
(2013) 03 DEL CK 0097
In the Delhi High Court
Case No : Crl. A. 537/2012

Rajender Yadav

APPELLANT

Vs

State of NCT of Delhi

RESPONDENT

Date of Decision : 07-03-2013

Acts Referred:

Citation : (2013) 03 DEL CK 0097

Hon'ble Judges : G.P. Mittal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

G.P. Mittal, J.—These two Appeals are directed against a judgment dated 25.11.2011 and an order on sentence dated 22.12.201 passed by the learned Additional Sessions Judge ("ASJ") whereby the Appellants were held guilty for the offences punishable under Sections 392 read with Sections 120-B, 397 and 411 IPC and were sentenced to undergo Rigorous Imprisonment for six months each with fine of Rs. 2,000/- each and in default of payment of fine to further undergo simple imprisonment for one month each for offence u/s 120-B; and RI for three years each with fine of Rs. 2,000/- each and in default of payment of fine to further undergo SI for one month for offence u/s 392 /120-B IPC. They were further directed to undergo RI for seven years each u/s 397 IPC; and RI for one year each u/s 411 IPC. On 19.11.2009 on receipt of DD No. 31-A regarding commission of a robbery in house no. F-3/13, Vasant Vihar, SI Ajit Pal Tomar (IO) along with Constable Ramniwas reached the earlier said house. He met Smt. Suman Ratra, the occupant of the house. She informed the IO that at about 9:30 P.M. she was all alone on the first floor of the house. Her servant Mahesh and maidservant Sunita were carrying out some work on the ground floor. Suddenly two slim bodied boys aged 35-40 years and 25-30 years; the younger one being of wheatish complexion and the elder one being of dark complexion, came there. Both of them gave her beatings with fists and kicks. Younger one showed her a knife. They asked her about the money kept in the house. She handed over a

sum of about Rs. 3.50 lacs kept in the dressing room. Both of them (the culprits) searched the almirah and whatever valuables they could lay hands on were removed. She informed that they also took away her red colour wallet, credit cards, some documents, some silver idols, Saaligram made of stone, etc. etc.

2. She also informed the IO that her servants Mahesh and Sunita who came upstairs after the culprits escaped, informed her that one boy (aged 30 years), who was armed with a knife had confined them in the kitchen on the ground floor. The knife used by the culprit (Appellant Bhagirath) on the ground floor was recovered from the driveway. The complainant raised suspicion on her servant Mahesh. Mahesh was taken to the Police Station. On interrogation Mahesh admitted of having planned the robbery with his friends Manoj, Rajender and Bhagirath. Accused Manoj and Appellants Rajender and Bhagirath were apprehended from Majnu ka Tila where they used to reside. Their disclosure statements led to the recovery of a sum of Rs. 3.63 lacs, one gold chain and Tulsi, two credit cards, one Sony Handy Cam with battery charger, one Sigma Tel mobile, one lady purse etc. Appellant Rajender got recovered a knife from the bushes near the Complainant's house at Munirka Marg. The Appellants and co-accused Manoj were put to Test Identification Proceeding (TIP) which they refused to join.

3. During the course of investigation the mobile phones of the Appellants and co-accused Mahesh were seized. It was found that the co-accused Manoj Yadav was in constant touch with co-accused Mahesh Yadav, the servant employed at the house of the Complainant on the date of the incident, before and after the commission of the robbery.

4. In order to prove its case, the prosecution examined 18 witnesses including Complainant Suman Ratra (PW-5), maidservant Sunita (PW-6) an eye witness to the incident, Constable Mahesh Kumar (PW-16) a witness to the arrest and recovery of the stolen property at the instance of the Appellants and co-accused Manoj and SI Ajit Pal Tomar (PW-17) IO of the case.

5. On closing of the prosecution evidence, the Appellants were examined u/s 313 of the Code of Criminal Procedure (Cr.P.C.). The Appellants denied that they were involved in the robbery or that they got recovered any stolen property in pursuance of the disclosure statements made by them. Appellant Bhagirath admitted that he had refused to join the TIP. The explanation given by him was that he was shown to the witnesses in the PS after his arrest. He, however, could not give any explanation for his false implication. Appellant Rajender showed his ignorance if he had refused to take part in the TIP. He also failed to give any explanation as to why he was falsely implicated in the case.

6. On appreciation of evidence, the learned ASJ found that the Appellants and the co-accused had been duly identified by the witnesses; the recovery of the knife and use thereof in commission of the robbery was proved against Appellants Bhagirath and Rajender. The learned ASJ opined that the conspiracy

to commit the offence of robbery was established on account of arrest of the Appellants and co-accused Manoj, in pursuance of the disclosure statement given by co-accused Mahesh, leading to the recovery of the stolen property, and call details showing that accused Manoj Yadav and Mahesh were in constant touch with each other before and after the commission of the robbery. The Appellants were convicted and sentenced as stated earlier.

7. I have heard Ms. Anita Abraham and Mr. Aditya Wadhwa, learned counsel for the Appellants and Ms. Rajdipa Behura, learned APP for the State and have perused the record.

8. It is urged by the learned counsel for the Appellants that there are grave doubts in the case of the prosecution on account of discrepancies and contradictions in the testimony of the two alleged witnesses of the occurrence of robbery and the witnesses of the recovery in pursuance of the purported disclosure statements made by the police. In the alternative, it is urged that use of a deadly weapon by the Appellants in commission of the robbery in any case is not established in as much as the recovery of the knife at the instance of Appellant Rajender is doubtful. No knife was recovered from or at the instance of Appellant Bhagirath. The knife allegedly recovered from the driveway was not even shown to Sunita PW-6 to confirm whether it was the same knife. It is contended that unless the prosecution established that the knives used were capable of causing death, the Appellants could not have been convicted u/s 397 IPC.

9. On the other hand, learned APP for the State argues that it was an open and shut case in as much as when suspicion was raised against the co-accused Mahesh, he was interrogated and he admitted his guilt and disclosed about the conspiracy to commit the robbery and involvement of the Appellants and co-accused Manoj. The police was able to apprehend the Appellants and co-accused Manoj on the very day and recovered the entire stolen property including cash of Rs. 3.63 lacs. The learned APP states that the Appellants have not imputed any motive to the Complainant or even to the IO to implicate them in the case falsely.

10. The following contradictions are pointed out by the learned counsel for the Appellants:-

(a) In her examination-in-chief Suman Ratra testified that the two culprits who came to her room were having their faces muffled. If it was so, she could not have possibly identified the culprits.

(b) Sunita (PW-6) the maidservant was also unable to identify Appellant Rajender and co-accused Manoj as she admitted to having only seen their back.

(c) Kanta Prasad (PW-9) was unable to say if co-accused Mahesh was with the police when they visited his jhuggi and apprehended the Appellants and co-accused Manoj. He (PW-9) was even unable to identify Bhagirath.

(d) PW-9 gave a big dent to the prosecution version when he stated that he had

not seen the articles recovered, if any, at the spot. The recovered goods were seen by him only in the Police Station.

11. In my view, the contradictions are not so material which may go to the root of the case. Rather, there is clinching evidence to establish the Appellants identity and their involvement in committing the robbery.

12. It is true that in her examination-in-chief PW-5 had stated that the two culprits were having their faces muffled. She gave the sequence of events in detail. She deposed that the culprits pulled her hair and gave beatings to her. They asked for money on which she handed them over a sum of Rs. 3.50 lakhs lying in a packet in another locked room. She requested the accused persons to go away but they refused. They again started beating her and tied her with the handle of the almirah. They opened all the almirahs of the room and removed a red colour wallet, camera, some more cash, credit cards, etc. etc. Thus, the Appellant Rajender and co-accused Manoj were present with PW-5 for sufficient time. PW-5 in his cross-examination pointed out that it was Appellant Rajender who was holding a knife and co-accused Manoj was the other person, whose one hand was amputated.

13. PW-5's testimony was not challenged in cross-examination on the ground that she could not identify the culprits as they were having their faces muffled. In the absence of any cross-examination PW-5's statement that the Appellant and co-accused were having their faces muffled when they entered the room would not be sufficient to hold that she could not have identified the culprits particularly in view of the subsequent events and her encounter with the two culprits who were identified as Appellant Rajender and accused Manoj. All the same, Appellant had refused to join the TIP. Thus, identification of the Appellant along with his refusal to participate in the TIP was sufficient to establish the identity of Appellant Rajender.

14. Appellant Rajender's non identification by PW-6 Sunita on the ground that she had just seen the back of the two culprits does not in any way affect the case of the prosecution rather strengthens the prosecution case that PW-6's testimony was natural and without any embellishment.

15. As far as Appellant Bhagirath is concerned since he had used a knife against her she very much identified him in the Court. Appellant Bhagirath also refused to join the TIP without any reasonable ground. Moreover, TIP is essential only where the witness just had a glimpse of the culprits. As stated earlier in the instant case the Appellants were in close proximity of the witnesses for a sufficiently long time. The incident took place inside the house where the lights were on. Thus, PW-5's testimony that the culprits entered the house with muffled faces is not of much consequence.

16. Similarly, the plea raised on behalf of the Appellants that PW-9 showed his ignorance about the presence of co-accused Mahesh with the police when they reached his jhuggi is not very material. The power of observation, retention and

recapitulation differs from person to person. He was sure about the identity of the Appellant Rajender and Bhagirath who had taken his jhuggi on rent. Admittedly, the report regarding the incident was lodged with the police very promptly. The details of all the articles including cash of Rs. 3.50 lacs was given in the statement Ex. PW-5/A made by PW-5 on the basis of which the FIR was recorded. Both the Appellants were arrested in pursuance of the disclosure of the conspiracy by accused Mahesh who was employed as a domestic help with PW-5. There was no possibility of planting the recovered goods on the Appellants and thus PW-9's ignorance about the presence of co-accused Mahesh at the time of arrest of the two Appellants and co-accused Manoj and his testimony that he saw the recovered goods in the Police Station does not in any way weaken the prosecution's case.

17. Learned counsels for the Appellants laid much stress on alleged use of knife in commission of the robbery and whether the knives used were deadly weapons. It is urged by the learned counsels for the Appellants that no evidence has been produced by the prosecution to prove that the knife allegedly used by them and recovered from the driveway (allegedly used by Appellant Bhagirath) and from the bushes near the house at Munirka Marg at the instance of Appellant Rajender were not proved to be deadly weapons as no evidence was produced by the prosecution that by virtue of their shape and size these could cause death. Relying on the judgment of the Coordinate Bench of this Court in *Balik Ram Vs. The State*, the learned counsels for the Appellants argue that they cannot be convicted for the offence punishable u/s 397 IPC.

18. From the testimony of PW-5 it is established that Appellant Rajender used a knife at the time of commission of the robbery. Similarly, from the testimony of PW-6 it is established that Appellant Bhagirath used a knife in commission of the robbery.

19. In *Shri Phool Kumar Vs. Delhi Administration*, it was held that if a person carries a deadly weapon open to the view of the victims sufficient to frighten or terrorize them, the case would fall u/s 397 IPC.

20. It is true that in *Balak Ram* a Coordinate Bench of this Court laid down that each and every knife will not fall within the purview of "deadly weapon". It was observed that it would be a question of fact to be proved by the prosecution if the knife used by the accused was a deadly one.

21. The view taken in *Balak Ram* was reiterated by a learned Single Judge of this Court in *Adesh Kumar Vs. State*, . The judgment in *Balak Ram* was doubted by a Coordinate Bench of this Court in *Salim Vs. State (Delhi Administration)*, . It was held that a knife can cut, pierce, and it can be deadly, therefore, to say that a knife to be a deadly weapon should be of a particular size, would not be a correct statement. The relevant portion of the report is extracted hereunder:-

... ..The Concise Oxford Dictionary defines the word "weapon" as "material thing designed or used or usable as an instrument for inflicting-bodily harm, e.g.

gun, bomb, rifle, sword, spear, stick hammer, poker, horn, claw". The word "deadly", according to this Dictionary, means "causing fatal injury". Also, according to this Dictionary, "knife" means "blade with sharpened longitudinal edge fixed in handle either rigidly or with hinge used as cutting instrument or as weapon". As per Webster's Third New International Dictionary a "knife" is "a simple instrument used for cutting consisting of a sharp-edged usually steel blade provided with a handle". Longman Dictionary of Contemporary English defines "knife" as "a blade fixed in a handle used for cutting as a tool or weapon". These definitions in various dictionaries can be multiplied. We all understand what a knife means and to categorise it or to fix its size for it to be a deadly weapon may not be appropriate. A knife has also been described as a pocket knife, pen knife, table knife, kitchen knife, etc. It cannot be denied that a knife can be used as a weapon of offence. It can cut, it can pierce, it can be deadly. To say that a knife to be a deadly weapon should be of a particular size would perhaps be not a correct statement?

22. Another Coordinate Bench of this Court in Lal Singh & Anr. v. State NCT of Delhi CrI. A. 236-37/2006 decided on 18.11.009 referred to State of Maharashtra Vs. Vinayak Tukaram Utekar and another, and held that any knife irrespective of its size will be a deadly weapon.

23. The view taken by the Coordinate Bench of this Court in Salim and in Phool Kumar that knife of any size will be a deadly weapon is in consonance with the report of the Supreme Court in Ashfaq Vs. State (Govt. of NCT of Delhi), where it was reiterated that if the offender is armed with a deadly weapon, it would come within the purview of use of a deadly weapon within the meaning of Section 397 IPC and it is not required to be shown that it was actually used for cutting, stabbing, shooting, etc. The Supreme Court had held that a knife is equally a deadly weapon for the purpose of Section 397 IPC.

24. The purpose of making a robbery or an attempt of robbery where the offender is armed with a deadly weapon punishable with a harsher punishment of not less than 7 years is from the stand point of the victim. In committing robbery the offender puts a knife at the neck or at the back of the victim. The victim may not actually see the size or sharpness of the knife. At the same time, he would be equally terrorized irrespective of whether the knife is of 3-4 inches or 7-8 inches in length or of its breadth etc. Thus, the judgment of this Court in Salim and Lal Singh and of the Supreme Court in Ashfaq will clothe every knife to be a deadly weapon for the purpose of Section 397 IPC.

25. In this view, the recovery of the knife at the instance of Appellant Rajender from the bushes or recovery of the knife from the driveway which was purportedly used by Appellant Bhagirath is not very material.

26. But all the same the recovery of knife from the bushes at Munirka Marg at the instance of Appellant Rajender is established. The size of this knife is about 23 cms. in all having a blade of 13.2 cms. If used as a weapon of offence, the

knife (sketch Ex. PW-5/C) can produce death. The other knife recovered from the driveway was allegedly used by Appellant Bhagirath. Its sketch Ex. PW 10/D shows its length as 25.4 cms and it has got a blade of 14.5 cms. Thus, if such a knife is used to cause injuries on the vital parts of the body of a person, it can definitely produce death. Thus, the contention raised on behalf of the Appellant that the knife as such cannot be said to be a deadly weapon or that the prosecution has failed to establish that the knives used in the instant case were deadly weapons is devoid of any merit.

27. The Appellants were awarded substantive sentence of rigorous imprisonment for seven years which is the minimum provided for the offence punishable u/s 397 IPC.

28. The Appeals, therefore, have to fail; the same are accordingly dismissed. Pending Applications stand disposed of.