

Santosh@mustafa Vs State

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Court : Delhi

Decided On : Aug-17-2010

Judge : Mr. Shiv Narayan Dhinrga, J

Appeal No. : Crl. Appeal No. 16 of 2009 ; Crl. Appeal No. 17 of 2009

Appellant : Santosh@mustafa

Respondent : State

Advocate for Def. : Mr. Sunil Sharma, Adv.

Advocate for Pet/Ap. : Ms. Saahila Lamba, Adv.

Judgement :

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

1. These two appeals have been preferred by the appellants assailing a common judgment dated 25th September 2008 passed by learned Sessions Judge whereby the learned Sessions Judge convicted both the appellants for the offences punishable under Sections 392 read with Section 34 and 397 IPC and sentenced them vide order dated 1st October 2008 to undergo rigorous imprisonment for a period of seven years under Section 397 IPC with fine of

Rs.500/- and three years rigorous imprisonment under Section 392 IPC.

2. The FIR against the appellants was lodged on the statement of Rajbir Singh who was the victim of robbery. On 1st April 2007, he was returning from Faridabad Sector-28 where he was working, on his bicycle. When he reached Mangal Bazzar Road street no.4, D Block Sangam Vihar at about 11 pm, the appellants stopped him and asked him about street no.9. The moment Rajbir Singh stopped, both the appellants pounced upon him and took out knives and pointed the knives at him and asked him to hand over whatever he had otherwise he would be stabbed. The money and other articles were taken from the pockets of his shirt and pant. He (victim) was carrying Rs.600/- in pocket of his pant. A diary and ICICI slip from his shirt pocket. These things were taken from him on the knife point and after looting him, they ran away. Immediately thereafter, the victim raised alarm about his being looted. ASI Karamvir and Constable Banwari were on patrolling duty in the area on that day and they heard alarm and they chased the appellants. Both were apprehended after chase and their names, addresses etc were inquired. A search was taken and on search one knife each was recovered from both of them. A diary along with ICICI bank slip also recovered from Santosh @ Mustafa and Rs.600/- and a knife was recovered from appellant Ravi Shankar. Both of them were apprehended.

3. During trial, the victim Rajbir Singh appeared as prime witness of prosecution and testified about the manner in which he was robbed. He supported the prosecution case. The other witnesses are police officials who had apprehended the appellants at the spot and made recoveries from them. The defence taken by the appellants before the trial court was that the cycle of Rajbir Singh hit them with the result that a quarrel took place between Rajbir Singh and both the appellants. Police reached at the spot. Rajbir Singh and both the appellants were taken to police station where police demanded money for their release. Rajbir Singh called his brother to the police station who paid Rs.1500/- for release of Rajbir Singh and Rajbir Singh was released. Since both the appellants could not pay the amount demanded by the police, they were implicated by the police in this false case. They claimed innocence.

4. From this defence, it is apparent that the appellants did not deny from their presence at the spot, their apprehension by the police from the spot and taking them and Rajbir Singh to police station from the spot. Rajbir Singh denied that his brother paid Rs.1500/- to police for his release and he denied that the appellants were falsely implicated.

5. It is argued by the counsel for the appellant that the trial court had not considered the contradictions in the statements of Rajbir Singh. While he initially stated that both the accused persons were arrested at the spot after chase but during cross examination he stated that accused Ravi Shankar was apprehended by the police later on and he was called at the police station on next day morning to identify him and he identified accused Ravi Shankar and therefore the deposition of Rajbir Singh is not trustworthy.

6. I consider that some variations and contradictions in the statement of witnesses are bound to come. The incidents tried by the courts are real life incidents and they are not stories written by authors where the entire story has to run as per book. In real life incidents, a witness has to depose from his/her memory. When witnesses are asked to depose in the Court after a long gap, the variations in the statement made before the police and statement made in the Court are bound to be there. The court has to see if the testimony of witness about commission of crime by the accused was trustworthy or not. In the present case, Rajbir Singh categorically stated that both the appellants had pounced upon him and took out knives and told him to shell out whatever he had in his pocket otherwise he will be stabbed. He raised noise and the appellants were caught at the spot. Let us presume that one appellant was caught at the spot and other was traced at the instance of other accused during night and was not caught at the spot. Thus, he was apprehended soon after the incident during same night it was not necessary for police to keep the complainant sitting in the police station till the police was able to trace the second accused and apprehend him. There is no denial of the fact that both the accused/appellants were apprehended on the same night. In fact, it was not case of the accused/appellants that they were not apprehended at the same time. What is more important to see whether the appellants were the same persons who had committed robbery or they were falsely implicated in this

case. The person who was their victim had categorically stated that both of them were the same persons who robbed him. There is no reason to disbelieve him. It is not the case of the appellants that the victim had an enmity against them rather the stand of appellants that Rajbir Singh was also a victim at the hands of police highhandedness and he had to shell out Rs.1500/-. If this had been the case, Rajbir Singh would have been the last person to support the prosecution case and to depose against the appellants. The fact is that Rajbir Singh stood by his stand and categorically stated that the appellants were the persons who robbed him on knife point.

7. In view of above facts and circumstances, I find no force in these appeals. Both the appeals are hereby dismissed. As far as sentence is concerned, the minimum sentence provided under Section 397 IPC is seven years RI. The trial court has awarded minimum sentence. There is no scope for reducing the sentence of the appellants.

8. Both appeals stand dismissed.

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