

Vinod Kumar and ors. Vs. State

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Court : Delhi

Decided On : Mar-06-2007

Reported in : 2007CriLJ2861; 2007(95)DRJ212

Judge : Shiv Narayan Dhingra, J.

Acts : Narcotic Drugs and Psychotropic Substances Act - Sections 21; Indian Penal Code (IPC) - Sections 395 and 397

Appeal No. : Crl. A. No. 362 of 1999

Appellant : Vinod Kumar and ors.

Respondent : State

Advocate for Def. : Richa Kapoor, Adv.

Advocate for Pet/Ap. : R.S.Gupta, Adv

Disposition : Appeal dismissed

Judgement :

Shiv Narayan Dhingra, J.

1. The appellants were convicted by the Court of Additional Sessions Judge under Section 395 read with Section 397 IPC vide judgment dated 21st July, 1999 and were sentenced to undergo 7 years RI and a fine of Rs. 250/- each vide judgment

dated 23rd July, 1999. They have preferred this appeal against the judgment and order of sentence.

2. The brief facts as narrated by the Trial Court giving rise to the offence are as under:

On 16.6.1995 at 10.15 p.m. a wireless message was received at P.P. Shidhi Pura, P.S. Desh Bandhu Gupta Road that a person who had been looted and injured by four or five men, was being taken to RML Hospital in PCR Van. The information was entered at Seriall No. 30 in the Roznamcha (PW 17/A). On receipt of DD No. 30 SI Nand Ram went to RML Hospital and there he obtained MLC of Sudhir Aggarwal (PW 1). He was told that the injured had been taken by his relatives to Maharaja Uggarsain Hospital, Punjabi Bagh. Accordingly, SI Nand Ram went to Uggarsain Hospital at about 1.00 a.m. but the injured was declared 'unfit for statement'. One hour later SI Nand Ram again approached the doctor and this time Sudhir Aggarwal was certified to be 'fit for statement'. SI Nand Ram examined him and he stated as follows:I live at above address with my family. I am a Chartered Accountant by profession. My office is situated on the third floor of property No. 10159 Padam Singh Road. At about 9.00 p.m. I closed my office and went to Hanuman Temple at Tuglak Road in my maruti car No. DL-8CA-6161. After making obeisance at the temple I left for my home at 9.30 p.m. I turned from Rani Jhansi Road to New Rohtak Road at about 9.45 p.m. A young boy aged about 20/25 years, dark complexion, height about 5' 6" came in front of my car in drunken condition. He was wearing light blue T-shirt and pant. I stopped the car. That boy came to the window on the driver's side and said in anger that I was not driving properly. In the meantime another boy came on the other side of the car near the front window. He was also aged about 20/25 years and his complexion was dark. He opened the door and then he opened the rear door also. He sat by my side. Three other boys occupied the rear seat. All of them took out daggers. The boy, who was standing at my side asked me to leave the steering. He kept injuring me with a knife. He also kept asking me to move aside. He snatched my wrist watch and removed Rs. 400/500 from my pocket. My briefcase containing my diary, letter pad and other papers besides Rs. 20/25 thousand in cash and keys was lying on the rear seat. It was picked up by the miscreants. I got out of the left

window to save myself and raised alarm. These boys ran away in a three wheeler towards New Rohtak Road with the briefcase. I could not note the number of the three wheeler. The three boys, who were sitting on the rear seat were in the age group of 20/25 years. I can identify on seeing them.

3. The appellants Vinod and Kamal were arrested under Section 21 of NDPS Act in FIR No. 280/1995 and 281/1995 respectively by police of Paharganj on 30th May, 1995 for possessing narcotic drugs. On interrogation the two accused made disclosure about their involvement in the robbery of this case. They also disclosed the names of their other accomplices and told police that they were to assemble at 'Liberty' cinema on the same day in the evening. Both the accused were taken to 'Liberty' cinema by a police team led by SI, Tarkeshwar Singh and SI, Anil Kumar and they pointed out to their other accomplices, who had arrived at 'Liberty' cinema, namely Mukesh Kumar, Sanjay and Manoj. They were overpowered and arrested by the police team and further interrogated. On interrogation of accused Mukesh Kumar, briefcase and diary of the victim were recovered from his house at Gali No. 9 Multani Dhandha although the money in the briefcase had been spent by them. They were produced before the Metropolitan Magistrate for TIP in unruffled face. They refused to participate in TIP. Two more accused persons Kishan and Kanha were also arrested by the police in this case on the information received from the accused persons about their involvement. Kanha also refused to undergo TIP. Identification of case property was got done and the victim/complainant identified his briefcase and diary in property TIP before Shri Narender Kumar, MM.

4. The main witness in this case is the victim himself, who appeared as PW 1. The injuries received by the victim at the time of incident were proved by Dr. J.C. Rai PW 15. The victim had received following injuries:

1. Two incised wounds on dorsum of right hand.
2. Once incised wound on abdomen, 1.5 X 1 c.m.
3. Two small incised wounds on abdomen 0.5 X 0.5 c.m., both on the right lateral side. The MLC of injured Exh. PW 15/A proved by PW 15. The victim had received

five inside wounds at the time of incident.

5. The victim PW 1 in his testimony testified how he was robbed by the accused persons at knife point. He identified accused Sanjay, as the person, who had come in front of his car on the pretext of being drunk and then came to window of driver seat and put knife on him. He identified accused Mukesh who entered the car through the left front side of the car and then opened the rear door to allow their other accomplices/accused, identified as Vinod, Kamal and Manoj, to enter into the car through rear door, who occupied the rear seat. He testified that Mukesh snatched his wrist watch and removed cash from his pocket and some papers lying in the pocket of his shirt. He also testified that the three accused sitting in the rear seat brandished knives and took away his briefcase containing his diary and Rs. 25,000/- cash. All the accused persons were identified by the victim in the Court since TIP was refused by the accused persons. The victim, PW 1 testified that he pleaded with accused persons for his life but they insisted upon him to leave the driving seat and move aside in the car. Apprehending danger to his life he pulled the keys of the car and got down from the left side of the car and after getting down he raised alarm for help cried for his life and ran towards the red light. Then, all the accused ran away, leaving the car and taking his briefcase and belongings. Somebody had telephoned the police and police came on the spot and he was removed to the hospital. He identified his briefcase and diary in TIP as well as in the Court. He stood cross-examination well. No suggestion was given to him that he was having an enmity with any of the accused and he falsely identified them or implicated them. No suggestion was given that no such incident had taken place as stated by him. He remained in hospital for about a week because of the injuries received at the hands of accused persons. After his discharge from the hospital, he did not visit police station nor police official called at his house or office. There was no chance with police to show him the accused persons. He denied the suggestion that the accused persons were shown to him or their photographs were shown to him. The only other suggestion given to him was that he falsely implicated the accused persons at the instance of the police officials.

6. The testimony of the injured/victim has been believed by the Trial Court and on the basis of the testimony of the victim and corroborative testimony of doctor and

other police officials about receiving DD of the incident. the Trial Court found that the case against the appellants under Section 395 and 397 IPC stood proved.

7. The judgment of the Trial Court has been challenged by the appellant on the ground that the identification of the appellants by the victim for the first time in the dock was no identification and could not have been relied upon by the Trial Court to convict the appellants. The appellants relied upon 59(195) DLT 699 Ten Singh v. State and : 40(1990)DLT289 Pramod Kumar v. State. The Trial Court discussed both the above cases and came to the conclusion that both these cases were not applicable in the present case since the appellant had not been shown to the victim.

8. The counsel for the appellants urged that except the victim no one had come forward to give evidence although the prosecution case is that there were many onlookers. In absence of any independent public witness the case of the prosecution should not be considered as proved.

9. I consider that this argument of the appellant must fail. The victim was driving a car when the incident took place. He was near red light. It is not the plea of the appellants that there was no sufficient light for PW 1 to see the accused persons. The road on which the incident took place is one of the main roads of Delhi and is a well lit road. The victim had sufficient and good opportunity to see the accused persons since, one accused came to the window of the driver seat, opened the door and asked him to move aside; the other accused entered from the left and he was sandwiched between the two accused persons. The three accused on back seat of the car were holding knives and his briefcase, containing cash and other papers. The victim was being pointed and threatened with knives. His wrist watch and money was removed by the accused. He saw three accused taking his briefcase and sitting on the rear seat. PW 1 had begged for his life from the accused persons. The incident was not committed in a lightening manner and the complainant had received injuries and got good time to see the accused persons. If a witness had sufficient time to see assailants and even has interaction with the assailants and got injured at the hands of the assailants, who had come to rob him, the faces of the assailants gets engraved in the memory of the victim due to

the gravity of incident and injuries he gets at the hands of the accused persons and it is not easy for him to forget those who put his life in danger, caused injuries to him and robbed him. There is nothing un-natural if a victim identifies his tormentors or the robbers at a later stage during trial. Such an identification cannot be doubted because the person who is identifying has suffered at the hands of the appellants. Here the victim PW 1 was truthful and the person whom he had not seen during the incident was not identified by him in the Court, despite police having made him the accused and only those five were identified by him who were actually involved and had robbed him at knives point. I consider that Trial Court rightly believed the testimony of PW1 in order to convict the appellant.

10. In 2007(1) SCC Cri 118 Major Singh and Anr. v. State of Punjab, Supreme Court observed that conviction can be based on the testimony of sole eye witness, who is a natural witness and who deposes the incident in detail. The Court has to believe the testimony of such natural witness. In State of Tamil Nadu v. Ravi @ Nehru 2007(1) SCC Cri 133 Supreme Court observed as under:

It is now well-accepted principle of law and conviction can be founded on the testimony of the prosecutrix alone unless there are compelling reasons for seeking corroboration. It is also well-accepted principle of law that corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence. A woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion treating her as if she were an accomplice. (see State of Punjab v. Gurmit Singh : 1996 CriLJ1728

11. The legal position of a prosecutrix and an injured are not different and conviction can be founded on the testimony of injured alone unless it is shown that the injured has some motive to falsely implicate the appellant. No motive has been alleged against the injured for falsely implicating the appellants.

12. It is argued by the counsel for the appellant that all the accused persons could not have been convicted under Section 397 because only two are stated to have used knife who were occupying the front seats and those, who were in the rear

seat had not used the knives, they had only taken out their knives. According to counsel, taking out of the knife does not amount to use of the knife. I do not agree with the contention raised by the appellant. Brandishing a knife in order to commit robbery amounts to use of knife. Even if the victim is not stabbed and at knife point he is robbed or looted, the offence under Section 397 is made out. It is not necessary that in order to attract Section 397 the deadly weapon is to be ;used in the sense that by use of it the person has to be injured. The use of weapon is also there when the weapon is brandished and a person is robbed/looted under the fear of his life caused by weapon.

13. In view of discussions above, I find no infirmity in the judgment passed by Additional Sessions Judge convicting the appellants. The appeal is hereby dismissed.

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