

**Ashwani Kumar Vs. State**

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**Court :** Delhi

**Decided On :** Jan-13-2011

**Judge :** Mukta Gupta, J.

**Acts :** Indian Penal Code (IPC) - Sections 392, 398; Code of Criminal Procedure (CrPC) - Section 313

**Appeal No. :** Crl. Appeal 221/2001

**Appellant :** Ashwani Kumar

**Respondent :** State

**Advocate for Def. :** Mr. Pawan K. Bahl, Adv.

**Advocate for Pet/Ap. :** Ms. Anita Abraham, Adv.

**Judgement :**

1. Whether the Reporters of local papers may be allowed to see the judgment?  
Not necessary

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

1. Briefly, the prosecution case is that on the night of 19th and 20th August, 1992 at around 2:45 a.m., the accused along with the co-accused Shamshad Ali and Bhushan, robbed one Ram Kishore of his purse containing `1500/- by using a

knife. At the time of the incident, SI Karam Chand and Constable Rajinder Singh were patrolling the area and when they reached near the Flag Staff Road, they heard a noise of "chor-chor" and they saw two persons running. On chasing, the two persons were apprehended, one being the Appellant and the other Bhushan Kumar. In the meanwhile, the Complainant also reached there and on search of the Appellant, a black leather purse containing `1500/- in the denomination of `50/- each and a visiting card of Bashiruddin, were recovered which were duly identified by the Complainant. As per the Complainant, he along with his nephew Ram Rattan had boarded a TSR at ISBT for going to Zakir Nagar, however, the driver was asking `60/- but he told the driver that he only had `30/-. The driver agreed to take them for `30/- on the condition that he will take other passengers also in the scooter. After driving around, the above named two persons also boarded the scooter, however, when the scooter reached North End Road, the driver took out a knife and threatened Ram Kishore and his nephew not to raise any alarm and the Appellant Ashwani Kumar searched the pocket of Ram Kishore and the accused Bhushan searched the pocket of Ram Lakhan. The driver ran away from the spot. On a trial being conducted, the Appellant was convicted for an offence under Section 392 IPC and sentenced for a period of RI of one year and a fine of `5,000/-. The co-accused Bhushan was also convicted for an offence under Section 392 IPC, however, since he had undergone a period of five years during the pendency of trial, he was sentenced to imprisonment for the period already undergone and a fine of `1,000/-; and co-accused Shamshad Ali who was the scooter driver was convicted for an offence under Section 398 IPC as he was armed with knife and had used the same to rob the Complainant and was sentenced to Rigorous Imprisonment for a period of seven years.

2. Learned counsel for the Appellant contends that the recovery from the Appellant has not been proved as neither the black purse was sealed nor was the number of the currency notes noted. There are discrepancies in the statement of the PW2 Ram Kishore the Complainant and that of the I.O as to the place where the statement of the Complainant was recorded. The investigation of the case is mala fide and according to the defence, the Appellant was found gambling and thus the money was planted on him and he has been falsely implicated in the present case.

3. The Appellant has examined his wife as DW1 in the present case, who has stated that on the day of the incident two police officials, who were in uniform, came to her house accompanied by her husband. The said police officials demanded `2,000/- from her which she was not having and thus, she gave a pair of gold ear rings to them and thereafter they left the house along with her husband on the pretext that they were to obtain his signatures in the police station. She also stated that her husband has been falsely implicated in the present case. PW4, owner of the TSR was examined who was not even aware as to who was driving the scooter on the day of the incident. It is stated that the testimony of the Complainant cannot be relied upon, as neither his nephew, travelling with him, nor Constable Rajinder Singh was examined and thus, the Appellant deserves to be acquitted. In the alternative, it is stated that the Appellant was 20 years of age on the date of the incident and has a mentally ill mother and thus he should be let out on probation.

4. Learned APP on the other hand contends that the story of false implication of the Appellant is clearly an afterthought as no suggestion in this regard has been given to the prosecution witnesses in their cross examination nor has such a defence been taken by the Appellant in the statement under Section 313 Cr PC. In fact the cross examination of PW2 on behalf of the Appellant itself suggests that the Appellant was present at some distance where the Complainant was dropped and the accused persons were arrested in his presence. Even if there is a minor discrepancy as to the place where the statement of the Complainant was recorded, the same does not discredit the entire prosecution case. There is no material inconsistency in the testimony of the prosecution witnesses and nothing adverse has been elicited from the Complainant in his cross examination.

5. It is contended by the learned APP that Sub Inspector Karam Chand, who heard the noise of "chor-chor" and apprehended the Appellant on the spot, has duly corroborated the testimony of PW2 and he has also testified about the seizure of the currency notes vide memo Ex. PW2/B. The defence taken by the Appellant by producing his wife as DW1 has not been put to the Investigating Officer in his cross-examination and thus, the same cannot be relied upon in the absence of an explanation sought from the witness.

6. I have heard learned counsel for the parties. This is a case where the Appellant was apprehended on the spot and in this regard, the statement of PW2 is trustworthy. The money which was robbed from the Complainant in the purse along with the visiting card was recovered on the spot. This version of the Complainant is duly corroborated by the testimony of PW6, Sub Inspector Karam Chand who had reached the spot on hearing the noise. As regards the place of recording of the statement of the PW2, ASI Budh Dev has been examined as PW1. He stated that on receiving ruqqa, he recorded a formal FIR, the copy of which he sent to the I.O. who was present at the spot. This witness has not been cross examined. Also, no suggestion has been given to the I.O. on behalf of the Appellant with regard to the false implication of the Appellant and thus, the defence is clearly an afterthought. Moreover, no contemporaneous record of the same has been produced. No suggestion has been put to the I.O. in the cross examination as regards the allegation that the Appellant was apprehended while gambling. The cross examinations of PW2 and PW6 on behalf of the Appellant suggests that the prosecution version of the incident is correct.

7. In view of the evidence on record, I find no infirmity in the impugned judgment convicting the Appellant for offence punishable under Section 392 IPC. The Appellant has been sentenced for Rigorous Imprisonment for a period of one year and a fine of `5,000/-. The fine amount has already been paid. Out of the sentence awarded to the Appellant, he has already undergone almost half the sentence. The incident is of the year 1992. The Appellant has already faced a protracted trial and appeal. Thus, the sentence is reduced to the period already undergone by him. The appeal is accordingly disposed of. The bail bond and the surety bond are discharged.

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