
(2012) 12 DEL CK 0101
In the Delhi High Court
Case No : Criminal A. 270 of 2012

Chunman @ Akash

APPELLANT

Vs

State of NCT of Delhi

RESPONDENT

Date of Decision : 04-12-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 392

Citation : (2013) 1 AD 255 : (2013) 1 JCC 97

Hon'ble Judges : A.K. Pathak, J

Bench : Single Bench

Advocate : Ravi Chaturvedi, for the Appellant; Fizani Hussain, APP, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Pathak, J.—Appellant has been convicted u/s 392 IPC and sentenced to undergo rigorous imprisonment for three years with fine of

Rs. 1,000/-; in default of payment of fine to undergo simple imprisonment for one week by the Trial Court. That is how appellant is before this

Court by way of present appeal.

2. Prosecution story, as unfolded, is that on 9th March, 2009 at about 08:45 pm complainant-Mangal along with his friend Shyam was returning

home; when they reached near Bharat Nagar liquor shop within the jurisdiction of police station Ashok Vihar appellant along with his accomplice

intercepted them, took out complainant's purse from his pocket and when he resisted appellant's accomplice showed him a knife. Complainant

raised alarm and apprehended the appellant with the help of public persons. Complainant informed the police by making a call at number 100.

Investigating Officer arrived there and arrested the appellant. Subsequently,

accomplice of appellant was also apprehended pursuant to the disclosure statement of the appellant. However, he has been acquitted since he was not identified by the complainant and the eye-witness Shyam, thus, his role need not to be discussed in this appeal of the appellant.

3. Complainant was examined as PW6; whereas his friend Shyam was examined as PW7. A perusal of statement of PW7 shows that he did not

support the prosecution case with regard to the identity of appellant. However, a perusal of his overall statement shows that he has affirmed the

happening of occurrence that took place on 9th March, 2009 at about 9 pm near Bharat Nagar liquor shop. According to him, two-three persons

gave beatings to the complainant PW6. He even identified the purse of PW6 which was robbed along with election identity card and currency

notes kept in the said purse. PW6 has supported the prosecution story to the extent that appellant had forcibly snatched his purse along with one

boy; but he did not identify the co-accused in Court as the same person who was accompanying the appellant. He has deposed that on 9th March,

2009 at about 08:45-9:00 pm he had gone to Bharat Nagar liquor shop to buy a bottle of beer along with his friend Shyam; while they were

returning one boy came there and snatched his purse containing Rs. 400/-, election identity card and photograph of "Sai Baba". When he offered

resistance the one another boy came there and thereafter both of them beat him up. On his raising alarm, some public persons gathered there and

apprehended one of them, that is, the appellant. He has identified the appellant in Court correctly. He also admitted his signatures on his statement

Ex. PW4/B, recorded by the Investigating Officer.

4. As per PW6, appellant was apprehended at the spot. This version has been duly corroborated by the police officials who had reached the spot

on receiving the information. PW2 HC Mazid Khan, who was posted in Police Control Room, had received the information about snatching

incident. He passed on this information to the local police. He has deposed in Court in this regard. PW3 HC Ram Avtar had received the

information from PW2 Mazid Khan and recorded DD Entry 24 Ex. PW3/A and has deposed to this effect. PW8 ASI Pradhuman Kumar Sharma

was handed over Ex. PW3/A for investigation and he reached the spot along with PW5 Const. Vinod. PW 8 has deposed that when he reached

at the spot PW6 and PW7 were present there along with appellant. A purse containing Rs. 400/-, photograph of "Sai Baba" and election identity

card was also handed over to him. PW8 has further deposed that PW6 told him that the appellant had robbed his purse. PW6 further stated that

one boy, who had shown a knife to him had succeeded in escaping; while appellant was apprehended by the public. PW4 HC Naresh was on

patrolling duty in the area and had also reached the spot. He has also deposed that when he reached the spot he found PW8 ASI Pradhuman

Kumar Sharma and PW5 Const. Vinod were already present there. PW6 Mangal and PW7 Shyam had apprehended one boy, namely, Chunmun

(appellant) and were present there. All these witnesses have identified the appellant in Court. PW5 Const. Vinod has also corroborated statements

of PW4, PW6 and PW8 on this point. Presence of appellant at the spot and his consequent arrest lends credence to the statement of PW6

regarding snatching of purse by the appellant and his apprehension, which fact has, otherwise, remained unshattered in his cross-examination; even

though he was declared hostile and cross-examined by the learned Additional Public Prosecutor (APP) for the State on some other points, that is,

with regard to the use of knife and identity of co-accused.

5. Trial Court has found the above evidence sufficient enough to conclude that it is the appellant who had robbed the complainant-Mangal. I do not

find anything wrong in the approach of the trial court and the view taken by trial court is in consonance with the well settled principles of law with

regard to scrutiny and acceptance of the statements of witnesses.

6. There is no law that statement of a witness who had been declared hostile and cross-examined by the public prosecutor on certain points has to

be brushed aside and/or discarded in toto. Even statement of a hostile witness can be relied upon to the extent to which it supports the prosecution

version of the incident. In Sandeep versus State 2012 VII AD (Delhi)39, a Single Judge of this Court has held that the examination-in-chief as well

as cross-examination of a witness is admissible insofar as it supports the case of the prosecution. It is settled law that the evidence of hostile

witnesses can also be relied upon by the prosecution to the extent to which it supports the prosecution version of the incident. The evidence of

such witnesses cannot be treated as washed off the records. It remains

admissible in trial and there is no legal bar to base the conviction of the accused upon such testimony, if corroborated by other reliable evidence. In Anil Rai Vs. State of Bihar, , Supreme Court has held that the mere fact that the Court gave permission to the public prosecutor to cross-examine his own witness by declaring him hostile does not completely efface the evidence of such witness. The evidence remains admissible in the trial and there is no legal bar to base conviction upon his testimony, if corroborated by other reliable evidence. In this case, PW6 Mangal has been consistent with regard to robbing of his purse containing Rs. 400/-, election identity card and photograph of Sai Baba by the appellant and his apprehension at the spot as also arrival of the police officials who subsequently arrested the appellant, inasmuch as, recording of his statement and registration of FIR. PW4 HC Naresh, PW5 Vinod and PW8 ASI Pradhuman Kumar Sharma have fully corroborated PW6 on the point of appellant being present with PW6 when they reached at the spot, inasmuch as, recovery of robbed purse.

7. For the foregoing reasons, I am of the view, that the trial court has rightly convicted the appellant u/s 392 IPC, therefore, conviction of appellant under the said provision is upheld. As regards sentence awarded to appellant is concerned same also cannot be said to be disproportionate to the offence committed by him and, in my view, it requires no interference. Appeal is dismissed.