

(2011) 04 DEL CK 0137

In the Delhi High Court

Case No : Criminal Appeal No. 117 of 2000

Radhey Shayam

APPELLANT

Vs

The State (N.C.T. of Delhi)

RESPONDENT

Date of Decision : 27-04-2011

Acts Referred:

Arms Act, 1959 — Section 25, 27

Penal Code, 1860 (IPC) — Section 34, 392, 397, 398

Citation : (2011) 04 DEL CK 0137

Hon'ble Judges : Mukta Gupta, J

Bench : Single Bench

Advocate : Lakshita Sethi, for A.J. Bhambhani, for the Appellant; Manoj Ohri, APP, for the Respondent

Final Decision : Dismissed

Judgement

Mukta Gupta, J.—Briefly the prosecution case is that on 1st October, 1994, at about 11 pm, the Appellant along with Bharat, Katik and Laxmi Narain @ Pappu committed robbery upon Gauri Shankar and Dharam Pal of Rs. 200/- and Rs. 100/- respectively on the point of knife. The Appellant and two others i.e., Bharat and Katik were apprehended from the spot immediately after the incident by the complainant and his neighbors who took them to the nearby police post and handed over them over to the police. Co-accused Laxmi Narain managed to escape and on the disclosure statement made by the Appellant vide Ex.PW3/G and the pointing out of the complainant, Gauri Shankar was arrested on 14.10.1994. As per the complainant Gauri Shankar PW3, the Appellant put knife and the other two accused removed Rs. 200/- from his pocket and Rs. 100/- from that of Dharam Pal. On the statement of the said Gauri Shankar, FIR No. 322/94 u/s 397/392/34 IPC read with Section 25/27 Arms Act was registered at PS Ashok Vihar. During the course of trial, Bharat and Katik absconded and were thus declared proclaimed offenders. After recording of the prosecution evidence and statement of the accused, the Appellant was convicted for offences punishable under Sections 397/392/34 IPC and 25/27 Arms Act and was

awarded Rigorous Imprisonment for a period of seven years for Section 397/34; five years for Section 392 and two years for Section 25/27 Arms Act respectively. Co-accused Laxmi Narain was convicted for offences punishable u/s 392/34 IPC and was awarded Rigorous Imprisonment for a period of five years. This judgment for conviction dated 1st July, 1999 and the order on sentence dated 9th July, 1999 in Sessions Case No. 56/95 is impugned in the present appeal by the Appellant. During the pendency of the present appeal, sentence of the Appellant was suspended vide order dated 16th November, 2000. However, when the appeal came up for hearing neither the Appellant nor his counsel was present and hence warrants were issued against the Appellant. Despite bail able warrants being issued repeatedly the same could not be executed and thus non-bail able warrants were issued and finally the Appellant was taken into custody. The Appellant is presently in judicial custody.

2. Learned Amicus Curiae appearing for the Appellant states that the version of the witnesses PW1, PW2 and PW3, who is also the complainant in the case is highly improbable. Though PW3, has alleged that the Appellant put knife on him, but he has not alleged that the Appellant removed Rs. 200/- from his pocket and Rs. 100/- from the pocket of Dharam Pal. In the absence of the necessary ingredients of robbery being attracted no offence can be said to be committed by the Appellant by merely showing knife. The other alleged victim i.e., Dharam Pal has not appeared in the witness box. The witnesses have admitted that it was dark at the spot and thus they could not identify the Appellant as the person who had showed the knife. Six currency notes i.e., four recovered from one accused and two from another were all sealed in a parcel. Neither the number of the recovered currency notes was noted nor any mark on the said notes was made. Moreover, PW3 has also not deposed anything in regard to any special mark of identification on the currency notes which were allegedly robbed from him. PW2 says that all the persons who went to apprehend the Appellant and his co-accused were armed with lathis whereas PW1 says that only two persons i.e. Gauri Shankar and Som Pal were armed with lathis/ dandas. It is not possible that a person who had allegedly robbed at the point of knife was easily threatened by the lathis and permitted PW3 and his neighbors to snatch the knife from him. All the witnesses i.e., PW1, PW2 and PW4 are the neighbors of PW3 and thus interested witnesses. In the absence of proof of robbery or recovery of robbed articles, the provisions of Section 397 IPC is not attracted. Reliance is placed on Chinnadurai Vs. State of Tamil Nadu, . In the alternative it is prayed that the sentence of the Appellant be modified to the period of imprisonment already undergone.

3. Per contra, learned APP for the State submits that the incident took place at about 8 P.M. on 1st October, 1994 and the DD No. 32 recorded vide Ex. PW6/C at about 11:45 P.M. itself speaks about the incident and the factor of three persons having been apprehended on the spot with knife. This contemporaneous document, thus corroborates the version of PW3, the complainant and his neighbors PW1, PW2 and PW4. It is contended that to prove an offence u/s 397

IPC it is not essential that the person who showed weapon should himself commit robbery. When two or more person acts in furtherance of common intention all acts of one are attributable to the other persons as well. Thus, there is no infirmity in the judgment of the learned trial court and the appeal be dismissed being devoid of any merit.

4. I have heard learned Counsel for the parties and perused the record. PW3 Gauri Shankar is the victim and complainant of the above mentioned FIR. He has deposed that on 1st October, 1994, he had gone to ease himself near Premwari Pul and Dharam Pal was accompanying him. After they reached the Premwari pul, at about 9:30 P.M. four persons surrounded them. The Appellant herein was having knife in his hand and he put the same on the abdomen of PW3 where after one of the co-accused named Pappu took his search and removed Rs. 200/- from the back pocket of his pant, co-accused Bharat removed Rs. 100/- from the pocket of Dharam Pal. The Appellant and his co-accused threatened them to rush from there. Complainant and Dharampal rushed to their jhuggis and brought back three boys Mahesh PW1, Bhagwan Dass PW2 and Sompal PW4 with sticks to help them. All of them tried to apprehend the accused persons and managed to apprehend three of them i.e., the Appellant Radhey Shyam, Bharat and Katik. However, the fourth person i.e., Laxmi Narain managed to escape. Knife was recovered from Radhey Shyam. Thereafter, the accused were taken to the nearby police post. PW3 got recorded his statement vide Ex. PW3/A and thereafter sketch of the knife was also prepared and memo of recovery of Rs. 300/- i.e. Rs. 200/- from Katik and Rs. 100/- from another accused whose name he did not recollect, were prepared. This witness was also cross examined by the counsel for the Appellant on some minor aspects wherein he clarified that after putting knife, the Appellant exhorted to take out whatever was with them and the disclosure memo was recorded in his presence which was duly signed by him besides the personal search memos, the recovery memos and the sketch of knife. Despite elaborate cross examination, nothing material could be elicited from this witness.

5. The testimony of PW3 is corroborated by the testimonies of PW1, PW2 and PW4 all of whom have stated that they had gone with PW3 and Dharam Pal for chasing the accused with lathis/ Dandas in their hands while they had moved slightly ahead, Gauri Shankar PW3 identified them. The Appellant was having a Buttoned knife in his hand. PW3 took away the knife from the Appellant. They also identified memos prepared in their presence. In view of the overwhelming testimony of these witnesses which is duly corroborated by contemporaneous documents Ex. PW6/C i.e. DD No. 32 recorded at the Police Station Ashok Vihar at 11:45 P.M. i.e. soon after the incident, I find no reason to disbelieve them. The minor contradiction as to the number of persons who were armed with lathis/ Dandas or that the currency notes were tied together in one parcel does not discredit the entire prosecution case.

6. There is no merit in the contention of learned Counsel that since there is no

recovery from the Appellant, he cannot be convicted for an offence punishable u/s 397 IPC. Reliance placed by the learned Counsel for the Appellant on Chinnadurai (Supra), is misconceived as the Court in that case was dealing with a situation where the allegation was that the accused trespassed the house and ransacked the same. Though ransacking appeared to be as if robbery was to be committed but no robbery was committed. It is in this reference the Court held that the provision of Section 398 IPC was not applicable.

7. PW9 HC Bahadur Singh was posted at the police post Premwari Pul where the complainant had brought the Appellant along with his co-accused. He has also deposed on similar lines as PW3. PW9 had informed PW10 ASI Suresh Sharma who reached at the spot and conducted the further proceedings, PW10 has also corroborated the version of the PW3 in regard to the recovery of the robbed money from the co-accused and a Buttoned knife from the Appellant.

8. In the present case, the Appellant was in possession of the buttoned knife which was recovered from his hand immediately after the incident. During the commission of offence, money was looted from both the Complainant and his friend Dharam Pal. Thus, offence punishable u/s 397 IPC is clearly established. The Appellant had used the knife and there is sufficient evidence placed on record on this count. Thus, I find no reason to disagree with the learned Trial Court. I also do not find any merit in the contention of learned Counsel that the sentence of imprisonment be reduced to the period already undergone. For an offence punishable u/s 397 IPC the minimum prescribed sentence is an imprisonment for seven years which has been awarded to the Appellant. The sentence of the Appellant cannot be reduced any further.

9. The appeal is accordingly dismissed maintaining the conviction and the sentence. The Appellant is already in custody. He would thus undergo the remaining sentence.