

Jagdish and Etc. Vs. the State

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Court : Delhi

Decided On : Feb-25-1985

Reported in : 1985CriLJ1621

Judge : J.D. Jain, J.

Appellant : Jagdish and Etc.

Respondent : The State

Judgement :

J.D. Jain, J.

1. Both the above mentioned appellants have been convicted of offences under Section 392/34 and Section 397 read with Section 392, Penal Code, by an Additional Sessions Judge vide his judgment dt. 28th Sept. 1983. They have been sentenced to rigorous imprisonment for seven years and a fine of Rs. 2007- each for offence under Section 392, I.P.C. and rigorous imprisonment for seven years under Section 397 read with Section 392, I.P.C, However, both the sentences have been made to run concurrently. Feeling aggrieved they have preferred separate appeals against their conviction and sentence. Since both these appeals arise out of the same incident and common questions of law and fact arise therein, this judgment of mine shall dispose of both the appeals.

2. The prosecution case succinctly is that Rajinder Parshad Sharma (PW1) and Krtehan Kumar Sharma (PW2) were employed as salesman at A.A.U.I. Service Station-cum-Petrol Pump, Willingdon Crescent, New Delhi, at the relevant time. On 25th Feb. 1982 at about 9.00 P.M. when both of them were present inside, what they call, the show-room at the said Service Station for the purpose of counting cash etc. both the appellants barged into the showroom. They were covering their bodies with dirty chadars. Both of them were having a knife each in their hands. One of them, namely, Harun Kumar appellant (as pointed out by both Rajinder Parshad, PW1 and Krishan Kumar, PW2) pointed the knife on the chest of Rajinder Parshad while the other (Jagdish) pointed the knife towards Krishan Kumar. Both Rajinder Parshad and Krishan Kumar were having a money bag each. The appellants asked them to hand over the cash to them. Rajinder Parshad handed over his money bag to Harun and similarly Krishan Kumar delivered the money bag to Jagdish. However, the latter bag was found to contain no money, Harun then took key of the cash box from Rajinder Parshad and opened the cash-box, Jagdish inserted his hand in the cash-box to take out money but Krishan Kumar who was practicing the art of Judo and Carate took out Non-Chaku (a kind of weapon) Ex.P1 and attacked Jagdish with the same, As soon as PW2 hit Jagdish, the latter hurled an abuse and exhorted Harun to fire. Thereupon, Harun fired at Krishan Kumar and he sustained bullet injuries on his right hand fingers. Both the appellants then fled away from the place of occurrence taking away the money with them. Krishan Kumar then went to hospital in a taxi and got himself medically examined. Someone informed the police and after a short while S. I. Suraj Bhan, Police Station Mandir Marg (PW 12) reached at the venue of the occurrence. He recorded statement Ex, PW I/ A of Rajinder Parshad and sent the same to the Police Station under his endorsement, Ex.PW/12/A for registration of a case. Besides these two persons, who were victims of the robbery, the incident was also witnessed by one Raj Kishore Gupta (PW3) who was running a tea-stall at some distance from the aforesaid Police Station and had per chance come to the Petrol Pump to serve tea to the Petrol Pump attendants named above. S. I. Suraj Bhan inspected the site and recovered five pellets of the bullet, Ex.P2/1-5 and four pieces of wad, Ex.P3/1-4 from the spot. He also lifted Non-Chaku, Ex.P1, from there. He covered these articles into sealed parcels and took them into

possession vide memo, Ex.PW1/B.

3. On 13th Aprl. 1982 both the appellants along with two other persons, namely, Tahir and Sabeer were arrested by Srinivas Puri Police in a case under Section 399/402 I PC, F.I.R. No. 87/82 of Police Station Srinivas Puri. On the clue provided by Sabeer it transpired that they were perhaps concerned with the commission of robbery in question. Accordingly, the message Ex. PW9/A (copy of D.D.No. 27B dt. 13th Aprl. 1982) was sent to Police Station. Mandir Man; and S.I. Surinder Pal Singh (PW9) then went to Police Station Srinivas Puri and brought all the four suspects to Police Station, Mandir Marg. On the next following day, they were produced before a Metropolitan Magistrate along with application Ex.PW9/B for holding a test identification parade. The learned Magistrate Shri Parkash Chand (PW10) fixed Aprl. 23, 1980 for holding the test identification parade inside Central Jail, Tihar. On the appointed day he went to the Central Jail Tihar to conduct the identification parade but all the four suspects including the appellants declined to participate therein on the ground that the police had already shown them to the alleged eye witnesses (their statements being Ex.PW10/C, D, E & F), Thereupon the police remand of the appellants was obtained by the Investigating Officer and on 30th Aprl, 1982 Harun made disclosure statement Ex.PW6/A to the effect that he had thrown the empty money-bag in the jungle close to the Petrol Pump in question and he could get the same recovered. He then led the police party to the Petrol Pump and then got recovered an empty bag, Ex.P4 from nearby a dried nullah. The same was taken into possession vide memo, Ex.PW6/C. On completion of the investigation, both the appellants were challaned.

4. The prosecution rests on 12 witnesses of whom Rajinder Parshad (PW1) and Krishan Kumar (PW2) who were working as salesman at the Petrol Pump and were victims of this robbery are naturally the star witnesses. Both of them have deposed to the foregoing facts. On going through the same I find that their evidence is quite consistent. They have not yielded any perceptible ground even during the course of their cross-examination. However, the evidence of PW3, who as stated above is a tea vendor and happened to be present per chance, is slightly at variance from that of PWs. 1 & 2. According to Raj Kishore Gupta, when the appellants entered the showroom they had small knives in their hands which they

showed to Rajinder Parshad and Krishan Kumar. Accused Jagdish showed knife to Rajinder and demanded the bag containing money, Accused Jagdish then caught hold of Krishan Kumar and dragged him to the side of the Petrol Pump and demanded his bag too but Krishan Kumar did not hand over the bag. Thereupon, Jagdish demanded the key of the drawer and Krishan Kumar took out Non Chaku. When the accused Jagdish tried to take the key Rajinder hit Non Chaku on the neck of Jagdish. Upon this Jagdish exhorted his companion that they (Rajinder and Krishan Kumar) be shot dead and Haruri fired at Krishan Kumar from his Katta (countrymade pistol). As a consequence thereof Krishan Kumar received bullet injuries on his hand and Harun then snatched the bag containing money from the hand of Rajinder. Thereafter, both the appellants decamped with the booty. Obviously this witness has faltered in the narration of the incident on many a point. Divergence between his testimony and that of PWs.1 & 2 may well be ascribed to faulty observation or weak memory i.e. inability to recall all the facts and narrate the same in a proper sequence. This is obvious from the fact that in one breath he says that Krishan Kumar took out Non Chaku but in the next breath he states that when Jagdish tried to take the key Rajinder hit Non Chaku on the neck of Jagdish. This shows the utter confusion from which his testimony suffers. Anyhow even if his evidence is ignored in this respect there is ample evidence in the form of testimony of PW1 & PW2 to establish beyond reasonable doubt not only the factum of dacoity but also the participation of both the appellants in the commission of crime. Indeed the fact of robbery having taken place, which finds corroboration from medical evidence regarding the injuries sustained by Krishan Kumar on his hand as also from the evidence of S.I. Suraj Bhan lifting pellets etc. from the place of occurrence, has not been seriously challenged by the learned Counsel for the appellants and the main plank of the defense is that identity of the appellants as the real culprits has not been established beyond reasonable doubt.

5. As stated above, the test identification parade was to be held by the Metropolitan Magistrate on 23rd Aprl. 1982. However, the appellants as well as their other companions declined to participate in the test identification parade on the ground that they had already been shown by the police to the ocular witnesses. Thus, the question straightway arises whether there is material on record to lend support to this contention or even to raise strong suspicion about

the police having shown the appellants to the ocular witnesses prior to the scheduled test identification parade taking place. My attention in this respect has been invited to the statement of Rajinder Parshad in his examination-in-chief to the effect that 10 or 12 days after the incident he was again called by the police to identify the accused at the Police Station and he identified them correctly. On cross-examination he amplified his statement by saying that he had gone to the Police Station on 28th Mar. 1982 and he had identified the accused sometime thereafter. This statement no doubt tends to leave an impression on one's mind that the appellants must have been shown to Rajinder Parshad prior to the date fixed for their identification. However, it is to be noticed that Rajinder Parshad firmly denied the suggestion that he had given the date 28th Mar. 1982 wrongly. This denial becomes significant in view of the fact that according to S. I. Bhanwar Singh (PW8), the appellants along with others were arrested on 13th Aprl. 1982 in a case under Section 399/402, I.P.C. The only suggestion made to Section 1. Bhanwar Singh was that the appellants had, in fact, been apprehended one week prior to 13th Aprl. 1982 and that the appellants had been shown to the PWs at Police Station ,Srinivas Puri. This suggestion was categorically refuted by him. Even assuming for the sake of argument that the appellants had been apprehended a week prior to 13th Aprl. 1982 the statement of PW1 that he saw the accused persons at the Police Station on 28th Mar. 1982 is hardly of any assistance to them. It is, therefore, difficult to reach the conclusion on mere surmises and conjectures that the appellants must have been shown to the accused persons prior to their test identification. Significantly both Krishan Kumar and Raj Kishore have vehemently denied having ever visited the Police Station subsequent to the incident of robbery. According to Krishan Kumar, the police never called him for identification of the culprits at the Police Station. However, according to Raj Kishore, the Police used to take him to various Police Stations during the course of investigation of the case and he was shown many photographs and asked to identify whether any of those persons had come to the Petrol Pump on the day of the occurrence. Lastly, S.I. Surinder Pal Singh refuted the suggestion that he had taken the witnesses Rajinder Parshad, Krishan Kumar and Raj Kishore with him to Police Station Srinivas Puri. I find no valid reason to disbelieve these witnesses. Hence, I am not convinced of the veracity of the

defense version that the appellants had been shown to the ocular witnesses prior to the holding of the test identification parade.

6. As for the reliability of identification of the appellants by PWs1, 2 & 3 in Court it may be borne in mind that there was sufficient light inside the show-room at the Petrol Pump when the appellants barged into it and committed robbery. Not only they pointed knives at both PWs 1 & 2, Krishan Kumar even sustained bullet injuries at the hands of Harun appellant. The whole Indians of Harun appellant. The whole incident, according to them, lasted for about five minutes. The witnesses, therefore, had ample opportunity to mark the faces and features of the miscreants especially when they were only two in number. Under the circumstances, it was but natural that their impressions should have become quite vividly sketched on their minds and they were certainly in a position to identify the culprits in Court even after the lapse of sufficiently long time. It cannot be laid down as a broad proposition of law and there is no rule of thumb either that after the lapse of a long period the witnesses would in no case be able to identify the robbers they had seen in the course of robbery. However, the Court has to be extremely cautious in appraising such evidence and the decision in each case must turn on its own special facts. It bears repetition that in the instant case the ocular witnesses had ample opportunity to notice and mark the special features of the miscreants and they had given some particulars of identity, if not detailed ones, of the culprits in their statements to the police. Pertinently neither Rajinder Parshad nor Krishan Kumar was cross-examined on this point vis-a-vis their police statements. Hence, I have least hesitation in endorsing the view of the trial Court that the identity of the appellants as the robbers in this case stands established beyond reasonable doubt.

7. Yet another piece of evidence, as noticed above, is the recovery of bag Ex. P.4 as a sequel to the disclosure statement made by Harun appellant. Both SI Surinder Pal Singh and ASI Radhey Lal have deposed to the disclosure Ex. PW6/A having been made by Harun on 30th April. 1982, and his leading the police party to the place wherefrom the aforesaid bag was recovered. However, this fact is of little value because neither Rajinder Parshad nor Krishan Kumar was called upon to identify the said bag as one which had been snatched by the robbers from

them. Unless, therefore, the identity of the bag Ex. P. 4 is duly established, no inference can be drawn that it was the same bag which contained money and was taken away from either Rajinder Parshad or Krishan Kumar. All the same, in view of the clear and direct evidence of the ocular witnesses which is quite reliable and truthful, the offence of robbery is amply brought home to the appellants,

8. Lastly, the question would arise as to whether the appellants are liable to enhanced punishment under Section 397, I.P.C. Needless to say that the said section does not create any substantive offence and it simply prescribes a minimum sentence for the offence of robbery under the aggravating circumstances mentioned therein. While there can be no shadow of doubt that both the appellants carried knives and they aimed the same at their victims, namely, Rajinder Parshad and Krishan Kumar, there is no satisfactory evidence to establish that those knives could be termed 'deadly weapons' as envisaged under Section 397. Rajinder Parshad and Krishan Kumar have simply stated that both the appellants were carrying a knife each in their hands. However, according to Raj Kishore the knives carried by them were small. In the FIR the knives were described as vegetable cutting knives. The question would, therefore, arise whether in the absence of anything more the said knives can be said to be deadly weapons.

9. A deadly weapon is a thing designed to cause death, for instance, a gun, a bomb, a rifle, a sword or even a knife. A thing not so designed may also be used as a weapon to cause bodily injury and even death. It will be a question of fact in each case whether the particular weapon which may even be a knife can be said to be a deadly weapon. In the instant case, there is evidence to the effect that the knives which the accused were having were small in size. They were ordinary vegetable cutting knives. This renders the possibility of those knives being deadly weapons highly doubtful and as such the appellants shall be entitled to benefit thereof. Consequently it would be unfair to impose the minimum sentence contemplated in Section 397 on the appellants merely because they used those knives in the commission of the crime. However the case of Harun stands on a different footing inasmuch he even fired a shot from his country-made pistol. This fact is amply borne out by the recovery of pellets and wads from the venue of occurrence.

10. To sum up, therefore, while maintaining conviction of both the appellants for offence under Section 392, I.P.C. I hold that only Harun-appellant is liable to enhanced punishment for aggravated offence under Section 397. Hence, his conviction for the offence under Section 392 read with Section 397 I.P.C. is maintained while the conviction of Jagdish-appellant for offence under Section 392 alone is sustained. Consequently, the sentence awarded to Harun-appellant is maintained and his appeal is dismissed in toto. However, the sentence of Jagdish-appellant is reduced to rigorous imprisonment for four years and a fine of Rs. 500/- in default he shall undergo further rigorous imprisonment for three months. The entire amount of fine, if recovered, be paid to the owner of the Petrol Pump mentioned above.

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