

(2014) 04 DEL CK 0041
In the Delhi High Court
Case No : Crl. A. 1326/2011

Manoj

APPELLANT

Vs

State of NCT of Delhi

RESPONDENT

Date of Decision : 17-04-2014

Acts Referred:

Arms Act, 1959 — Section 25
Evidence Act, 1872 — Section 114, 114(a)
Penal Code, 1860 (IPC) — Section 34, 392, 397, 411

Citation : (2014) 04 DEL CK 0041

Hon'ble Judges : S.P. Garg, J

Bench : Single Bench

Advocate : Sangram Singh, Advocate for the Appellant; M.N. Dudeja, APP and Ram Partap, SI, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

S.P. Garg, J.—The appellant-Manoj questions the correctness of a judgment dated 08.09.2011 of learned Additional Sessions Judge in Sessions Case No. 37/10 arising out of FIR No. 109/09 registered at Police Station Delhi Cantt. by which he was convicted u/s 392 IPC. By an order dated 12.09.2011, he was sentenced to undergo RI for three years with fine Rs. 5,000/-. Allegations against the appellant, as depicted in the chargesheet, were that on 04.05.2009 at 1.40 a.m. at Dhaula Kuan to Delhi Cantt. Road, before Yamaiya Red Light, he and his associate Mohd. Rinku Ali robbed a Maruti Esteem car No. DL1RX-6064 from Sumesh. It is alleged that Mohd. Rinku Ali was armed with a deadly weapon at that time. Intimation regarding the incident was given to PCR. Daily Dairy (DD) No. 4A (Ex. PW-3/A) was recorded at 02.20 a.m. at Police Station Delhi Cantt. It records that two boys had fled after snatching a taxi Esteem Car No. DL-1RX-6064. The investigation was assigned to ASI M.Y. Khan who with Ct. Joginder Singh went to the spot. Efforts were made to find out the culprits but in vain. On 05.05.2009, after recording complainant's statement (Ex. PW10/A), FIR was lodged by the Investigating Officer. On 06.05.2009, Manoj Kumar and Mohd.

Rinku Ali were arrested by the officials of AATS (South West District) at around 07.20 a.m. and from their possession, the robbed car was recovered. Mohd. Rinku Ali was also found in possession of a pistol for which a separate case was registered. Appellant's involvement emerged in this case in his disclosure statement made therein. Statements of witnesses conversant with the facts were recorded. After completion of investigation, a chargesheet was filed against the accused; they were duly charged; and brought to trial. The prosecution examined twelve witnesses to establish their guilt. In 313 statement, the accused persons denied their complicity in the crime and pleaded false implication. DW-1 (Mohd. Amin Ali) was examined in defence. After appreciating the evidence and considering the rival contentions of the parties, the trial court by the impugned judgment convicted both the accused u/s 392 IPC. It is relevant to note that for the offences u/s 397 IPC and 25 Arms Act, the accused persons were acquitted and the State did not challenge the said acquittal.

2. I have heard the learned counsel for the parties and have examined the record. Intimation regarding the robbed vehicle was conveyed on the night intervening 3/4.05.2009. PW-1 (W.Ct. Pramila) recorded the information in PCR Form (Ex. PW-1/A). She received a call from mobile No. 9990166808 at about 1.53 a.m. informing that two boys after robbing a car Esteem (white colour) bearing No. DL1RX-6064 near Kirbi Palace Red Light had fled towards Dhaula Kuan. PW-3 (SI Ram Karan) recorded DD No. 4A (Ex. PW-3/A) at 02.20 a.m. at Police Station Delhi Cantt. after getting information about the incident from PCR. PW-4 (Ram Prakash) working with M/s. Easy Cabs as an Assistant Fleet Manager deposed that on 04.05.2009, he had received a call from his office regarding vehicle Maruti Esteem bearing registration No. DL1RX 6064 being taken away by unknown individuals. He informed the police and handed over the relevant documents. He further disclosed that the vehicle was being driven by Sumesh Kumar. PW-10 (SI M.Y. Khan) recorded complainant Sumesh's statement (Ex. PW-10/A) on 05.05.2009 and lodged First Information Report. The complainant had no ulterior motive to fake the incident of robbery for which the information was conveyed to the police at the earliest.

3. The prosecution examined PW-5 (HC Vinod Kumar) and PW-7 (ASI Rajinder Singh), officials of AATS (South-West District) Dwarka, who gave consistent version regarding recovery of the vehicle in question from the possession of the appellant and his associate Mohd. Rinku Ali on 06.05.2009 at around 07.20 a.m. They deposed that on the basis of secret information, a raiding party arrived near Brar Square Red Light of Base hospital at about 07.20 a.m. and made a nakabandi there. Immediately, thereafter, one Maruti Esteem car No. DL1RX-6064 came from Dhaula Kuan side and at the instance of secret informer, it was stopped. The said car was being driven by the appellant-Manoj Kumar. Mohd. Rinku Ali was sitting near the driver's seat. From the casual search of Mohd. Rinku Ali, one revolver was recovered from his left dub. On checking, two live cartridges were found therein. On inquiry, it revealed that the car in question was wanted in case FIR No. 109/09 u/s 392/34 IPC registered at PS Delhi Cantt.

Necessary intimation was given to the concerned Investigating Officer. A mobile phone make Nokia 1209 was also recovered from the appellant and it was revealed by him that the mobile was used during robbery. These witnesses were cross-examined at length. However, no material discrepancies or inconsistencies could be extracted or elicited to discard their version. The police officials are not expected to plant the vehicle in question on their own. They were not concerned with the robbery of the said vehicle at Police Station Delhi Cantt. and came to know about it only when in their disclosure statements, the appellant and his associate disclosed about that. The vehicle in question was seized u/s 411 IPC by a memo (Ex. PW-5/A). The accused persons did not explain as to how and from where they had come into possession of the vehicle of substantial value which did not belong to them. The burden was heavily upon the accused persons to show that they were bona-fide purchaser of the vehicle in question for valuable consideration or its possession was legal. Adverse inference is drawn against the appellant in this regard. The appellant was driving the vehicle in question at the relevant time. Presumption raised u/s 114(a) Evidence Act has not been rebutted. Apparently, the appellant dishonestly received or retained the vehicle No. DL1RX-6064 knowing or having reasons to believe it to be a stolen property.

4. The trial court has convicted the appellant u/s 392 IPC with the aid of presumption u/s 114 Evidence Act as the stolen vehicle was recovered within two days from the date of the incident of robbery from his possession. The occurrence took place at around 01.40 a.m. on the night intervening 3/4-5-09. The complainant-Sumesh, however, did not lodge any report with the police in promptitude. His statement (Ex. PW-10/A) was recorded on 05.05.2009 and the FIR was lodged. The explanation given by Sumesh that he had gone to his village and could not lodge the report with the police in time soon after the incident does not inspire confidence. The delay in lodging the complaint with the police has not been explained properly. In DD No. 4A (Ex. PW-3/A), there is no mention that the vehicle in question was robbed at pistol point. The description of the assailants was not recorded therein. The complainant had already left the spot before arrival of the police at the spot. The complainant-Sumesh could not be examined during trial due to his death. The statement made by the complainant on 05.05.2009 thus could not be proved. The vehicle was recovered after two days of the incident. Both the accused persons were acquitted of the offences u/s 397 IPC and 25 Arms Act. In the absence of other incriminating circumstances, mere unexplained possession of stolen vehicle cannot lead to an inference that the appellant took part in the robbery or was a party to it. When the stolen articles are recovered from the possession of the accused, the only legitimate presumption that can be drawn that the accused knew that the said article was stolen but no knowledge can be attributed that he was knowing that the said article was stolen in robbery. Appellant's conviction u/s 392 IPC was not legally permissible. The prosecution was able to establish the offence u/s 411 IPC whereby the appellant and his associate were found in possession of the vehicle which did not belong to them and they failed to account for it. The accused did

not give plausible explanation to the incriminating circumstances in 313 statement. DW-1 (Mohd. Amin Ali) did not lodge any report with the police and the version narrated by him deserves outright rejection for the reasons given by the trial court in the impugned judgment. The conviction of the appellant is accordingly altered to Section 411 IPC.

5. Sentence order dated 12.09.2011 reveals that appellant-Manoj is the first time offender and has no past criminal history. He was on bail during trial and there are no allegations if he misused the liberty or indulged in any unlawful activity during that period. It was informed that Manoj was working as a driver in a private company. He has old parents to look after them. Considering the mitigating circumstances, the trial court took lenient view and awarded RI for three years with fine Rs. 5,000/- whereas Mohd. Rinku Ali was awarded RI for seven years with fine Rs. 25,000/-. Since the conviction of the appellant has been altered to Section 411 IPC and it is informed that he remained in custody for about two months before enlargement on bail, the sentence order is modified and the substantive sentence of the appellant is reduced to RI for one year with fine Rs. 1,000/- and failing to pay the fine to further undergo SI for one month. The appeal stands disposed of in the above terms. The appellant shall surrender before the Trial Court on 23.04.2014 to serve the remaining period of sentence. The Registry shall transmit the Trial Court records forthwith.