

Anil Kumar Bakshi Vs. the State

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Court : Delhi

Decided On : May-06-2013

Judge : Mukta Gupta

Appellant : Anil Kumar Bakshi

Respondent : The State

Advocate for Def. : Mr. Manoj Ohri

Advocate for Pet/Ap. : Ms. Charu Verma

Judgement :

R-22# \$ * IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.A. 115 /2003
Decided on:

6. h May, 2013 % ANIL KUMAR BAKSHI Through: Appellant Ms. Charu Verma, Advocate with Appellant in person. versus THE STATE Through: Respondent Mr. Manoj Ohri, APP for the State. CORAM: HON'BLE MS. JUSTICE MUKTA GUPTA MUKTA GUPTA, J (ORAL) 1. The present appeal is directed against the judgment dated 3 rd August, 2002 whereby the Appellant has been convicted for offence punishable under Section 392 IPC and the order on sentence dated 17 th August, 2002 whereby he has been directed to undergo Rigorous Imprisonment for a period of five years and to pay a fine of Rs. 500/- and in default of payment of fine to undergo Simple Imprisonment for a period of one month.

2. Learned counsel for the Appellant at the outset submits that the co- convict Narender Kumar and Surjit Sharma @ Mota have not filed the appeal and the only appeal before this Court is of that of the Appellant Anil Kumar Bakshi. It is contended that the present is a case of no evidence. The Complainant who is the only witness who could have identified the Appellant has stated nothing in his examination-in-chief against the Appellant. Even on cross-examination by the learned APP, he specifically denied that the Appellant was arrested at his instance or that there was any recovery from the Appellant or that the Appellant was amongst the four robbers who had robbed him. The Complainant has further stated that no proceedings were carried out at the spot, all memos were signed at the police station and thus the statement of the police witnesses cannot be relied upon. In view of there being no evidence against the Appellant, he be acquitted.

3. Learned APP for the State submits that the case of the prosecution is proved by the testimony of PW8 Constable Satpal and PW9 Inspector Sunil Vashisth who arrested the Appellant at the instance of the co-accused in the presence of the Complainant and recovered the purse, visiting card and cash belonging to the Complainant. There is no merit in the appeal and the same be dismissed.

4. I have heard learned counsel for the parties.

5. The case of the prosecution based on the complaint of Complainant Naveen Khanna, Ex. PW2/A is that on 10th November, 1992 at around 7.007.30 p.m. after completing his job he was going to his house on the scooter make Vespa bearing No. DL 1.7393 after distributing the printed results of the lottery amongst the people on the back side of Rivoli. When he just started the scooter for going to his house, all of sudden four persons surrounded his scooter. One person caught hold of him by the arm and put knife on his neck. The other person took out a Katta and pointed at him. They asked him to hand over whatever he was carrying. He handed over a purse which contained Rs. 2,000/- cash, driving license and some visiting cards. He handed over his silver ring polished with gold and wrist watch make HMT. Thereafter three of them fled away on his scooter and one of them ran on foot. The Complainant chased him and raised alarm. Members of the public apprehended one of them opposite Himachal Emporium however, the other three

managed to escape on the scooter. In the meantime, the police party which was coming from the opposite side also over powered the one who was being chased by the public. Later his name came to be known as Narender Kumar. In the statement made before the Court PW2, the Complainant reiterated only these allegations in the FIR and identified Narender. Though it is the case of the prosecution that subsequently after three days on 13th November, 1992 on the disclosure of Narender, coaccused, PW9 and PW8 went to apprehend the other co-accused and on the way they associated the Complainant, however in his testimony before the Court the Complainant is absolutely silent about the same. Even on crossexamination by the learned APP he denies participating in the apprehension of the Appellant or having identified the purse, visiting card and cash of Rs. 150/-. The scooter was found abandoned at some distance which was seized. A katta and HMT watch of the Complainant was seized from the accused Narender.

6. Thus the only evidence on the basis of which the prosecution has tried to convict the Appellant is that of PW8 Constable Satya Pal and PW9 Inspector Sunil Vashisth. The deposition of both these witnesses is that the accused Narender was interrogated and he made a disclosure recorded vide memo Ex. PW2/B. As per the disclosure of the co-accused Narender on 13th November, 1992 he was taken to the Railway Phatak, Nangal Raya and the Appellant and co-accused Surjit Sharma were apprehended on his pointing out. The Complainant was also with them and identified both the accused at the spot. However, the version of PW9, Inspector Sunil Vashisth on this count that the Appellant was arrested on the pointing out of the accused Narender is not supported by PW8, Constable Satya Pal. PW8 Constable Satya Pal does not even state that the Complainant identified the Appellant at the time of apprehension. It is further the case of PW9 Inspector Sunil Vashisth that the Appellant took to his house and got recovered the rexine purse having visiting card of Navin Printers, some other papers and cash of Rs. 150/-. It may be noted that these articles were never sealed nor identified by the Complainant. The most crucial aspect is that the Complainant stated before Court that his purse contained driving license also. Though recovery of rexine purse, visiting cards and some papers and cash is stated to have been made however, the driving license which could have unerringly pointed out towards the ownership

of the articles to be of the Complainant has not been recovered from the Appellant.

7. In view of the fact that the Complainant is hostile and has not supported the prosecution case on any of the point relating to identity, arrest or recovery relating to the Appellant and there are material contradictions in the testimony of PW8 and PW9, the police witnesses who were allegedly present at the time of arrest of the Appellant, I am of the opinion that the Appellant is entitled to the benefit of doubt.

8. Consequently the impugned judgment of conviction and the order on sentence are set aside. The Appellant is acquitted of the charges framed. Appeal is disposed of. The bail bond and the surety bond are discharged. (MUKTA GUPTA)
JUDGE MAY 06.2013/vn

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