

Dharmendra Vs. State

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Court : Delhi

Decided On : Jul-18-2013

Judge : S. P. Garg

Appellant : Dharmendra

Respondent : State

Advocate for Def. : Mr. M.N.Dudeja

Advocate for Pet/Ap. : Mr. R.R.Rajesh

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI RESERVED ON : May 23, 2013 DECIDED ON : July 18, 2013 + CRL.A. 64/2011 DHARMENDRA Appellant Through: Mr. R.R.Rajesh, Advocate versus STATE Respondent Through: Mr. M.N.Dudeja, APP for the State CORAM: MR. JUSTICE S.P.GARG S.P.GARG, J.

1. The appellant-Dharmendra challenges a judgment dated 01.11.2010 in Sessions Case No.140/2007 arising out of FIR No.111/2007 registered at Police Station Nangloi by which he was convicted under Section 393/308 IPC and sentenced to undergo Rigorous Imprisonment for five years under Section 393 IPC and Rigorous Imprisonment for three years under Section 308 IPC with fine ` 10,000/2. Allegations against the appellant were that on 08.02.2007 at about 03.00 A.M. he and his associates Munna Khan (since P.O.), Kalia, Subodh and Chotu

(not arrested) committed trespass in a godown at Todar Mal Chowk, Mundka in occupation of Cadila Health Care Limited. Ram Avtar was Chowkidar at the said godown. After finding the assailants in the godown, he came out of his cabin and inquired from them as to who they were. The assailants were armed with knives and saria. They asked Ram Avtar not to raise alarm or else he would be killed. He raised an alarm. Public persons from the neighbourhood gathered there. The assailants gave beatings and injured him. They attempted to escape from the spot. Dharmendra and Munna Khan were apprehended after some chase and their associates succeeded to flee. The police was informed and their custody was handed over to the Investigating Officer along with the knives left at the spot. Necessary proceedings were conducted at the spot. The injured was taken to hospital and medically examined. The Investigating Officer lodged First Information Report and recorded the statement of the witnesses conversant with the facts. Pursuant to Munnas disclosure statement, a country made pistol with cartridge was recovered. After completion of investigation both Dharmendra and Munna Khan were sent for trial for committing offences punishable under Sections 392/394/395/397/398/34 IPC and under Section 25 Arms Act. Vide orders dated 29.08.2007, they were charged for committing offences punishable under Section 395/398/308/34 IPC and Section 25 Arms Act. The prosecution examined 12 witnesses to substantiate the charges. During trial, Munna Khan absconded and finally declared Proclaimed Offender. In his 313 statement, Dharmendra pleaded false implication. On appreciating the evidence and after considering the various contentions raised by the parties, the Trial Court, by the impugned judgment held Dharmendra guilty for committing offences under Section 393/308 IPC only. It is relevant to note that the State did not file any appeal to challenge appellants acquittal under Section 395/398 IPC and 25 Arms Act.

3. I have examined the relevant materials. It reveals that major discrepancies and contradictions have emerged in prosecution case regarding the exact number of assailants and how and in what manner Dharmendra and Munna Khan were apprehended etc. Complainant-Ram Avtar in his statement (Ex.PW-1/A) had given the exact number of assailants i.e. four. However, after conclusion of investigation, the police charge-sheeted five individuals. As per the prosecution, Dharmendra and Munna Khan were apprehended at the spot and the other assailants

succeeded to flee. It is unclear how the investigating agency ascertained that assailants/intruders were five in number as the identity of Kalia, Subodh and Chotu could not be ascertained and established. It is not certain how and from where the police came to know their names. Their addresses could not be ascertained/found during investigation. The Trial court for valid reasons did not believe the prosecution's case and rightly concluded that it was not a case of dacoity. During examination, Ram Avtar was not sure how many assailants had committed trespass. He merely deposed that he saw four-five boys who had entered in the godown by jumping the wall/gate.

4. The prosecution witnesses including the complainant have given inconsistent version as to how and under what circumstances both Dharmendra and Munna Khan were apprehended. In Daily Diary (DD) No.30A (Ex.PW-11/A) recorded at 03.12 A.M. at Police Station Nangloi, there is no mention that the assailants were apprehended at the spot and were in the custody of the public. In statement (Ex.PW1/A) it is recorded that the assailants were chased and the complainant was successful to apprehend Dharmendra and Munna Khan after some chase. PW-1 (Ram Avtar) did not support the prosecution and in court statement as PW-1 categorically stated that he was informed by the neighbours that two of the assailants who were trying to escape by climbing a tree were apprehended by the police. He further deposed that the said two individuals were not arrested in his presence. Additional Public Prosecutor cross-examined him after seeking court's permission. The complainant denied the suggestion that he had stated to the police about the chase and apprehension of the accused at the spot. There are no reasons to disbelieve PW-1 (Ram Avtar). PW-2 (Amit @ Bittoo) who reached the spot after hearing the noise of the villagers gave contradictory version about the circumstances in which the appellant and Munna Khan were apprehended. He deposed that when he came out of his house on hearing the noise, the village people told him that two thieves had entered in the back side of his house while escaping. They searched for them and were found in one of the kothri constructed in the back side of his house. PW-8 (ASI Vir Singh), PCR official on duty deposed that at about 03.00 A.M. he reached the spot on getting information about a quarrel. The public persons had apprehended two boys and one was having injury mark. They produced both the boys before him with two knives. He, however,

could not identify the accused persons. In the cross-examination by Additional Public Prosecutor, he expressed his inability to say that names of the boys produced before him were Munna and Dharmendra. He volunteered that he had not seen their faces. He further claimed that he had not produced both the accused persons before the Investigating Officer. He volunteered to add that he only produced the knives before the Investigating Officer. Scanning the testimony of these witnesses it transpires that there are inconsistent versions as to how, when and where Dharmendra and Munna Khan were apprehended. PW-1 (Ram Avtar) who had direct confrontation with the assailants at odd hours at night did not claim that they were apprehended from inside the kothri in the back side of PW-2s house as disclosed by the village people. The prosecution did not examine any village people who had apprehended Dharmendra and Munna Khan at the site. Since the identity of the assailants was not known to the eye witness, it was incumbent upon the Investigating Officer to get such suspect identified from eye-witnesses in a test Identification Parade to ensure that the person arrested was the real culprit. It was more so, as Ram Avtar denied apprehension by him after chase. However, during investigation, no such Test Identification Proceedings were conducted. The Trial Court discarded the prosecutions version about possession of knife with the appellant. PW-1 (Ram Avtar) did not attribute any specific role to the appellant in inflicting injury to him or use of knife, in the occurrence. He was unable to disclose if the injuries sustained by him were caused with saria or knife. There was no blood on the knives found at the spot. One of the assailants had sustained injuries, however, he was not taken for medical examination and the prosecution did not explain injuries recovered by him. Omission to explain the injuries on the accused can be regarded as voluntary suppressing true facts. Merely because the appellant was apprehended by public, it does not follow that he was the culprit. In the MLC Ex.PW-9/A there is mention of only of physical assault and nature of injuries as simple. The victim was discharged after four or five hours. PW-3 (Anil Jaitely), owner of the godown, was not informed of the incident immediately.

5. In the light of vital and major discrepancies and contradictions, it appears that the prosecution has not presented true facts. Consequently, the appellants conviction 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.

6. A copy of the order be sent to Jail Superintendent for compliance of the above order. Copy be also sent to the accused/appellant through Jail Superintendent. Trial Court record, if any, along with copy of this order be sent back to the Trial Court. (S.P.GARG) JUDGE July 18, 2013/sa

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