has examined the three victims, namely, Satish Kumar as P.W., 1, Dhanesh Chander as P.W. 2, and Sohan Singh as P.W. 5 besides examining the members of the crew of the bus and the police officials.

5. The driver, the conductor and the helper of the bus in question who have appeared as P.Ws. have only deposed to the fact that four persons duly armed with knives had robbed certain passengers in the bus. They however could not name or identify the accused persons. It is not necessary to discuss their evidence as the fact of robbery having taken place in the bus was not challenged by the learned counsel for the appellants. The main contention of the counsel for the Appellants before me was that it was a case of mistaken identity. According to the learned counsel the witnesses, Harbhajan, Mangal and Lekh Raj have totally failed to identify any accused and the identification made by the alleged victims is vague and unreliable because of serious discrepancies. In order to appreciate this contention, it is necessary to discuss the evidence of the said P.Ws., at some length.

6. Satish Kumar, P.W. 1 deposed that he boarded the mini bus at about 4.00 p.m. in the month of March, 1980. The bus was overcrowded with passengers. As the bus reached the area of Tis Hazari, the commotion started in the bus on the front side of the bus. He was standing in his own thoughts when he noticed that some ladies sitting on the seats near the gate moved back in a harassed condition. He noticed that one man started taking watches of the passengers. His wrist watch was Ricoh Automatic which was taken by one of the accused He pointed to Inder accused, who had taken his watch. He further stated that he was able to see properly the face of the person who had come near him but could not see the face of the person who was standing armed at the gate of the bus. He could not identify any other accused. According to him after about 11/2 months of the incident, he learnt that the robbers have been caught. He went to the police post and the Police Inspector showed him 6 or 7 watcher and he identified his watch, Ex. P. 1.

7. Dhanesh, P.W. 2 deposed that on 22nd March, 1980 he had come to visit his brother-in-law at about 3.45 p.m. On his way back he boarded a bus for going to Inter State Bus Terminus, which was a mini bus. At the beginning of T-junction near Tis Hazari four persons boarded the bus. One person was armed with a Rompy and the remaining three were armed with knives. The person who was armed with a Rompy approached the driver of the bus and he put the Rompy at his back. He ordered the driver to continue to drive the bus. He stated that he could identify, the four persons who had boarded the bus and pointed towards Bishamber accused, who was armed with the Rompy. Then he pointed towards the other three accused, Ramesh, Karan and Inder Singh who were armed with knives. He stated that the accused Inder Singh shouted 'Maderchod, Hamare Upper Ghandi Sawar Hai, Jiske Pas Ghari Aur Nagadi Ho Nikal Do'. Bishamber got the wrist watch of the passenger sitting alongside Swaran Singh, and he also got some cash from Swaran Singh and gave some minor injury on the leg of Swaran Singh with his Rompy. He took off his watch and wrapping it in his handkerchief he threw it down on the floor of the bus to avoid detection. However, he was carrying Rs. 50/- in his pocket and Bishamber accused took away the said money from his pocket. Inder Singh ordered the driver to stop the bus and when the bus stopped, all the accused persons got down and went away. In cross-examination, he stated that he was called to the Police Station on 23-3-1980. The accused person was shown to him in the Police Post and he was asked to identify the said person. He was unable to say as to which of the accused got down from the bus first and he denied the suggestion that Karan Singh was not one of the robbers who looted the bus. In re-examination, he stated that it was on the next day of the incident that the accused were shown to him by the police in the police post.

8. Sohan Singh, P.W. 5 deposed that on 22-3-1980 he boarded Bus No. DHR-145 from near S.B. Mills. He wanted to go to Delhi Main Railway Station. The bus crossed Mithai Pull and turned towards the road which passes near Tis Hazari Courts. At the turning point, four boys boarded that bus. Those boys were under influence of some drink or liquor. They created a fuss. They called out 'Ghandi Swar Hai.' These boys started taking away the watches of the passengers. They took off his watch also. He stated that he could identify three of those boys and

pointed towards Bishamber, Karan and Inder accused. He further stated that he was sitting just behind the seat of the driver of the bus and Dhanesh, P.W., was sitting by his side. The boy who had put a Ghuri on the back of the driver has snatched his watch. The said boy was Bishamber. He pointed towards Bishamber who, in fact, as noticed by the court, was Inder and not Bishamber. He also stated that his watch was GDR German made. He also stated that after about a month or 11/2 month of the incident, he went to the police post Tis Hazari and identify the accused and his watch. In cross-examination, he stated that Bishamber and Karan were the first who boarded the bus and other followed. All the accused boarded the bus when the same was running. The public prosecutor was permitted to cross-examine the accused regarding identity of the accused in view of his previous statement under Section 161 of the Code of Criminal Procedure, but nothing much could be brought out in the said cross-examination.

9. The learned counsel pointed out that according to Satish P.W., it was Inder who snatched his watch but according to Sohan Singh, P.W., Inder continued to control the driver while Bishamber looted them. He further pointed out that Satish P.W., was not sure of the identity inasmuch as he stated 'as far as I recollect'. He further pointed out that Sohan Singh is not sure whether it was Bishamber who looted him or it was Inder accused. He stated that two are very similar, He further pointed out that the evidence of these witnesses could not be accepted inasmuch as the photos of Bishamber and Karan were shown to Sohan Singh, P VV. There is yet a confusion in the mind of Dhanesh, P.W., as to whether Bishamber looted him or it was Inder who looted him. The learned Trial Judge has noticed in his judgment that Inder and Bishamber are real brother and have striking similar built and physical look. In this situation, the learned trial Judge came to the conclusion and, in my opinion, rightly that after a lapse of long period, the witnesses could not be disbelieved regarding the identity of these two accused persons. According to all the witnesses, both these accused persons were present in the bus. The discrepancy is only regarding the part played by them According to Satish, P.W., it was Inder accused who snatched the watch and the other accused was keeping a guard over the driver, while according to Dhanesh, it was the other way. Sohan Singh has obviously mixed up the two inasmuch as he has pointed towards Bishamber while, in fact, he was Inder. From the observations of the learned trial

Judge, it can safely be held that these two accused persons are similar in looks and built and they are admittedly the real brothers. Such discrepancies are of no consequence. It is also of importance that recoveries of the knives and the watches were made from these two persons and Inder accused also led the police party and six more watches were recovered from his house. In these circumstances, it can safely be held that these two accused were amongst the four persons who had boarded the bus and had looted the passengers at the point of knives. It was contended by the learned counsel for the appellants that no reliance should be placed on the evidence of Dhanesh inasmuch as he had been shown the accused persons on the very next day of the incident in the police post. There seems to be some confusion in the date given by Dhanesh, P.W. It is further not open to the accused to raise such a contention as according to them, they were arrested only on 25th March, 1980 from Haryana and in this situation, they could not be present in the police post on 23rd March, 1980 as stated by the P.W. The learned trial Judge has also noticed that P.Ws., seem to be under some threat and have not made a clear and straight deposition and they have also tried to go back from their earlier statements with regard to the identification of the accused persons. There is yet another factor against the accused persons inasmuch as they refused to take part in the identification parade which was fixed for 14th April 1980. Assuming that they had been shown to one of the witnesses, admittedly, the other witnesses who were present for the identification had not seen the accused persons.

10. As regards Karan, Appellant in Criminal Appeal No. 69 of 1982, his case is clearly distinguishable from the case of Inder and Bishamber, Appellants. According to Karan, he was arrested on 23rd March, 1980 and was shown to the witnesses in the police post on the same day. The version of arrest on 23rd March, 1980 is supported by D VV. 1. No connection between him and the other accused has been established. Admittedly, no recoveries have been made from him and none of the witnesses have assigned any specific part played by him. No doubt two of the witnesses, namely, Sohan Singh and Dhanesh have identified him in court, but their evidence to that effect is rather vague. The bus was admittedly overcrowded and Karan, according to the witnesses, was standing on the back side of the bus while the witnesses were sitting on the front side, that is next to the

driver's seat. The entire incident took about 4 to 5 minutes and in this situation, the mistake of identity cannot be ruled out. The presence of Karan accused in the bus is therefore not free from suspicion. According to me, his case is exactly similar to the case of Ramesh accused who was acquitted by the learned trial Judge. In the circumstances, Karan is also entitled to the benefit of doubt.

11. For the reasons recorded above, Criminal Appeal No. 2 of 1982 is dismissed and the conviction and sentence of Inder and Bishamber accused is maintained. However, Criminal Appeal No. 69 of 1982 is allowed and Karan, Appellant, is acquitted. He is already on bail and need not surrender to the bail bond.

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