

(2009) 05 DEL CK 0454

Delhi High Court

Case No: Criminal Appeal No. 291 of 2006

Rohtash

APPELLANT

Vs

The State

RESPONDENT

Date of Decision: May 12, 2009

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 34, 365, 392, 397

Hon'ble Judges: Sunil Gaur, J

Bench: Single Bench

Advocate: D.M. Bhalla, for the Appellant; Amit Sharma, Additional Public Prosecutor, for the Respondent

Judgement

Sunil Gaur, J.

Intermingling of the two offences, i.e., of abduction and armed robbery produces a strange concoction in this case. To begin with, the offence is of abduction which Appellant and his companions commit at the point of a revolver and the demand of ransom of Rupees one lac is strangely made to the victim and not to his relatives and the victim is let off by telling him that he should pay it on the second day. In any case, it is said that offence of abduction simplicitor is still made out and side by side, offence of armed robbery has been committed by appellant/accused and he was assisted by his companions in commission of these offences. In the aforestated background, factual scenario of this case has to be looked into.

2. In the evening of 29th day of November, 1998, A.K. Mishra was about to leave his house in his Maruti Car and Appellant/accused took a lift from him and since A.K. Mishra knew Appellant/accused, therefore, he offered him a lift and in the meanwhile, three companion of Appellant/accused sat on the rear seat of the car of A.K. Mishra, who did not object to it since Appellant/accused was known to him. After traveling for a short while, Appellant/accused asked A.K. Mishra to close the

side window of the car and pointed a revolver at him, whereas his companions had put some weapon like object on his stomach from the rear side and Appellant/accused directed A.K. Mishra to move towards Lal Kuan by pointing the revolver at him and out of fear, A.K. Mishra took left turn in a street and stopped the car and one of the companions of the appellant/accused, pushed A.K. Mishra inside the car and drove the car. After they had crossed Sangam Vihar, one of the companions of appellant/accused took out the purse of A.K. Mishra from the back pocket of his pant and gave a blow to him with the butt of the revolver and thereupon, appellant/accused told his companion not to beat A.K. Mishra and to take the money.

3. According to the narration of A.K. Mishra, companion of appellant/accused took out the money from his purse, i.e., Rs. 4200/- and kept it with him and finally the car stopped at a deserted place after crossing Andheria Mor and appellant/accused had allowed A.K. Mishra to go away only after he had promised to pay a sum of rupees one lac on the second day of this incident. As per the version of A.K. Mishra, after this incident, he proceeded to his clinic and met his brothers, and thereafter, he made a statement to the police regarding this incident and the law was set into motion.

4. On the aforesaid statement of A.K. Mishra, (Ex.PW-4/A), FIR No. 1062/98 u/s 392/397 of the Indian Penal Code was registered at Police Station Kalkaji, Delhi. Girdhar Gopal Mishra (PW-5) supports the aforesaid version of complainant/first informant (PW-4). ASI Raj Singh, (PW-6) is the initial Investigating Officer of this case. DSP Ombir Singh (PW- 8) had deposed about the arrest of appellant/accused in another case. SI Anil Kumar (PW-9) is the main Investigating Officer of this case, who has filed the charge sheet in this case against appellant/accused alone as his companions could not be traced.

5. Appellant/accused was charged for committing offences punishable u/s 365/34 and u/s 392 read with Section 397 of the Indian Penal Code. He had claimed trial in this case.

6. Prosecution case rests upon the testimony of nine witnesses, and the crucial evidence is of complainant/first informant (PW-4) and of the Investigating Officers (PW-6) and (PW-9).

7. The stand taken by the Appellant before the trial court was of denial of the prosecution case and he chose not to lead any evidence in his defence and the plea which he took, reads as under:

Mr. Beer Singh alongwith Dr. A.K. Mishra were residing together at Harkesh Nagar Okhla in the year 1995. I was also residing at Harkesh Nagar Okhla alongwith other family members and my parents. On instigation of Dr. A.K. Mishra, Mr. Bir Singh committed the murder of my brother Swamiji on 17.1.95 and the criminal case was registered against Beer Singh. Mr. Beer Singh and PW-1, Dr. A.K. Mishra put

pressure on us to sold out our residential house and other property but due to their pressure we sold our residential house and other property and due to said enmity the present false case was registered against me by PW-Dr. A.K. Mishra.

8. Trial ended in conviction of the appellant/accused for the offence of abduction as well as for the offence of committing armed robbery and trial court vide impugned order of 12th April 2006, has sentenced the Appellant to undergo rigorous imprisonment for a period of ten years with fine of Rs. 3,000/- for commission of offence u/s 392 read with Section 397 of the Indian Penal Code. For the offence u/s 365 of the Indian Penal Code, the Appellant has been sentenced to undergo rigorous imprisonment for five years with fine of Rs. 2,000/-. Both these sentences contained default clause and have been ordered to run concurrently.

9. In this appeal, counsel for the parties have been heard and with their assistance, the evidence on record has been assessed.

10. During the course of the arguments, learned Counsel for the Appellant had pointed out that the arrest of the appellant/accused was after one year of this incident and no recovery has been effected from or at the instance of appellant/accused and there is discrepancy in the robbed amount. It is pointed out that in the FIR, the robbed amount mentioned is Rs. 3,000/- only, whereas, complainant/first informant (PW-4), in his evidence, has stated that the robbed amount was Rs. 4,200/-. Another discrepancy pointed out is that complainant/first informant (PW-4) has stated in his evidence that his son and compounder were with him, when he was returning from his clinic to his house, whereas, as per the evidence of his brother (PW-5), he had met the complainant (PW-4) at the round about Okhla Service Road, i.e., not at the clinic of the complainant (PW-4) as claimed by him. It is also pointed out that brother (PW-5) of the complainant (PW-4) had claimed that he had taken the complainant to Police Station Okhla, whereas, ASI Raj Singh (PW-6) has stated in his evidence that the complainant accompanied by his brother, had come to PP Govindpuri.

11. According to learned Counsel for the Appellant, aforesaid infirmities in the prosecution case casts a doubt about the veracity of the prosecution version and entitles appellant/accused to benefit of doubt. Lastly, it is submitted that trial of this case stands vitiated as proper legal assistance was not provided to the appellant/accused and reliance has been placed upon a decision of a Division Bench of this Court reported in 90 (2001) DLT 702, to contend that instead of remanding back the case, accused was let off as the accused had remained behind bars for a substantial period of time. It is pointed out that the Appellant is behind bars in this case for the last about four and half years and therefore, he deserves to be released forthwith as the trial of this case stands vitiated. Nothing else has been urged on behalf of the appellant/accused.

12. On behalf of the Respondent-State, learned Additional Public Prosecutor, is quick to point out that appellant/accused cannot derive any advantage out of the decision reported in 90 (2001) DLT 702, as the complainant (PW-4) of this case has been adequately cross-examined by the counsel for the appellant/accused before the trial court, but there is no worthwhile cross-examination of the complainant (PW-4) to create a doubt about the truthfulness of the complainants version and since it is not shown as to why complainant (PW-4) would falsely implicate the appellant/accused, therefore, trial court has rightly relied upon the evidence of this star witness, i.e., complainant (PW-4) to convict and sentence the appellant/accused and there is no infirmity in the impugned judgment and order on sentence passed by the trial court in this case.

13. After giving thoughtful consideration to the submissions advanced by both the sides, and upon analysis of the evidence on record, I find that the discrepancies pointed out the in prosecution case by the defence do not go to the root of the matter and are not sufficient to dislodge the substratum of the prosecution case, which stands firmly proved on record from the evidence of complainant/first informant (PW-4) of this case.

14. The plea taken by the appellant/accused of complainant (PW-4) falsely implicating him in this case at the instance of one Bir Singh, is not only farfetched but is also without any basis because the categoric assertion of the complainant (PW- 4) that he had no enmity with the appellant/accused remains unassailable. It is pertinent to note that here the abduction of the complainant is not for settling the old scores but is with a view to rob and to extract money from the complainant of this case. Therefore, I find that the trial court has rightly relied upon the testimony of the complainant (PW-4) and has rejected the aforesaid plea of the appellant/accused, as he has failed to show that he had any inimical relations with the complainant (PW-4) of this case.

15. Now I shall deal with the aspect of trial of this case being vitiated for want of legal assistance. In the case of [Mohd. Miraz @ Munna Vs. State \(NOT of Delhi\)](#), it was found that the counsel for the accused was not present on any of the hearings and the cross-examination was done on behalf of the accused but it was not stated that it was done by counsel for the accused and since material witnesses were not cross-examined by the counsel or amicus curiae counsel for the accused, therefore, it was held that the trial stood vitiated.

16. The factual position of this case is entirely different. Here, the material witness is the complainant/first informant (PW-4) and he has been duly cross-examined by counsel for the Appellant. Whether the cross-examination done by counsel is adequate or inadequate, is a matter of subjective satisfaction and on this account, it cannot be said by any stretch of imagination that the trial stood vitiated. In any case, the contention of the counsel for the appellant/accused herein is that the trial stands vitiated in this case because the remaining witnesses, i.e., brother (PW-5) and

the Investigating Officers of this case have been cross-examined by the accused and not by any legal aid counsel and it was the duty of the trial court to have provided free legal assistance to the appellant/accused for cross-examination of the remaining witnesses.

17. Ideally speaking, trial court ought to have ensured that without legal assistance, recording of evidence should not have taken place. A perusal of this record reveals that an amicus curiae counsel was, in fact, appointed by the trial court in this case. What the trial court should do, if legal aid counsel does not appear to defend the poor accused, is a question which will arise for consideration not in this case, but perhaps in some other case. It is so said because the record of this case reveals that at the stage of recording of the statement of the appellant/accused, u/s 313 Cr.P.C., he was duly represented by his own counsel. It goes without saying that if the counsel for appellant/accused wanted to cross-examine Investigating Officers of this case and the brother of the Complainant (PW-4) and then nothing had stopped him from moving an application before the trial court for recalling these witnesses. It is not the case that there is no cross-examination of these witnesses by the accused. Since the evidence of Girdhar PW-5 is of corroborative value, therefore, perhaps counsel for the Appellant before the trial court did not deem it proper to recall him for cross-examination.

18. Be that as it may. Since the fate of this case depends upon the testimony of the Complainant/first informant PW-4 alone, who has been cross-examined by the counsel for appellant/accused, therefore, no prejudice is caused to the appellant/accused in the absence of cross-examination of PW-5 and PW-6 by the defence counsel. Therefore, in my considered view, the trial of this case does not stand vitiated for want of free legal assistance to appellant/accused at the stage of recording of the evidence of witnesses i.e. PW-5, PW-6 and PW- 9.

19. Viewed from any angle, the testimony of the Complainant/first informant PW-4 alone is sufficient to sustain the conviction of the appellant/accused for the offences with which he has been charged. There is no illegality in the impugned judgment warranting any interference by this Court in this appeal. The conviction of the appellant/accused deserves to be maintained and is hereby upheld.

20. On the quantum of sentence, I find that considering the nature of offence committed, there is some scope for reduction of the substantive sentence imposed upon the Appellant for the offence u/s 397 of the Indian Penal Code. Trial court has awarded ten years sentence for this offence, whereas the minimum provided is seven years. Keeping in view the fact that the Appellant has faced the agony of trial and appeal proceedings in this case for the last more than one decade, I find that the ends of justice would be met if the substantive sentence imposed upon the Appellant for the offence punishable u/s 397 of Indian Penal Code is reduced from rigorous imprisonment for a period of ten years to rigorous imprisonment for seven years.

21. With the modifications, as aforesaid, this appeal stands partly allowed. Appellant is in custody. He be apprised of this order through the concerned Jail Superintendent.

22. This appeal stands disposed of accordingly.