

* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 05.03.2014

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CRL.A. 1291/2010

NARENDER

..... Appellant

Through: Mr. Dinesh Chander Yadav, Adv.
versus

STATE

..... Respondent

Through: Mr. Feroz Khan Ghazi, APP for
State

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CRL.A. 1292/2010

NARENDER

..... Appellant

Through: Mr. Dinesh Chander Yadav, Adv.
versus

STATE

..... Respondent

Through: Mr. Feroz Khan Ghazi, APP for
State

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CRL.A. 1523/2011

SONAM GAURANG

..... Appellant

Through: Ms. Rakhi Dubey, Adv.

versus

STATE

..... Respondent

Through: Mr. Feroz Khan Ghazi, APP for
State

CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (Oral)

On 08.03.2008, ASI Om Prakash Yadav informed the Police Station Kapashera that during the course of checking, he had seen two boys snatching a Qualis bearing registration number HR 38 HT 6812. On receipt of the information, ASI M.S. Yadav of the aforesaid police station, along with other police officials, reached the police picket, Bajgera, where ASI Om Prakash handed over to him two boys namely Narender and Sonam and stated that country made pistol had been recovered from them. The complainant – Sabban Khan was also present there and his statement was recorded by ASI M.S. Yadav, The complainant told him that on the aforesaid day, at about 2 pm, he was working in a call centre and after dropping the staff members at Madanpur Khadhar, when he was going towards Mehrauli and stopped at red light at about 4 pm, two boys entered his vehicle and requested him to drop them a little away from the said spot. Thereafter, those boys got his vehicle stopped in a dark place and asked him to move to the rear seat. When he refused, those boys pointed out country made pistol on him and threatened to kill him in case he did not sit silently. Being scared, he shifted to the rear seat. The hands of the complainant were then tied and he was thrown on the floor of the vehicle between rear seat and the front seat. One of the boys sat near him whereas the other boy started driving the vehicle. At one place, the vehicle was stopped by the police for the purpose of checking. When the

complainant raised alarm, those boys got down and tried to ran away, but were apprehended by the police officers.

2. Both the appellants were charge-sheeted under Section 392/397/365/506/34 of Indian Penal Code. The charges against them were, however, framed under Section 392/34 and Section 397 as well as under Section 364 and 506 of IPC read with Section 34 thereof. Since they pleaded not guilty to the charges, as many as six witnesses were examined by the prosecution. No witness was examined in defence.

3. The appellants - Sonam and Narender were separately charge-sheeted under Section 25 of Arms Act after two separate FIRs being FIR No.47/2008 and 48/2008 were registered against them. Vide order dated 23.08.2010, the appellant – Narender was convicted under Section 25 of Arms Act and vide Order on Sentence dated 28.08.2010, he was sentenced to undergo RI for three years and to pay fine of Rs.5,000/- or to undergo SI for one month in default. Similar sentence is stated to have been awarded to Sonam after his conviction in the case registered vide FIR No.46/2010, but no appeal has been preferred by him, against his conviction.

4. In the case under Arms Act, the prosecution examined complainant – Sabban Khan, ASI Om Prakash and Constable Sugna Ram. The prosecution also examined some more witnesses, one of them being ASI Dalip Singh, who went to the spot on receipt of information lodged by ASI Om Prakash Yadav and the appellants – Sonam and Narender were handed over to them along

with the Qualis vehicle. One loaded country made pistol each was recovered from them was also seized by this witness.

PW1 – Ms. Shalini Singh is the police officer who accorded sanction under Section 39 of Arms Act and for prosecution of the appellant – Narender whereas PW3 – Mr. K.C. Varshney is the Assistant Director, FSL, Rohini, who examined the country made pistol as well as the cartridge recovered from the appellant – Narender sent to FSL by the Investigating Officer and opined that the country made pistol sent to him was a fire arm from which test fire was conducted successfully. He also reported that the cartridge sent to him was a live cartridge which was test fired through the country made pistol sent to him, which he test fired through the country made pistol.

5. The complainant – Sabban Khan, who came in the witness box as PW1, *inter alia*, stated that on 08.03.2008, he was driving a Qualis bearing registration number HR 38 HT 6812. After dropping the staff members at Madanpur Khadar, when he reached the red light of Badarpur-Mehrauli Road and stopped the car there on account of red light, both the accused, who were standing at the red light, requested him to drop them upto Khanpur. He declined their request. Thereafter, accused Narender opened the left side door of the Qualis, whereupon he allowed them to take lift up to Khanpur. The other accused occupied the back seat of the Qualis. Just before Khanpur, the accused persons asked him to keep the Qualis on the side. The moment he stopped the Qualis on the side, accused Sonam smashed the wire of the

wireless set installed in the Qualis and rounded it on his neck. When, due to fear, he tried to open the door, accused Narender pointed out country made pistol on him. Thereafter, he was thrown on the floor of the vehicle and both the accused pointed out country made pistol at him. Accused Sonam threatened to kill him with the country made pistol. At about 3 pm, when the vehicle reached Bijwasan red light, a police check post was noticed by him. On seeing the police officer, he started shouting, whereupon the appellants tried to run away but were overpowered. They were taken to Police Station Kapashera where one country made pistol each from both of them was recovered.

6. PW3 – Anil Kumar is the owner of the Qualis vehicle bearing registration number HR 38 HT 6812. He, *inter alia*, stated that the aforesaid vehicle was purchased by him from Veer Singh Chauhan and Sabban Khan was the driver on the aforesaid vehicle.

PW4 – Constable Sugna Ram, *inter alia*, stated that on 08.03.2008, he along with ASI Om Prakash and two Home Guard constables was on vehicle checking duty at Bajgera Picket, Main Najafgarh Road. At about 3 pm, one Qualis vehicle bearing registration number HR 38 HT 6812 coming from the site of Bajgera, was signaled to stop. When the vehicle stopped, one person inside the vehicle shouted. The accused who were sitting in the vehicle tried to escape, but were apprehended by them. He further stated that one country made pistol each was recovered from the accused Narender and Sonam.

PW5 – ASI Om Prakash has corroborated the deposition of PW4 – Constable Sugna Ram with respect to stopping the aforesaid vehicle at the check post, apprehending the appellants when they came out of the vehicle on alarm being raised by the complainant and one country made pistol each had been recovered from them.

7. In their statements under Section 313 Cr.P.C., the appellants denied the allegations against them and claimed to be innocent.

8. Vide impugned judgment dated 23.08.2010, the appellants were convicted under Section 392/397/364 and 506 of IPC read with Section 34 thereof. Vide impugned order on sentence dated 28.08.2010, they were sentenced to undergo rigorous imprisonment for ten year each and to pay fine of Rs. 5,000/- each or to undergo SI for three months each in default under Section 392/397 of IPC. Identical substantive sentence was awarded to them under Section 364 of IPC. They were also sentenced to pay fine of Rs.10,000/- each or to undergo SI for six months each in default under the aforesaid section. They were further sentenced to undergo RI for two years each and to pay fine of Rs.2,000/- each or to undergo SI for one month each in default under Section 506 of IPC read with Section 34 thereof.

Being aggrieved from their conviction and sentence awarded to them, they are before this Court by way of these appeals.

9. I do not see any reason to disbelieve the complainant – Sabban Khan. There can be no reason for him to make false allegations of his kidnapping

and robbery of the vehicle which he was driving. No material discrepancy in the deposition of the complainant – Sabban Khan has been pointed out. The deposition of the complainant finds full corroboration from PW4 – Constable Sugna Ram, PW5 – ASI Om Prakash, in whose presence the appellants came out of the vehicle and were apprehended.

10. This is not the case of the appellants that though they had taken the lift in the vehicle, they did not abduct the complainant and did not take the vehicle from his possession. Their case is of total denial. The appellants have been apprehended on the spot, while coming out of the vehicle and trying to run away. It was incumbent upon them to explain as to how they had got inside the vehicle and why they had tried to run away when the vehicle was stopped at the check post. They, however, did not make any attempt to explain the aforesaid act on their part.

11. Since the country made pistol recovered from the appellant – Narender, when examined in FSL was to be the firm arm and cartridges recovered from him was found to be live cartridges, he has rightly been convicted under Section 25 of Arms Act and for carrying a fire arm at a public place.

12. The appellants – Narender and Sonam, abducted the complainant by taking him, from the place he was tied till the place the appellants were arrested by the police by use of force against him. The appellants, therefore, abducted the complainant within the meaning of Section 362 of IPC.

However, abduction alone is not punishable under the Penal Code. Section 364 of IPC under which the appellants have been convicted refers to abduction of any person in order that such person may be murdered or may be so disposed of or put in danger of being murdered. No such intention, however, can be inferred from the facts and circumstances of the case. AS per the prosecution case, the complainant was in the custody of the appellants for about 12 hours. Despite that no attempt was made to commit his murder and in fact, there is no evidence of physical injuries having been caused to him. Therefore, it would be difficult to sustain their conviction under Section 364 of IPC.

Learned APP submits that the appellants ought to be convicted under Section 365 of IPC which punishes the abduction with intention to cause the abductee to be secretly and wrongfully confined. However, no such intention can be inferred against the appellants in the facts and circumstances of the case. Therefore, conviction even under Section 365 of IPC would not be justified.

13. However, it can hardly be disputed that the appellants committed robbery of the vehicle by removing the complainant from its driving seat and one of them driving the vehicle till the time the appellants were apprehended at the check post. Therefore, they have rightly been convicted under Section 392 of IPC. It has come in evidence that both of them were armed with country made pistols. The pistols were recovered from them when they were

arrested by the police. When examined in the laboratory, the pistols were found to be fire arm and the cartridges were found to be live. Therefore, Section 397 of IPC has been rightly applied to both of them.

14. Since the complainant was threatened to be killed, while in the vehicle, the charge under Section 506 Part II of IPC also stood proved against the appellants and they have been rightly convicted for the said charge.

15. For the reasons stated hereinabove, the conviction of the appellants under Section 392 of IPC read with Section 397 and 506 Part II/34 of IPC as well as the conviction of the appellant Narender under Section 25 of the Arms Act is maintained. However, in the facts and circumstances of the case, the substantive sentences awarded to the appellants under Section 392/397 of IPC is reduced from ten years each to seven years each. The remaining sentences, however, shall remain unaltered. In default of payment of fine, imposed under Section 392/397 of IPC, the appellants shall undergo SI for one month each whereas in default of payment of fine imposed under Section 506 of IPC, they shall undergo SI for 15 days each. The appellants shall be entitled to benefit of Section 428 of Cr.PC. The sentence awarded to the appellants shall run concurrently and they shall also be entitled to benefit of Section 427 of Cr.PC in the sense that the sentence awarded under Section 25 of Arms Act, shall also run concurrently along with sentences awarded under Section 392/397/34 and 506 of IPC. The separate sentence awarded to the appellants under Section 397 of IPC is, however, set aside.

All the appeals stand disposed of.

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

Trial court record be sent back forthwith along with a copy of this order.

MARCH 05, 2014/*rd*

V.K. JAIN, J.