

Khazanchi Vs. State and anr

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Court : Delhi

Decided On : Aug-07-2013

Judge : S. P. Garg

Appellant : Khazanchi

Respondent : State and anr

Judgement :

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

7. h August, 2013 + CRL.A. 410/2011 KHAZANCHI Appellant Through : None. versus STATE & ANR Respondents Through : Mr.M.N.Dudeja, APP for the State. CORAM: MR. JUSTICE S.P.GARG S.P.GARG, J.

(ORAL) 1. Zakir, Deepak @ Kunti, Rakesh @ Kale and Khazanchi (the appellant) were sent for trial on the allegations that on 10.01.2008 at about 09.30 P.M. they committed robbery and deprived Ajit Singh of his mobile, election I-card, ATM card and cash `1500/-. Zakir was armed with a knife which was used while committing robbery. The First Information Report was lodged after recording Ajit Singhs statement (Ex.PW-1/A) at Police Station Welcome. Two assailants were apprehended at the spot and their names were ascertained as Zakir and Khazanchi. During the course of investigation, Rakesh @ Kale and Deepak @ Kunti were arrested. The Investigating Officer recorded the statements of the witnesses conversant with the facts and on completion of investigation submitted a

charge-sheet in the court. The appellant and his associates were duly charged and brought to trial. The prosecution examined six witnesses. In their 313 statements, the appellant and his associates pleaded false implication. After considering the rival submissions of the parties and appreciating the evidence on record, the Trial Court by the impugned judgment convicted Khazanchi under Section 392 IPC. Deepak @ Kunti, Rakesh @ Kale were acquitted of all the charges. It is relevant to note that the State did not challenge their acquittal.

2. Ajit, the victim, in his statement before the court implicated only Zakir who used the knife while committing robbery and was apprehended by PW-2 (Const. Dharmapal Singh) after chase. He did not identify Khazanchi to be amongst the assailants who committed robbery on his person. He stated that Khazanchi was apprehended after two or three days of the incident. Learned APP cross examined him after seeking courts permission. However, nothing material emerged in the cross examination to implicate the present appellant. He admitted his signatures on the seizure memo (Ex PW-1/D) whereby ATM and I-Card were seized. He denied the suggestion of the learned APP that Khazanchi was apprehended by him at the spot and these articles were recovered from his possession. In the cross-examination of learned defence counsel, he disclosed that there were three or four persons at the time of incident and they managed to flee the spot. Only Zakir was apprehended at the spot and was taken to the police station. Apparently, PW-1, the victim, did not support the prosecution and identified the present appellant to be one of the assailants. No role was attributed to him in the incident. He also did not prove recovery of stolen articles from his possession. prosecution witnesses are formal in nature. Other The testimony of PW-2 (Const.Dharmapal) is in conflict with the testimony of PW-1. There was no legal evidence before the Trial Court to establish that the present appellant shared common intention with co-accused in committing robbery or played any specific role. PW-2 (Constable Dharampal) is not an eye-witness and incident of robbery did not take place in his presence. He did not apprehend the appellant at the spot. His only version is that the assailants were chased and Khazanchi was apprehended by PW-1 (Ajit) at the spot. Complainant also did not identify Deepak @ Kunti and Rakesh @ Kale. They were given the benefit of doubt and were acquitted in this case on the same set of evidence. Since the complainant did not

identify the present appellant and established his involvement in the incident, he too deserves benefit of doubt. The impugned judgment by which he was convicted under Section 392 IPC read with Section 34 IPC cannot be sustained and is set aside.

3. The appeal is allowed. The conviction and sentence qua appellant-Khazanchi are set aside. A copy of the order be sent to Jail Superintendent, Tihar Jail with the direction to release the appellant immediately, if he is not required in any other case. Copy be also sent to the accused/appellant through Jail Superintendent. Trial Court record along with copy of this order be sent back to the Trial Court. (S.P.GARG) JUDGE AUGUST 07 2013 sa

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