

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

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Judgment reserved on: 05.02.2014

Date of Decision: 10.02.2014

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Crl. Appeal 286/2013

RAJESH @ PREM @ PAWAN

..... Petitioner

Through: Mr. Saurabh Kansal, Adv. for Ms Pallavi
Kansal, Adv.

versus

STATE (GOVT. OF NCT) DELHI

..... Respondent

Through: Mr Feroz Khan Ghazi, APP

CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J.

On 20.10.2009, on receipt of copy of DD No. 25A, SI Naresh Kumar of Police Station Maurya Enclave went to TU-70, Pitampura, where the complainant Mahavir Saini met him and lodged a complaint. Ex.PW-8/A Shri Mahavir Saini stated that on the aforesaid date, he along with his colleague Ramesh Mittal. was taking cash kept in two bags, to the place of his employer Shri Vijay Pal Garg on a motorcycle, from Wazirpur. He further stated that on reaching the house of the employer at TU-70, Pitampura at about 7.50 PM and stopped the vehicle there. Suddenly, three persons came there on a Pulsar motorcycle and two persons came on a scooter. One of those five persons was armed with a pistol. Two bags containing cash, one from Mahavir Singh and the other from Ramesh Mittal were snatched. On alarm being raised by them, Shri Vijay Pal came out of the house, but by that time, the robbers had left. They followed the robbers, but, while leaving the spot, one of

them fired towards them as a result of which they got scared and stopped chasing them. The police was then called and the matter was reported.

2. The case of the prosecution is that the appellant Rajesh @ Prem, while in custody in another case, made disclosure with respect to his involvement in this case and pursuant to the said statement, he was arrested in this case. During the course of investigation, the appellant refused to join TIP. He was later identified by the witnesses.

3. Since the appellant pleaded not guilty to the charge framed against him, as many as 16 witnesses were examined by the prosecution. No witness, however, was examined in defence.

4. PW-7 Shri Vijay Pal Singh is the employer of the complainant. He stated that on 20.10.2009, he asked his employees Ramesh Mittal and Mahavir Saini to collect cash amounting to Rs 39.19 lakh, which he had kept with his distributor Mr Sawar Mal Goel and bring the same to his house at TU-70, Pitampura. At about 7.30-7.45 PM, he came out of the house on hearing the alarm raised by Ramesh Mittal and Mahavir Saini and saw them running after two boys. According to the witness though he could not see the face of those boys, he came to know that they had snatched Rs. 39.19 lakh which Ramesh Mittal and Mahavir Saini were carrying.

5. The complainant Mahavir Saini came in the witness box as PW-8 and stated that on 20.10.2009, he along with Ramesh Mittal, collected Rs. 39.19 lakh from Mr Sawar Mal Goel which they kept in two bags. Rs. 14.44 lakh were kept in his bag, whereas the remaining cash was

carried by Ramesh Mittal. When they stopped their motorcycle at the residence of their employer Shri Vijay Pal Garg at TU-70, three persons came there on a motorcycle, whereas two persons came on a scooter. One of those persons was carrying the pistol with him. The pistol was put on him and the bag he was carrying was snatched. At the same time, remaining persons pushed Mr Ramesh Mittal and snatched the bag which he was carrying with him. On alarm being raised by them, their employer Mr Vijay Pal Garg came out of the house. He further stated that they went towards the accused persons, but they left on their vehicles along with the bags containing the cash and while escaping, the persons, who had snatched the bag from them, fired towards them as a result of which they got scared and stopped chasing them. He identified the appellant Rajesh as the person who had snatched the bag from him on the point of pistol.

6. PW-5 Ramesh Mittal has corroborated the deposition of the complainant. He stated that after taking cash from Sawar Mal Goel when they reached the house of their employer Mr. Vijay Pal, two vehicles, one motorcycle and one scooter reached there. There were three persons travelling on the motorcycle and two persons on the scooter. One of those persons snatched the bag of the complainant on the point of gun, whereas one of the remaining persons pushed him as a result of which he fell down on the ground. He was then given beatings with kicks and the bag was snatched from him. On alarm being raised by them Vijay Pal came out of the house. They chased the accused persons, but one of them fired towards them, as a result of which they stopped chasing them. He identified the appellant as the person who had snatched the bag from him and Mahavir Saini on the point of pistol.

7. PW6 Sawar Mal Goel is the person from whom cash was collected by the complainant Mahavir Singh and Ramesh Mittal on the aforesaid date. He confirmed their deposition with respect to handing over a sum of Rs.39.19 lakh to them on 20.10.2009.

8. In his statement under Section 313 Cr.P.C., the appellant denied the allegations against him and claimed that he was not even present at the spot. The appellant, however, admitted the TIP proceedings conducted by Shri Vishal Singh, Metropolitan Magistrate, which are Ex.PX1.

9. The deposition of the complainant – PW8- Mahavir Saini and PW5 – Ramesh Mittal with respect to theft of Rs.39.19 lac from them on 20.10.2009 finds full corroboration from the deposition of PW6 – Sawar Mal Goel, who handed over the aforesaid money to them as well as from the deposition of their employer Vijay Pal Garg, who had instructed Sawar Mal Goel to hand over to Ramesh Mittal and Mahavir Saini besides instructing his employees to bring the said amount to his house. Even otherwise, it is not the case of the appellant that no theft had taken place and a false story of robbery was concocted by Mahavir Saini and Ramesh Mittal. The depositions of PW8-Mahavir Saini and PW5-Ramesh Mittal also proves that a pistol was used for threatening the complainant Mahvir Singh, while snatching the bag containing cash from him, whereas Ramesh Mittal was given beatings in order to facilitate snatching of the cash, which he was carrying on his scooter. The theft is a robbery if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily

causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint. In the case before this Court, not only Mahavir Saini was put under fear of instant death by putting a pistol on him, in order to commit of the theft of the cash he was carrying with him, hurt was also caused to Ramesh Mittal, in order to commit theft of the cash he was carrying on his scooter. Even thereafter, while leaving, the robbers put both Mahavir Saini and Ramesh Mittal under fear of instant death by firing a shot on him. Therefore, the theft committed in this case amounts to robbery. Since hurt was caused to Ramesh Mittal, in committing robbery, the offence committed in this case is punishable under Section 394 of IPC. It has come in the deposition of both Ramesh Mittal and Mahavir Saini that one of the robbers had, at the time of committing robbery, used a pistol, firstly by putting it on the complainant Mahavir Saini and then firing from the said pistol while escaping with the stolen cash. Therefore, the person who used the pistol while committing robbery is liable to be punished under Section 394 of IPC read with Section 397 thereof.

10. There is no contradiction in the depositions of Mahavir Saini and Ramesh Mittal as regards the identity of the appellant – Rajesh as the person who had put a pistol on Mahavir Saini before snatching the bag containing the cash from him and had thereafter fired a shot from that pistol while fleeing from the spot. In his cross examination itself – Ramesh Mittal identified the appellant – Rajesh as the person who had snatched the bag on the point of a pistol. Mahavir Saini clearly stated in his deposition that the appellant – Rajesh was the person who had snatched the bag on the day of the incident on the point of a pistol.

Therefore, there can be no doubt that it was the appellant – Rajesh who had used the pistol in commission of the robbery.

11. It is an admitted case that the appellant refused to join Test Identification Parade before the learned Metropolitan Magistrate on 24.9.2010. A perusal of the said proceedings would show that the appellant refused to join TIP on the ground that he had been shown to the witnesses and his photographs were also taken by the police. However, there is absolutely no material on record to show that either Mahavir Saini or Ramesh Mittal had seen the appellant before he refused to join TIP proceedings on 24.9.2010. In fact, Ramesh Mittal has clearly stated in his deposition that it was on 4.10.2010 that he had identified one of the persons who had snatched the bag on the point of a pistol. According to him, the appellant – Rajesh was the person who had snatched the bag from him and Mahavir Saini. Since this witness saw the appellant only after his refusal to join TIP proceedings, the appellant had no justification to refuse to join the said proceedings on 24.9.2010. When Mahavir Saini came in the witness box, he emphatically denied the suggestion that he was shown the photographs of the appellant or that the appellant was shown to him before the TIP proceedings and he was asked to identify him. Therefore, in this case also, it can be safely presumed that had the appellant joined the TIP proceedings, he would have been identified by the eye witness and that precisely was the reason why he refused to join the said proceedings on 24.9.2010. Similar view was taken by the Hon'ble Supreme Court in Suraj Pal versus State of Haryana [(1995) 2 SCC 64].

12. No fault, therefore, can be found with the conviction of the appellant under Section 392/397 of IPC. Since, the trial court has awarded the minimum prescribed sentence to the appellant, there is no scope for its reduction. Even the amount of fine imposed on him is quite modest, warranting no reduction.

13. For the reasons stated hereinabove, I find no merit in this appeal and the same is hereby dismissed.

Trial court record be returned with a copy of this order.

A copy of this order be also sent to concerned Jail Superintendent for information and necessary action.

FEBRUARY 10, 2014
BG/rd

V.K. JAIN, J.