

Subhash Vs. State (Nct) of Delhi

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Court : Delhi

Decided On : Feb-21-2013

Judge : S. P. Garg

Appellant : Subhash

Respondent : State (Nct) of Delhi

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI RESERVED ON :

11. h February, 2013 DECIDED ON :

21. t February, 2013 + CRL.A. 131/2010 SUBHASH Through :Appellant Mr.Ajay Verma, Advocate with Mr.Shiv Kumar Dwivedi, Advocate. versus STATE (NCT) OF DELHI .Respondent Through : Ms.Fizani Husain, APP. SI Prahlad Meena, PS Mayur Vihar. CORAM: HON'BLE MR. JUSTICE S.P.GARG S.P.GARG, J.

1. The appellant- Subhash impugns judgment dated 06.07.2009 and order on sentence dated 18.07.2009 in Sessions Case No.86/2006 arising out of FIR No. 445/2005 PS Mayur Vihar by which he was convicted for committing offences punishable under Sections 392/397/34 IPC and 25 Arms Act. He was sentenced to undergo RI for four years with fine ` 3,000/- under Section 392 IPC and in default of payment of fine to further undergo RI for three months. He was further sentenced to undergo RI for seven years with fine ` 5,000/- under Section 397 IPC

and in default of payment of fine to further undergo RI for five months. He was also sentenced to undergo RI for two years with fine ` 2,000/- under Section 25 Arms Act and in default of payment of fine to further undergo RI for two months. All the sentences were directed to operate concurrently.

2. Allegations against the accused were that on 16.12.2005 at 06.00 P.M. in front of Block No.18 near Safeda wala park, Trilok Puri accused Subhash along with his associates Rohtash and Nitin (juvenile) committed robbery and deprived Ajay of his wrist watch, purse containing ` 677/- and identity card at the point of knife. The prosecution examined four witnesses. In his 313 Cr.P.C. statement, Subhash pleaded false implication and stated that he was lifted from his house. On appreciating the evidence and considering the rival contentions of the parties, the Trial Court by the impugned judgment convicted and sentenced the appellant. Being aggrieved, he has preferred the appeal.

3. Learned counsel for the appellant urged that the Trial Court did not appreciate the evidence in its true and proper perspective and fell into grave error to base conviction on the sole testimony of complainant Ajay. There were inherent defects in the prosecution case. It was complete darkness at the spot. It is unbelievable that in a short period, he would be able to recognise and identify the assailants as he had only a fleeting glance of the assailants. The Investigating Officer did not move any application for Test Identification Parade. The prosecution witnesses have given contrary and inconsistent version as to the circumstances in which the assailants were apprehended and the recoveries were effected. The recoveries at the instance or from the possession of the accused are also suspect. No independent public witness was associated during the investigation. Prosecution witnesses have given divergent version about arrest of the accused. Learned APP urged that there was no complete darkness. The complainant categorically identified the assailants who were apprehended at the spot soon after the occurrence. Counsel for the appellant placed reliance on State of Rajasthan vs. Netrapal and ors., (2007) 4 SCC 45.

4. I have considered the submissions of the parties and have examined the record. The incident happened on 16.12.2005 at 06.00 P.M. PW-3 (ASI Kanta Parsad)

recorded rukka and lodged First Information Report at 08.00 P.M. after recording complainants statement (Ex.PW2/A). There was no delay in lodging the First Information Report. In his statement (Ex.PW-2/A), the complainant Ajay gave vivid description of the incident and attributed specific role to the each assailant in committing robbery. Since the FIR was lodged promptly without any delay, there was least possibility of false fabrication. While appearing as PW-2 in the Court, the complainant proved the version given to the police at the first instance without any variation. He deposed that on 16.12.2005 at about 06.00 P.M., he was returning to his house after meeting his aunt (bua) and was on foot. When he reached Block No.18 near canal, three persons suddenly came in front of him. Two of them caught hold him and the third showed a knife. He identified Subhash who had the knife and Rohtash who caught hold of his hand. He claimed to identify the third assailant (he is facing trial before the Juvenile Court). PW-2 further deposed that Rohtash snatched his wrist watch make HMT. The third assailant who was not present before the Court took out his valet containing ` 677/- and I card. He raised alarm. Three police officials who were on patrolling duty in the area came and apprehended the assailants after some chase. The robbed articles and the knife were recovered from their possession. He further deposed that the watch was recovered from the possession of Rohtash and the valet was recovered from the juvenile. Knife was recovered from Subhash. Police recorded his statement Ex.PW-2/A. In the cross-examination, he stated that it was dark at that time. The accused came from the front direction. When the accused ran up to the distance of 4- 5 Km. they were apprehended by the police who were in Gypsy. He stated that the papers were prepared at the spot by the police. He denied that he was not robbed or that he named the accused at the instance of the police.

5. Scrutinising the testimony of the victim, it reveals that despite lengthy cross-examination, no material discrepancies emerged to disbelieve him. PW-2 (Ajay) had no acquaintance with the assailants. In the absence of any prior enmity or ill-will, he was not expected to falsely implicate the accused. No ulterior motive was assigned to PW-2 in the cross-examination for making false statement against the accused. There are no good reasons to discard his cogent and reliable testimony. His presence at the spot cannot be doubted as number of memos prepared at the spot contain his signatures. The accused did not deny his presence at the spot in

his cross-examination. The victim identified the assailants at the spot soon after their apprehension. He was not hesitant to identify them in the Court. He attributed specific role to each accused in committing the robbery. Since the accused persons were apprehended at the spot and were identified by the complainant, there was no question of moving any application for TIP for identification of the assailants. The occurrence took place at about 06.00 P.M. and the complainant had direct confrontation with assailants for sufficient long time, he had sufficient opportunity to recognise the assailants and to identify them. The robbed articles were recovered from the possession of the accused soon after their apprehension and were identified by the complainant.

6. PW-3 (ASI Kanta Prasad) and PW-4 (Banveer) who were on patrolling duty, categorically deposed that the assailants were apprehended after some chase when they fled after committing robbery. Minor contradictions highlighted by the counsel are not material to throw away the prosecution case in its entirety. The police officials had no illwill against the assailants to falsely implicate them. The accused did not examine any witness in defence to falsify the positive testimony of the complainant. They did not examine any witness in defence to prove their presence at some other specific place at the time of incident.

7. The conviction is based upon fair appraisal of the evidence and requires no interference. The conviction is maintained. Order on sentence is modified to the extent that total fine would be ` 3,000/- and in default of payment of fine, he will undergo SI for one month. Other sentences are left undisturbed. The appeal is disposed of in the above terms. The Trial Court record be sent back forthwith. (S.P.GARG) JUDGE FEBRUARY 21 2013/tr

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