

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.525 OF 2010

RAJENDER SINGH

APPELLANT(S)

VERSUS

THE STATE OF HARYANA

RESPONDENT(S)

WITH

CRIMINAL APPEAL NO.218 OF 2011

O R D E R

These two appeals arise out of a common judgment and common trial and are being disposed of by one judgment.

The prosecution story, briefly stated, is that Kashmir Singh (PW-7) was employed as a driver with Mahabir Singh (PW-2). On 04.12.1996, PW-7 was driving a Maruti Van No.DL9CA-1284 in which Mahabir Singh and his wife Sunita Jain were also travelling. They had just crossed the Kundli border towards the Punjab side, PW-1-Sunita Jain asked the driver Kashmir Singh to make an enquiry from some boys standing on the side of the road for the direction of Surya Shoe Factory, Kundli. According to the prosecution, when the van was stopped, three boys were standing, one left and the remaining two attacked the driver. One of them used a pistol to intimidate the driver and the passengers in the van. Thereafter, one of the two accused got into the driver

seat after pushing the driver and Mahabir Singh into dicky of the van. Victims were blind folded. They were driven out in the van for almost three hours. Thereafter, they were all left in a field and the car was taken away. After the car was taken away, Kashmir Singh took a lift in a tractor and made a complaint to the police in this regard. After investigation, the accused were charged for committing offence punishable under Section 397 of Indian Penal Code.

On 08.12.1996, the police party consisting of Assistant Sub-Inspector Dharam Pal (PW-9) along with Head Constable Ran Singh (PW-4) and others were present on the bank of river Yamuna when they saw Van bearing No.DL9CA-1284. The vehicle was stopped & thereafter one country made pistol was allegedly recovered from the accused. Both the vehicle & the pistol were taken into possession by the police.

Robbery is either theft or extortion and theft of car would also amount to robbery. As far as Section 397 of Indian Penal Code is concerned it reads as follows:

397. Robbery, or dacoity, with attempt to cause death or grievous hurt.—If, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years.

Therefore, while committing robbery or dacoity, if

the offender uses a deadly weapon, or causes grievous hurt or attempts to cause death or grievous hurt minimum imprisonment provided is seven years. It is not material whether a shot is fired or not, the material aspect is whether the offender uses the deadly weapon or not. There can be no dispute that a pistol is a deadly weapon. Therefore, the only issue is whether the prosecution has proved its case that the appellants did use a deadly weapon.

Though, PW-1 and PW-2 have turned hostile to the limited extent that they have not identified the two accused they have otherwise fully supported the prosecution version with regard to the occurrence, the fact that one of the accused got into the front seat and one sat in the rear seat, and that one of the accused persons intimidated the victims with a pistol. The version of all the three witnesses in all respects complements each other and there are no contradictions. However, both, PW-1 and PW-2, state that since they were immediately blind folded, they could not identify the accused.

The accused have been identified by PW-7 who was the injured. It is urged on behalf of the learned counsel for the accused that no test identification parade was done. There is material on record to show that the accused were given the option of taking part in test identification parade but they refused to do so. They may have valid

grounds to refuse to take part in the test identification parade because according to them they had been shown to PW-7 in Court and, therefore, no purpose would be served by conducting a test identification parade. Even if that be correct then the identification by the victim in Court does not become totally meaningless. There is no material on record to show that there was any past animosity between the accused and the victim. The occurrence has taken place and the victim would not get any benefit by implicating somebody who was not involved in the incident.

As far as the accused Rajender Singh is concerned, we are of the considered opinion that he used a pistol. Therefore, his conviction is maintained.

We, therefore, find no merit in the appeal (Criminal Appeal No.525/2010), which is accordingly dismissed.

As far as accused Jai Parkash is concerned, PW-7 in his statement has also clearly mentioned by pointing out to accused Jai Parkash as the one who had occupied the driver seat and further pointing out to Rajender Singh who had threatened them at pistol point. There is no evidence that Jai Parkash used a dangerous weapon. He has not been charged under Section 34 of Indian Penal Code. Therefore, Jai Parkash cannot be convicted under Section 397 of Indian Penal Code and is convicted under Section 392 of Indian Penal Code, which is a lesser offence. Accused Jai Parkash has already undergone 04 years 07

months 06 days imprisonment which according to us is sufficient sentence. We order accordingly. His bail bonds shall stand discharged.

In view of the above, Criminal Appeal No.218/2011 is partly allowed. Both the appeals are disposed of accordingly.

.....J.
(DEEPAK GUPTA)

.....J.
(ANIRUDDHA BOSE)

New Delhi
September 17, 2019

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s). 525/2010

RAJENDER SINGH

Appellant(s)

VERSUS

THE STATE OF HARYANA

Respondent(s)

WITH

Crl.A. No. 218/2011 (II-B)

Date : 17-09-2019 These appeals were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE DEEPAK GUPTA
HON'BLE MR. JUSTICE ANIRUDDHA BOSE

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Dr. Monika Gusain, AOR
Ms. Manpreet kaur Balla, Adv.Mr. Raj Singh R., Adv.
Mr. Pankaj Kumar Singh, Adv.
Mr. Sidhirath Singh Sengar, Adv.
Mr. Sanjeet Paliwal, Adv.
Mr. Vishwa Pal Singh, AORUPON hearing the counsel the Court made the following
O R D E RThe criminal appeals are disposed of in terms of the signed
order. Pending application, if any, stands disposed of.(MEENAKSHI KOHLI)
COURT MASTER(RENU KAPOOR)
COURT MASTER

[Signed order is placed on the file]