

Arvind Kumar @ Arun Vs. State

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Court : Delhi

Decided On : Mar-20-2013

Judge : G.P. Mittal

Appellant : Arvind Kumar @ Arun

Respondent : State

Advocate for Pet/Ap. : Mr. Amit Seth, Ms. Jasbir Kaur, Mr. Bhupesh Narula, Mr. Anish Dhingra

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on:

8. h March, 2013 Pronounced on:

20. h March, 2013 + CRL.A. 262/2012 ARVIND KUMAR @ ARUN Through: Appellant Mr. Amit Seth, Advocate versus STATE Respondent Through: + Ms. Jasbir Kaur, APP for the State. CRL.A. 562/2012 SUNIL KUMAR Appellant Through: Mr. Bhupesh Narula, Advocate versus STATE Respondent Through: + Ms. Jasbir Kaur, APP for the State. CRL.A. 844/2012 BALWANT SINGH Through: Appellant Mr. Anish Dhingra, Adv. versus STATE Respondent Through: Crl. A. Nos.262/2012, 562/2012 & 844/2012 CORAM: HON'BLE MR. JUSTICE G.P.MITTAL JUDGMENT G. P. MITTAL, J.

1. These three Appeals are directed against a judgment dated 02.12.2011 and an order on sentence of even date passed by the learned Additional Sessions

Judge(ASJ) in Sessions Case No.12/2009 FIR No.277/2008 P.S. Alipur whereby the Appellants Balwant Singh and Sunil Kumar were convicted for an offence punishable under Sections 365/392/34 IPC. They were sentenced to undergo rigorous imprisonment (RI) for five years and to pay a fine of `2,000/- or in default to undergo simple imprisonment (SI) for two months for the offence punishable under Sections 365/34 IPC; they were further sentenced to undergo RI for five years and to pay a fine of `3,000/- or in default to undergo SI for three months for the offence punishable under Sections 392/34 IPC. Appellant Arvind Kumar was additionally convicted for an offence punishable under Sections 397 IPC as also under Section 25 of the Arms Act. He was sentenced to undergo RI for five years and to pay a fine of `2,000/or in default to undergo SI for two months for the offence punishable under Sections 365/34 IPC; he was further sentenced to undergo RI for seven years and to pay a fine of `3,000/- or in default to undergo SI for three months for the offence punishable under Sections 392/34 IPC and 397 IPC. He was also sentenced to undergo RI for one year and to pay a fine of `1,000/- or in default to undergo SI for one month for the offence punishable under Section 25 Arms Act.

2. The Appellants are alleged to have abducted complainant Raj Tirkhi and committed robbery of a container loaded with shampoo pouches belonging to Hindustan Lever Ltd. The facts of the case are extracted from the impugned judgment as under: Pawan Kumar Gupta is the owner of Road Carrier of India. Road Carrier of India is the registered owner of the container bearing not HR 2626 GA0522(hereinafter referred to as the container). Raj Tirkhi was employed as a driver in Road Carrier of India. Raj Tirkhi was the driver of the said container. Raj Tirkhi on 20.10.08 loaded the shampoo from Haridwar in the container which are to be unloaded at Godown of Hindustan Lever Limited situated at Hamidpur. The loaded material could not be unloaded due to heavy rush of other trucks came for the purpose of unloading goods. Raj Tirkhi was asked to come in 1-2 days for unloading the container. Raj Tirkhi in the intervening night of 22/23.10.08 parked the container near rice mill situated at Hamidpur and at about 1.00/1.30 am. Raj Tirkhi was sitting inside the cabin inside the cabin of the container. In the meantime Arvind Kumar opened the gate of the cabin of the container and entered in it and was having knife which was put on the neck of Raj Rirkhi. Sunil Kumar @

Mohan also entered into the cabin of the container and thereafter Arvind Kumar and Sunil Kumar @ Mohan snatched the keys of the container from Raj Tirkhi. Balwant also entered into the cabin and snatched the mobile phone make China and `250/- from Raj Tirkhi. The container was taken to a secluded place with the help of 3 other persons who were sitting in the Tata tempo. Raj Tirkhi was thrown out from the container. 2.Raj Tirkhi form the secluded place went to his office situated at Nangloi. The police was informed vide DD No.7 which was assigned to ASI Jagdish Chander. ASI Jagdish Chander and Ct. Mukesh on 23.10.2010 reached at Hamidpur where they met with Raj Tirkhi. Statement of Raj Tirkhi was recorded. Rukka was prepared. FIR bearing No.270/08 U/S 392/34 IPC was got recorded. ASI Jagdish Chander on 24.10.08 went to Vani(Forest), Jindpur in search of the container where the container was found standing. Arvind Kumar @ Arun, Sunil Kumar @ Mohan and Balwant Singh were found sitting inside the container. They were arrested and also made their respective disclosure statements. The container along with pouches of shampoo was also seized. One dagger and key of the container were recovered from the accused Arvind@ Arun. The accused Balwant Singh was also found in possession of mobile phone stated to be snatched from Raj Tirkhi. The other associates could not be apprehended. The accused Arvind @ Arun, Sunil Kumar @ Mohan and Balwant Singh refused to participate in the TIP despite warnings. Raj Tirkhi during the TIP identified the mobile phone which was snatched by the accused Balwant Singh. The accused after completion of investigation were charge sheeted for offences punishable u/s 392/397/34 IPC and u/s 25/27 Arms Act, 1959.

3. In order to establish its case, the prosecution examined nine witnesses. Raj Tirkhi(PW4) is the complainant and the driver of the robbed container, Constable Mukesh (PW3), Constable Naresh Kumar (PW6) and Constable Hari Parkash (PW8) are the witnesses with regard to the apprehension of the Appellants and recovery of the loaded container from the Appellants, recovery of dagger from Appellant Arvind Kumar and recovery of the mobile phone belonging to complainant from Appellant Balwant Singh.

4. On appreciation of evidence, the learned ASJ found that PW4s abduction and robbery of the container loaded with shampoo pouches with use of a deadly

weapon in committing robbery by Appellant Arvind Kumar was fully established. Thus, the Appellants were convicted and sentenced as stated earlier.

5. The learned counsels for the Appellants Balwant Singh and Sunil Kumar, on instructions (from Appellants) do not challenge the finding on conviction reached by the learned ASJ.

They have made a fervent appeal that out of the sentence of RI for five years awarded to the Appellants, they have already undergone a sentence(including the period of remission earned) of about four years and ten months and they may be released on the sentence already undergone.

6. On the other hand, the learned counsel for Appellant Arvind Kumar argues that the prosecutions case against the Appellant was not established beyond the shadow of all reasonable doubt. is, therefore, entitled to be acquitted. The Appellant Elaborating his argument, the learned counsel for the Appellant urges that although as per the prosecution version, Constables Naresh Kumar and Hari Parkash were witnesses to the recovery of the truck, the dagger and the mobile phone, yet the memos Exs. PW9/G, PW9/E and PW9/F were not signed by Constables Naresh Kumar and Hari Parkash. It is contended that the driving licence of the complainant (Raj Tirkhi) showing he was entitled to drive a heavy transport vehicle or any identity card showing that he was an employee of Pawan Kumar Gupta (registered owner of the container) was not seized to lend credence to the prosecution version about the robbery. The learned counsel for the Appellant urges that failure to record statement of any employee of Hindustan Lever regarding ownership of the shampoo pouches and non-infliction of an injury by the Appellant on PW4s person make the prosecution version to be unbelievable and the prosecution witnesses unworthy of reliance.

7. I have before me the recovery memos. Admittedly, the same do not bear the signatures of Constables Naresh Kumar and Hari Prakash. At the same time, they do bear the signature of Constable Mukesh who was one of the witnesses of recovery of these articles. It was not incumbent on the IO to obtain signatures on the recovery memos of all the police officials present at the spot at the time of recovery. Moreover, SI Jagdish Chander(PW9) in his cross-examination was not

asked to give any explanation for not obtaining the signatures of the other police officials. Thus, the fact that the recovery memos do not bear the signatures of some police officials who were also present at the spot would not make the recovery doubtful.

8. It is true that the IO did not seize PW4s driving licence or any other document to prove that he was employed as a driver on truck No. HR-26GA-0522. The non-seizure of the driving licence or any other proof of identity is totally immaterial as it is not the defence version that PW4 was not a driver of the container. What was suggested to the complainant (PW4) in cross-examination was that the robbery of the container was planted on the Appellants. Anil Kumar(PW1) was examined by the prosecution to prove the release of the container to him on superdari. He also deposed that Raj Tirkhi(PW4) was working as a driver of the container for the last two-three years before the date of the incident. No suggestion was given to PW1 that PW4 was not working as a driver of the container or was not an employee of Pawan Kumar Gupta. The contention raised, therefore, does not, in any way, make the prosecution version doubtful.

9. Coming to the non-examination of an employee of Hindustan Lever Ltd. I may say examination of some representative of Hindustan Lever Ltd. as a corroborative piece of evidence to the testimonies of PW4 and PW1 to prove the factum of ownership of the pouches would have been better. At the same time, the non-examination of the representatives/employees of Hindustan Lever Ltd. is not fatal to the prosecution case, particularly when PW1 and PW4 have boldly stood the test of cross-examination and nothing material has been brought in their cross-examination to infer false implication of the Appellants.

10. It is urged by the learned counsel for the Appellant that in the absence of any injury with the knife, the charge under Section 397 IPC cannot be said to be proved and in the absence of an injury the recovery of the dagger Ex.P1 is doubtful. I am not inclined to agree with this submission. The word uses in Section 397 IPC would include the use of the knife to frighten and terrorise the victim. It is not necessary that the deadly weapon must be used to inflict an injury to bring the case under Section 397 IPC. The term uses as contemplated under Section 397

IPC was interpreted by the Supreme Court in Phool Kumar v. Delhi Administration, AIR 197.SC 90.where it was held as under:

6. .the purport behind the use of the different words by the Legislature in the two sections, viz., "uses" in Section 397 and "is armed" in Section 398. In our judgment the anomaly is resolved if the two terms are given the identical meaning. There seems to be a reasonable explanation for the use of the two different expressions in the sections. When the offence of robbery is committed by an offender being armed with a deadly weapon which was within the vision of the victim so as to be capable of creating a terror in his mind, the offender must be deemed to have used that deadly weapon in the commission of the robbery. On the other hand if an offender was armed with a deadly weapon at the time of attempting to commit a robbery, then the weapon was not put to any fruitful use because it would have been of use only when the offender succeeded in committing the robbery.

11. Thus, if an offender is armed with a deadly weapon at the time of committing robbery to terrorise the victim, it would amount to use of the deadly weapon for the purpose of the offence under Section 397 IPC. Simply because there was no injury on the person of PW4 with the dagger Ex.P1, it would not mean that the FIR was falsely lodged by PW4 regarding use of the knife.

12. The testimony of PW4 is quite convincing and believable. No reason has been attributed to PW4 to have lodged a false complaint with regard to robbery, particularly when PW4 was not even known to the Appellant previously. During cross-examination of PWs1 and 4, a suggestion was given that the Appellants were falsely implicated because of the business rivalry between Hindustan Lever Ltd. and Lotus Beauty Care Products in connivance with the police. The Appellants connection with alleged Lotus Beauty Care Products has not been shown. Even a suggestion has not been given to any of the prosecution witnesses with regard to the Appellants connection with alleged Lotus Beauty Care Products. The defence put forth by the Appellant is, therefore, only a make believe story.

13. It is important to note that PW4 was kidnapped around 1:30 am in the night. He was taken to a deserted place and thereafter he was put in a Tata Tempo and

was taken around for some time before he was dropped at a secluded place. PW4 then proceeded to his office in Nangloi and informed the police. It is important to note that the FIR was recorded without much delay and the Appellants were apprehended on the next evening, that is, within two days of the incident and within 28 hours of the recording of the FIR. The learned ASJ rightly concluded that the prosecution case against the Appellant for the offence punishable under Sections 365/392/397/34 IPC and 25 of the Arms Act was proved beyond the shadow of reasonable doubt. The sentence of imprisonment of seven years is the minimum sentence which could be awarded under Section 397 IPC.

14. The Appeal filed by Appellant Arvind Kumar, therefore, has to fail; the same is accordingly dismissed. CrI.A.562/2012 & CrI.A.844/2012:

15. I have before me the nominal roll of Appellants Sunil Kumar and Balwant Singh. They have already undergone sentence of about four years and ten months including the remission earned by them. Their conduct in Jail has been reported to be satisfactory. In the facts and circumstances of the case, the substantive sentence of imprisonment of five years awarded to the Appellants is reduced to the period already undergone.

16. It goes without saying that the Appellants would be liable to pay fine as imposed by the learned ASJ, failing which they shall undergo SI as awarded by the learned ASJ.

17. The Appeals are partly allowed in above terms.

18. Pending Applications stand disposed of.

19. A Copy of the judgment be transmitted to the Central Jail concerned for information and compliance. (G.P. MITTAL) JUDGE MARCH 20 2013 pst

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