

(2018) 06 DEL CK 0002
In the Delhi High Court
Case No : CRL.A. 548 OF 2004

PRATAP SINGH

APPELLANT

Vs

STATE OF NCT OF DELHI

RESPONDENT

Date of Decision : 14-06-2018

Acts Referred:

Indian Penal Code, 1860 — Section 34, 392, 394, 397, 452
Code Of Criminal Procedure, 1973 — Section 482

Citation : (2018) 06 DEL CK 0002

Hon'ble Judges : ANU MALHOTRA

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. The appellant Shri Pratap Singh, s/o Shri Kundan Singh vide the impugned judgment dated 22.11.2003 was convicted for the commission of offences punishable under Section 452/392 r/w Section 34 and Section 394/397 Indian Penal Code, 1860 in relation to charges framed against him on 05.07.2002 to the effect that on 25.10.2001 at about 1:15 am at the H.No.107, Gali No.3, he along with his other associates named Ramesh and Avtar in furtherance of their common intention committed a robbery by committing criminal house trespass into the house of Chanan Singh after having made preparation to cause hurt to Chanan Singh and had in furtherance of their common intention with the said Ramesh and Avtar on the said date, time and place committed robbery and looted a sum of Rs.80,000/-, one thousand US dollars, 200 pounds along with four gold bangles, one gold kangan, one gold necklace, one gold chain, another gold chain, one gentâ??s bracelet, one baby bracelet, one pair of kante, one pair of earrings, one â??karaâ?? for baby, one â??ring for baby, one pair small earring, one small

chain, three gentâ??s wrists watches, two lady wrist watches out of the possession of Shri Chanan Singh and whilst committing the said robbery at the house of Chanan Singh caused injuries on the person of Chanan Singh with a razor which was a deadly weapon and thus committed the said offences punishable under Section 452 r/w 34, Section 392 r/w 34, Section 394 r/w 34 and Section 397 Indian Penal Code, 1860. Vide the impugned order on sentence dated 22.11.2003, the appellant was sentenced to undergo Rigorous Imprisonment for a period of three years and to pay a fine of Rs.500/- for the offence punishable under Section 452 Indian Penal Code, 1860 and in default of the payment of the said fine to under Rigorous Imprisonment for a period of two months. The convict was also sentenced to Rigorous Imprisonment for a period of three years and to pay a fine of Rs.500/- for the offence punishable under Section 392 Indian Penal Code, 1860 and in default of the payment of the said fine to under Rigorous Imprisonment for a period of two months and further sentenced to undergo Rigorous Imprisonment for five years and to pay a fine of Rs.1,000/- for the offence punishable under Section 394 Indian Penal Code, 1860 and in default of the payment of the said fine to under Rigorous Imprisonment for a period of four months and in addition to this sentence, he was also sentenced to under Rigorous Imprisonment for a period of seven years for the offence punishable under Section 397 Indian Penal Code, 1860. The appellant at the time of sentencing as indicated vide the impugned order on sentence dated 22.11.2003 was in judicial custody since 26.12.2001 and it was thus directed that all the substantive sentences would run concurrently and that the convict would get the benefit of the period of detention already undergone in terms of Section 428 Cr.PC, 1973.Â

2. During the course of the hearing in the present appeal as indicated as placed on record is an application CrI.M.B.687/2006 filed by the appellant seeking to be released on the period of detention already undergone submitting to the effect that he did not want to press this appeal against the conviction. However as on the date 12.07.2006 when the application was taken up for consideration, it was observed that the appellant had suffered imprisonment of only about five years, six months including remissions and the convict having been sentenced inter alia under Section 397 Indian Penal Code, 1860 for which the law prescribes a minimum imprisonment of seven

years, the application CrI.M.B.687/2006 was dismissed.Â

3. The matter was taken up for hearing in terms of proceedings dated 04.06.2018, 07.06.2018 and 08.06.2018. the Trial Court record has been

received in the e-form and print thereof has been placed on the record. The nominal roll was called for from the Superintendent Jail, Delhi which has

been received from the Superintendent of Prison, Central Jail No.4, Tihar, Delhi which indicates that the appellant has undergone the period of the

substantive sentence and has paid the fine at the jail gate and was thus released on 26.09.2007, he having been in custody since 26.12.2001 as per the

impugned order on sentence and having been in custody w.e.f. 28.12.2001 as an under trial as per the nominal roll received.Â

4. The facts alleged as per the prosecution version are set forth succinctly through the impugned judgment to the effect that:

â??prosecution case emanates from the facts that on the night intervening 24th and 25th December, 2001 Chanan Singh was sleeping at this

H.No.107, Gali No.3, Chand Nagar, New Delhi along with his wife. Couple was sleeping at the first floor portion of the house. Someone knocked at

the door of their room and Chanan Singh inquired as to who was there. It was 1.15 am at that time. Someone responded that he was his tenant and on

the said reply Chanan Singh opened the door of his room. He noted that three sikh boys were standing there, out of whom two boys were armed with

daggars and the third boy was armed with a razor. Chanan Singh tried to shut the door but they pushed the door inside and made their forcible entry.

Daggar borne boys had over-powered Chanan Singh and the boy who was having razor in his hands over powered Kirpal Kaur, wife of Chanan

Singh. He criminally intimidated Kirpal Kaur and peeled off her four gold bangles and a gold chain. One of the robber demanded keys of the Almirah

from Chanan Singh. Chanan Singh gave nod to his wife directing her to hand over keys. She handed over kesy to the boy who was having razor in his

hands. He opened the almirah and tried to check the goods kept inside. Chanan Singh resisted his acts and at that juncture razor borne boy wielded a

blow on right hand of Chanan Singh. He sustained injuries and become frightened. He was tightly caught by the other robbers. Razor borne boy had

removed Rs.80,000/- in cash, 1000 US dollars, 200 ponds sterling and jewellery from the said almirah, put it in a bag and handed over the same to his

associate who was having an obese body. The robbers started running from there. At that juncture Chanan Singh tried to apprehend the razor borne

boy. He wielded razor blows that on his right hand and right leg as a result of which Chanan Singh sustained injuries. Chanan Singh raised an alarm

for help and residents of the locality collected. He grappled with Razor borne boy and ultimately over-powered him. The other robbers managed their

escape good with the booty. Chanan Singh over powered razor borne boy with the help of the public persons whose name was later on revealed as

Pratap son of Shir Kundan Singh. Public had given beating to the said robber. Police was informed. Chanan Singh was removed to hospital for

treatment. Later on he reported the matter to the police which became bed rock of the case of prosecution. Partap was arrested and a razor was

recovered from a place near the stairs, handle and blade of which were broken in two pieces.Â

During the course of investigation Manjit Singh, Harnam Singh and Baljit Singh were also arrested by the police. No recovery could be effected in the

case. Investigation culminated into a charge sheet against the accused personsâ??.

5. The co-accused Mayank Singh, Harnam Singh and Baljit Singh were discharged vide order dated 05.07.2002 and the other two persons Ramesh

and Avtar Singh are indicated to have already escaped from the spot with the looted articles and after the commission of the offence, though they too

as per the testimony of PW-12 ASI Rajbir Singh were arrested from Indore Jail.Â

6. The prosecution is indicated to have examined 13 witnesses in the instant case named Dr. Sunil Kumar (PW-1), Shri Jasbir Singh (PW-2),

Constable Mukesh (PW-3), HC Darshan Kumar (PW-4), Constable Tarsem Lal (PW-5), Constable Sher Singh (PW-6), ASI Balwant Singh (PW-7),

Constable Om Prakash (PW-8), Constable Prahlad Singh (PW-9), ASI Budh Ram (PW-10), Constable OM Prakash (PW-11), Simple Imprisonment

Rajbir Singh (PW-12) and Chanan Singh (PW-13).Â

7. The testimonies of the prosecution witnesses examined are consistent qua the prosecution version in relation to material particulars and the

testimony of Chanan Singh, examined as PW13, is categorical to the effect that on 24.12.2001 he was sleeping in his house bearing No.107, Chand

Nagar, New Delhi along with his wife on the first floor portion of their house and

at about 1:15 in the night somebody knocked the door of the room and when he questioned as to who was there, the person standing outside the room responded that he was the tenant and someone was waiting for him, i.e. Chanan Singh in the street and Chanan Singh switched on the light and opened the room and three persons entered the room of whom one was the present appellant who had a razor in his hand at that time and his associates had daggers with them and that the appellant and his associates had muffled their faces with cloth pieces. As per the testimony of Shri Chanan Singh, he tried to close the door but the appellant and his associates entered inside the room forcibly and caught hold of him from one side by his hand as well as from his hair and from the other side one of his associates had over-powered him and the appellant ordered Chanan Singh's wife to peel off her gold bangles and gold chain and to give her ornaments to them and Chanan Singh asked the accused not to assault his wife as she was a diabetic and would die on account of the stab injuries. It was stated by Chanan Singh that the accused i.e. the appellant herein wielded razor blows on his right hand and caused injuries to his thumb and fingers and also inflicted injuries on his right leg, as a consequence of which the razor was broken into pieces and the blade was separated from his handle. Shri Chanan Singh further stated that the accused i.e. the appellant herein and his associates had snatched the gold ornaments from the person of his wife and demanded keys of almirah and his wife told them that the keys were lying on the shelf and the accused i.e. the appellant herein and his associates opened the almirah and removed a sum of Rs.80,000/- in cash and 1,000 US dollars and 200 pounds and lifted a bag from the almirah and put the looted articles into it and started running and at the time the noise of the commotion was heard by the neighbours and reached his wife. Inter alia it is stated by Shri Chanan Singh that the accused i.e. the appellant herein and his associates had shown the daggers to the neighbours and the associates of the accused i.e. the appellant herein managed to escape with their looted articles but the accused i.e. the appellant herein was apprehended at the spot and public persons had beaten him and the police was informed. SI Rajbir Singh reached there and he was sent to the hospital and first aid was given to him and he reported the matter to the police and the razor Ex.P1 and the handle Ex.P2 were identified by him as being those

in the hand of the appellant at the time of the assault and as being that which was used as the weapon of the assault by the appellant.Â

8. Dr. Sunil Kumar who has examined Shri Chanan Singh at 2:30 pm on 25.12.2001 testified to four incised would on the person of Shri Chanan Singh

which is corroborated by the MLC Ex.PW1/A and thus supports the statement made by Shri Chanan Singh.Â

9. Constable Sher Singh and ASI Balwant Singh examined as PW-6 and PW-7 respectively have corroborated the prosecution version in relation to

the production of the appellant by the public before ASI Balwant Singh and the factum that the appellant was in the custody of the public is also borne

out through the testimony of Constable Om Prakash examined as PW-8, which testimony is also reaffirmed through the testimony of ASI Rajbir Singh,

PW-12. The razor Ex.P-1 and its handle Ex.P2 were also recovered at the instance of the appellant. The looted articles in the instant case however

were not recovered.Â

10. The learned counsel for the appellant submitted that the testimonies of the prosecution witnesses were wholly discrepant and inconsistent in

relation to material particulars and that the looted articles were also not recovered and that the razor stated to have been utilized by the appellant was

recovered from the staircase of the house of Chanan Singh and that PW-2 Jasbir Singh, r/o H.No.95, Chand Nagar, New Delhi with the incident

having been taken place at House No.107, Gali No.3, Chand Nagar stated that though he had seen the injured Chanan Singh who had apprehended

one sikh gentlemen he could not say whether the accused i.e. the appellant herein was that person because that person who was being brought down,

had muffled his face, he however admitted and it was submitted on behalf of the appellant that the appellant had been falsely implicated in the instant

case.

11. It was thus submitted on behalf of the appellant that PW-7 stated that one public person Jasbir Singh produced the accused i.e. the appellant

herein before ASI Balwant Singh and that the same is falsified through the testimony of PW-2 himself who had not identified the appellant stating that

his face was muffled and it was further submitted on behalf of the appellant that the cross examination of PW-8 Constable Om Prakash was

categorical to the effect that none of the 40 persons in the crowd was an eye

witness and none of them stated that they had over-powered the appellant whilst committing the robbery. It was submitted on behalf of the appellant that the statement of Jasbir Singh was recorded at 2:30/3:00 pm as testified by Constable Om Prakash in his cross examination in relation to an incident which was stated to have been taken place at 1:15 pm which also indicated the late recording of the statement of Jasbir Singh and falsified the prosecution version. Inter alia it was submitted on behalf of the appellant that the signatures of Jasbir Singh were also not obtained on the disclosure statement of the appellant which indicated that Jasbir Singh was not present.

12. On behalf of the State the contention raised on behalf of the appellant were refuted submitting to the effect that the testimonies of the prosecution witnesses were consistent in relation to all material particulars and the testimony of PW-13 Chanan Singh, the injured was categorically in consonance with the averments qua the incident. As regards the identity of the appellant, it is significant that PW-13 Chanan Singh himself too stated that the accused and his associates had muffled their face with cloth pieces when they had come into his house but as stated by him through his cross examination that the offence was committed by the accused i.e. the appellant herein and his associates within six to seven minutes and when the grappling started, the face of the accused i.e. the appellant herein and his associates had become unmuffled. He also stated categorically that the accused was first of all over-powered by Mr. Chanan Singh himself and immediately the public persons had beaten him. Shri Chanan Singh PW-13 identified the razor Ex.P1 and the handle Ex.P2 which was in the hand of the appellant and that were used as the weapon of the offence to commit the looting of the articles belonging to him and his wife along with his other associates.

13. Significantly, SI Rajbir Singh, the IO of the case has also stated that the statement of Jasbir Singh was recorded by him after 6 am though Jasbir Singh narrated the incident at 2:10 am as he had anticipated that ASI Balwant Singh would be recording the statement.

14. Significantly as testified by the accused i.e. the appellant herein had sustained injuries as caused by the public persons which is also so borne out through the medical examination of the appellant conducted.

15. Taking the totality of the circumstances of the case into account, the testimony of the Chanan Singh which is consistent in relation to all material particulars and which is corroborated by the testimony of ASI Balwant Singh, Constable Sher Singh, Constable Om Prakash and SI Rajbir Singh, it is held that the charges of allegations levelled against the appellant for the commission of the offences punishable under Section 452/392 r/w 34 and Section 394/397 Indian Penal Code, 1860, have been rightly held to have been proved against the appellant vide the impugned judgment dated 20.11.2003 and in the circumstances of the case where the appellant along with his associates criminally intimidated with fear of instant death, caught and looted golden bangles and gold chain from a person Smt. Kripal Kaur, wife of Chanan Singh and looted cash of Rs.80,000/-, 1,000 US dollars and 200 pounds from the almirah of Chanan Singh and caused injuries with the razor on the person of Chanan Singh, with the looted articles having been taken away by the associates of the appellant, with the appellant having been armed with a razor whilst his associates were armed with daggers and they entered into house of Shri Chanan Singh claiming that they were his tenants and then made a forcible entry into the house of Chanan Singh, it is apparent that there is no infirmity in the impugned order on sentence dated 22.11.2003 also which lays down that there was no leniency called for in the matter. As already observed hereinabove, the appellant has already undergone the sentence imposed vide the impugned order on sentence dated 22.11.2003 in relation to FIR No.808/2001 in Sessions Case No.31/2002.Â

16. In the circumstances, the appeal CRL.A. 548/2004 is dismissed.

17. Copy of this judgment be sent to the Superintendent Jail, Delhi.