

Banti Vs. State

Banti Vs. State

SooperKanoon Citation : sooperkanoon.com/977127

Court : Delhi

Decided On : Jul-04-2013

Judge : S. P. Garg

Appellant : Banti

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI RESERVED ON : May 13, 2013 DECIDED ON : July 04, 2013 + CRL.A. 499/2012 BANTI Appellant Through : Ms.Anita Abraham, Advocate. versus STATE Respondent Through : Mr.M.N.Dudeja, APP. CORAM: MR. JUSTICE S.P.GARG S.P.GARG, J.

1. The appellant-Banti impugns judgment dated 18.11.2010 in Sessions Case No.46/2009 arising out of FIR No.302/2008 under Section 392/394/397/411/34 IPC registered at Police Station Adarsh Nagar by which he was held guilty for committing offence punishable under Section 394/34 IPC and under Section 397 IPC read with Section 27 Arms Act. By an order dated 19.11.2010, he was sentenced to undergo rigorous imprisonment for seven years with total fine `5,000/-.

2. Allegations against the appellant were that on 5.12.2008 at about 07.30 A.M. near Petrol Pump, Mukandpur Road, Jal Board Ground, he and Vicky (Convicted under Section 392 IPC) in furtherance of their common intention robbed Tata Mobile Phone and `130/- from Shashi Kant Sharma. The appellant was armed with

a buttondar knife and in the process of committing robbery, Shashi Kant Sharma was injured. The prosecution examined 11 witnesses to prove the charges. On appreciating the evidence and after considering the rival contentions of the parties, the Trial Court by the impugned judgment held both Banti and Vicky perpetrators of the crime. Being aggrieved, Banti has preferred the appeal.

3. The police machinery came into motion when DD No.32A (Ex.PW-5/A) was recorded at police station Adarsh Nagar at 07.50 P.M. on 05.12.2008 to the effect that two boys had robbed Shashi Kant Sharma at petrol pump and they have been apprehended. The investigation was assigned to SI Mohd.Swaley who with Head Constable Laxmi Narain went to the spot and met PW-3 (ASI Hari Ram) Incharge, Commander 36 of PCR. He handed over custody of both Banti and Vicky to the Investigating Officer. He also produced the mobile, cash `130/- and one buttondar knife recovered from Bantis possession. Prosecutions case is that PCR officials were present at Mukundpur-Azadpur Road and one Ravinder Pal informed them about the incident.

4. On scrutinizing the testimonies of the prosecution witnesses minutely, it reveals that vital discrepancies and contradictions have emerged in their statements. The prosecution did not explain as to how and under what circumstances in DD No.32-A (Ex.PW-5A), it was recorded that cash was robbed from Ravinder. The victim in the incident is not Ravinder Pal but PW-4 Shashi Kant Sharma. PW-4 (Shashi Kant Sharma) on whose statement (Ex.PW-4/A) First Information Report was lodged by the Investigating Officer has given inconsistent version about the incident. As per PW-11 (ASI Mohd.Swaley) the First Information Report was lodged after recording statement of the victim (Ex.PW-4/A) at the spot. However, PW-4 (Shashi Kant Sharma) in his court statement deposed that on 05.12.2008 at about 07.00 P.M. he was going to his house by a cycle. It was fog at that time. When he was walking with his cycle, two boys came and hit him on his head and stomach. One of them was having a knife. He became unconscious and did not know what happened thereafter. He failed to identify the assailants/accused in the court. Thereafter, he went to his house and narrated the incident to his neighbour Ram Avtar. He made telephone call on his mobile number and found that it was in the police station Adarsh Nagar. SHO asked him to come to the police station but

he expressed his inability. Thereafter, the police officials came to his house and brought him to the police station. He was taken to hospital for medical examination. The testimony reveals that the victim did not report the incident to the police and from the spot went to his house. It further reveals that no recovery of the robbed articles was effected in his presence. He also did not claim presence of Ravinder Pal, who allegedly intervened in the incident at the spot. He further gave inconsistent version in the cross-examination that the mobile phone, cash and knife were recovered at the spot from the possession of the accused persons in his presence when he was brought at the spot second time. It is not the prosecutions case that the recovery was effected when PW-4 (Shashi Kant Sharma) was brought to the police station after his medical examination. The victim was medically examined at 01.30 A.M. at Babu Jagjivan Ram Memorial hospital on the night intervening 5/6.12.2008. There is no mention that he was robbed by the assailants and was injured. The alleged history merely records that it was a case of physical assault. No injury on the head was found. The knife allegedly in possession of the appellant was not used to cause any injury to the complainant.

5. PW-3 (ASI Hari Ram) Commander PCR Van 36, did not witness the incident. His plea is that he came to know about the occurrence when one public person approached and told about the robbery near Petrol Pump at Mukundpur-Azadpur Road. He went to the spot and saw that one boy was robbed by two boys and the victim was crying Bachao-Bachao, Chor-Chor. He along with Ravinder Pal apprehended both the boys whose names were ascertained Banti and Vicky. PW-10 (Ravinder Pal), has, however, given contradictory version and deposed that at about 07.30 P.M. on 12.05.2008 when he was going for his duty to Mayapuri by foot, he saw two boys who gave beatings to the victim with fist and leg blows. One of them robbed him of his mobile and `130/-. At the same time, one police gypsy reached and apprehend them at the spot. He did not depose that after witnessing the incident of robbery, he had rushed to inform the PCR officials. PW-10 (Ravinder Pal) in his examination-in-chief identified Vicky as Banti. He further contradicted PW-4 (Shanti Kant Sharma) and stated that at the time of incident, the victim was driving bicycle. PW-3 (ASI Hari Ram) did not elaborate as to how and under what circumstances, knife was recovered from the appellant Banti and if

so from where.

6. None of the material prosecution witness claimed that appellants father Vijay Singh reached the spot after the incident. Arrest Memos (Ex.PW-3/D and PW-3/E) bear his signatures. It is no clear as to when he reached the spot. No other memo contains his signatures. The residential addresses of both Vijay and Banti have been recorded as House No.467 Dhobi Mohalla, Village Azadpur. It is unclear as to what is the relation between the two and how they were living together in the same house. No incriminating article was recovered pursuant to the disclosure statements of the accused persons recorded on 6th December, 2008. It appears that the prosecution has not presented true facts. No previous involvement of the appellants in any criminal activity was found during investigation. It is not believable that after committing robbery, with deadly weapon i.e. knife, the accused persons would not flee the spot and remain present at the spot to be apprehended by PCR.

7. Considering all these discrepancies and contradictions which go to the root of the case, the conviction of the appellant cannot be sustained. The appeal is allowed and the impugned judgment is set aside. The appellant be released forthwith, if not required in any other case.

8. A copy of the order be sent to Jail Superintendent for compliance of the above order. Trial Court record along with a copy of this order be sent back forthwith. (S.P.GARG) JUDGE July 04, 2013 sa

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com