

Mohd. Rafiq Vs. State

Mohd. Rafiq Vs. State

SooperKanoon Citation : sooperkanoon.com/695341

Court : Delhi

Decided On : Jan-21-1984

Reported in : 1984(1)Crimes815; 1984(6)DRJ362

Judge : R.N. Aggarwal and; Malik Sharief-Ud-Din, JJ.

Acts : Indian Penal Code (IPC) - Sections 392, 395 and 397

Appeal No. : Crl. Appeal No. 348 of 1980

Appellant : Mohd. Rafiq

Respondent : State

Advocate for Def. : Harish Gulati, Adv.

Advocate for Pet/Ap. : R.C. Kapur and; S.K. Sharma, Adv

Judgement :

Malik Sharief-Ud-Din,, J.

1. Mohammad Ashqin and Mohammad Rafiq, appellants were found guilty under Section 395 read with Section 397 IPC by Shri S.R. Goel, Additional Sessions Judge, Delhi, and after convicting them he sentenced them to imprisonment for life by his order dated 29th September 1980. The appellants came to be prosecuted in pursuance of F.I.R. No. 632 dated 16-6-1978 recorded in police station Sadar Bazar, Delhi at the information received from Abdul Wahid.

2. Briefly stating the facts are that the complainant is residing at house No. 802, Bartan Market, Sadar Bazar, Delhi and accused Mohd. Rafiq, Ashqin and one 'Barbara who could not be apprehended were known to him. On 18th July 1978 at about 5.15 A.M. when Abdul Wahid was sleeping on the terrance his wife Akhtari Begum was sleeping in the room on the first floor of the house. The complainant is allegedly running a small industry in the ground floor. On the night of occurrence, Mohd. Rafiq armed with pistol and dagger comes to the terrace and wakes him up and at the point of pistol calls him down-stairs to the room where Akhtari Begum Was sleeping. While going down the stairs he also finds accused Mohd. Ashqinand one Barbara, both armed with pistols and daggers. He is then asked to wake up his wife and demand keys from her. It is said that the outer door of the house was locked and two or more parsons were standing outside. Thereafter, they collect the jewellery articles and a sum of Rs. 10,000/- and escaped on a motor cycle and a scooter which were kept stand-by outside the house, While the accused were escaping Abdul Wahid raised an alarm attracting one Hari who was an employee of the complainant and was residing in a portion of this very house who too saw the accused escaping.

3. On the day of occurrence Abdul Wahid, complainant, besides the ornaments owned any his wife, Akhtari, was also retaining some jewellery articles of his relations. In this way the accused are supposed to have robbed him of one pair of gold Jhumkas, two gold rings, one gold necklace belonging to his wife Akhtari Begum as well as cash worth Rs. 10,000/- which belonged to him and his sister-in-law and daughter-in-law. The accused also took away one pair of golden Kangan and one gold necklace belonging to the sister-in-law and one pair of golden kangan and necklace belonging to his daughter-in-law. Besides, they had also taken away one pair of silver Pazeb of his wife, two pairs of silver Pazeb belonging to his sister-in-law, two wrist watches out of which one was Seiko make and the other was a ladies watch. The accused had further removed one key ring made of silver. After the accused escaped, Akhtari Begum, the wife of the complainant, is said to have gone to the house of Abdul Wahid's sister. Thereafter, the matter was reported to the police at about 12.30 P.M. on the same day. On 19th June 1978, Mohd. Rafiq appellant was caught red handed in another case under Section 394/34 IPC whereas Mohd. Ashqin was arrested on the night intervening 7/8th of

August 1978 when he was sleeping on the second floor of a Masjid in Gali Garhayya, Qusabpura, Delhi, and a dagger was recovered from his possession at that time.

4. During investigation, the accused Mohd. Ashqin made a disclosure statement on 26-6-78 indicating there in the place in his house where he had hidden some of the ornaments stolen from the house of Abdul Wahid and in pursuance of this disclosure statement some ornaments were recovered from his possession in the presence of one Nawab Ali. These ornaments consist of one pair of gold bangles, one gold ring and one pair of Pazeb made of silver and were duly taken possession of by seizure memo and were properly sealed.

5. On 29th August 1978 accused Ashqin had also made a disclosure statement disclosing the place in his house where he had hidden the stolen ornaments. In pursuance of the disclosure statement and at his instance the articles, namely, one gold tikka, a pair of Jhumkas, were recovered from his house. These were duly secured and taken possession of.

6. Test identification parade for identification of these ornaments was held under the supervision of Shri P.K. Dham, Metropolitan Magistrate, Delhi, and the articles were correctly identified by the owners thereof. A number of witnesses have been examined by the prosecution in support of the case while the accused have led no defense. It may further be pointed out that in their statements under Section 313 Cr. P.C. the stand taken by the accused is that of total denial of the prosecution story. They say that the witnesses are deposing falsely against them. They did not own the articles recovered at their instance.

7. We have heard the learned counsel for the appellants and we have carefully gone through the record of the case. In this case PW 2 Abdul Wahid, PW 6 Akhtari Begum, PW 9 Nankan, PW 10 Satbir Singh, PW .11 Hari Ram are the eye-witnesses. PW 2 Abdul Wahid and PW 6 Akhtari Begum have not only identified the accused but have fully supported the prosecution version of the case.

8. PW 9 Nankan, who was an employee of Abdul Wahid, says that he was, residing in a near-by Jhuggi provided by Abdul Wahid and that at about 5.15 on

the night of occurrence, some one turned his cot upside down as a result of which he fell on the ground. He then saw the appellants and three other persons standing near-by and all of them were armed with revolver and knives was asked to hold his ears with his own hands in sitting position and was warned not to raise any alarm. He then saw the appellants accompanied by one more person going upstairs into the residential quarter of Abdul Wahid while one of them stood outside the house and the other one kept guard on him. At the time of incident one Ibrahim, another employee of Abdul Wahid, was sleeping with him on the same cot and he was also treated by the accused in the same manner. The wrist watch belonging to Ibrahim was also snatched by Mohd. Ashqin and another person. Within half an hour's time he saw the appellants accompanied by one more person escaping from the house with one Potli in their hand. On the second day of the occurrence he has identified the appellant Rafiq in the police station at about 3 or 4 P.M. and his statement was recorded by the police on the same day at about 12 O' clock.

9. PW 10 Satbir Singh, who in another eye-witness, had come to see his brother Jagdish who was also an employee of Abdul Wahid. At about 5 A.M. on the day of occurrence he woke up while he was sleeping outside the main gate. He went inside to collect his shirt and when he was about to come back, three persons armed with revolvers and daggers swooped on him. Mohd. Rafiq appellant, who was identified by him, placed revolver on his chest warning him not to move. He then remained in that position. From a short distance from him he saw two more persons similarly armed, out of which one was identified as appellant Ashqin and when he saw all the three of them going upstairs, the fourth man came and stood guard at him. After about half an hour he saw three persons including the two appellants coming down from the house out of which appellant Rafiq was carrying a bundle in his hand. All the accused then escaped on motor-cycle and a scooter which were kept standby outside the house. Next day, after receiving information that one of the dacoits has been arrested, they all went to the police station where they identified Mohd. Rafiq appellant.

10. PW 1 Hari Ram was also employed with Abdul Wahid and was also residing in the nearby Jhuggi. At about 5.15 A.M. on the night of occurrence on hearing noise

he got up and on looking around he saw three persons coming into the house of Abdul Wahid while two of their companions remained outside and all the five were armed with pistols and knives. He also saw two of them coming to the terrace where Abdul Wahid was sleeping and they brought him down stairs. He has identified both the appellants as two of the accused and has seen all the five accused persons escaping from the place on a motor-cycle and scooter with a bundle. He had found a note of Rs. 10/- on the stairs which he picked up and gave to Abdul Wahid. He had known the accused by face before as they used to pass by the side of Abdul Wahid's house. His statement was recorded by the police on the same day.

11. Apart from this evidence, prosecution has also proved the disclosure statement of Mohd. Rafiq marked as Ext. PW 16/A as a result of which the ornaments mentioned in seizure memo, Ext. PW 15/A were recovered from the possession of appellant Mohd. Rafiq and these were identified in an identification parade by the complainant, his wife Akhtari Begum etc. Similarly, the disclosure statement of Ashqin appellant, marked as Ext. PW 16/B, and pursuant to it the recoveries made from his possession as per seizure memo Ext. PW 14/A have also been proved. These have been proved by PW 18 S. I. Rohtas Singh, PW 16 Om Parkash, PW 15 Nawab AH and PW 14 Khairati Lal.

12. Besides this, prosecution has also examined PW 5 Himat Singh who supplied ornaments for mixing up with the seized ornaments at the time of identification parade. PW 19, Shri P.K. Dham Metropolitan Magistrate, who conducted identification parade, is a witness to the fact that the complainant and the owners of the ornaments correctly identified the ornaments which were seized from the accused after the complainant was robbed of them by the appellant. The testimony of the Magistrate would show that he had taken all the precautions while conducting identification parade. PW 8 Shri Nath has also identified some of the ornaments as belonging to Abdul Wahid and says that these ornaments were got prepared by Abdul Wahid through him. PW 13 Smt. Sarvari also identified Tikka, Jhumka and necklace as the ones belonging to her and which had been deposited by her in the house of Abdul Wahid. She is the wife of Abdul Wahid's brother and lives in the same house though in different rooms. She says that she identifies

these articles as she has been using them and she knows that they belong to her PW 17 Tirlochan Singh is a witness to the arrest of appellant Ashqin and has partly investigated the case.

13. It will thus be seen that there are a number of witnesses apart from Abdul Wahid complainant and his wife Akhtari Begum who are eyewitnesses to the occurrence. They have identified the appellants very clearly. They have given the details as to how the offence came to be committed. All of them have said that at the time of commission of offence the appellants together with their associates were armed. We find no reason to disbelieve the testimony of these witnesses and to our mind the trial court has rightly relied upon their testimony. The only thing that the appellants want the court to believe is that the witnesses were falsely deposing against them. This is not true because none of the witnesses as would be seen, are in any way inimical towards them. It is a different matter that most of them are employed by the complainant Abdul Wahid. That fact by itself does not go to support the assertion of the accused that they were deposing falsely. As a matter of fact under the circumstances under which the offence came to be committed they are the most natural witnesses of the occurrence. Apart from this, the prosecution has prayed the disclosure statements made by both the appellants resulting in the seizure of some of the ornaments lost by the complainant on that night and these were discovered in pursuance of the disclosure statements at the instance of the appellants. It is to be borne in mind that these articles were recovered from the house of the appellants and obviously the places where they had hidden these were within their exclusive knowledge. There can be no doubt about the accused having made disclosure statements leading to the discovery as not only disclosure statements but the recoveries have been made in the presence of independent witnesses. There is no evidence that the investigation made an attempt to associate many other people with the recovery but they refused to get themselves entangled. If no other person as such has signed the recovery memos the prosecution is not to be blamed. In fact, this is how the people in our present setting usually behave as they do not want to get involved in court cases.

14. The ornaments recovered from the possession of the accused have not been owned by them and they have been on identification parade correctly and

sufficiently identified by the complainant, his wife and all those to whom they belonged. This would show that these ornaments which ultimately were found to be in the possession of the appellants had been stolen by them from the complainant's house. The accused have not in any way explained as to how they came to possess these ornaments and have simply denied the fact of recovery at their instance. This evidence together with the evidence of the eyewitnesses goes to show that the prosecution has sufficiently proved the association of the appellants with the commission of the crime and under the circumstances of this case there is no escape from the conclusion that the accused appellants have committed this crime. Under the circumstances of this case, therefore, we are of the view that the learned Addl. Sessions Judge has rightly found the accused guilty and convicted them.

15. Next it was argued before us that even though the occurrence allegedly took place at 5.15 AM the making of report has been deferred till 12.30 PM and there is no Explanation as to why the report was delayed. We do not agree with the averment. PW 6 Akhtari Begum wife of the complainant has said that she verified as to what had been stolen. This seems to be true as the details of articles are given in the statement of the complainant. Surely, no one would expect him to make a report till he had fully verified as to what was lost. That accounts for the belated report.

16. The next aspect of the case that came to be argued before us is in respect of the sentence. The learned Addl. Sessions Judge has sentenced the accused to rigorous imprisonment for life and doing so the learned Sessions Judge was mainly guided by two considerations. These were that even though an opportunity was provided to the appellants to lead evidence indicating any mitigating circumstances for lesser punishment and secondly that the offence of dacoity being the outcome of contemptible motive of appropriating property lawfully belonging to another and such crime being difficult to trace the act of the accused has to be construed as grave and should be visited with maximum punishment. We have given our anxious thought to the matter. In this case even though the eye-witnesses have said that the appellants at the time of commission of offence were accompanied by three more persons, the only persons who had been

identified are the appellants and one Barbara. There is evidence that only these three persons had gone into the house. The other two persons who were supposed to be standing house outside the house have neither been named nor identified and who they were is still shrouded in mystery. The offence of dacoity is defined under Section 391 IPC and the robbery assumes the form of dacoity only when the offence is committed by five or more persons conjointly. In the present case, therefore, from our point of view the offence will not fall under Section 395 IPC though it does fall within the ambit of the definition of Robbery made punishable under Section 392 IPC. Since in this case the appellants are proved to have gone armed with deadly weapons they will be liable to be punished under Section 392 IPC read with Section 397 IPC. We, therefore, set aside the conviction and sentence passed by the learned Addl. Sessions Judge under Section 395 read Section 397 IPC and convict the appellants under Section 392 read with Section 397 IPC. Under the circumstances of this case, the accused are sentenced to undergo rigorous imprisonment for a period of seven years and to the payment of fine of Rs. 300/- each failing which they shall undergo further rigorous imprisonment for a period of two months.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com