

“Rajesh Kumar, complainant was working at Greater Kailash Part-I, ‘Morning Store’ and used to get salary of Rs. 2800/- on 5th of every month. On 5th March, 2001, he received salary as usual from the shop owner and at 8 p.m. was preparing to go to his home. His friend Chandra Prakash alongwith accused Anil came to him at the shop around 8 p.m. Finding that his friend has come with another person he served them with coke. His friend Chandra Prakash told him to accompany them to their house but he refused to accompany them then they told him that they would go to his house. An auto rickshaw was hired by the complainant and all three sat in three wheeler and proceeded towards complainant’s house at Saket. When the auto rickshaw reached at a deserted place between Sheikh Sarai and Saket there was darkness on that way, Chandra Prakash and accused Anil told Rajesh that they wanted to ease themselves (wanted to urinate) and the auto was stopped. Chandra Prakash and accused Anil got down. They came after urinating and Chandra Prakash put a revolver on the temple (kanpati) of Rajesh and told Anil(accused) to take entire money from the pocket of complainant. Accused Anil had just taken money out of pocket of Rajesh when two police persons happen to pass that way on a motorcycle. When they found Chandra Prakash holding a pistol at complainant they stopped there. On seeing police both Chandra Prakash and accused Anil ran from the spot. They were chased and accused Anil was apprehended by the police persons while Chandra Prakash succeeded in escaping from there. Those police persons informed police of Malviya Nagar on telephone about apprehending one of the two robbers and requested for sending some police officer. This report was recorded by DD No. 25 at 8.40 p.m. ASI Babu Khan was given this DD and he arrested accused Anil who was in the custody of two constables who had apprehended him red handed. From accused Anil, purse of complainant Rajesh containing Rs. 2100/-, one Election Card and one TV receipt were recovered. On the statement of complainant Rajesh Kumar this FIR was registered against accused Anil and Chandra Prakash. Chandra Prakash could not be arrested by the police and he was declared PO. Challan was filed against accused Anil after completion of the investigation. Challan against accused Chandra Prakash was also filed as a PO and his case was clubbed with this case and it was ordered that the evidence recorded in the case shall be read against accused Chandra Prakash as well as in accordance with Section 299 Cr.P.C. Accused Anil was charged u/s 392 and 397 IPC r/w 34 IPC to which accused Anil pleaded not guilty.”

3. Since co-accused Chander Prakash could not be arrested only the petitioner, who was apprehended at the spot, faced trial. In order to establish its case the prosecution primarily relied upon the evidence of the victim of robbery(PW-1 Rajesh Kumar).

4. The learned trial Court after examining the evidence of the victim of the incident PW-1 Rajesh Kumar found the same to be wholly trustworthy. PW-1 Rajesh Kumar deposed as under:

"I work at Morning Store G.K. Part I. It is a shop and I am employed for the last 5 years and get salary of Rs. 3000/- p.m. I live at A 70/1 Saket, New Delhi with my Bhuwa and Fufua. On 5th March 2001 after drawing my salary of Rs. 2800/- I was going to Saket to my house. Out of Rs. 2800/- I had given Rs. 500/- to my friend. I use to get salary every month on 5th. Accused present in the court was with one Chander Parkash who was known to me and was living in Saket. At about 8 p.m. Chander Parkash came on the back side of the shop where I was working with the accused I served them Coke they told me to accompany them to their house which I refused. I told them I had to go to my house. They told that they would accompany me to my house and we should hire a Auto instead of going by bus. I hired Auto and we all three sat in the Auto. When the Auto reached at deserted place between Sheikh Sarai and Saket there was darkness and they told that they want to ease themselves (they want to urinate) and stopped auto. Chander Parkash came after urinating and put a revolver on my tempal (Kanpatti) and told his companion the accused present in the court to take entire money from my pocket. When the accused present in the court was taking out money from my pocket two police persons happened to come there on motor cycle and found that I was being threatened by pistol and being robbed they stopped there and on seeing police persons Chander Parkash and the accused present in the court tried to run away. Accused present in the court was caught and apprehended and while Chander Parkash managed to escape. The three wheeler driver, then I was being robbed was trying to seek help of passers-by but nobody was stopping his vehicle and police had come there. The accused present in the court after being caught was searched and my purse and money was recovered from his pocket. Police recorded my statement Ex. PW1/A which bears my signature at point A. My I.D. Rs. 2100/- and T.V. receipt which were in the purse were recovered by the police from accused and seized vide seizure memo Ex. PW1/B which also bears my signature at point A....."

The brief cross-examination of PW-1 is also being re-produced below:

"I had given Rs. 500/- to Ajay Kumar Pandey my friend. I had told police persons that I have Rs. 500/- to my friend. The remaining Rs. 200/- were spent by me when accused with Chander Parkash had come to me and I had served them with Coke etc. and I had also paid Rs. 50/- to the Auto Driver in advance. Chander Parkash had been living in my neighbourhood for 2 years prior to incident and he was my good friend. I had seen Anil for the first time on the day of incident. I had not made cries at that time because the opportunity was not there for making cries and police had reached when I was being robbed."

After noticing the fact that testimony of PW-1 regarding the involvement of the appellant – accused in the robbery had remained totally unchallenged in his cross-examination the trial Court held the appellant guilty.

5. Learned counsel for the appellant submitted that the finding of the trial Court cannot be sustained since there is no independent evidence adduced by the prosecution which was very much available and that independent witness was the auto driver in whose auto Rajesh, the victim, was travelling along with appellant and the absconding accused Chander Prakash.

6. I have already extracted the examination-in-chief of PW-1 as also his cross-examination and I am in full agreement with the learned trial Court that whatever PW-1 stated in his examination-in-chief in respect of the incident of robbery has remained unchallenged. It was not even suggested to PW-1 in his cross-examination that no such incident had taken place or that he was deposing falsely. He was simply asked as to why he had not shouted at the time of the incident and his reply was that there was no occasion to shout since the police had reached the spot when he was being robbed.

7. Since the statement of the victim of the robbery inspires full confidence there is no occasion to doubt his testimony only because the auto driver has not been examined and particularly when it was not elicited from PW-1 whether he was robbed in the presence of the auto driver.

8. I find no infirmity whatsoever in the judgment under challenge of the learned Additional Sessions Judge convicting the appellant under Section 392 IPC and, therefore, the challenge to the conviction fails.

9. As far as sentence of imprisonment awarded to the appellant is concerned learned counsel for the appellant submitted that appellant has already remained in jail for almost two years out of the total sentence of imprisonment of four years and, therefore, he should be now let off by reducing the sentence of imprisonment to the period already undergone by him in jail.

10. Learned APP, on the other hand, has submitted that no leniency should be shown to such kind of robbers and already the learned trial Court has been lenient while punishing the appellant.

11. Considering all the facts and circumstances including the fact that the incident is of the year 2001 and the appellant was aged 21 years old at the time of the incident the trial Court's order on sentence only is modified to the extent that the sentence of imprisonment is reduced from four years to three years. The appeal stands disposed of accordingly.

P.K. BHASIN,J

March 19, 2010
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