
(2010) 12 DEL CK 0320
In the Delhi High Court
Case No : Criminal Appeal 174 of 2001

Kalu Singh and Another

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 16-12-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 328, 34, 379, 411

Citation : (2011) 1 AD 209 : (2011) 1 JCC 259

Hon'ble Judges : Mukta Gupta, J

Bench : Single Bench

Advocate : Sanjeev Kumar, for the Appellant; Manoj Ohri, APP, for the Respondent

Final Decision : Disposed Off

Judgement

Mukta Gupta, J.—On 12th May, 1996 at about 2.30 p.m. an information was received at P.S. Tilak Nagar that two thieves have been apprehended near 20-Block Gurdwara, Tilak Nagar, and police be sent. SI S.S. Yadav reached the spot along with Constable Rajender and found many people, present there. Sardool Singh, the complainant had caught hold of the Appellant as well as one Mahinder @ Machhu with the public present at the spot and Sardar Saran Singh father of complainant was lying in an unconscious condition nearby. Accused Mahinder @ Machhu was having a gold kara in his hand. SI S.S. Yadav recorded the statement of the complainant who stated that at about 2.50 p.m. he came to the spot where he found his father Sardar Saran Singh in an unconscious condition. Two boys Kalu Singh s/o Pyara Singh and Mahinder @ Machhu were removing a gold kara from the right hand of his father. Kalu Singh removed the kara and handed the same to Mahinder Singh. Both of them ran away on which he raised an alarm. People gathered there and apprehended both of them. They were beaten by the public and their heads were tonsured. According to him the incident was also witnessed by Bishan Singh s/o Issar Singh, Mahinder Singh s/o Harbans Singh, Mahinder Singh s/o Harbhajan Singh besides other persons. Kalu

Singh and Mahinder Singh were apprehended by the police personnel. The gold kara recovered from Mahinder Singh was seized. On the statement of Sardool Singh FIR No. 359/1996 u/s 328/379/411/34 IPC was registered. On completion of the investigation, charge sheet was filed and both the accused were charged for offences punishable u/s 328/34 IPC and 379/34 IPC. The statement of the prosecution witnesses and the accused u/s 313 Code of Criminal Procedure were recorded. The Appellant and co-accused were acquitted for offence punishable u/s 328/34 IPC, however convicted of offence punishable u/s 379/34 IPC and awarded a sentence of rigorous imprisonment for three years with a fine of `5,000/- each and in default of payment of fine to further undergo simple imprisonment for three months. The present appeal was filed by both the convicts, however, before this appeal could be finally heard, Appellant No. 2 Mahinder Singh died on 5th March, 2007 and vide order dated 12th November, 2010 the appeal qua the Appellant No. 2 stands abated. Thus, the only Appellant now before this Court in the present appeal is Kalu Singh.

2. Learned Counsel for the Appellant challenging the judgment of conviction and sentence contends that none of the witnesses has identified the Appellant or supported the case of the prosecution. Sardar Saran Singh, the victim implicates Mahinder co-convict as the person who gave the intoxicant and removed the kara. He states that there were 2-3 other persons with accused Mahinder who managed to run away. Testimony of PW5 Mahinder Singh s/o Harbhajan Singh and PW6 Mahinder Singh s/o Harbans Singh only implicates Mahinder Singh as the person from whom the gold kara was recovered. Both these witnesses have not ascribed any role or overt act to the Appellant Kalu Singh. It is stated that the testimony of PW4 Sardool Singh, the complainant does not inspire confidence, as he says that he saw both the accused surrounding his father and both removing the gold kara from the hand of his father when they were apprehended by the public, while his father lay unconscious. The testimony of this witness is wholly unreliable as this statement of the complainant is an improvement from his earlier statement recorded by the police. Though he has deposed that he saw the accused surrounding his father and taking off the kara, he does not try to save his father nor makes any attempt to apprehend the accused. Nobody except the complainant has implicated the Appellant. None of the persons who apprehended and who had allegedly beaten the Appellant & co-accused Mahinder have been made witnesses. The witnesses examined including PW4 were not present at the spot and they have been planted as witnesses. PW2 Dr. K.K. Arya and PW-10 Dr. Y.N. Chhabra contradict each other as both the doctors claim to have examined the victim on the date of incident i.e. 12.05.1996. PW 10 in his testimony has deposed that the victim was brought to his clinic by his daughter-in-law and thereafter was got admitted to Singh Heart Clinic, and in support thereof has produced the prescription Ex. PW 10/A whereas PW 2 has deposed that the victim was examined by him on 12.05.1996 with a suspected diagnosis of narcotic poisoning and stated that the victim was initially treated at M.P. Heart Centre for eight hours. He further deposed that the victim

was discharged on 14.05.1996. Prescription in this regard is exhibited as Ex.PW2/A. It is thus prayed that the prosecution has not been able to prove the charges against the Appellant and he be acquitted. In the alternative it is also prayed that the incident is of the year 1996 and the Appellant has faced the ordeal of the pendency of the trial and the appeal for 14 years, therefore, he be released on the period of sentence already undergone.

3. Learned APP, on the other hand contends that the testimony of PW2 and PW10, the two doctors proves that the victim i.e. PW3 Sardar Saran Singh was admitted on 12th May, 1996. The presence of the Appellant at the spot as he was beaten by the public and apprehended at the spot stands proved by the testimony of PW1, PW3, PW4, PW5 and PW6 beyond reasonable doubt. PW3, the victim could not identify Appellant Kalu Singh in the Court as he was 80 years of age when he appeared as a witness in the Court. The Appellant in his statement u/s 313 Code of Criminal Procedure has taken the plea of alibi, however, this plea has neither been put as a suggestion to the prosecution witnesses nor proved by the Appellant by way of defence evidence. Thus, the appeal is liable to be dismissed.

4. I have heard learned Counsels for the parties and perused the records. PW3, the victim has not identified the Appellant Kalu Singh and has deposed that Mahinder Singh Appellant No. 2 (since dead) had given him the intoxicant and removed his kara. As per the suggestion given to this witness by the learned APP the role attributed to the Appellant Kalu Singh was that he gave lemon water; which suggestion he refused to acknowledge and replied that he could not identify the boy i.e. the Appellant herein. He has reiterated in the cross examination by the learned APP that the kara was removed by the co-accused Mahinder and not by the other boy i.e. the Appellant, though he admitted that he was having diabetes and may have forgotten some facts. Similarly, PW5 Mahinder Singh s/o Harbhajan Singh has also stated that the gold kara was recovered from the accused Mahinder Singh. He also does not attribute any role to the Appellant except the fact that both of them were being beaten by the public in front of the Gurdwara. PW6 Mahinder Singh s/o Harbans Singh deposed that he had not witnessed the incident, and only witnessed the two accused being apprehended by the police near the Gurdwara. Thus, PW5 and PW6 are not the eye witnesses and have only witnessed the recovery of kara from Mahinder Singh and the two accused being beaten by the public.

5. PW4, the complainant in his testimony before the Court has deposed that he had seen the Appellant Kalu Singh along with the co-convict Mahinder removing the gold kara from the hand of his father. Both of them were apprehended by the public, while his father was lying unconscious at the spot. The said gold kara was recovered from the pocket of the accused Mahinder Singh. This witness has been cross examined at length from which it has been elicited that there are material contradictions/ improvements in the testimony of this witness as each statement of his in the examination in chief is contrary to his earlier statement or

contradicted by the other witnesses. In the examination in chief this witness deposes that both the accused persons were apprehended by the public whereas in his cross examination he has deposed that he himself apprehended the accused/Appellant Kalu Singh and also apprehended co-accused Mahinder Singh. Moreover his deposition in the examination in chief is even contrary to the prosecution case. As per the suggestion given by the learned APP to PW3 the role attributed to the Appellant Kalu Singh is that he gave the intoxicant and Mahinder Singh removed the kara. As per the testimony of this witness he had not witnessed his father being administered intoxicant. He states that both the accused surrounded his father and both removed the kara from his hand. His deposition of taking his father to the clinic has also been contradicted by PW-10 Dr. Y.N. Chhabra who states that the daughter in law of Swaran Singh came to his house and took him to her house where he advised her to take the patient to DDU Hospital. At around 5 pm, the patient was taken to Singh Heart Clinic on the request of the daughter in law. The son of Swaran Singh neither was present when he went to his house nor had come when he was taken to the clinic.

6. The Appellant has been convicted for offence punishable u/s 379/34 IPC and the only evidence against the Appellant is the testimony of PW4 Sardool Singh i.e. the complainant along with the fact that both the accused were beaten by the public and apprehended on the spot. PW4 Sardool Singh has also stated that both the accused present in the Court surrounded his father and both removed the gold kara from the hand of this father. The site plan Ex.PW8/E does not disclose about the place from where Sardool Singh was witnessing this incident. Neither there is any evidence on record nor does this witness says that he tried to save his father. His conduct of not stopping the two accused persons from removing the gold kara nor apprehending them, nor shouting for help, nor taking care of the unconscious father is an unnatural conduct. The testimony of this witness is not only not corroborated by any evidence on record to prove that the Appellant Kalu Singh removed the gold kara from the hand of PW3 but is contradicted on all aspects. Thus no reliance can be placed on the testimony of this witness. In his testimony PW3, Sardar Saran Singh has categorically stated that it was Mahinder Singh who gave him the intoxicant and removed the kara. PW1, PW5 and PW6 in their testimony have deposed that they have not witnessed the Appellant herein removing the kara. Therefore, no role or overt act has been assigned to the Appellant Kalu Singh by any of the witnesses examined by the prosecution.

7. Thus the only evidence left against the Appellant is the circumstance that soon after the incident the Appellant Kalu Singh was beaten by the public and apprehended at the spot along with the co-accused Mahinder. However, this circumstance alone is not sufficient to prove the charge u/s 379/34 IPC beyond reasonable doubt against the Appellant Kalu Singh. This single circumstance is not sufficient to base the conviction for an offence punishable u/s 379/34 IPC.

8. Thus, Appellant Kalu Singh is entitled to benefit of doubt. Hence he is

acquitted of the charge u/s 379/34 IPC. The bail bond and the surety bond are discharged. The appeal stands disposed of.