
(2010) 09 DEL CK 0185
In the Delhi High Court
Case No : Criminal Appeal No. 82 of 2005

Gopal @ Nizam

APPELLANT

Vs

The State (NCT of Delhi)

RESPONDENT

Date of Decision : 29-09-2010

Acts Referred:

Arms Act, 1959 — Section 25
Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 34, 394, 397, 399, 402

Citation : (2010) 09 DEL CK 0185

Hon'ble Judges : Ajit Bharihoke, J

Bench : Single Bench

Advocate : Udai Raj Singh, for the Appellant; Pawan K. Bahl, APP, for the Respondent

Final Decision : Dismissed

Judgement

Ajit Bharihoke, J.—Above two appeals are directed against the impugned judgment dated 05th November, 2004 in Sessions Case No. 272/2002, FIR No. 353/98, P.S. Srinivas Puri, in terms of which the appellant Gopal @ Nizam has been convicted for the offence punishable u/s 394 read with Section 34 IPC and Section 397 IPC and the appellant Uday Bhan has been convicted for the offence u/s 394 read with Section 34 IPC as well as the consequent order on sentence dated 08th November, 2004.

2. Briefly stated, the facts relevant for the instant appeals are that on 29th April, 1998 at about 11:40 a.m., an information was conveyed by Lady Constable Sudesh of PCR to police post New Friends Colony that some boys on a motorcycle No. 2171 have committed robbery of Rs. 90,000/- and escaped after inflicting knife injury on a victim. This information was recorded as DD No. 9 at the police post and copy thereof was entrusted to ASI Pat Ram, who proceeded for the spot of occurrence along with Constable Ram Prasad. The police post Incharge SIJ.S. Joon and Home Guard Constable Daryal Singh were also sent to the spot of

occurrence.

3. On reaching the place of occurrence, SIJ.S. Joon came to know that the injured victim had already been sent to Holy Family Hospital. SIJ.S. Joon then went to the hospital and found the victim Kailash Chand Sharma admitted there. Kailash Chand Sharma was declared fit for making statement. SIJ.S. Joon recorded his statement Ex.PW11/1 and sent it to the Police Station for registration of the case after appending his endorsement Ex.PW6/A on the complaint.

4. Kailash Chand Sharma in his statement Ex.PW11/1 stated that he was working as Liaison Officer with M/s. Jindal Rolling Mills, D-1, Maharani Bagh. On 29th April, 1998, at about 11:00 a.m., he left his office for encashing a bearer cheque of Rs. 90,000/-. After encashing the cheque from Canara Bank, Ashram Chowk, he kept the money comprising of 10 packets of Rs. 50/-denomination each and 4 packets of Rs. 100/- denomination each in a green cloth bag. When he was returning back to his office at around 11:20 a.m., while he was crossing the Ring Road and had reached the Central Verge, two young boys came from behind and started fighting with him. One of them snatched said bag from him. When he resisted, the other boy inflicted an injury on his left hip with a knife like instrument, consequently he started bleeding and fell down. Thereafter, those boys escaped with the bag containing money on a motorcycle which was either "Hero Honda" or "Yamaha" and its registration number was 2171. The complainant also stated that one of those boys was aged around 24-25 years with fair complexion. His height was about 05 feet 07 inches. The other boy was aged around 22-23 years and claimed that he would be able to identify them if shown to him.

5. SIJ.S. Joon inspected the place of occurrence and prepared unscaled site plan. Thereafter investigation was taken over by SI Subhash Malik, Incharge, Police Post, Sunlight Colony, who recorded the statements of the witnesses and got prepared identity kit of the accused persons with the help of the complainant. He also collected MLC of the complainant, wherein it was opined that he had sustained simple injuries.

6. While the case was still under investigation, Gopal @ Nizam, Manoj @ Bittu @ Satish and Uday Bhan were arrested by Special Staff, South District, Delhi in case FIR No. 234/98 under Sections 399/402 IPC and Section 25 of the Arms Act, P.S. Mehrauli. On interrogation, appellants as well as their co- accused Manoj made disclosure statements pertaining to this case. Pursuant to the said disclosure statements, accused Uday Bhan, Gopal and Manoj got recovered sums of Rs. 5000/-, 5000/- and 10,000/- respectively. On receiving information about their arrest and disclosure statements as well as recovery of stolen money at their instance, SI Subhash Malik moved an application for production of aforesaid three accused persons in the court and formally arrested them with the permission of the court and obtained their police custody remand, but neither the weapon offence nor the remaining money could be recovered. On completion of

investigation, the above three accused persons were challaned and sent for trial for the offences punishable under Sections 394/397/412 IPC.

7. The learned Additional Sessions Judge, on consideration of challan, charged appellant Gopal @ Nizam for the offences punishable u/s 394/34 IPC and Section 397 IPC. He also charged the other appellant Uday Bhan and co-accused Manoj for the offence punishable u/s 394 read with Section 34 IPC. Both the appellants pleaded not guilty to the charge and claimed to be tried.

8. In order to bring home the guilt of the appellants, prosecution has examined 14 witnesses, including the victim Kailash Chand Sharma (PW11).

9. Statements of the appellants as well as their co-accused Manoj were recorded u/s 313 Cr.P.C. wherein they claimed to be innocent and explained that they have been falsely implicated by the police. Though the co-accused Manoj examined one Praveen Rathi, Warden, Central Jail Tihar as DW-1, neither of the appellants preferred to lead evidence in defence.

10. The learned Additional Sessions Judge, relying upon the testimony of sole witness of the incident complainant Kailash Chand Sharma PW11 and the evidence pertaining to recovery of part of the stolen property at the instance of the appellants as well as their co-accused Manoj, found them guilty of the offence punishable u/s 394 read with Section 34 IPC and he also found the appellant Gopal @ Nizam guilty of offence u/s 397 IPC and convicted and sentenced them accordingly.

11. Co-accused Manoj has not challenged the impugned judgment but the appellants have preferred the instant appeals.

12. Before advertng to the submissions of the rival parties, it would be appropriate to have a look upon the important evidence adduced by the prosecution.

13. PW11 Kailash Chand has testified that in April, 1998, he was working as a Marketing Executive with Jindal Rolling Mills at D- 1, Maharani Bagh, New Delhi. On 29th April, 1998, at about 10:00 a.m., he had gone to Canara Bank, Ashram Chowk and withdrawn a sum of Rs. 90,000/- comprising of currency notes of denomination of Rs. 100/- and Rs. 50/- respectively. He kept the money in a green colour bag and on his way-back when he was on the Central Verge of Ring Road, three persons namely Manoj, Nizam and Uday Bhan came there. Accused Manoj snatched the bag from him and the appellant Gopal @ Nizam inflicted an injury on his hip while the appellant Uday Bhan punched him on his neck. Out of the fear that the assailants may not inflict another knife injury on his person, he let go the bag and the accused Manoj fled away on a motorcycle and other accused persons also fled away from the spot. He, thereafter, came to his office and intimated the police. From the office, he was taken to Holy Family Hospital where the police came and recorded his statement Ex.PW11/1. The complainant Kailash Chand has also stated that all the bundles of currency notes were having

slips with the stamps of Canara Bank. He has proved the photocopy of the cheque as Ex.PW4/1 and the bag as Ex.PW10/4. He has also identified the bundles of currency notes, purportedly recovered at the instance of the appellants and their co-accused as Ex.PW10/1 to Ex.PW10/3 and has identified the appellants as well as their co-accused.

14. PW1 Rajesh Kumar is the employee of Canara Bank. He has testified that on 29th April, 1998, while working as a Cashier at Ashram Chowk Branch of Canara Bank, he made the payment of Rs. 90,000/- to Kailash Chand Sharma against a cheque issued against Saving Bank Account No. 9635. He also stated that aforesaid money comprised of wads of currency notes. This version of PW1 corroborates the version of PW11 Kailash Chand Sharma regarding withdrawal of Rs. 90,000/- by him from Ashram Chowk Branch of Canara Bank on 29th April, 1998.

15. PW2 Dr. Thomas Davis, CMO, Holy Family Hospital examined the complainant K.C. Sharma S/o Prahalad Sharma on 29th April, 1998 vide MLC Ex.PW2A/A. He testified that on examination, he found a clean cut incised wound 3 c.m. long over left gluteol region i.e. the left buttock. He further stated that he declared the patient fit for statement vide his endorsement Ex.PW2/3 on the application made by the Investigating Officer.

16. PW12 S.I.R.S. Sherawat has testified that on 06.05.1998, the appellants along with their co-accused Manoj and four other persons were arrested in case FIR No. 234/98 P.S. Mehrauli on the basis of secret information. On interrogation, the appellant Gopal @ Nizam made a disclosure statement Ex.PW12/2 in respect of the offence which is the subject-matter of his appeal and disclosed that he had kept Rs. 5000/- out of the stolen money in his house at Tilak Ram Colony, Bheta, Hajipur, Loni and pursuant to the said disclosure, he led the police party to his house at Tilak Ram Colony, Bheta, Hajipur, Loni. From there, he took out one packet of currency notes of Rs. 50/- denomination each, having 100 currency notes from the drawer of his bed which was seized vide memo Ex.PW10/6 after converting it into a sealed packet. He has proved the said packet of currency notes as Ex.PW10/2. PW12 S.I.R.S. Sherawat further deposed that the appellant Uday Bhan on interrogation also made a disclosure statement Ex.PW12/1 stating that he could get recovered Rs. 5000/- out of the stolen money from his house at Sangam Vihar. Pursuant to the said disclosure statement, the appellant Uday Bhan led the police party to his house at Sangam Vihar from where he got recovered one packet of currency notes of Rs. 50/- denomination each, containing 100 currency notes, which packet was converted into a sealed parcel and taken into possession. He identified the packet of currency notes recovered at the instance of appellant Uday Bhan as Ex.PW10/1. Aforesaid version of PW12 also find corroboration in the testimony of PW10 ASI Suraj Bhan and PW13 Rohan Singh who have also deposed to almost similar effect. PW13 Head Constable Roop Singh has also stated that the wads of currency notes recovered at the instance of appellants were having slips of Canara Bank, Maharani Bagh

Branch.

17. Learned Sh. Udai Raj Singh, Advocate appearing for the appellants has submitted that the appellants are innocent and they have been falsely implicated by the police with a view to solve the blind case.

18. First contention of learned Counsel for the appellants against the impugned judgment of conviction is that the case of the prosecution rests on sole testimony of the complainant Kailash Chand Sharma, whose version pertaining to identity of the appellants as the robbers is highly suspect. Dilating on the argument, learned Counsel for the appellants submitted that as per the case of prosecution, incident took place in the morning of 29th April, 1998 at around 11:00 a.m. and the Investigating Officer recorded the statement of the complainant Kailash Chand Sharma Ex.PW11/1 on the same day at Holy Family Hospital, on the basis of which the FIR was registered. Learned Counsel took me through the said complaint statement Ex.PW11/1 and submitted that in the complaint, Kailash Chand Sharma is categorical that he was robbed by two young boys whereas in his testimony in the court on 01st August, 2001, he has improved upon his aforesaid earlier version and implicated three persons namely, both the appellants and their co-accused Manoj. Learned Counsel argued that after initially lodging complaint naming two persons, the complainant in his testimony in the court has introduced the story of involvement of third person and he has even identified three persons as robbers, which casts a doubt on the correctness of the version of the complainant, particularly regarding the identification of the culprits and a possibility cannot be ruled out that the complainant has identified all the three accused persons before the court only for the reason that they had been charge sheeted by the police and he was told that they are the culprits. Learned Counsel further submitted that otherwise also, the incident took place on 29th April, 1998 and the complainant Kailash Chand Sharma was examined as a witness in the court on 01st August, 2001 i.e. after more than three years of the incident. Therefore also, it is highly improbable that after such a long time, the complainant could have remembered the faces of the appellants to categorically identify them as the robbers.

19. I am not convinced with the above contention. On careful perusal of the complaint statement Ex.PW11/1, it transpires that complainant Kailash Chand Sharma in the said statement claimed that when he was returning to his office after withdrawing Rs. 90,000/- from Canara Bank, Ashram Chowk Branch, two young boys grappled with him and one of them tried to snatch the bag containing money from his hand. When he resisted, the other boy stabbed him on his left hip with a knife like object and as a result of injury, he fell down. Thereafter, said boys fled away on a motor cycle. From the aforesaid statement, it is obvious that at the time of robbery, there was some accomplice of the appellants who was on motor cycle and who brought the motor cycle at the spot after the snatching of bag. Thus, I do not find any mismatch between the complaint statement Ex.PW11/1 and the testimony of the complainant in the

court. Only difference is that PW11, in his testimony in the court has given the details of the manner in which the occurrence took place and how the appellants/accused persons fled away from the spot, which was not in his statement Ex.PW11/1. Thus, it cannot be said that the complainant has improved upon his earlier version. One cannot lose sight of the fact that at the time of recording of statement Ex.PW11/1, the complainant must have been in an acute pain and trauma as a result of the stab injury suffered by him and if in that traumatic condition, he failed to give elaborate details of the manner in which incident took place, it cannot be taken as a circumstance to suspect his testimony.

20. Coming to the issue of identity of the appellants as culprits. PW11 Kailash Chand Sharma, sole witness of the incident has categorically stated that while he was returning back after withdrawing Rs. 90,000/- from Canara Bank, Ashram Chowk Branch at the Ring Road, he was waylaid by two young boys who tried to snatch the bag containing money from him and when he resisted their attempt, he was stabbed on his left hip by the appellant Gopal @ Nizam. This version of the complainant finds corroboration in the testimony of PW Rajesh Kumar, Cashier of Canara Bank, Ashram Chowk Branch, who has stated that on 29th April, 1998, he made payment of Rs. 90,000/- to the complainant against a cheque Ex.PW1/1 issued from Saving Bank Account No. 9635. The version of the complainant regarding his having been stabbed is also corroborated by his MLC Ex.PW2A/A, which was prepared by PW3 Dr. Thomas Davis, wherein it is recorded that on 29th April, 1998, complainant K.C. Sharma was admitted in Holy Family Hospital with the history of incised wound 3 c.m. long over his left gluteal region. In view of the above, I find no reason to suspect correctness of the testimony of the complainant K.C. Sharma. From his version, not only the robbery and stabbing is established but it is also established on record that the complainant K.C. Sharma resisted the attempt of the appellants when they tried to snatch the bag containing money from him. It is natural that in that process, the complainant had an opportunity to see them snatching, therefore, there is no reason to suspect the dock identification of the appellants by the complainant merely on the ground that he was examined three years later, particularly when there is nothing on record to suggest any reason or motive on the part of the complainant to falsely implicate the appellants. Thus, I am of the view that the learned Additional Sessions Judge has rightly relied upon the testimony of the complainant.

21. PW10 ASI Suraj Bhan, PW12 SIR.S. Sehrawat and PW13 Head Constable Roop Singh are the witnesses to the disclosure statements made by the appellants and consequent recovery of stolen money from their possession at their instance. From the testimony of above three witnesses, it stands established that the appellants along with their co-accused Manoj and four others were arrested in some other case FIR No. 234/1998 relating to police station Mehrauli. When the appellants were interrogated, both the appellants Uday Bhan and Nizam made disclosure statements that they could get recovered Rs. 5000/- each out of the stolen money from their respective houses and pursuant to their

respective disclosure statements, they led the police party to their respective houses at Sangam Vihar and Tilak Ram Colony, Behta Road, Hazipur, Loni and got recovered one packet each of Rs. 50/- denomination each from their respective houses. The witnesses have proved those packets of currency notes recovered at the instance of the appellants as Ex.PW10/1 and Ex.PW10/2. The case property was produced for examination by this Court from "malkhana" on 23rd September, 2010 and on examination, the wads of currency notes Ex.PW10/1 and Ex.PW10/2 were found to have bank slips of Canara Bank, Ashram Chowk Branch with endorsement of dates prior to the date of incident i.e. 29th April, 1998. Thus, any possibility of planting of aforesaid currency notes Ex.PW10/1 and Ex.PW10/2 on the appellants is oblique. Learned Counsel for the appellants contended that wads of currency notes Ex.PW10/1 and Ex.PW10/2 are planted by the Investigating Officer to implicate the appellants. This suggestion was given to PW1A Rajesh in his cross examination, which he denied as incorrect. Otherwise also, there is no reason as to why a bank official will agree to be a part of conspiracy to falsely implicating the appellants at the instance of police. Thus, I find no reason to suspect the testimony of police officials regarding the disclosure statements made by the appellants and the recovery of the stolen money at their instance. Neither of the appellants have come out with any explanation as to how they came into possession of the stolen money, which was recovered at their instance within 8 days of the robbery. From this, it can be safely inferred that the appellants have committed the robbery.

22. In view of the discussion above, I find no infirmity in the impugned judgment and find that the learned Additional Sessions Judge has rightly convicted and sentenced the appellants.

23. The appeals are accordingly dismissed.

24. The appellants are on bail. They be taken into custody to undergo the remaining sentence.