

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

RESERVED ON : MARCH 24, 2015

DECIDED ON : APRIL 27, 2015

+ CRL.REV.P.565/2014

SAMMI & ANR.

..... Petitioners

Through : Mr.Vimal Puggal, Advocate.

versus

STATE

..... Respondent

Through : Mr.Navin K.Jha, APP.

SI Sumer Chand, PS Nabi Karim.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Petitioners Sammi and Ved Parkash @ Lekhu were convicted under Section 392/34 IPC by a judgment dated 22.03.2014 of learned Metropolitan Magistrate (Central), Tis Hazari and were awarded RI for three years each. It is relevant to note that Subhash-petitioners' associate was also convicted by the said judgment. It is unclear if he has filed any revision petition. The petitioners challenged their conviction and sentence in Crl.A.No.62/2014 which was dismissed by an order dated 20.08.2014. Being aggrieved by the impugned orders, the petitioners have filed the instant revision petition.

2. Briefly stated, the allegations against the petitioners and their associate Subhash were that on 10.05.2009 at around 10.45 p.m., at DBG Road in front to Today Hotel, they in furtherance of their common intention, robbed complainant Vinod Kumar of his mobile after putting him in fear. On 10.05.2009 when Vinod Kumar and his friend Raju were coming to their house after finishing work and reached near Today Hotel at around 10.45 p.m., three boys came and intentionally pushed them. They started abusing them and told that 'Saalo dekh kar nahin chal sakte'. In the meanwhile, one of them caught Vinod Kumar by his collar and started shaking him. In the process, the said assailant took out his mobile phone kept in the upper pocket of the shirt. The other two assailants gave beatings to him and his friend with fists and slaps. The assailants fled the spot. On raising alarm, two of them were apprehended near the spot and were thrashed by the public. Vinod Kumar lodged complaint (Ex.PW-1/A) and the Investigating Officer registered the case. During investigation, the third assailant was arrested and identified in Test Identification Proceedings by the complainant. Statements of the witnesses conversant with the facts were recorded. After completion of investigation, a charge-sheet was filed against the petitioners and their associate. The prosecution examined eleven witnesses to substantiate its

case. In 313 statement, the accused persons denied their involvement in the crime without producing any witness in defence. The trial resulted in their conviction as aforesaid.

3. The instant case was lodged on the complaint of complainant Vinod Kumar (Ex.PW-1/A) in which he gave detailed account of the occurrence. He gave vivid description as to how and under what circumstances, he was robbed of his mobile make Sony Ericsson. He also disclosed that the assailants Shammi and Subhash were apprehended near the spot and their associate Ved Parkash @ Lekhu succeeded to flee the spot. In his Court statement as PW-1, Vinod Kumar proved the version given to the police at the first instance without any variation. He identified the assailants in the court and attributed specific role to each of them in depriving him of his mobile while using criminal force. PW-3 (Raju) who had accompanied the complainant corroborated his version in its entirety and implicated the assailants including the petitioners to be the perpetrators of the crime. Despite lengthy cross-examination, no material infirmities could be extracted in their cross-examination. No sound reasons exist to disbelieve the statements of the victim and his associate as they were not acquainted with the petitioners prior to the incident. They did not nurture any grievance or ill-will to falsely rope them in the

incident. The mobile phone snatched was recovered at the spot and was duly identified by the complainant. The concurrent findings of fact recorded by the courts below are based upon fair appreciation of the evidence. No infirmity or irregularity has been pointed out.

4. The main emphasis of the petitioners' counsel is that ingredients of Section 392 IPC are not attracted in this case as it was a simple case of 'theft' or 'snatching' covered under Sections 379/356 IPC. I find no merit on this aspect. The complainant and his associate have categorically deposed that even before committing theft and depriving them of mobile, they were abused and wrongfully confined by the assailants. They caught hold of the complainant's collar and started shaking him. They intentionally pushed both of them; abused them and uttered 'Saalo dekh kar nahin chal sakte'. Subsequent to that, the complainant was robbed of his mobile without his consent. Not only that, two of the assailants gave beatings to the complainant and his friend Raju by fists and slaps. Apparently, criminal force was used and the victims were wrongfully confined before committing theft of the mobile phone.

5. Offence under Section 356 falls under Chapter XVI of the Penal Code which deals with the offences affecting the human body; contrary to that, Section 390 IPC punishable under Section 392 IPC falls

under Chapter XVII of the Penal Code which deals with offences against property. Evidently, under Section 356 IPC, primacy has been given to the offence of assault in an attempt to commit a theft of property carried by a person. Such an attempt is a circumstance that aggravates the offence of assault. Under Section 392 IPC, primacy is given to the offence of taking away the property/goods without consent when violence or force which includes wrongful restraint is caused or attempted in order to commit theft. Robbery is a special and aggravated form of either theft or extortion. 'Robbery' means a felonious taking from the person of another or in his presence against his will, by violence or putting him in fear. The chief distinguishing element in robbery is the presence of imminent fear of violence. The Section contemplates that the accused should have, from the very beginning, the intention to deprive the complainant of the property, and should for that purpose either hurt him or place him under wrongful restraint.

6. In the instant case not only the complainant and his associate were wrongfully confined / restrained, criminal force was also used to cause hurt to them. All the ingredients of Section 392 IPC are attracted in this case. In *Harish Chandra vs.State of U.P.* AIR 1976 SC 1430 in similar circumstances, the passenger was relieved of his wrist watch

forcibly and when the complainant raised alarm, the appellant Harish Chandra slapped him and his other companions hit him with a stick. Hon'ble Supreme Court upheld the conviction recorded under Section 390 IPC. It observed that according to Section 390 IPC, 'theft' is robbery, if in order to committing of the theft or in committing the theft, or in carrying away or attempting to carry away property obtained by theft, the offender, for that and, voluntarily causes or attempts to cause hurt. The evidence was quite sufficient to show that after Avinash Kumar had been relieved of his watch by the accused Ram Avtar, he (Avinash Kumar) raised an alarm and the appellant Harish Chandra slapped him to enable him to carry away the stolen watch. The hurt which was thus caused to Avinash Kumar clearly fell within the purview of Section 390 IPC.

7. In the light of the above discussion, I find no merit in the revision petition and the same is dismissed. Trial Court record be sent back forthwith along with the copy of this order. Intimation be sent to the concerned Jail Superintendent.

(S.P.GARG)
JUDGE

APRIL 27, 2015/sa