

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

RESERVED ON : 2nd SEPTEMBER, 2013

DECIDED ON : 5th SEPTEMBER, 2013

+ CRL.A. 398/2003

KISHAN KUMAR & ORS. Appellants

Through : Mr.Rambir Singh, Advocate.

versus

THE STATE (GOVT. OF NCT OF DELHI) Respondent

Through : Mr.Lovkesh Sawhney, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Kishan Kumar (A-1), Pradeep (A-2) and Rajesh (A-3) challenge their conviction under Section 392/34 IPC and order on sentence in Sessions Case No. 34/2001 arising out of FIR No. 228/2001 PS Rohini by which they were directed to undergo RI for three years with fine ₹ 500/- each. The police machinery was set into motion when Daily Diary (DD) No. 8A (Ex.PW-6/A) recorded at 06.45 A.M. on 28.03.2001 at PS Rohini regarding a quarrel and snatching of money near Vijay Nurshing Home, Avantika. The Investigating Officer lodged First Information Report after recording Santosh Kumar's statement (Ex.PW-

2/A) in which he disclosed that when he was present in bus No. DL 1PA-7717 route no. 971, A-1 to A-3 driver, conductor and helper in the bus joined hands with their associates and actively assisted them to rob him of ₹ 9,000/- and wrist watch. During the course of investigation, A-1 to A-3 were apprehended and arrested. The Investigating Officer recorded statements of the witnesses conversant with the facts. The actual culprits who had robbed the complainant could not be arrested. After completion of investigation, a charge-sheet was filed against A-1 to A-3 in the Court for committing offences under Section 392/109 IPC read with Section 397 IPC. The prosecution examined six witnesses. In their 313 statements A-1 to A-3 pleaded false implication.

2. It is not under challenge that A-1 to A-3 were driver, conductor and helper respectively in the bus on the date of occurrence. PW-3 (Kulbir Singh), owner of the bus proved their employment pursuant to notice under Section 133 Motor Vehicle Act (Ex.PW-3/A). Presence of the complainant in the said bus on route no. 971 is not disputed. The incident by which he was robbed of cash ₹ 9,000/- and wrist watch cannot be doubted as he had no ulterior motive to falsely fake it. Regarding complicity of the appellants in the incident, the prosecution has failed to establish beyond reasonable doubt that they were in league with the actual

culprits and abetted robbery on the complainant. It has come on record that when the victim boarded the bus at Anand Vihar Bus Stand, the actual culprits were not in the bus. The appellants diverted the route and took the bus towards Subzi Mandi, Azadpur to reach Avantika. This course of action was resented by the complainant. It appears that a quarrel ensued on that score and the complainant was asked to keep quiet. Thereafter, when the bus stopped at the red light, three boys boarded the bus from Azadpur Mandi. The driver was under obligation to stop the bus at red light and it cannot be inferred that the appellants had deliberately and intentionally facilitated the actual assailants to board the bus to commit robbery or pick-pockets. After boarding, the assailants did not threaten or direct the complainant to handover cash and wrist watch. When the bus reached Avantika, its destination, instead of stopping it there, the driver took it ahead and halted at red light. It again resented the complainant. When he attempted to get down there, the conductor did not allow him and pushed him inside the bus. No adverse inference can be drawn from it as the conductor was not supposed to allow passengers to alight at red light. The complainant deposed that at that juncture, he was robbed of cash ₹ 9,000/- and wrist watch by the three culprits where conductor caught hold him. The actual culprits could never be arrested during

investigation. No robbed article was recovered. There were twenty passengers in the bus and none else was threatened by the culprits. No pocket of any other passenger was picked. It is unbelievable that the appellants had deliberately allowed the pick-pockets/ robbers to board the bus or in any manner assisted them to rob the complaint. The appellants did not abscond from last destination of the bus. Complainant's conduct is unreasonable as he did not lodge report with the police soon after alighting from the bus. He went to his home and returned after some time with his wife who was not associated in the investigation. At his instance A-1 to A-3 were apprehended and beaten. Paltry amount of ₹ 400/-, ₹ 100/- and ₹ 200/-, respectively was produced by A-1 to A-3 to the police after their apprehension which cannot be considered/ taken part of robbed cash without specific identification. The complainant did not depose that in his presence, the actual culprits handed over cash out of robbed amount to the appellants. No other passenger in the bus was joined in the investigation. They did not lodge any complaint against the conduct and behaviour of the appellants. The Investigating Officer did not gather any evidence during investigation if the appellants were hand-in-glove with the robbers or any such untoward incident had earlier happened in the bus. The owner of the bus has deposed that A-1 was deputed as driver on the

day of incident only. A-2 was conductor for the last one month and A-3 was helper for the last twenty days. No complaint was ever received regarding their conduct from the passengers. The appellants had no enmity with the complainant and did not anticipate his arrival in the bus. They were not aware if the complainant had any cash to conspire with the actual culprits to rob it. It appears that the complainant lodged the case after having a tiff with the appellants over diversion of route and not permitting him to alight at the red light. The appellants cannot be faulted for the incident of robbery by actual culprits whose identities remain unestablished during investigation. There are discrepancies/ contradictions in the testimony of the complainant. In his Court statement, he implicated only the conductor for aiding the real offenders. No evidence has come on record that the actual culprits were known to the appellants or they had any previous acquaintance. The appellant cannot be convicted on the basis of mere suspicion. The prosecution is bound to prove its case beyond reasonable doubt. In ‘*Raj Kumar Singh @ Raju @ Batya vs. State of Rajasthan*’, 2013 (6) SCALE 635, the Supreme Court observed :

“17. Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that 'may be' proved and 'will be proved'. In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the

reason, that the mental distance between 'may be' and 'must be' is quite large and divides vague conjectures from sure conclusions. In a criminal case, the Court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between 'may be' true and 'must be' true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between 'may be' true and 'must be' true, the Court must maintain the vital distance between conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The Court must ensure, that miscarriage of justice is avoided and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense."

3. In the light of above discussion, conviction and the sentence of the appellants cannot be sustained and is set aside. The appeal is allowed and the appellants are acquitted of the charges. The Trial Court record be sent back forthwith.

(S.P.GARG)
JUDGE

SEPTEMBER 05, 2013/tr