

(2009) 04 DEL CK 0350

In the Delhi High Court

Case No : Criminal Appeal No. 403 of 2006

Vinod @ Raju

APPELLANT

Vs

The State (NCT of Delhi)

RESPONDENT

Date of Decision : 08-04-2009

Acts Referred:

Arms Act, 1959 — Section 25, 27

Criminal Procedure Code, 1973 (CrPC) — Section 313

Penal Code, 1860 (IPC) — Section 34, 392, 394, 397

Citation : (2009) 04 DEL CK 0350

Hon'ble Judges : Sunil Gaur, J

Bench : Single Bench

Advocate : Purnima Sethi, Amicus Curiae, for the Appellant; Amit Sharma, Additional Public Prosecutor, for the Respondent

Judgement

Sunil Gaur, J.—The challenge in this appeal to the verdict of guilt against appellant and his co-accused of committing armed day light robbery in a running bus, on 7th January, 2002, at about 3:40 p.m. Vinod Kumar Sharma was travelling in abovesaid bus, bearing No. DL 1PA 1176 from Raja Garden and when the bus reached the electric crematorium bus stop, appellant/accused Vinod @ Raju, alongwith his three co-accused, boarded the said bus from rear gate and while one of his co-accused Ajay removed a DTC Bus Pass No. 524777 and Rupees five hundred in the denomination of Rupees one hundred each, from the front shirt pocket of the Complainant Vinod Kumar Sharma (PW-1), appellant/accused - Vinod @ Raju herein, along with his another co-accused placed knives on his side and threatened him not to raise alarm or else the knife would pass through his body. The fourth co-accused gave fist blows on his stomach and waist. However, Complainant Vinod Kumar Sharma, managed to reach to the driver, and on finding the traffic police staff and a PCR Van standing on the road side, raised alarm and asked the driver to stop the bus near police. The traffic police as well as police from the PCR van boarded the bus and apprehended the three miscreants while the fourth managed to escape. On being searched, one

buttondar knife each was recovered from the possession of appellant/accused Vinod @ Raju and his co-accused. On completion of necessary proceedings, police filed the charge-sheet in the court against Appellant and his co-accused who claimed trial. Charges u/s 392/394/397/34 of the IPC were framed against the appellant/accused Vinod @ Raju. Separate case u/s 25 and 27 of the Arms Act was also registered against the appellant/accused herein.

2. During the trial, the Prosecution, in support of its case, had got examined eighteen witnesses in all. The prime witness in this case is Complainant Vinod Kumar Sharma (PW-1) and Satbir Singh (PW-4), who is the Conductor of the bus. Various police officials including Inspector Dharam Chand (PW-9), Constable Ashok Kumar (PW-10), Constable Najirullah (PW-11), Head Constable Dharamvir Singh (PW-12), Sub Inspector Gyanender Singh (PW-13), have been examined to prove their role in investigation of this case. Sub Inspector Niranjana Singh (PW-14) is the Investigating Officer of this case.

3. In his statement recorded u/s 313 of the Cr.P.C., the appellant/accused Vinod @ Raju, did not plead guilty and submitted that since he had a quarrel with a scooterist, he was taken to police station Kotwali, where the scooterist was allowed to go but he has been falsely implicated in this case. He also stated that he was not travelling in the bus, as alleged and that he has been falsely implicated in this case.

4. Vide impugned judgment of 1st July, 2005 and order on sentence of 12th July, 2005, learned Additional Sessions Judge has convicted and sentenced the appellant/accused Vinod @ Raju for the offence u/s 392 and 394 of the IPC, to RI for seven years with fine of Rupees one thousand and in default of payment of fine, to undergo SI for one year and for the offence u/s 397 of the IPC, he has been sentenced to RI for seven years. He has also been sentenced to RI for one year for the offence u/s 25 of the Arms Act. All these sentences are to run concurrently.

5. In this appeal, the aforesaid conviction and sentence is assailed by learned Counsel for Appellant by contending that the prosecution case is inconsistent and unreliable and the trial court has illegally accepted the prosecution story to convict and sentence the Appellant. It is pointed out that the complainant (PW-1) stands contradicted by the conductor (PW-4) of the bus as he has stated in his evidence that the knives were recovered by the police from the floor of the bus and it is highlighted by the defence that no knife was recovered from the person of the Appellant/accused. It is also pointed out that the driver of the bus in which this incident took place, has not been cited as a witness and Appellant was apprehended by the police due to quarrel with a scooterist and he has been falsely implicated in this case. It is pointed out that it does not stand conclusively established that any knife was recovered from the person of the Appellant and the evidence of the Complainant (PW-1) does not merit acceptance as he is unable to remember as to what was recovered in the personal search of the Appellant. Thus, it is submitted that Appellant is innocent and he deserves to be

given benefit of doubt. Nothing else has been urged on behalf of the Appellant/accused.

6. Learned Additional Public Prosecutor for the Respondent - State submits that the hostility of the bus conductor (PW-4) regarding the identity of the Appellant/accused is of no avail as there is evidence of the traffic police (PW-13) regarding the apprehension of the Appellant/accused from inside the bus and the evidence of Sub-Inspector Jitender Singh (PW-15) and of Sub-Inspector Nirranjan Singh (PW-14), which sufficiently proves the recovery of knife from the Appellant who was apprehended at the spot. It is submitted that there is clinching evidence of the Complainant (PW-1) regarding Appellant putting knife on the person of the Complainant (PW-1) at the time of this incident to facilitate the robbery and therefore, the conviction and the sentence imposed upon the Appellant is fully justified and there is no merit in this appeal.

7. After having gone through the evidence of the Complainant (PW-1), I find that he has clearly stated in his evidence that at the time of commission of robbery in the running bus, Appellant had put a knife on his person and the robbery took place and after a while, when the bus stopped near the traffic police, Complainant (PW-1) raised alarm and the police came inside the bus and the Appellant with his co-accused were apprehended.

8. To dislodge the testimony of the Complainant (PW-1), defence asserts that he is not able to remember about the articles recovered in the personal search of the Appellant. This incident is of January, 2002 and the evidence of Complainant (PW-1) was recorded in January, 2005 and due to the time lapse, it is natural that such minor details cannot be recapitulated. In any case, the weapon of offence was not to be recovered in the personal search. It was already recovered at the time of apprehension of the Appellant/accused from the bus, wherein this incident took place. Complainant (PW-1) has categorically stated in his evidence that one knife was recovered from the Appellant and the other knife was recovered from his co-accused Ajay and those knives Ex. P-4 and P-5 were taken into possession at the spot. The evidence of the Complainant (PW-1) remains unshaken in the cross-examination by the defence. To my mind, the evidence of the conductor (PW-4) which is at variance with the prosecution case regarding the graphic details of the incident, is not at all sufficient to undermine the otherwise reliable testimony of the Complainant (PW-1) as his testimony stands duly corroborated from the evidence of the police officials PW-8, PW-9, PW-13 to PW-15. The plea of Appellant/accused of false implication due to a quarrel with a scooterist at the spot does not inspire confidence as the Appellant has not disclosed as to why the Complainant (PW-1) or the police would falsely implicate him in this case. There is no cross-examination of the Investigating Officer of this case as to why he did not get examined the driver of the bus as a witness in this case. Anyhow, the evidence of the driver of the bus would not have been of any help either to the case of the prosecution or to the defence, as this incident took place while the bus was moving and the bus driver could not have possibly

witnessed this incident. Furthermore, no one had stopped the Appellant/accused to have got examined the bus driver in his defence.

9. Upon taking an overall view of the entire evidence on record, I find that the trial court has rightly convicted and sentenced the Appellant and there is no illegality or infirmity in the impugned judgment and the order on sentence. Rather, evidence on record justifies the conviction and the sentence imposed upon the appellant by the trial court.

10. This appeal lacks merit and deserves to be dismissed and is accordingly dismissed. Appellant is in custody. He be apprised of dismissal of this appeal through the concerned jail superintendent.

11. This appeal is accordingly disposed of.