

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

DECIDED ON: NOVEMBER 18, 2011

+ CRL. L.P. No. 223/2011 and Crl. M.A.Nos.5498/2011 & 5499/2011

STATE Petitioner
Through: Mr. Sanjay Lao

versus

KAMAL @ KAKE & ORS Respondents
Through: None

CORAM:

MR. JUSTICE S. RAVINDRA BHAT

MS. JUSTICE PRATIBHA RANI

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to Reporter or not? | YES |
| 3. | Whether the judgment should be reported in the Digest? | YES |

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The State seeks leave to appeal against the judgment and order dated 9th September, 2010 in S.C No.196/09. By the impugned judgment, the respondents/accused were acquitted for having committed the offences punishable under Sections 395/397/120-B IPC.

2. The prosecution alleged that the respondents/accused were initially arrested in another case i.e. FIR No.265/2004, P.S. Uttam Nagar pertaining to the offences punishable under Sections 399/402 IPC. Apparently, they made disclosure statements connecting them with another offence which is the subject matter of the present case. It

was stated that they had stolen a Car bearing registration No.DL-3C 5691 in furtherance of their common intention and looted ₹ 1,92,000/- on 03.03.2004 at about 11:15 AM at Fateh Nagar Road, near Kuraghar, Jheel Wala Park from the complainant (PW-2) Inderjeet @ Sarjeet Singh . The latter was an employee of Saksham Motors Petrol Pump. The accused/respondents were allegedly armed with *katta*. The prosecution also alleged that the accused Mahender @ Chinu was found in possession of one green colour mobile phone (Nokia) 2280 No.36070416, which he retained knowing that it was a stolen property. The prosecution collected the material evidence and charged the respondents for having committed the aforesaid alleged offences.

3. The respondents/accused denied the charges and claimed trial. The prosecution relied upon the testimony of 21 witnesses including the complainant, who was the sole eye witness to the incident in which he was looted to the tune of ₹ 1,92,000/-. The money had been taken out from the petrol pump. After considering the materials on record, the Trial Court acquitted all the accused.

4. It was contended by the learned Addl. Public Prosecutor that the impugned judgment discloses serious errors which constitutes substantial or compelling reasons to this Court to grant leave to appeal, to the State. Particular emphasis was given to the testimony of PW-2. It was submitted that this witness, i.e., the complainant had correctly identified the accused No.3, Mohd. Jahid as the assailant who stepped out of the car, overtook his (complainant)'s Motor Cycle and pointed *katta* at his *kanpatti* and forced him to part with the money. Learned counsel argued that the Trial Court discarded the testimony of this witness on the ground that he did not support the prosecution case. Learned APP argued that the subsequent portion of his evidence was recorded about 8 months, after the initial examination-in-chief was recorded. He also highlighted that in the re-examination, this witness had clarified that what he stated in the examination-in-chief was true. Counsel submitted that the recovery of ₹35,000/- and sealed with the seal of petrol pump intact subsequent to the disclosure statement made by the accused also constituted incriminating material. Taken together they were sufficient to at least convict the accused Mohd. Jahid.

5. The Court had, after considering the submission, issued notice confined to the

third respondent/accused, Mohd. Jahid. We have today the benefit of submissions of learned APP for the State. We have also considered the Trial Court record which was requisitioned for the purpose of this proceeding. The Trial Court in its operative part of the reasoning, while discussing the testimony of PW-2, i.e. the complainant, has recorded as follows:-

“ In the present case, considering the totality of facts and circumstances of the present case, the most material witnesses are Inderjeet @ Sarjeet Singh (PW2-complainant), Suresh Goel (PW3) and Sh. Jabbar (PW15-an eye witness) upon whose testimonies the entire case of prosecution revolves and though their versions have already been discussed earlier at length, yet at this stage, it would be appropriate to discuss the relevant portions of their testimonies even at the cost of repetition to appreciate the evidence on record.

Inderjeet @ Sarjeet Singh (PW2) who is the most material witness being the person was robbed of ₹1,92,000/- while he was going to deposit them in the bank on his motor cycle has categorically deposed that he was overtaken by a maruti car from which two boys came out, one of whom kept the katta on his kanpatti after which they robbed him of his said bag and threatened him with dire consequences in case he would raise a noise. It would be pertinent to mention here that though initially he had identified the accused Mohd. Zahid and Vijay (PO) but thereafter he has categorically deposed that he had identified them only at the instance of police officials and the said accused persons had never committed any offence upon his person.

During re-examination by Ld. APP though he stated that his earlier statement regarding identification was correct, yet in response to further question put during cross-examination in this regard on behalf of the accused persons, he preferred to keep silent and did not give any answer at all in which regard my Ld. Predecessor has endorsed his observation as well. In these circumstances, as per record the said witness has firstly identified the accused Mohd. Zahid but later on he denied him to be one of the culprits and then again stated that his said identification was correct and then he preferred not to respond any questions/suggestions given on behalf of accused persons and in these circumstances, the only reasonable conclusion that can be drawn is that the said witness is quite shaky and confused who is not clear regarding identity of the accused Mohd. Zahid.

It cannot be lost sight of that Sh. Jabbar (PW15) though shown and produced as an eye-witness of the occurrence has very categorically denied if at all he had ever seen the occurrence or if any of the accused persons

were ever present at the spot or if they came in maruti car or if they robbed the bag consisting of ₹1,92,000/- from the complainant. In the present case, identity of the accused persons namely Kamal @ Kake, Ravinder, Mahender and Mohd. Zahid is not established on record and it is nowhere shown if they had committed the alleged offences. It also cannot be lost sight of that quite grave and material contradictions have also crept on record in the versions of complainant Inderjeet @ Sarjeet Singh (PW2) and his employer Suresh Goel (PW3) as well who had reached at the spot in a short while. It would be appropriate to mention that Inderjeet @ Sarjeet Singh (PW2) has clearly stated that he had called the police at 100 number whereas Suresh Goel (PW3) has stated that after reaching only at the spot, he from his mobile phone himself had called the police officials who has also stated that the statement of Inderjeet @ Sarjeet (PW2) was recorded in his presence whereas the Investigating Officer/police officials who recorded the statement of Inderjeet @ Sarjeet Singh (PW2) has stated that at that point of time, none in the name of Suresh Goel was present there, however, Suresh Goel (PW3) has very categorically stated that the police officials had reached at the spot in his presence who conducted entire investigation in his presence.

The other witnesses as examined by the prosecution as discussed above, considering totality of peculiar facts and circumstances, are more or less formal in nature who do not throw any light so far as merits of the case are concerned and have nowhere proved or ever whispered if it were the accused persons namely Kamal @ Kake, Ravinder, Mahender and Mohd. Zahid who had snatched/looted the bag consisting of ₹1,92,000/- from the complainant Inderjeet @ Sarjeet Singh (PW2). It would also be appropriate to mention that the accused persons were arrested in case FIR No.265/04, PS Uttam Nagar wherein they are stated to have made disclosure statements confessing commission of present case but even then, recoveries pertaining to present case are shown to have been effected by the Investigating Officer of case FIR No.265/04 PS Uttam Nagar and the said investigation has not connected any of the accused persons with commission of alleged offences of present case. In the present case, the katta as shown to have been recovered from the possession of accused Mahender also seems doubtful as per evidence adduced on record”.

6. We notice that the accused had been arrested in connection with some other case. In such circumstances whether or not the TIP took place did not assume great significance. The Trial Court was also right to the fact that the amounts recovered were identified on the basis of seals of the petrol pump, which according to the prosecution were intact despite lapse of about above three weeks. Now this was an improbability

which could not have been ignored. Besides this aspect, the Trial Court, as previously noted, has given its reasons for disbelieving the testimony of PW-2. It is no doubt true that this witness did not support the prosecution case during the later part of his evidence. The question this Court has to consider is whether the approach of the Trial Court in disbelieving the testimony of this witness and acquitting the respondents/accused constitutes gross mis-appreciation of evidence. It has been reiterated time and again that the High Court's jurisdiction is confined to examining whether the reasoning of the Trial Court is based on gross mis-appreciation of evidence or a serious flaw and understanding of law or its approach betrayed such a manifest or irregularity as to lead to miscarriage of justice. If two views are possible, one favouring the accused, the fact that the Trial Court adopts and the High Court in the first instances may be inclined to adopt the latter, does not constitute gross or compelling reasons.

7. We are of the opinion that the Trial Court's reasoning for discarding the testimony of the prosecution's witnesses and acquitting the respondents/accused is sound and does not call for any interference by this Court on the application of the settled standard.

8. The petition is, therefore, dismissed being without merit.

S. RAVINDRA BHAT
(JUDGE)

PRATIBHA RANI
(JUDGE)

NOVEMBER 18, 2011
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