

(2008) 06 CAL CK 0008

Calcutta High Court

Case No: C.R.A. No. 370 of 2004

Rahamat Khan alias Badal Khan
and Najrul Molla

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision: June 24, 2008

Acts Referred:

- Arms Act, 1959 - Section 25, 27
- Criminal Procedure Code, 1973 (CrPC) - Section 313, 428
- Penal Code, 1860 (IPC) - Section 392, 394, 397

Citation: (2008) 4 CALLT 85 : (2008) 4 CHN 562 : (2008) CriLJ 3285 : (2008) 2 ILR (Cal) 871

Hon'ble Judges: Kishore Kumar Prasad, J; Girish Chandra Gupta, J

Bench: Division Bench

Advocate: Minoti Gomes and Mr. Apurba Dutta, for the Appellant; S.K. Mahato and Mr. Pinaki Ranjan Bhattacharyya, for the Respondent

Final Decision: Allowed

Judgement

Kishore Kumar Prasad, J.

This appeal is directed against the judgment and order of conviction dated 29.4.2004 and order of sentence dated 30.4.2008 passed by the learned Sessions Judge, 10th Bench, City sessions Court, Calcutta in Sessions Trial No. 2(9) of 2003 arising out of Sessions Case No. 93 of 2002 convicting the appellants under sections 392/394 of IPC and sentencing them to suffer rigorous imprisonment for ten years as also to pay fine Rs.1,000/- each, in default, to suffer further simple imprisonment for a period of six months each for both the offences punishable under sections 392/394 of IPC.

2. The sentences awarded to the appellants were ordered to run concurrently.

3. The facts and circumstances of the case briefly stated are as follows:

The informant Bijoy Gupta (P.W.I), a broker by profession on 14.6.2002 at about 16.30 hours boarded into a bus of route No.12C/IA from Khidirpur after collecting payment through account payee cheques. When the bus moving along Khidirpur Road came near "Sangam Gate", four persons surrounded him inside the bus and one of them asked him in a low voice to give them everything whatever he had. When he was hesitating, one of those four persons hit on his left side with the "butt" of a revolver. They snatched away from him one black colour rucksack bag which was hanging on his side. Inside that bag there were two cheques of Central Bank, samples of pulses of different qualities and some essential papers. Out of the fear, Shri Gupta gave them his mobile phone bearing No. 9831051943 and the money bag. None of the passengers of the said bus came forward to help him out of fear. The miscreants got down from the bus at J.K.Island after committing the robbery. After they got down, Shri Gupta started shouting for help and the conductor of the bus stopped the bus at some distance. Shri Gupta got down from the bus and chased the miscreants shouting "Pakrao Pakrao". Hearing his shout some pedestrians chased the miscreants and at that time some police personnel also chased them. The police and the pedestrians caught the present two appellants, namely, Rahamat Khan @ Badal Khan and Nazrul Molla and before that they were manhandled by chasing mob. Immediately on search, the snatched bag with cheques, purse etc. were recovered from their possession while other two miscreants managed to flee away with the mobile phone and fire arms. On the spot the police recorded the statement of Shri Gupta and the same had been treated as FIR in this case on the basis of which Maidan P.S. case No.6 dated 14.6.2002 was started. Subsequently, the case was transferred to Anti-Dacoity and Robbery Section, Detective Department, Lalbazar. After completion of investigation, the investigating agency submitted charge-sheet against the appellants under sections 394/397 of IPC and under sections 25/27 of Arms Act.

4. On conclusion of investigation, the case was committed to the Court of sessions along with the appellants to stand the trial.

5. The learned Trial Judge initially framed charges under sections 394/397 of IPC which was subsequently altered by the learned Trial Judge under sections 392/394 of IPC. The charges so framed were read over and explained to the appellants who pleaded not guilty to the charges and claimed to be tried.

6. In the Trial Court, the prosecution examined as many as 9 witnesses. Apart from leading oral evidence, the prosecution also tendered and proved large number of exhibits.

7. Though the appellants were examined u/s 313 of the Cr PC, yet there was no adduction of oral testimony by the appellants. The learned Trial Court after considering the oral and documentary evidence on record and hearing the counsel for the parties passed the order of conviction and sentences as stated hereinabove.

8. Learned counsel for the appellants first tried to assail the conviction of the appellants on the merits but realising that there was insurmountable and trustworthy evidence against the appellants, she confined her argument only towards the quantum of sentences awarded by the learned Trial Judge. Learned counsel prayed for just reduction of the jail sentence awarded by the learned Trial Court.

9. In reply, the learned counsel appearing on behalf of the state/respondent supported the judgment of conviction and sentences passed by the learned Trial Court and prayed for dismissal of the appeal.

10. To bring home the charges as leveled against the appellants, the prosecution had examined the complainant Bijoy Gupta (P.W.I.) who in his evidence stated that on 14.6.2002 at about 4.20 to 4.30 P.M. he was coming to Burrabazar from Khidirpur through a bus on the route No.12C/1A. Inside the bus four persons tried to snatch away his bag and he was assaulted on his back. When the bus was plying, the said four persons got down near J.K.Island taking away his reckon bag containing some cheques and other documents, money bag and mobile phone. As he raised alarm, the conductor of the bus forced him to get down. Some passengers from the bus got down and he including they chased the miscreants and two of them were apprehended by the public. The police came there. He identified those two persons on the spot to the police. The said two persons were also identified by him in the Court during trial. This witness further stated that the articles which were taken away from him inside the bus were recovered from the possession of the apprehended miscreants i.e. present appellants from the spot excepting mobile phone. He identified reckon bag and the money bag. He also deposed that inside the bag, there were two cheques, some samples of pulses. Reckon bag and money bag were recovered from the possession of the accused on the relevant date at the spot. Another seizure list in respect of pulses was prepared on the spot by the police. The money bag containing 23 documents and the reckon bag were marked (Mat.Ext.I collectively) and (Mat.Ext.II). His brother Raju Gupta was also present at the time of seizure. Raju Gupta signed the seizure list. He also deposed that he was treated at P.G.Hospital as he was assaulted and narrated his history of assault to doctor. The evidence of the complainant that the appellants are the persons who had committed this robbery, has got further support by the promptly lodged FIR. (Ext.3) wherein he clearly disclosed the details of the operation of the robbery.

11. P.W.3, Kiran Routh stated that he was also inside the bus and found four persons encircled a person and trying to snatch away his bag forcibly and they were assaulting him with the butt of a revolver on his soldier and they took away the bag, mobile phone and purse and got down at J.K. Island. The person from whom the bag was snatched away also got down and shouted and hearing this he also got down and chased the miscreants and the public managed to apprehend two of them. This witness identified the appellants in the T. I. Parade inside the jail and also

identified the appellants in the Court. He also identified the black bag.

12. P.W.5, Bishu Routh also deposed in the same tune with P.W.3 about the incident inside the bus. He deposed that he along with his friends got down from the bus and chased the miscreants raising their voice. Two of the said miscreants were apprehended but the local people and the other two persons escaped. He identified the appellants before the Court as also in the T. I. Parade held at Presidency Jail. He also deposed that a mobile phone and a black colour bag were taken away by the miscreants. The black bag was recovered from the appellant Rahamat Khan and the money bag was recovered from the appellant Nazrul Molla.

13. P.W.6, Debaki Banerejee stated that on 14.6.2002 at 6 p.m. the incident took place and after seeing a gathering he stopped there. He found two persons were apprehended by the police. Police asked him to be a witness and he agreed to it. Police seized a black bag wherefrom pulses, bank papers were found and police seized those articles under seizure list where he signed. He identified his signature on the seizure list and also identified the reckon bag and the money bag.

14. P.W.7, Krishna Laskar, the doctor attached to Emergency Department, S.S.K.M. Hospital deposed that on 14.6.2002 she examined the informant Bijoy Gupta and found one swelling over the left lower joint with 1 inch circumscribed haematoma. He reported to her that he was assaulted by 3-4 person in the bus of route No.12C/IA at about 4.45 P.M. After examining the patient, she prepared a medical report and in that report the informant Bijoy Gupta also put his signature.

15. P.W.2, Raju Gupta , the brother of the, P.W.1 also supported the prosecution case regarding the assault of his elder brother with a butt of revolver. He also deposed that one of the miscreants snatched away the said bag which was carried by his elder brother and another person snatched away the mobile phone and the purse of his elder brother. He further deposed that the said four boys after some time got down near Fort William and his elder brother also got down from the bus and seeing it he also got down. He shouted and the public managed to apprehend two of them. The bag was recovered from the possession of the appellant Rahamat Khan and the purse was recovered from the possession of appellant Nazrul Molla. The seizure list was prepared and he signed in the seizure list.

16. The vital witness of this case is P.W.8 , Shri Sankar Chakraborty who was sub-Inspector of Police, attached to Maidan P.S. and arrived at the spot while on a round duty and he caught held both the appellants who were apprehended and manhandled by the public. He in his evidence stated clearly that at about 16.35 hours he had been on round duty with force within the police station area. While he was on round at about 5 P.M. at the crossing of the Duffrin Road and J.K.Island he heard a hue and cry and saw that two persons were being chased by some other persons and they were crying as "dacoit" and the said two persons were running through Out-ram Road. He also chased the said persons through his departmental

vehicle. The said two persons were apprehended by local people near Territorial Army Institute of Out-ram Road and public also assaulted them. He apprehended the aforesaid two persons and saved them from public wrath. The said two persons received bodily injuries through assault by public. He asked their names and they disclosed their names as Rahaman Khan @ Badal Khan and another as Nazrul Molla. A black reckshin bag was hanging on the soldier of Rahamat Khan. At that point of time a person rushed to his departmental van disclosing his name as Bijoy Gupta and stated that he was a pulse broker and in the bus those two persons along with the others took away his mobile phone, bag and purse on the point of pistol and he was assaulted with the butt of the revolver. He recorded the statement of Bijoy Gupta and that statement was treated as FIR. He arrested the appellants and searched, them. Raju Gupta and Debaki Banerjee became witnesses of the search. After search of the person of Nazrul Molla he seized one brown colour purse made of by the reckshin containing Rs. 24/-, one photo identity card in the name of Bijoy Gupta, some visiting cards, some pieces of brown colour paper packets and seized those articles under a seizure list. He proved the seizure list and also identified the signature of Debaki Banerjee and Raju Gupta and of accused Nazrul. After searching the person of accused Raju Khan he seized one black colour bag made by reckshin containing two A/C payee cheques, and some packets containing sample of different pulses and some bills in various names. He seized those articles and proved the seizure list and identified the signature of the accused Raju Khan as well as of attesting witnesses Debaki Banerjee and Raju Gupta. He also identified the reckshin bag (Mat. Ext.II). The appellants were taken to hospital for treatment and thereafter they came to Maidan P.S. with the appellants. The complaint Bijoy Gupta was also treated at hospital. After coming to P.S. he filled in the formal FIR which has been marked Ext.6. During investigation, he collected medical report of the accused from the hospital and also identified both the accused before Court during trial.

17. P.W.9, Ram Thapa is the sub-Inspector of police who was attached to Anti-Detective and Robbery Section, Detective Department, Lalbazar. On 21.6.2002 he took charge of this case for further investigation from the then Officer-in-charge, Maidan P.S. under the order of his superior. T.I. parade was held in respect of the appellants on 6.7.2002 and he collected the report of parade on 8.7.2002 and 8.8.2002 and submitted charge-sheet in this case on 10.8.2008.

18. There were minor wear and tear in the evidence of the aforesaid witnesses but they sang a chorus song about the acts perpetrated by the appellants. The witnesses have withstood the ordeal of cross-examination about the incident on the date of occurrence i.e. on 14.6.2002 about which there is no dent.

19. Thus, on overall re-appreciation of the entire prosecution evidence on record, we have no hesitation to hold that the informant P.W.1 sustained simple injury at the time of incident when the appellants had committed robbery.

20. For the said reasons, in our view the learned Trial Court acted correctly in accepting the involvement of the appellants established in this case.

21. One of the questions which remain is whether the learned Trial Judge was justified in convicting the appellants both under sections 392 and 394 of IPC. We have thoughtfully reflected over the said question and our answer is that he tell in error in convicting the appellants both under sections 392 and 394 of IPC.

22. The offence of simple robbery is punishable u/s 392 of IPC and that of robbery, accompanied by hurt u/s 394 of IPC. Since the learned Trial Judge convicted the appellants u/s 394 of IPC, in our opinion he should not have convicted them u/s 392 of IPC. All the ingredients of the offence punishable u/s 392 of IPC are covered in the offence u/s 394 of IPC. Consequently, we set aside the conviction and sentence of the appellants u/s 392 of IPC and acquit them on that count.

23. In our judgment the conviction of the appellants u/s 394 of IPC has been rightly recorded by the learned Trial Judge.

Section 394 of IPC reads thus :

"Voluntarily causing hurt in committing robbery :-

If any person, in committing or in attempting to commit robbery, voluntarily caused hurt, such person, and any other person jointly concerned in committing or attempting to commit such robbery, shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine".

A perusal of the text of the section would show that not only the person who actually causes hurt but an associate of his/her would be equally liable for the mischief contemplated by the section.

24. Thus unlike section 397 IPC wherein the liability is only individual, the liability u/s 394, IPC is both individual and vicarious.

25. Accordingly, the conviction entered against the appellants for the offence u/s 394 of IPC. deserves to be confirmed. We do so.

26. The only question which survived is what should be the quantum of sentence to be awarded to the appellants u/s 394 of IPC.

27. Learned counsel for the appellant with her customary persuasive advocacy urged that bearing in mind that the incident had taken place over six years ago and the appellant Rahamdt Khan and Nazrul Molla were aged about 24 and 28 years respectively at the time of incident, it is a fit case in which their sentences be reduced to the period already undergone by them.

28. Learned counsel appearing for the state/respondent repelled the said contention and advocated that if we were to fall a prey to the submission of the

learned counsel for the appellants, we would almost be judicially abetting the commission of highly anti-social offences like robbery in the metropolis of Calcutta. He urged that such an approach would vitiate the even tempo of life in Calcutta.

29. We have carefully considered the rival contentions.

30. Although the submission of the learned counsel for the appellants appeared to be pregnant with substance on the first blush on a deeper reflection, we found the submission of the learned counsel for the state/respondent to be more weighty.

31. All the same dilemma staring us is the quantum of sentence. Learned counsel for the appellants is right in contending that the appellants were aged 24 and 28 years respectively at the time of incident. The correctness of her submission is vindicated by the fact that in the forwarding Memo dated 15.6.2002 sent to Court along with the appellants, the investigating agency had mentioned the age of the appellants Rahamat Khan and Nazrul Molla as 24 and 28 years respectively, meaning thereby that at the time of incident i.e. on 14.6.2006, the appellants were aged about 24 and 28 years. From the material on record it does not appear that the appellants have any adverse criminal antecedent.

32. In such a situation, having due deference to the submission of the learned counsel for the state/respondent, we feel that the ends of justice would be amply satisfied if the appellants are awarded sentences of 8 years rigorous imprisonment as also to pay fine of Rs.1,000/-, in default, to suffer further simple imprisonment for 6 months each u/s 394 of IPC.

33. In the result, the conviction of the appellants u/s 394 of IPC as awarded by the learned Court is affirmed. In so far as sentence of 10 years is concerned, it is reduced to 8 years rigorous imprisonment and in so far as fine of Rs.1,000/- with default stipulation is concerned, it is maintained.

34. The appellants are in custody and they are directed to serve out the remaining part of their sentences as indicated above. The entire amount of fine if realised, shall be paid to the informant Bijoy Gupta (P.W.1).

35. The appellants shall get benefit of set off in terms of section 428 of Cr PC out of the period of imprisonment already undergone.

36. The learned Lower Court is directed to issue necessary revised jail warrant as required by the Rules in respect of these two appellants.

37. With this modification in the sentence, the appeal is partly allowed.

38. Lower Court Records with a copy of this judgment to go down forthwith to the learned Chief City Sessions Judge, Calcutta at Bichar Bhawan for information and necessary action.

Urgent xerox certified copy of this judgment, if applied for be supplied to the learned counsel for the parties upon compliance of all formalities.

Girish Chandra Gupta, J.

39. I agree.