

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

Date of Reserve: 10th September, 2010

Date of Order: 21st September, 2010

+ Crl. Appeal No. 289/2004

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21.09.2010

Pawan Kumar

... Appellant

Through: Mr. Rajesh Mahajan, Advocate

Versus

The State (Govt. of 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

By this appeal, the appellant has assailed order dated 10th March, 2004 convicting the appellant under Section 392/397 IPC and the order dated 15th March, 2004 sentencing the appellant to undergo RI for 5 years under Section 392 IPC and RI for 7 years under Section 397 IPC along with fine. The prosecution case before the learned Sessions Judge was that the appellant on a knife point, robbed complainant of the money which he was having in his pocket. The complainant was put under the fear of knife and the contents of his pocket which contained cash of ₹ 470/-, a driving licence and some visiting cards were robbed on the night of 13th September, 2003, when the complainant was proceeding towards his house from Jhandewalan Mandir where he had gone after closing his shop. The appellant was known to the complainant since he was living in the same *mohalla* and from the list of

cases being faced by the appellant it appears that the appellant has been indulging into similar acts earlier also. The appellant was apprehended after a little chase by the patrolling party of the police who got attracted towards the appellant on hearing shouts of "*Bachao Bachao*". The appellant after arrest was taken to Deen Dayal Upadhyaya Hospital for his medical examination where he was found giving smell of alcohol in his breath, there was no injury on the body of the appellant

2. The complainant, i.e. victim of this armed robbery appeared as PW-5 and testified on the lines of his complaint. He stated that accused Pawan Kumar i.e appellant was known to him and robbed him of his money on knife point. The suggestion given to the witness was that he falsely implicated the appellant because he (complainant) was a police informer. However the fact that complainant was having a shop and after closing the shop was proceeding towards his home was not denied. He testified that accused/appellant was apprehended within 3-4 minutes of the incident. The other witnesses who supported the prosecution version were the police officials who happened to reach the spot after the incident on hearing cries of the complainant and apprehended the accused. The learned trial Court after appreciating the evidence of complainant and the other witnesses came to the conclusion that the offence against the appellant stood proved beyond reasonable doubt.

3. The Counsel for the appellant argued that the appellant in this case was falsely implicated with the help of the complainant, who was a police informer, because the mother of the appellant had made a complaint against some police officials at PS Anand Parbat. This argument was considered by

the trial Court as well and it was found that the police officials against whom the complaint was made by mother of the appellant had already been transferred from PS Anand Parbat and were no more working there. Moreover, the complainant had not shown to have any enmity against the appellant to falsely implicate in a case. The complainant knew the appellant from before and looking at the antecedents of the appellant, he would have been more fearful in falsely implicating the appellant.

4. The other ground taken by the Counsel for the appellant is that the story of the prosecution that appellant started running towards police party was unbelievable. He submitted that no person after committing crime would rush to the police party. It is proved from the MLC of the appellant that he was drunk at that time. The incident is of 13th September, 2003 of around 10.30 pm. The appellant was examined by the doctor on 14th September, 2003 at about 5.15 am and still smell of alcohol was coming from the appellant i.e. after about 7 hours of incident the appellant breath was still giving smell of alcohol so it can be easily inferred that the appellant was almost drunk at that time and in that drunkenness he had robbed the complainant on knife point and after robbing him he started running. It is a matter of chance that police party was also coming from the opposite direction it is not necessary that the appellant started running in that direction on seeing the police party. However, he crossed the police party and he was chased and then caught. I therefore find no force in this argument.

5. After perusal of the judgment of the trial Court I find that the trial Court had rightly convicted the appellant. The guilt of the appellant was proved beyond reasonable doubt by the complainant. There was no doubt

about the identity of the appellant. The amount robbed by the appellant was recovered. The recovery has been proved. In view of this, I find no force in the appeal. The appeal is hereby is dismissed.

September 21, 2010
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SHIV NARAYAN DHINGRA, J.