

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on : December 23, 2016

+ CrI. A. No. 755/2000
NANHEY LAL

..... Appellant

Through: Mr. Kunwar C.M. Khan, Ms. Aasima
Chaudhary, Advocates

versus

STATE OF DELHI

..... Respondent

Through: Mr. Ashish Datta, Additional Public
Prosecutor for the State

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

JUDGMENT

P.S.TEJI, J.

1. Aggrieved by the judgment of conviction dated 17.11.2000 passed by the learned Additional Sessions Judge, Karkardooma, Delhi convicting the appellant for the offence punishable under Section 392 of Indian Penal Code (hereinafter referred to as I.P.C.), and order on sentence dated 18.11.2000, whereby the appellant had been sentenced to undergo rigorous imprisonment for a period of five years with a fine of Rs.2,000/- and in default of payment of fine, to further undergo simple imprisonment for a period of two months, the present appeal has been preferred by the appellant.

2. The factual matrix that emerges from the record is that on

06.01.1992, an information was received in police control room from one Rakesh Aggarwal that four men committed robbery in his house. Inspector Prakash Chand reached the spot and complainant – Rakesh Aggarwal narrated the incident saying/stating/explaining that when he opened the door at the bell, one boy of 18-19 years produced a box of sweets as having been sent by Guptaji of Shahdara. In the meanwhile three persons appeared and pointed a revolver and a knife, he was also hit on the face and pushed. Thereafter he was taken inside the room and was tied with an iron wire. As stated by the complainant, they enquired of him about the keys for the jewellery and also threatened to kill him. It is further submitted that he gave keys and those persons got the almirah opened and removed jewellery and other valuables from the almirah. His servant Ram Kishore also reached the spot. Description of the four persons was also given by the complainant.

3. After registration of the case, two accused persons - Raju Maity and Surender Pal were arrested on 27.01.1992 and on search, certain jewellery articles were recovered from them. Subsequently, upon their disclosures, other accused Rajender Pratap alongwith the appellant – Nanhey Lal were arrested. All the four accused persons were identified by wife of the complainant to be the persons who removed the articles on 06.01.1992. Appellant was charged under Section 392/397 IPC.

4. In support of its case, prosecution examined 12 witnesses. They are, Smt. Madhu (PW-1), Mr. Narender Singh (PW-2), Head Constable Girraj (PW-3), Mr. Rakesh Kumar Aggarwal (PW-4), Sub-

Inspector P. Pandey (PW-5), Sub-Inspector Subhash Sootardhar (PW-6), Sub-Inspector Parkash Chand (PW-7), Inspector M.C. Katoch (PW-8), Sub-Inspector Naseeb Singh (PW-9), Mr. Rajbir Singh (PW-10) ACP (Special Cell) Delhi Police, Mr. Raj Kishore (PW-11), Inspector Sh. R.L. Bhasin (PW-12) Special Cell, Lodhi Road, Delhi. After conclusion of the prosecution evidence, the statements of the appellants were recorded under Section 313 of the Cr.P.C.

5. After conclusion of trial, the appellant was convicted for the offence under Section 392 of IPC vide judgment dated 17.11.2000 and order on sentence dated 18.11.2000.

GROUND OF CHALLENGE

The sole contention of the appellant is that there is no evidence against the appellant to hold him guilty for the offence of robbery. The complainant (PW-4) has specifically stated that the appellant had not participated in the commission of robbery. There was no other evidence against the appellant to connect him with the alleged offence of robbery. The prosecution had miserably failed to prove the recovery of alleged robbed articles from the appellant, and that was the reason he was not charged under Section 411 of IPC.

6. The appellant has filed the instant appeal challenging the aforesaid judgment on conviction as well as order on sentence. During pendency of the present appeal, the sentence imposed upon the appellants was suspended vide order dated 10.01.2001.

7. Arguments advanced by learned counsel for the appellant is that the complainant (PW-4) is the only eye-witness of the alleged incident of robbery, who had not supported the case of prosecution. The complainant in his testimony before the court had not identified the appellant as one of the robbers inasmuch as he could not say whether the appellant was amongst the robbers or not. The prosecution had also examined employee of the complainant, namely, Raj Kishore (PW-11) who had also not identified any of the robbers during his testimony in the court. There is no other evidence on record to connect the appellant with the commission of alleged robbery.

8. Per contra, learned Additional Public Prosecutor for the State has argued that there is sufficient material on record to convict the appellant for the offence of robbery. The stolen articles were recovered from the appellant. Though the role of the appellant was not attributed by the complainant but from the circumstances brought on record, the prosecution had successfully establish its case that the appellant was one of the robbers and he has been rightly convicted by the Trial Court.

9. I have heard the submissions made on behalf of both the sides and also gone through the evidence as well as material placed on record.

10. The complainant – Rakesh Kumar Aggarwal was examined as PW-4. In his testimony he had deposed that on 06.01.1992 at about 2.15 PM, someone rang the door bell and when he opened the door,

appellant – Nanhey was there. ***He gave box of sweet to him saying that it was sent by Guptaji and after giving the sweets, he went away.*** Thereafter, when PW-4 was in the process of closing the door, three-four persons came and attacked him. Two of them took out revolvers and the third one tied the hands of PW-4. One of them put a string around the waste of the PW-4 with a ball of wire saying that it was a bomb and asked PW-4 about the keys of almirah. He gave the keys of almirah to them when he was threatened to be killed. After opening the almirah, they took a jewellery and other valuables, made PW-4 sit on chair, tied him with the chair and ran away with the jewellery and valuables. Before the assailants left his house, his servant Raj Kishore reached there and he was also tied and left in another room. PW-4 specifically stated that the appellant Nanhey was his earlier servant who had brought the box of sweets. He further deposed that the other three accused present in the court were not the persons who came to his house on the date of occurrence and robbed him. He further stated that there were four assailant who have robbed him on the date of occurrence at the point of revolvers. ***He could not say whether the appellant – Nanhe was amongst those four persons or not. He also stated that police never brought any of the assailant to his house for the purpose of identification.***

11. PW-4 was declared hostile and was cross-examined by learned Additional Public Prosecutor for the State during which he stated that ***he could not say whether appellant was amongst those 3/4 persons who had robbed him.*** He stated that on 24.02.1992 he was standing

outside the court of learned Metropolitan Magistrate when the investigating officer of the case had brought some accused persons and told PW-4 that they were the assailants of the case. ***He further deposed that he had not stated to the police that the appellant – Nanhey alongwith other assailants has tied his feets, threatened to kill him and was collecting the robbed articles.***

12. Another public witness examined by the prosecution was PW-11 Raj Kishore, who had allegedly seen the robbers on the day of incident. This witness during his testimony in court had deposed that on 06.01.1992 he was working as an employee on the shop of Rakesh Aggarwal. On that day, Rakesh Aggarwal had called him at his house and he went to his house at about 2.30 PM. When PW-11 pressed the call bell, two boys came out; one of whom caught hold of PW-11 from behind and another put knife on his chest. They also fixed a plastic tape on his lips to seal his mouth. They took him to a room where he saw his employer Rakesh Aggarwal already tied. There were two more boys who tied his hands and put him in kitchen and locked the door. They also took away his wrist watch made HMT Mouriya. ***He specifically stated that he could not identify those boys due to lapse of time. He also stated that he did not know any of the boys before the incident not he had seen them anytime thereafter. He also stated that those boys were not present in the court,*** when his statement was recorded. This witness was never declared hostile or cross-examined by the learned Additional Public Prosecutor for the State to controvert his testimony.

13. From the testimony of complainant PW-4, it is apparent that there is nothing in his testimony to say that the appellant was amongst the robbers. The complainant has specifically stated that though the appellant came to his house on the day of incident to deliver box of sweets but he went away immediately thereafter. He had not imputed the role of the appellant in the commission of robbery. He has specifically stated that he could not say whether the appellant was amongst the robbers. He had denied having stated to the police that the appellant alongwith other assailant had tied his feet or threatened to kill him or robbed him of his articles. There is nothing in the testimony of the complainant to connect the appellant with the alleged offence of robbery.

14. It is apparent from the record that the present case is based solely on the testimony of the complainant (PW-4) who had not supported the case of prosecution and had not identified any of the accused including the appellant as one of the robbers. He was declared hostile and was cross-examined by the learned Additional Public Prosecutor for the State but during cross-examination also, he remained stuck to his stand that appellant was amongst the robbers. he has not stated anything in his testimony to the effect that the appellant was one of the robbers when the alleged robbery was committed at his house.

15. Another eye witness examined by the prosecution is PW-11 Raj Kishore, who had allegedly seen the robbers on the day of incident. This witness has also not stated anything against the appellant in his

entire testimony. He had not identified the appellant as one of the robbers during his testimony record in the Court.

16. Witness PW-11 was not declared hostile by the prosecution to get him cross-examined on the point that he was resiling from his earlier statement made before the police. In the absence of any such cross-examination by the prosecution, the testimony of this prosecution witness is believed to the extent that the appellant was not amongst the robbers on the day of incident.

17. Apart from the testimony of above two prosecution witnesses (PW4 and PW11), there is no other evidence on record to connect the appellant with the commission of crime of the instant case.

18. It was also alleged against the appellant that robbed articles were recovered at his instance. There is no substance in this allegation against the appellant for the reasons that no charge under Section 411 IPC was framed against him and secondly, there is no evidence on record to say that he was amongst the robbers what to say recovery of robbed articles from him or at his instance. As no charge under Section 411 IPC was framed against the appellant, he cannot be convicted for an offence for which he was not charged.

19. In the light of the aforesaid discussion, the impugned judgment of conviction dated 17.11.2000 and order on sentence dated 18.11.2000 qua the appellant are set aside. He is acquitted of the charge framed against him.

20. The appellant – Nanhey is on bail. His bail bonds and surety bonds are discharged.
21. A copy of this order be sent to the Trial Court for information.
22. With aforesaid directions, the present appeal is disposed of.

(P.S.TEJI)
JUDGE

DECEMBER 23, 2016
pkb/dd

