

Ram Nath Vs. State

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Court : Delhi

Decided On : Nov-01-2011

Judge : Mukta Gupta, J.

Acts : Indian Penal Code (IPC) - Sections 394, 34, 394, 397, 411; Code of Criminal Procedure (CrPC) - Section 313

Appeal No. : CRL.A. 68 of 2010 And Crl.M.B. 966 of 2010

Appellant : Ram Nath

Respondent : State

Judgement :

1. By the present appeals the Appellants lay a challenge to the judgment dated 15th December, 2009 whereby they have been convicted for offences punishable under Sections 394/34 IPC and the order dated 19th December, 2009 directing them to undergo Rigorous Imprisonment for a period of four years and to pay a fine of Rs. 3000/- and in default of payment of fine to further undergo Rigorous Imprisonment for a period of six months.

2. Learned counsel for the Appellant contends that the alleged Complainant PW1 Aleyamma neither gives the name nor the description of the accused in her statement. She did not lodge the First Information immediately after the incident, though she is allegedly a victim. She further states that after the incident she came to her house and after about an hour she received a phone call from Church

whereafter she went to the Police Station. It is contended that PW1 does not say about the presence of PW3 Christy John. Further, also PW3 Christy John does not say that he called the PW1. Though the Appellants were allegedly apprehended at the spot soon after the incident but the FIR was registered belatedly after a period of six hours. No request for TIP was made nor was it conducted. The TSR has neither been exhibited nor proved. There are contradictions in regard to the time of PW1 reaching the place. Moreover, the accused persons were made to sit unmuffled when they were got identified by PW1. Furthermore no TIP of the allegedly robbed chain was conducted. PW1 simply walks into the Police Station and identifies the same. The recovery of the knife is also shrouded in mystery. It is stated that the knife was handed-over in the hospital and thus memo of knife was prepared later on, which fact has been denied by PW1. The TSR has not been exhibited and proved by either of the eye-witnesses and exhibiting of TSR by one Chandeshwar Sahu is meaningless exercise.

3. Learned APP on the other hand contends that PW3 Christy John heard the cries of PW1 and chased the Appellants on his motor-cycle and raised an alarm. Hearing him a PCR also followed and ultimately the PCR stopped the TSR of the Appellants and apprehended the co-accused after a chase. Further testimony of PW1 is corroborated by PW3, PW6 and PW7. The testimony of PW6 corroborates PW3 and there is no contradiction in their version. Exhibit PW3/A, that is, the sketch of knife bears the signatures of PW3 Christy John. By the sequence of events it is clear that the FIR was registered on the statement of Aleyamma PW1. Further there is one more involvement of the Appellant Kamal. In view of the fact that it was day light robbery no lenient view should be taken in favour of the Appellants and the appeal be dismissed.

4. I have heard learned counsel for the parties and perused the record.

5. Briefly the prosecution case is that on 31st May, 2009 robbery was committed by the accused persons by snatching the gold chain of the Complainant from her neck at point of knife when she was returning to her home after offering prayer at Saint Marry Church. All the accused persons were in an auto. As the Complainant protested she sustained injury and the accused succeeded only in taking part of

the chain whereas other part remained with her. She went back to her home and disclosed the incident to her daughter as well as her husband through telephone. One Christy John, who had also come to attend the prayer to the church, saw the incident and chased the TSR. While chasing he was hit by the auto due to which he fell down and got injured. In spite of this he further chased the TSR and in the meanwhile he saw one police van and informed it. Both the PCR and Christy John got stopped the TSR and three accused persons namely Kamal, Ramnath and Pawan were apprehended at spot, however, one accused Ved Prakash managed to escape who was later apprehended. Knife recovered from accused Ramnath was handed over to the Investigating Officer at the CBS Hospital. In the meantime, Complainant Alyemma reached the police station when she was informed about the apprehending of the robbers. There upon her statement FIR was registered under Section 394/397/411 IPC. Investigation was completed and charge sheet was filed against the accused persons. After recording the prosecution evidence and statement of accused persons under Section 313 Cr.P.C. the learned Trial Court convicted and sentenced the accused persons as abovementioned. Besides the Appellants the other two accused persons were also convicted. No appeal has been filed by them.

6. PW1 Aleyamma in her testimony has narrated the incident. This witness has deposed that on the day of incident at about 8.40 a.m. in morning after attending the morning prayers in church she was returning back to her house situated in phase-III, when a TSR came from behind and stopped by her side. There were four boys in the TSR, three were sitting at back and fourth one was driving the said TSR. Out of the four boys, two boys came out from the TSR near her of which one was having knife. The one, who was having open knife, asked her to give whatever she was having. On this she became afraid and put her both hands on her neck. The second boy snatched her gold chain from the back side. She made a cry. They ran away after taking half of the chain they were able to snatch while a part of the same remained with her in her hand. Witness has clearly identified accused Ramnath as the one who was driving the said TSR, accused Pawan was having knife in his hand and accused Kamal was identified as the person who had snatched the chain. She has further deposed that after the incident she was afraid and came to her house. After about an hour she received telephone call from the

member of the church that the person who had snatched the chain had been apprehended and was asked to go to the police station. Thereafter she went to the police station where the accused person/Appellants and one Pawan were present and she identified them as her assailants. She deposed that on the same day in the evening she again visited the police station and from the pocket of the wearing shirt of accused Ved Prakash gold chain was recovered. The same was taken in possession and sealed by the police. Despite an elaborated cross examination nothing material could be elicited from the witness.

7. PW3 Christy John in his testimony deposed that on the relevant day when he reached near A-Z Block, Mayur Vihar he heard a cry of a woman. He saw two boys and one of them was having knife, coming in an auto. Those persons snatched the chain of a lady. He followed the TSR while crying „chor chor' and at some distance he saw a vehicle of police officials. He told them about the incident and continued chasing. After some distance while trying to surpass the TSR he was hit by the TSR, he fell down and received injuries. He stood up and continued to chase the TSR. The police officials also came and apprehended the accused persons. This witness has deposed that the sketch of the knife recovered was prepared in his presence. He has identified all the accused persons and the knife in the court. In his cross-examination he has stated that he had seen the accused showing knife to the lady and the knife was a folding knife. He has further deposed that the police officials met him at the CRPF camp.

8. PW6 HC Komal Prasad has deposed that on 31st May, 2009 he was posted in PCR. At about 8.40 a.m. he was present near CRPF camp in front of Mayur Vihar, Phase-III. Three or four persons were going in TSR. One was holding a knife in his hand and the knife was open. One motorcyclist who was chasing the said TSR was raising the alarm "Chor Chor" "Pakro pakro". On seeing them, we also chased the TSR. On the way, TSR struck the motor cycle wala and the motorcyclist fell down on the ground. Near Safeda Park, he overtook the TSR and got the same stopped. Immediately, three persons came down from the TSR and started running. Out of the three persons, two persons were apprehended by the public persons who disclosed their names as Kamal and Ram Nath and third one namely Pawan was apprehended by him at some distance who was holding the knife with

the help of public persons. He identified all the three in the Court. This witness has admitted in his cross-examination that motorcyclist was also there when they apprehended and stopped the TSR. He had asked from the motor cyclist his name and address. He told his name as Kristy, however, he did not note down the number of his motor cycle. Further he has deposed that the sketch of the knife recovered was prepared. He identified all the accused persons and the knife in the court to be the same which was recovered at the time of apprehension.

9. A perusal of the testimony of PW1 shows that while she was coming from the Sunday Church the Appellants along with the co-accused snatched the chain from her back-side with the result half chain was taken by them whereas the other part of the chain remained in her hands. The Appellants along with co-convicts ran away and PW1 came back to her house. However, this incident was witnessed and the cries of PW1 were heard by PW3 who was on a motor-cycle and chased the TSR. When the Appellant saw that PW3 was chasing them, they hit him with the result he fell down and sustained injuries. In the meantime the PCR also which was standing on the way followed the TSR and stopped it. The accused started running away when the Appellants were caught by the public and the co-accused Pawan was caught by the PW6. The testimony of PW1 and PW3 is corroborated by their MLCs Exhibit PW2/A and PW2/B. As per PW2 Dr. K.G. Gupta PW1 received multiple linear abrasions on the back, the neck and upper part of back, whereas PW3 received abrasions over the left elbow and right knee. The injuries clearly corroborate the version of PW1 and PW3. Further a perusal of the sequence of events shows that since PW1 left for her house she was called after the accused were apprehended. She was medically examined on the same day at 3.15 PM.

10. A perusal of Ex.PW3/A the sketch of the knife shows that it has a blade of 20.8 cms and the handle 24.2 cms. Thus, it is a fairly large knife which shows that two Appellants and the co-accuseds were armed with the intention of committing day-light chain snatching. Further from the testimony of PW3 it is apparent that after the recovery of the knife which seizure memo Ex.PW3/B was duly signed by PW3 he left the hospital. By the time the PW1 was called and she reached the Police

Station, the accused persons had been caught red-handed at the instance of PW3. Since the Appellants were apprehended at the spot in the presence of public at the instance of PW3 an eye witness, I do not find any merit in the contention of the learned counsel for the Appellant that TIP was not conducted and hence the identification should not be believed. Further the snatched part of the chain was also recovered in the evening at the instance of co-accused Ved Prakash. A photograph of the said chain has been exhibited during the trial.

11. No doubt as urged by the learned counsel for the Appellants there is a gap in the prosecution case as PW3 states he did not call up PW1 and PW1 states that she received a phone call from a member of the church and then she went to the police station where her statement was recorded. However, the fact that the person who identified PW1 resulting in a phone call to be made to her was either not traced or no efforts were made to trace is not such a lacuna in the prosecution case so as to demolish the evidence of PW1 and PW3, who are both injured witnesses. The possibility that being a Sunday morning church time and as PW1 use to go to church regularly someone disclosed her identity cannot be ruled. The present is a case of PW3 witnessing the incident and chasing the culprits resulting in their apprehension and not a case of circumstantial evidence.

12. As regards TIP of the chain it may be noted that the Appellants were able to take away part of the chain which was less than half. The other part remained with PW1. PW8 the Investigating Officer has clearly stated that the part of the chain recovered from the co-accused Ved Prakash was identified by PW1 and thereafter it was sealed. PW1 has stated that she got the part of chain on superdari from the Court, though exact date she did not remember. She also stated that she produced the complete chain in the Court as she got attached with a kunda. No question has been put to the witness that the two parts were not identical. In view of the fact that part chain was available with the non-conducting of TIP of the part chain does not demolish the prosecution case. Thus, I find no merit in the contentions raised by learned counsel for the Appellants.

13. The appeals and the pending applications are dismissed being devoid of merits.

