

(1984) 09 DEL CK 0048

Delhi High Court

Case No: Criminal Appeal No. 32 of 1984

Abdul Gafoor Goga

APPELLANT

Vs

The State

RESPONDENT

Date of Decision: Sept. 28, 1984

Citation: (1984) 2 Crimes 846 : (1984) 8 DRJ 34 : (1985) 1 RCR(Criminal) 174

Hon'ble Judges: J.D. Jain, J

Bench: Single Bench

Advocate: Neelam Grover, amices Curiae, R.M. Tufail and D.R. Sethi, for the Appellant;

Judgement

J.D. Jain, J.

(1) The appellant hails from Kanpur (U.P.). He has been convicted of offences u/s 392/34 read with Section 397, Indian Penal Code and also of offence u/s 27 of the Arms Act by an Additional Sessions Judge vide his judgment dated 4th February 1984. He has been sentenced to rigorous imprisonment for seven years which is the minimum prescribed in law for an offence falling u/s 397 Indian Penal Code and also to rigorous imprisonment for three years u/s 392 Indian Penal Code and rigorous imprisonment for six months u/s 27 of the Arms Act. However, all these sentences have been made to run concurrently. Feeling aggrieved, he has come up in this appeal against his conviction and sentence.

(2) The prosecution case in brief is that on 8th September 1978 at about II.30 A.M./12 Noon the appellant accompanied by another person entered house No. 298, Street No. 4, Govind Puri. Smt. Sumitra Devi, Pw 1, was then present in the house Along with her infant son aged about two years, but no male member of the family was present. The main gate of the house was lying open. The appellant and his companion entered through the same. The appellant was carrying a pistol in his hand. On entering the house the companion of the appellant snatched the gold chain which Sumitra Devi was wearing on her neck. She raised an alarm and both the appellant and his companion ran away in the street in opposite directions.

However, some occupants of the neighbouring house came out of their respective houses. Brij Bhushan, Public Witness 2, who happened to be standing near the shop "Sweet Corner" in Gali No. 3, saw the appellant running towards Bhagat Singh College. He also heard the shouts of the lady. So, he chased the appellant and succeeded in overpowering him on the main road near Bhagat Singh College. He then brought the appellant to the Halwai shop by which time Shanti Parshad, Public Witness 3, who was also living in the neighborhood reached there. Feeling the touch of a hard substance Brij Bhushan raised the shirt of the appellant and found that a country-made revolver (Ex. P 1) was concealed below it. He seized the same. It was loaded with a live cartridge (Ex. P 2). Another cartridge was found in the pant pocket of the appellant. Smt. Sumitra Devi too reached the spot by then and identified the appellant as one of the persons who had entered her house. She also told them that the person who had snatched the chain had managed to escape.

(3) It appears that some person telephoned the police from public telephone booth about the incident of chain-snatching and the culprit having been apprehended by the members of the public. On receipt of the said message, Si Laxmi Narain, Police Station Kalkaji, reached the spot. At about the same time Si Ganga Dutt, who happened to be on patrol, too reached there. The latter recorded statement Ex. Public Witness 2/A of Brij Bhushan and sent the same to the Police Station under his endorsement Ex. Public Witness 9/A for registration of a case. Brij Bhushan produced the pistol and the cartridges which had been seized by him from the appellant and the same were taken into possession by Si Ganga Dutt vide memo Ex. Public Witness 2/C. After completion of investigation and obtaining the necessary sanction for the prosecution of the appellant under the Arms Act, the challan was put in against the appellant to stand trial for offences under Sections 392/34, 397 Indian Penal Code and 27 of the Arms Act,

(4) The prosecution case has been unfolded at considerable length by Smt. Sumitra Devi who, inter alia, stated that the appellant was having a pistol in his hand when he entered her house along with another person and he snatched the gold chain which she was wearing. At that time she was in advanced stage of pregnancy and was alone at her house. As a result of chain snatching she sustained scratches on her neck. She also deposed to the apprehension of the appellant by Brij Bhushan and the recovery of pistol and cartridges from him.

(5) During cross-examination, she explained that she had known the appellant from before because he used to work in a factory just opposite her house. She explained that there was a water tap in the compound of her house and like other persons the appellant also used to take water from her house. However, she did not know the companion of the appellant prior to this incident and she had not talked to the appellant either. She admitted having told the police that out of the two persons who had entered her house, the person who was having the pistol aimed at her whereas the other snatched the chain from her neck. She re-affirmed her statement

to the police to be correct saying that she had forgotten the details of the incident on account of lapse of 4" years. However, she admitted that she had refreshed her memory before coming to the court by going through the statement made by her to the police. She further explained that she was lying on bed at the time of the incident and, Therefore, she did not see the face of the appellant at the time of his entering the house. She ran after the culprits immediately on the chain being snatched and she also raised an alarm. She admitted that when she came out of the house she saw the revolver in the hand of Brij Bhushan when the latter came back to the spot after apprehending the appellant. The companion of the appellant, however, managed to escape.

(6) S/SHRI Brij Bhushan and Santi Parshad too have supported the prosecution version about the appellant having been apprehended while he was running away towards Bhagat Singh College and recovery of the pistol and cartridges from his possession by Brij Bhushan. According to Brij Bhushan, the appellant was identified by Smt. Sumitra Devi as one of the persons who had entered her house and had aimed at her with the revolver Ex. P 1 while the other person snatched her chain.

(7) Nandan Singh, Public Witness 6, is record clerk in the All India Institute of Medical Sciences. He produced the original medico-legal certificate of Smt. Sumitra Devi who was examined by Dr. A.K. Sharda saying that Dr. Sharda had since left the hospital and his whereabouts were not known. The medico legal certificate Ex. Public Witness 6/A shows that she had scratches on her neck when examined by the doctor on the very day of the incident.

(8) Si Ganga Dutt, Public Witness 9 and Si Laxmi Narain Public Witness 4, are the investigating officers who seized the arms, i.e. pistol Ex. P I and cartridges Ex. P 2 and P 3, which were produced by Brij Bhushan before them, vide memo Ex. Public Witness 2/C. They also arrested the appellant who too was produced by Brij Bhushan and Shanti Parshad.

(9) In his examination u/s 313, Code of Criminal Procedure, the appellant denied the prosecution version in toto. However, he came out with a parallel version saying that at the relevant time he was working in an export factory opposite the house of the complainant Smt. Sumitra Devi. He was on visiting terms as he used to take water and other necessities from her house as and when required. On the day of the occurrence, he heard the shouts "Bachao, Bachao" coming from the window of the complainant and he rushed to the house of the complainant. As he entered her house, he saw one person grappling with her in her room. On seeing him, i.e. the appellant, the culprit pushed him and ran away. He chased the culprit and other persons too ran after the culprit. However, that person managed to escape throwing away his pistol. He, i.e. the appellant, picked up the pistol and in the meantime Brij Bhushan and others caught hold of him suspecting him to be the culprit. Thus, he claimed to be innocent. However, he has led no defense.

(10) On a perusal of the entire evidence on record, I find that the conviction of the appellant is well founded. No doubt, Smt. Sumitra Devi stated in her deposition in court that it was the appellant who had snatched the chain from her neck but when confronted with her police statement she veered round to her former statement and re-affirmed the same to be correct. The Explanation given by her that there was some confusion in her mind due to lapse of long time between the incident and her deposition in court is quite plausible. In any event her testimony finds ample corroboration from the evidence of both Brij Bhushan and Shanti Parshad, Public Witness s, and I see no reason to disbelieve her. It is nobody's case that she fostered any ill-will or animosity towards the appellant. Sue categorically refuted the suggestion that the appellant had come to her house to rescue her after hearing her shouts and reiterated that the accused had entered her house along with another person and he was holding the pistol which he aimed at her. In the absence of any apparent motive or ill-will on the part of Smt. Sumitra Devi towards the appellant who was admittedly known to her from before, it cannot be urged by any stretch of reasoning that she tried to falsely implicate the appellant in this heinous offence. That apart, both Brij Bhushan and Shanti Parshad being neighbours of the complainant are the most natural witnesses. It is indeed praiseworthy that Brij Bhushan displayed unusual courage in chasing and overpowering the appellant. Luckily for him the appellant was not then holding the pistol in his hand with a view to overawe any person attempting to apprehend him. His companion was, however, fortunate enough to escape with the booty as he ran away the opposite direction. The stand of the appellant that he picked up the pistol on its being thrown away by the real culprit does not carry conviction and is totally falsified by the fact that only one cartridge was loaded in it whereas the other cartridge was recovered from the pocket of his pant. Surely, certain discrepancies, which are always likely to crop up in the depositions of various witnesses when they are examined after the lapse of such a long time as 4" (four and a half) years of the incident cannot be magnified into serious infirmities so as to render evidence of the witnesses unworthy of credence. Hence, I find that the learned Additional Sessions Judge has correctly appraised and appreciated the evidence on record and the conviction of the appellant for the aforesaid offences calls for no interference. Needless to say, that the very act of the appellant carrying a country-made pistol in his hand and aiming the same at the complainant was enough to frighten and terrorise her. As held by the Supreme Court in [Shri Phool Kumar Vs. Delhi Administration](#), it was tantamount to the use of a lethal weapon for the purpose of committing robbery. Hence, conviction of the appellant for the aforesaid offences is maintained.

(11) As for sentence, the learned counsel for the appellant has earnestly canvassed that, it is a fit case for release of the appellant on probation rather than award of institutionalized punishment. She has urged that the appellant was below 21 years of age at the time of commission of the crime and that the reports received from both the Probation Officers, one from Delhi and the other from Kanpur, clearly point

out that he had been gainfully employed during the period he remained on bail. So her submission is that the Court should adopt the approach of a reformist and afford an opportunity to the appellant to reform and rehabilitate himself rather than become a hardened criminal by being lodged in Jail for a long term of seven years. There is no doubt that the modern trends in penology favor an approach of a reformist where it is considered that the offender not being a person of depraved character may have succumbed to sudden temptation or uncontrollable impulse but even then there are chances of his reformation. On the other hand, the learned counsel for the State has urged that the nature of the crime committed by the appellant, which was admittedly preplanned, disentitles him to the benefit of probation. He has also pointed out that the appellant was involved in two more criminal causes of Police Station Kalkajee being (i) Fir No. 259/76 u/s 379/411 Indian Penal Code, and (ii) Fir No. 911/78 dated 11th September 1978. However, he frankly conceded that the appellant was acquitted in the second case on 23rd May 1983. As for the first, he is not aware" as to whether charge sheet was ever filed by the police against him and as such he was put on trial or not.

(12) A perusal of the reports of both the Probation Officers would show that the appellant has since married and that he has been gainfully employed in different embroidery factories from time to time. Some of his employers have even given commendation certificates stating that he is a very good worker. Having regard to the fact that he is well versed in embroidery and that he has a young wife to take care of him, chances of his shunning life of crime and becoming a good citizen, if given the opportunity, cannot be ruled out. In [Masarullah Vs. State of Tamil Nadu](#), on which reliance has been placed by the learned counsel for the appellant, too the appellant had been convicted of offences u/s 452 & 397 Indian Penal Code. He had been sentenced to rigorous imprisonment for seven years. His appeal to the High Court failed and his prayer for release on probation of good conduct too was turned down by the High Court, inter alia, on the ground that the crime was pre-planned and the appellant had made the victim part with the jewels including her "thali mani" by brandishing a knife. However, the Supreme Court disagreeing with the approach of the High Court observed that:

"IN case of an offender under the age of twenty one years on the date of commission of the offence, the Court is expected ordinarily to give benefit of the provisions of the Act and there is an embargo on the power of the Court to award sentence unless the Court considers otherwise, having regard to"

(13) Their Lordships then proceeded to examine the report of the Probation Officer which stated that the appellant had fallen into undesirable company and came under the evil influence of the movie which accentuated the dormant criminal propensity and proclivity in him. However, having regard to his family background etc. their Lordships considered the same to be pre-eminently a fit case to grant the benefit of modern Penal logical approach as enacted in the said Act.

(14) Having regard to the observations of their Lordships the instant too appears to be a fit case where the benefit of probation should be allowed to the appellant. As already observed, it may enable him to get suitable employment and lead a happy married life. On the other hand, if this benefit is declined to him, there will be virtually no opportunity and scope for his reformation and his family life will be altogether ruined. So, taking a compassionate and lenient view of the matter, I order that instead of serving the remaining sentence the appellant shall be released on probation of good conduct subject to his furnishing a bond in the sum of Rs. 5,000.00 rupees five thousand only) with one surety in the like amount to the satisfaction of the trial Court to be of good behavior and to keep peace for a period of three years. Further, he shall report to the concerned Probation Officer at New Courts, Tis Hazari, Delhi, once every three months and abide by the instructions which may be issued by him from time to time. In case he furnished the requisite bond and the surety who must be amenable to the jurisdiction of Delhi Courts to the satisfaction of the trial Court, as ordered, his remaining sentence shall remain suspended. He shall, however, appear and receive sentence if he commits breach of the bond within the aforesaid period of three years. This appeal stands disposed of accordingly.