

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Reserve: 4th October, 2010
Date of Order: 1st December, 2010

+ Crl.Appeal No. 18/2004
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01.12.2010

Hukam Singh

... Petitioner

Through: Mr. B.R.Puri, Advocate

Versus

State (NCT of Delhi)

... Respondent

Through: Mr. Sunil Sharma, APP for the State

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

JUDGMENT

This appeal has been preferred by the appellant against his conviction whereby the appellant has been convicted under Section 392 read with Section 34 and Section 394 IPC and sentenced to undergo RI for seven years and to pay fine of Rs.1,000/-.

2. The prosecution's story is that the victim Kailash was found in injured condition on road and he reported that on 11th August, 2001 at about 9.30 pm he had hired a Three Wheeler Scooter Rickshaw (TSR) from Tigri Khanpur for Anand Vihar ISBT and in the said TSR one person was already sitting. At about 10.30 pm, the TSR driver instead of going to his destination turned TSR to Hasanpur, when he objected to it and asked the driver as to where he was taking the TSR, the person sitting on the back seat took out a knife and pointed at his

throat and robbed Rs.400/- from his pocket and snatched a suitcase containing his clothes and cash of Rs.5500/-. In the process of robbing him, he was injured by knife. He was then thrown out of the TSR and the scooter driver ran away with the robber

3. The appellant is alleged to be the TSR driver and has been convicted on the basis of testimony of complainant that the appellant was the driver of TSR in which he was robbed. The appellant was arrested by the police in this case on the basis of a purported confession made by the appellant in another case before another police official while in custody. After his arrest, his police remand was sought in this case and investigation was done. The appellant refused TIP on the ground that he was shown to the witnesses. Thus, the identification of the appellant from complainant was got done outside the Court by the Investigating officer and thereafter he was identified in the Court.

4. The sole basis of conviction of the appellant by the trial Court is the statement of the complainant made in the Court that it was the appellant who was driving the TSR and the complainant identified the appellant in the Court.

5. In case, the appellant was plying a TSR in Delhi and was taking passengers, there are two possibilities – one, either the appellant owned the TSR or he was plying a TSR owned by someone else on monthly lease basis or periodical lease basis. The appellant also would have possessed a driving license issued by the Transport Authority permitting him to drive a TSR in Delhi. The police in this case neither recovered driving license of the appellant, nor was able to recover the scooter (TSR). It is not the case of the police that appellant was owner of the TSR neither it is a case of police that appellant was taking TSR on hire from someone for plying on the roads of Delhi, neither such evidence has

been produced. The confessional statement of the appellant recorded by police would show that the appellant had entered into a conspiracy with the co-accused to rob passengers and appellant with that aim had taken a TSR from one of his friends viz. Raju on that day for about 3 hours on some excuse. Neither Raju, the alleged TSR owner, was interrogated by the police or traced by the police nor was the TSR number allegedly owned by Raju found out. The case was sent to trial by the Investigating Officer without this material evidence regarding TSR.

6. The learned trial Court convicted the accused believing the testimony of the complainant. I consider that unless the appellant was shown to have been driving a TSR on that day, the appellant's link with this crime could not have been established. The appellant's link with this crime could only be established if it was proved that the appellant was driving a TSR on that day, TSR was traced, and either the evidence of owner or evidence of person who handed over TSR to the appellant was recorded. Conviction of the appellant merely on the basis of identification by the complainant in the Court cannot be upheld. The identification has to be doubtful since it was night time when the TSR allegedly was hired and no specific description of the appellant was given by the complainant in his first report.

I therefore accept this appeal. The conviction of the appellant is set aside. The appellant is acquitted.

December 01, 2010
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SHIV NARAYAN DHINGRA, J.