

Ram Kumar Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Feb-19-1980

Reported in : 1980WLN(UC)71

Judge : S.N. Deedwania, J.

Appeal No. : S.B. Criminal Appeal No. 553/1979

Appellant : Ram Kumar

Respondent : State of Rajasthan

Disposition : Appeal allowed

Judgement :

S.N. Deedwania, J.

1. Appellants Ramkumar and Ramjvan have preferred this appeal against the judgment dated August 20, 19/5 of the learned Additional Sessions Judge, Churu, convicting and sentencing them as under:

Ramkumar Under Section 147 IPC 1 yr. R.I.342 IPC 2 yrs. R.I.323 IPC 1 yr. R.I.395 IPC 4 years R.I. and a fine ofRs.500/ in default 6 months R.I.Ramjyan 147 TPC 1 yr. R I.332/151 1 yr. R.I.323/149 6 months R.I.395 IPC 4 yrs. R.I. and a fine of Rs.500/.in default 6 months R.I.

The substantive sentences of both the appellants were directed to run concurrently.

2. Briefly stated the prosecution case was this. On the night intervened 8-7-1973 bus No. RSM 72 0 left Bikaner at 10 p.m. for Jaipur. The driver and the conductor of the bus were Chhutan Khan and Devi Singh respectively. The bus arrived at Dungargarh bus stand at about 11.20 p.m. About 35 persons including PW10 Subhash, PW12 Gopal Chaudhari also boarded the bus. It then proceeded further. However, as soon as the bus stand appellant Ramkumar also boarded the bus and began to smoke a 'bus'. PW9 conductor Devi Singh requested him not to smoke and enquired whether he had put cash for the ticket Ram Kumar refused to purchase the ticket and to stop the smoking. Devi Singh then got the bus stopped and asked Ramkumar to get down from the bus. The other passengers also requested Ramkumar to leave the bus or to purchase the ticket. Ramkumar began to abuse Ganeshram and Gopal who requested him to purchase the ticket to leave the bus. Ramkumar they dragged Gopal away from the bus and began to (sic) beat him. Devi Singh and other passengers also got down from the bus and tried to intervene Ram Kumar also gave fist blows to them. At that time Ramjyan and others seven in number came there and all of them including Ramkumar began to give a beating to Devi Singh, Gopal and Ganesh. Chhutan Khan driver was also beaten. Somehow the three injured Devi Singh, Gopal and Ganesh entered the bus but all the accused also boarded the bus and again began to beat them. A purse containing about Rs.195/- was hanging from the neck of Devi Singh and that was taken away forcibly by Ramjyan and Ramkumar. A wrist watch and about Rs. 170/- were taken by somebody from Gopal and Ganesh was robbed of Rs. 645/- by the accused. The injured was then taken to police station Dungargarh and report Ex P 11 was orally lodged by Devi Singh. A case under Section 325, 147 and 323 IPC was registered. The injured was medically examined. The recovery of the stolen property could not be effected. After completing the usual investigation the challan was filed against eight accused persons, viz, Ram kumar, Ramjyan Ramchand, Narayn Ghana Shiv Prasad, Hanuman Prasad, Bijra Lal and Subhkaran in the court of Munsif Magistrate, Ratangarh who committed the case to the court of sessions. Charges under Sections 147, 332, 397 and 395 IPC were framed against them. The accused pleaded not guilty and claimed trial. The

prosecution examined a number of witnesses but PW 1 Laxmandas, PW2 Mohan, PW3 Devaram, PW4 Asu Singh and PW6 Banshilal did not support the prosecution case and turned hostile. PW11 Chhutan Khan, driver of the bus also did not support the prosecution case as alleged. The learned Additional Sessions Judge believed PW9 Devi Singh to convict the two appellants and further got support from the statements of PW10 Subhash and PW12 Gopal Choudhary. The learned Additional Sessions Judge also held that bus No. RSM 7240 belonged to Rajasthan State Roadways, a Corporation created under a statute and owned by the State Therefore, he conductor and the driver of the bus were public servants within the meaning of Clause 22 of Section 21 IPC.

3. I have heard the learned Counsel for the appellants and the learned Public Prosecutor. It was argued by the learned Counsel for the appellants that none of the three witnesses knew the appellants or other accused before the incident Two of the witnesses PW10 Subhash and Gopal Choudhary failed to identify the appellants The solitary statement of Devi Singh was insufficient to establish the identity of Ram Kumar as it is not corroborated by the test identification which was not held in the case. It was also argued that the story of taking away of the wrist watch and the money from Subhash and Gopal Chaudhary by the accused had not been stated even by these two witnesses and there was no evidence in support of the same. I am not concerned with this argument because the learned Additional Sessions Judge did not convict any of the accused for this offence. The appellants were convicted under Section 495 IPC for snatching the purse containing money from Conductor Devi Singh. It was argued by the learned Counsel for the appellants that this was also an improvement because this fact did not find place in the FIR or in the statement of Devi Singh. The other two witnesses also did not corroborate Devi Singh on this point. On the other hand the learned Public Prosecutor argued that there was no motive on the part of Devi Singh to falsely implicate the appellants. It could not be disputed that no incident took place. In these circumstances therefore, the statement of Devi Singh was reliable and worthy of credence. I have considered the rival submissions carefully. PW12 Gopal Choudhary stated that when the bus started from Dungarpur bus stand a man in a drunken condition boarded the bus and began to quarrel with Devi Singh Blows were exchanged between them. He was unable to recognise

that mean. He, Ganesh and Subhash tried to rescue the conductor. That man then left the bus and they requested the driver to take away the bus. However, the driver insisted to report the matter to the police. Then 10 or 12 more persons with Ram Kumar came there and again picked up the quarrel. Almost all the passengers alighted from the bus. Four or five persons also gave him a beating. His wrist watch and about Rs. 170/-were somehow lost. Thus though this witness had given out a general version of the incident but had not stilted that Ramjyan and Ram Kumar appellants snatched a purse containing some money from the neck of Devi Singh. PW10 Subhash stated that he was unable to recognise or indentify appellant Ram Kumar. A drunken boy entered the bus and quarrelled with the conductor. Two or three passengers tried to intervene He did not intervene. Ganesh and others intervened. They were also injured. Some other accused also came there but he was unable to identify them This witness also in a way gave a general version but had not stated anything about the snatching of the purse from the neck of Devi Singh Both these witnesses were unable to identify any of the appellants during the trial. Thus the statements of these two witnesses are of little worth either to establish an offence under Section 395 IPC or to establish complicity of the appellants in the crime. They also gave a general version of the incident from which it can be said to be established that one person entered he bus, picked up a quarrel with the conductor and then some beating was occasioned to Devi Singh and others. I am, therefore, left with the solitary statement of Devi Singh to find out the guilt against the appellants. The statement of Devi Singh that the purse was snatched by Ramjyan and Ramkumar does not inspire confidence. The witness admitted that he did not state in his police statement that Ramkumar caught hold of his hands and one Ramjyan snatched away the purse. This fact is also not mentioned in the FIR. The witness also admitted that he found his purse after the incident there. I am, therefore, of the opinion that because of these omissions and in the absence of any corroboration whatsoever from any evidence direct or circumstantial, it cannot be said beyond reasonable doubt that Ramjyan and Ram Kumar forcibly took away the purse containing the money from the neck of Devi Singh. As regards the identity, or the involvement of the appellant in the crime, I am left solely with the statement of Devi Singh who is only partly reliable. I have not believed him on the fact that his

purse was snatched away by the appellants. The complication in the case arose because in the FIR it was not disclosed by Devi Singh that he did not know the other accused or the appellants before the incident. Naturally therefore, no test identification was held. Now at the trial Devi Singh PW9 had admitted that he came to know of the names of the appellants and the other accused from Devaram Sarpanch. Devaram was examined in the case as PW3. However, he did not state that he disclosed the names of the accused and the appellants to Devi Singh. In such circumstances I am of the view that the conviction of the appellants cannot be based only on the testimony of a partly reliable witness Devi Singh which is not corroborated by any facts and circumstances. I am mindful of the fact that Devi Singh had good opportunity of identifying the appellants. Therefore, his statement may be true but the point is whether his statement is true beyond reasonable doubt. It was thus observed in *Kanan and Ors. v. State of Kerala* 1979 Cr.L.J. page 919:

Where a witness identifies an accused who is not known to him in the Court for the first time, his evidence is absolutely valueless unless there has been a previous T.I parade to test his powers of observations. The idea of holding T.I parade under Section 9 is to test the veracity of the witness on the question of capability to identify an unknown person whom the witness may have seen only once. If no T.I parade is held then it will be wholly unsafe to rely on his bare testimony regarding the identification of an accused for the first time in Court.

4. I am, therefore, of the view that in the absence of a previous test identification parade, it is not safe to rely on the statement of PW9 Devi Singh and his identification of the appellants at the trial is of little value. The prosecution therefore, could not prove its case beyond reasonable doubt against the appellants and they are entitled to acquittal.

5. I, therefore, accept the appeal and acquit the appellants for the offences for which they stand convicted. The appellants Ramkumar and Ramjyan are on bail and they need not surrender to their bail bonds which are hereby cancelled.