

Om Prakash & Anr.

Vs

State of Rajasthan

(G. T. Nanavati, V. N. Khare JJ)

21.01.1998

JUDGMENT

NANAVATI J

1.The two appellants were convicted by the trial court for the offence punishable under Section 395 IPC and sentenced to suffer 4 years rigorous imprisonment. The High Court confirmed their conviction and sentence. Therefore, they have field this appeal.

2.It was alleged against them that they along with Amarjit Singh, Radhey Shayam And Vijay Kumar had robbed Mohan Lal of his wrist watch and 10 currency notes of Rs.10/-each.On 10.4.1977 at 5.00 P.M., while Mohan Lal was standing in front of his shop along with his brother Prabhunarain all the 5 accused there in a car after committing the dacoity ran away in that car. Within an hour they were caught by the police near dausa octroi check-post.

3.In order to prove its case the prosecution had examined three eye witnesses Mohan Lal (PW-6), Prabhunarain (PW-2) and Hanumansahi (PW-6).The prosecution had also relied upon the circumstances that when the search of accused Amarjit Singh was taken at the police station the wrist watch belonging to Mohan Lal was found from his person. Believing the evidence of these witnesses and also the recovery of wrist watch from Amarjit Singh the trial court held that five persons had caught hold of Mohan Lal and had snatched away his wrist watch and hundred rupees. It, however, held that identity of accused Vijay Kumar and Radhey Shyam was not established beyond doubt and, therefore, acquitted them. The other three accused, that is, two appellants and Amarjit Singh were convicted under Section 395 IPC.

4.The High Court on re-appreciation of the evidence held that trial court had rightly believed the evidence of Mohan Lal, Prabhunarain and Hanumansahi and also the evidence relating to recovery of wrist watch of Mohan Lal. It further held that the prosecution had established beyond any doubt the case against the said three accused. It therefore, dismissed the appeal field by the three convicted accused.

5.Out of them Om Prakash and Munna have field this appeal. Accused Amarjit Singh has not field any appeal against his conviction and sentence.

6.It was contended by the learned counsel for the appellants that the story narrated by the prosecution witnesses was unnatural and, therefore, ought not to have been believed by this courts below. We fail to appreciate that how the version of the eye witnesses can be said to be unnatural. Mohan Lal and Prabhunarain have stated that while they were standing in front of the shop of

Mohan Lal the accused came there and snatched away the wrist watch and ran away in the car in which they had come. They have further stated that they chased the Accused for some time in a jeep in which they got lift soon there after but they did not stop the car of the accused and decided to proceed to the police station as they were afraid of the dacoits. It is difficult to appreciate how this version can be regarded as unnatural. Impulsively they chased the dacoits but soon realized the danger of intercepting them. So they noted the number of the car went straight to the police station. This conduct of the witnesses cannot be regarded as unnatural. Immediately after loading the FIR they along with Sub-inspector of Police had proceeded in the direction in which the accused had left and found them sitting near Dausa octroi check post, at a distance of about 23 Kms. On seeing the police two occupants of the car ran away but the other three, that is, Om Prakash, Munna and Amarjit Singh were caught. They were taken to the police station and searched. From the person of Amarjit Singh the wrist watch of Mohan Lal was recovered. The learned counsel for the appellants submitted that it was highly improbable that even after about an hour, the accused would have remained sitting in the car. The evidence discloses that the jeep in which Mohan Lal and Prabhunarain were chasing the accused overtook the car of the accused and went ahead the police station. There is no material to show that the accused knew that they were chased. They had therefore, no reason to suspect that the jeep would go to the police station and police would be informed. They had already travelled a distance of 23 Kms. and they might have considered it safe to take a halt there. Therefore, the prosecution version cannot be said to be improbable having carefully considered the evidence of eye witnesses and the Investigating Officer we do not find anything in their evidence which would create any doubt as regards the correctness of what they have stated. The trial court and the High Court have thought it fit to believe their evidence and we see no reason to differ from their findings.

7. It was lastly argued by the learned counsel that even after believing their evidence the courts below could not have convicted the appellants under Section 395 IPC as the charge of dacoity was five named persons and out of them two were acquitted by the trial court. Neither the charge nor the finding recorded by the trial court was that accused Om Prakash, Munna, Amarjit Singh and two other unknown persons had committed dacoity. Specifically, the five named accused were alleged to have committed the offence. Two accused having been acquitted it ought to have been appreciated that only the remaining three accused had committed the said offence. Therefore, it was not proper to convict the remaining three accused under Section 395 IPC. Their conviction will have to be altered to one under Section 392 IPC.

8. We therefore, partly allow this appeal, set aside the conviction of the appellants from that of under Section 395 IPC to Section 392 IPC and reduce their sentence from 4 years rigorous imprisonment to 2 years rigorous imprisonment. The accused were released on bail during the pendency of the appeal. Their bail is cancelled and they are ordered to surrender to custody to serve out the remaining sentence.