

Ravinder Paswan Vs. State

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Court : Delhi

Decided On : Jul-05-2013

Judge : Sunita Gupta

Appellant : Ravinder Paswan

Respondent : State

Advocate for Def. : Ms. Fizani Hussain

Advocate for Pet/Ap. : Mr. Ujas Kumar

Judgement :

\$~ * IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision:

05. h July, 2013 + CRL.A.319/2004 RAVINDER PASWAN Through: Appellant Mr. Ujas Kumar, Advocate along with the appellant (in custody) versus STATE Through: Respondent Ms. Fizani Hussain, APP SI Raghuvir, PS Dabri CORAM: HONBLE MS. JUSTICE SUNITA GUPTA JUDGMENT : SUNITA GUPTA, J.

1. Challenge in this appeal is to the impugned judgment dated 3rd March, 2004 and order on sentence dated 17th March, 2004, passed by learned Addl. Sessions Judge in Session Case No.07/2002 arising out of FIR No. 576/2001, Police Station Dabri, under Section 392/411/34 IPC and 27/54/59 Arms Act whereby the appellant was convicted for offence under Section 392 IPC and was sentenced to

undergo CrI. A.319.2004 Page 1 of 15 rigorous imprisonment for five years and to pay a fine of Rs.3,000/in default of payment of fine to further undergo simple imprisonment for one year.

2. Prosecution case emanates from the fact that on 9th July, 2001 SI Prahlad Singh along with Constable Rajesh was on patrolling and surprise checking in the area. At about 8.40 pm when they were going to Kailashpuri via Gali No. 5, Main Sagarpur, they heard noise coming from the Gali. They saw two boys running and they tried to apprehend them but one of the boys managed to escape. They, however, managed to apprehend one of the boys, who, on inquiry gave his name as Shamshe Alam. Both of them along with Shamshe Alam reached near the crowd and found that the crowd had also apprehended another boy who was handed over to SI Prahlad Singh. Meanwhile, Smt. Bhagwan Devi came and gave her statement, inter alia, to the effect that on that day at about 8:30 pm, she along with her grand-daughter aged about 1 years was coming from the shop of Dr. Mudgil. She was on foot and coming to her house. When she was in front of Kesho Ram Sweets in Gali No. 5, three boys aged about 20-22 years suddenly came from the side of Gali No. 5, Main CrI. A.319.2004 Page 2 of 15 Sagarpur and one boy who was a little fat and was wearing a cap snatched her wearing chain weighing about 18-20 grams on which a thread of Babaji had been tied. As soon as she tried to catch hold of him and raised alarm, he whipped out a knife and his two other accomplices pushed her. She fell down along with her grand- daughter who was in her arms and also received injuries on her right hand and also on stomach. She raised alarm on which all the three boys ran towards Gali No.

5. On hearing her noise, her son Ghanshyam and public persons started following those boys. One of the boys who had snatched the chain and was a little fat was apprehended at a distance of about 200 meters by the public and she identified that boy. The boy was beaten by the public. His other accomplices were also apprehended and given beatings but two of them managed to escape. She identified both the boys Shamshe Alam and Ravinder Paswan and also stated that when Ravinder Paswan was searched, from his wearing black pant pocket, her chain which was broken was also recovered. The knife was also recovered from his pant. The statement Ex. PW1/1 of Smt. Bhagwan Devi became bed rock of

investigation. After making endorsement Ex.PW7A, same CrI. A.319.2004 Page 3 of 15 was sent to police station for registration of the case on the basis of which FIR Ex.PW4/1 was recorded by Head Constable Om Prakash (PW4). Chain (Ex.P1) was taken into possession vide memo Ex.PW1/4. Sketch of the knife Ex.PW1/2 was prepared which was sealed in a pulanda and was taken into possession by memo Ex.PW1/3. From the possession of accused Shamse Alam, a knife was recovered for which separate proceedings were initiated. Both the accused were arrested and their personal search was conducted vide memos Ex.PW-1/5 and Ex. PW1/6. The accused Ravinder Paswan was sent to DDU Hospital for his medical examination. His MLC Ex.PW5/1 was prepared by Dr. Devender Singh Chauhan (PW5). After completing investigation, charge sheet was submitted against both the accused.

3. Charge for offence under Section 392 r/w Section 397 IPC was framed against both the accused to which they pleaded not guilty and claimed trial.

4. Prosecution examined seven witnesses in order to substantiate its case. All the incriminating evidence was put to both the accused while recording their statements under Section 313 Cr. P.C., wherein CrI. A.319.2004 Page 4 of 15 they denied the case of prosecution. According to the appellant Ravinder Paswan, on 9th July, 2001, he was sitting in his dhaba along with his father when police officials came. He was taken forcibly to an unknown place and was given merciless beatings and his leg was broken. He was forced to sign on blank papers and then he was taken to DDU Hospital where he was shown to his in-laws. He further alleged his false implication in this case at the behest of his in-laws as he was in love with Jaimala to whom he married against the wishes of her parents. It had enraged her parents and they had taken away their daughter after getting him involved in this case. Although, he took an opportunity to produce defence evidence but no evidence was led but certified copies of certain documents were filed. Accused Shamshe Alam also pleaded his innocence and alleged that he was picked up from his shop and was falsely implicated in this case.

5. Vide impugned order dated 3rd March, 2004, the appellant was held guilty of offence under Section 392 IPC, however, co-accused Shamshe Alam was granted

benefit of doubt and was acquitted of the charge levelled against him. Feeling aggrieved by this impugned CrI. A.319.2004 Page 5 of 15 order, the present appeal has been preferred by the appellant Ravinder Paswan.

6. It was submitted by learned counsel for the appellant that there are contradictions in the statements of the witnesses as such no reliance can be placed on the same. None of the public witnesses have identified the appellant. Moreover, as per prosecution version, besides the chain, a knife was also recovered from the possession of the appellant. However, the recovery of knife has not been believed by the learned Trial Court. Furthermore, on the same set of facts, coaccused has been acquitted, therefore, the appellant could not have been convicted on the basis of same set of facts. As such it was submitted that prosecution has failed to bring home the guilt of appellant beyond shadow of doubt and the appellant is entitled to be acquitted.

7. Per contra, it was submitted by the learned Public Prosecutor for the State that the factum of snatching of chain of the complainant stands proved from her testimony. The same was recovered from the possession of the appellant which was duly identified by the complainant. The entire evidence has been considered by the learned CrI. A.319.2004 Page 6 of 15 Trial Court in correct perspective and no interference is called for. As such, the appeal is liable to be dismissed.

8. Record reveals that as regards the factum of incident of snatching of chain belonging to complainant Bhagwan Devi is concerned, the same stands proved from her testimony wherein she testified that in the month of July, 2001, she was going on foot with her grand-daughter aged about 1 years, who was in her arms and when she was at the corner of gali No. 5, her chain was snatched from her neck, she was pushed and she fell down and sustained injuries. Her testimony in this regard goes un-rebutted and unchallenged inasmuch as even no suggestion was given to her that no such incident had taken place. Immediately after the incident, police officials Constable Rajesh (PW6) and SI Prahlad Singh (PW7) came to the spot. Accused were apprehended and thereafter the complainant made a statement (Ex.PW1/1) which became bed rock of investigation. The chain was also recovered which was duly identified by the complainant as belonging to

her. Under the circumstances, incident of snatching of chain belonging to the complainant stands proved. Crl. A.319.2004 Page 7 o

9. As regards, the complicity of the accused in the crime, it has come in the statement of PW-1 Smt. Bhagwan Devi that the boy who had snatched the chain was wearing the cap. She also admitted that her son Ghanshyam and public persons had chased the boys and apprehended the boy who had snatched the chain. She identified the chain (Ex. P1) which was snatched from her neck and it was recorded that hook of the chain was intact but it was broken. The witness expressed her inability to identify the accused which was quite obvious inasmuch as she was aged about 60 years and was examined after a lapse of about one year of the incident. Moreover, the occurrence had taken place in a fraction of seconds, therefore, it was difficult for her to identify the boy but the sequence of events establishes that it was the appellant who had snatched the chain because on hearing the noise PW-2 Ghanshyam Singh, son of the complainant came out of his house and started running towards Gali No.5 from where the noise was coming. Other persons were also running. With the help of other persons, he caught hold of a boy, who was running, however, the custody of that boy was taken from him by the public persons who started giving him beatings. That Crl. A.319.2004 Page 8 of 15 boy, however, managed to escape from the clutches of public persons but the police officials apprehended the boy whose name came to be known as Ravinder Paswan and on his search, one knife and chain of his mother was recovered. He was categorical in deposing that the chain and knife was recovered from the possession of that particular boy who had been apprehended by him and had succeeded in escaping from the clutches of the public persons and who was then apprehended by the police. To the same effect is the testimony of PW-3 Sh. Sunil Kumar Sharma who also deposed that on 9th July, 2001 at about 8.30 pm, he was going towards Subzi Mandi from his house. When he was near a shop of Kesho Ram Sweets, he heard Halla Gulla and someone from the public told that chain had been snatched and the boy was running. Public persons chased and apprehended that boy. Name of that boy was told as Paswan. From the possession of that boy one knife was recovered. Chain had already been recovered from that boy by the public persons as well as the police officials.

10. It has further come in the testimony of the police officials that SI Prahlad Singh along with constable Rajesh was on patrolling duty Crl. A.319.2004 Page 9 of 15 in the area when they reached near Gali No. 5, main Sagarpur and were proceeding towards Kailashpuri Main Road, they found that there was a crowd in the Gali. They saw that two boys were running towards inside Gali No.

5. They tried to apprehend those boys. One of the boys was apprehended whose name was disclosed as Shamse Alam. Thereafter, they proceeded towards the crowd. One boy was apprehended by the public who was handed over to them. Name of that boy was disclosed as Ravinder Paswan. On his search, from left side pocket of pant, a chain (broken piece) was recovered which was identified by the complainant and a knife was also recovered which was also seized. Name of the other boy who was apprehended was disclosed as Shamse Alam.

11. Testimony of PW1 and PW2 find corroboration from PW 3 Sunil Sharma, an independent witness who has also stated that the boy who was apprehended gave his name as Paswan and he was fat and was wearing a cap. From his possession, chain and knife was recovered. Contable Rajesh (PW6) and SI Prahlad (PW7) have also deposed regarding apprehension of appellant at the spot by the public and that he was beaten by the public and when he was running away, Crl. A.319.2004 Page 10 of 15 he was apprehended by them and on his search, chain Ex. P1 was recovered. The sequence of events leads to the only conclusion that it was the appellant Ravinder Paswan who had snatched the chain and when he was running away, he was chased by Ghanshyam and was apprehended by him and then the public who gathered at the spot took charge of him and gave beatings to him. Police officials, while on patrolling, reached the spot and apprehended him. Chain (Ex.P1) was recovered from his possession. Presence of the appellant at the spot stands further proved from the fact that since he was administered beatings by the public, vide application Ex. PW7/2, he was sent to DDU hospital where his MLC Ex. PW 5/A was prepared by Dr. D.S. Chauhan (PW5) and a perusal of the MLC goes to show that at the very initial juncture, the history of being beaten by public was given. No suggestion was given to any of the public witnesses that the appellant was not given beatings by the public or that he was taken to police station where he was beaten by police.

12. The plea taken by the accused is that he was lifted from his Dhaba in the presence of his father and was thereafter falsely implicated in this case at the instance of his in-laws who were against CrI. A.319.2004 Page 11 of 15 his marriage with their daughter Jaimala. This plea does not appeal to reason inasmuch as no evidence has been produced by the appellant to prove that he was lifted from his Dhaba on that day, although it was alleged that at that time even his father was present. However, for reasons best known to him, he has not even examined his father in order to substantiate this plea. Moreover, he has been taking contradictory pleas, inasmuch as, it was suggested to PW7 in his cross-examination that he was picked up from his house and thereafter falsely implicated in this case. In order to prove that relations between him and his in-laws were not cordial, he had filed certified copies of a writ petition filed by his father-in-law before this Court and the orders passed on the writ petition but that does not help the appellant inasmuch as that at the most reflect that the relations between him and his in-laws may not be cordial but no presumption can be drawn that due to that reason at the behest of his in-laws, police would falsely implicate him in this case. This is particularly so, when the appellant was apprehended at the spot immediately after the incident and the chain snatched by him was also recovered then and there. CrI. A.319.2004 Page 12 o

13. As regards, the submission that recovery of knife from the possession of the appellant has not been believed by the learned Trial Court, same is devoid of substance, inasmuch as, no finding has been given by the learned Trial Court regarding recovery of knife from the possession of the appellant. The charge against the appellant was also under Section 397 IPC, however, since there was no evidence to prove that at the time of snatching the chain from Bhagwan Devi, the appellant had used the deadly weapon, therefore, use of deadly weapon at the time of committing robbery was not proved. That being so, he was convicted only for offence under Section 392 IPC.

14. As regards the submission that co-accused Shamshe Alam has been acquitted on the same set of facts and, therefore, the appellant could not have been convicted, the plea is devoid of merits inasmuch as there are catena of decisions to the effect that merely because other accused is acquitted, that is no ground for

acquittal of the co-accused.

15. In *Gurcharan vs. State of Punjab*, AIR 195.SC 460.where some accused persons were acquitted and some others were convicted, it was held as follows:9.....The highest that can be or has been said on behalf of the Appellants in this case is that two of the four accused have CrI. A.319.2004 Page 13 of 15 been acquitted, though the evidence against them, so far as the direct testimony went, was the same as against the Appellants also; but it does not follow as a necessary corollary that because the other two accused have been acquitted by the High Court the Appellants also must be similarly acquitted.

16. In *Gangadhar Behera vs. State of Orrisa*, (2002) 8 SCC 381:2003 SCC (Cri.) 32 reliance was placed on *Gurcharan Singh (Supra)* and it was held:15.... Merely because some of the accused persons have been acquitted though evidence against all of them, so far as direct testimony went, was the same does not lead as a necessary corollary that those who have been convicted must also be acquitted. It is always open to a court to differentiate the accused who had been acquitted from those who were convicted.

17. This authority was cited with approval in *Prathap Vs. State of Kerala* (2010) 12 SCC 7.and *Surajit Sarkar Vs. State of West Bengal* (2013) 1 SCC (Cri) 877. It is being the legal position, the appellant cannot be absolved of his involvement in the commission of the crime merely because co-accused who was not identified by the witnesses nor any recovery was effected from him, acquitted. So far as the appellant is concerned, there is cogent and reliable evidence to connect him with the crime. As such the submission of learned counsel for the appellant deserves rejection. CrI. A.319.2004 Page 14 o

18. In view of the aforesaid discussion there is no infirmity in the impugned order dated 3rd March, 2004 whereby the appellant was convicted of the offence under Section 392 IPC which warrants interference.

19. Coming to the quantum of sentence, learned Public Prosecutor for the State submitted that the appellant does not deserve any leniency and she placed on record the involvement of the appellant in as many as 36 cases. As such, it was

submitted that the appellant belongs to a criminal background and despite the fact that his sentence was suspended and he was released on bail again he indulged in criminal activities due to which again he has been lodged in jail. The submission has force. Keeping in view the antecedents of the appellant, the sentence imposed upon him cannot be said to be onerous which may call for interference. Under the circumstances, there is no merit in the appeal. The same is, accordingly, dismissed.

20. Trial Court record be sent back. SUNITA GUPTA (JUDGE) July 05, 2013 rs
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