

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

% Reserved on: 23rd May, 2012

Decided on: 16th July, 2012

+ **CRL.A. 125/2000 and Crl. M.B. No. 772/2011**

SATISH KUMAR Appellant
Through: Mr. Mukesh Kalia, Advocate.
versus

STATE Respondent
Through: Mr. Manoj Ohri, APP for the State.

+ **CRL.A. 187/2000 and Crl. M.B. Nos. 81/2011, 1642/2011 and 315/2012**

SURINDER SINGH Appellant
Through: Mr. Prag Chawla and Mr. Saurabh Shokeen, Advocates.
versus

STATE Respondent
Through: Mr. Manoj Ohri, APP for the State with SI Pradeep Jain, PS Kashmere Gate.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. The present appeals are directed against the judgment and order on sentence dated 21st February, 2000 and 2nd March, 2000 respectively. Vide judgment dated 21st February, 2000 the Appellants were convicted for offences punishable under Section 392/506/34 IPC. The Appellant Surrender and one Banwari Lal were also convicted for offences punishable under Section 397 IPC & under Section 25/27 Arms Act. Vide order dated 2nd

March, 2000 the Appellants were sentenced to undergo rigorous imprisonment for a period of 5 years for offences punishable under Section 392/34 IPC. Appellant Surender and Banwari Lal were also sentenced to undergo rigorous imprisonment for a period of seven years for offences punishable under Section 397 IPC. For offences punishable under Section 25/27 Arms Act, the Appellants were sentenced to undergo rigorous imprisonment for a period of two years.

2. Briefly the prosecution case is that on 25.4.1995 SI Sunil Kumar along with SI Dinesh Kumar, HC Chander Bhan, Ct. Preet Singh Ct. Jaivir and Ct. Rajinder Singh were present on patrolling duty and reached Mori Gate, School Road at about 11:35 am. They found one person whose name and address was subsequently disclosed as Nagar Singh, Constable, posted at Old Delhi Railway Station, raising alarm 'Pakdo Pakdo' and was following three persons. SI Sunil Kumar with the assistance of his fellow Police Officials apprehended Satish Kumar alias Pappu son of Nathi Ram, R/o B-113, Majlis Park, Adarsh Nagar, Delhi, Surender Singh, S/o Nanak Chand, R/o of H.No.22, Gali Sheikhpura, Mandi Ghanta Ghar, Meerut, U.P. and Banwari Lal S/o Sh. Manohar Lal, r/o A-449, Gali No.8, Daak Khana Wali Gali, Usmanpur, Delhi after following them on the other corner of Saint Stephen College Ground towards Boulevard Road Delhi, and recovered a 'Mahroon' colour purse from the hands of Satish Kumar which contained a cash amount of Rs.4000/- in the denomination of Rs.100/- currency notes, summons in the name of Nagar Singh Constable issued from the Court of Shri M.L.Sahni, for his appearance on 27th April, 1995, which were identified by Nagar Singh as his money and summons and that the said three persons were escaping after having snatched the same from him. During the

personal search of the accused Surender Singh, a buttondar knife was recovered from the right pocket of the pant which measured 13.25” having red and green circles on it. A dagger was recovered from the personal search of Banwari Lal. The knife and dagger were taken into possession through memos and were sealed.

3. Nagar Singh made a statement to the abovenamed SI that he was posted at Old Delhi Railway Station as a constable and on that day after doing his night duty, he was going towards Mori Gate, Delhi. At about 11.35 a.m. when he reached near the Advocates Parking situated near Mori Gate Chambers, all of a sudden three boys, whose names were subsequently disclosed as Satish Kumar, Surender Singh and Banwari Lal, stopped him and Surender Singh took out a knife and kept it on his chest and in the meanwhile Banwari Lal also took out another knife and kept it on his neck while Satish Kumar caught hold of him and took out his purse from his dub pocket containing 40 currency notes of Rs.100/- each and his summons for appearance in Court on 27th April, 1995 and threatened him that if he raised alarm, his stomach will be torn and they escaped towards St. Stephen College ground. He raised alarm “Pakdo Pakdo” and in the meanwhile the police party reached there during patrolling duty, followed the offenders and arrested them. On the basis of this statement of Nagar Singh, FIR No. 245/95 under Sections 392/506/34/397 IPC and 25/27 Arms Act was registered at PS Kashmere Gate against all the above named three accused persons. After investigation, the charge sheet was filed against the accused persons. After recording the statement of prosecution witnesses and statements of accused persons under Section 313 Cr.P.C., learned Trial Court convicted the Appellants and sentenced them as mentioned above.

Aggrieved by the judgment and order on sentenced passed by the learned Trial Court, the Appellants preferred the present appeals. Accused Banwari Lal expired during the pendency of the appeal. Thus his appeal stands abated.

4. Learned counsels for the Appellants contend that the learned Trial Court has passed the impugned judgment based upon conjunctures and surmises. The impugned judgment is erroneous as the principles of criminal jurisprudence have been negated and ignored by the learned Trial Court. Learned Trial Court has ignored the factual matrix of the case as there is no clear evidence against the Appellants. There is only one formal witness, that is, PW1 and rest all the witnesses are either the witnesses of recovery or arrest. The present case is a peculiar one as the victim of the incident is a police officer and also all the witnesses are police officers. Despite being fully aware of the legal procedure no independent witness has been made to join the investigation or examined by the prosecution. It is stated that the standard of proof of guilt against the Appellants, which is required in the present case, has to be the one of a higher magnitude as there is no corroboration of the testimony of the police witnesses by any other independent witness. It is further contended that PW5, the Complainant Constable Nagar Singh has not identified Appellant Satish Kumar though he has identified the other two accused persons, that is, Surender and Banwari Lal and has also been declared hostile by the prosecution. The testimony of this witness is not trustworthy as there are major contradictions in his testimony despite being the victim of the offence. This witness has not been medically examined by the prosecution, to prove his version that during the incident he became unconscious and he could not recognize Appellant Satish

Kumar. Learned counsel has further stated that constable Rajender Singh who is the attesting witness on all the memos allegedly prepared at the spot has not been examined by the prosecution. Learned counsel has further stated that the currency notes which were allegedly recovered from the possession of accused Satish Kumar have not been produced in the Court and hence the same cannot be used against the Appellants. It is stated that the essential ingredients of offences punishable under Section 392/397 IPC are not proved against the Appellants. The prosecution has not been able to prove its case against the Appellants and hence the impugned judgment is liable to be set aside.

5. Per contra learned APP for the State contends that photocopy of the currency notes was produced before the court which was identified by the prosecution witness. Furthermore the testimonies of the prosecution witnesses are clear and cogent which ascribe specific roles to the accused persons. PW5 and PW7 have identified the knife and dagger. The accused persons have been apprehended at the spot and they are identified by the witnesses. Thus the impugned judgment suffers from no illegality. The present appeals have no merit and are liable to be dismissed.

6. I have heard learned counsel for the parties and perused the record.

7. PW5, Constable Nagar Singh has deposed that on 25th April, 1995 he was posted at PS Railway Main. On that day he was going home at about 8.00 a.m. after finishing his night duty to old police lines on foot. When he reached at the corner of parking near St. Stephens hospital all the three accused persons came from behind and stopped him. Accused Surender took out the knife and put it on his chest, accused Banwari took out a dagger and put it on his neck, while accused Satish Kumar took out the purse of brown

colour containing Rs. 4,000/- i.e. 40 notes of 100 denominations each, one summons of the court of Sh. M.L. Sahni. The accused persons then threatened him that if he made noise they will kill him and he received a minor knife injury on his right hand in the scuffle. Accused started running towards the park and he cried 'Pakdo Pakdo'. In the meantime, a police party consisting of SI Sunil Kumar, SI Dinesh Kumar, HC Chander Bhan, constable Jaideep and others came from the other side and on hearing his noise they apprehended the accused with his help. Accused Surender was apprehended by him and SI Sunil Kumar. He was having an open knife in his hand. Head Constable Chander Bhan with the help of SI Dinesh Kumar apprehended accused Banwari Lal who was having a dagger in his hand. The third accused was also apprehended at the spot and his purse containing Rs. 4,000/- and the summons were recovered from his possession. Accused Satish could not be identified by this witness. This witness has identified the purse and the summon whereas the photocopy of the 40 notes Ex.P5/1 to 40 were produced before the Court. This witness in his cross-examination by the learned APP for the State has stated that he did not state the name of accused Satish Kumar in his statement recorded by the Investigating Officer. He has further stated that he could not say whether accused Satish was apprehended at the spot as he had not seen him there as he had become unconscious. Further on cross-examination by the learned counsel for the accused Bawari Lal and Surender he deposed that he could not produce the currency notes taken by him on superdari. He has stated that on the relevant date his duty was either 8.00 p.m. to 8.00 a.m. or 9.00 p.m. to 9.00 a.m. but he did not recollect the exact timing due to passage of long period. He left the police station at about 11.00 a.m. He reached the spot at about 11.10

a.m. He has stated that it was correct that traffic was passing from the spot at that time. He tried to raise alarm but the accused person threatened him not to do so otherwise he will be dealt with severely so he could raise the alarm only when the accused persons escaped from the spot. He further stated that he became semi-unconscious when the accused persons kept knife on his neck but he felt encouraged on seeing the police party and told them the facts. He remained unconscious for about 25 minutes. Constable Pritpal brought a tablet for him. The police did the writing work at the place of arrest of the accused person while he was sitting aside. No public persons collected at that place at that time. The police requested some persons to join them at the place from where the police followed the accused persons but nobody agreed. The Investigating Officer did not call any person at the time of arrest of accused persons. On the cross examination by the learned counsel for accused Satish this witness has stated that the park referred to by him is known as St. Stephens play ground and is surrounded by boundaries on all the sides. The height of the boundary wall of the park may be 4/5 feet, he crossed the boundary wall by climbing on it and the police party also did so.

8. PW6 SI Dinesh Kumar deposed that on 25th April, 1995 he was posted in PS Kashmere Gate. On that date, he along with SI Sunil Kumar, HC Chander Bhan, Constable Preet Singh, Constable Jaibir Singh and Constable Rajender Singh was on patrolling duty. They were going from Mori Gate School to Chambri Mori Gate at about 11:35 a.m. They heard noise of “pakdo pakdo”. All the three accused persons were running towards them and were chased by Constable Nagar Singh. They were apprehended by them and from the hand of accused Satish a purse was recovered containing

Rs.4000/- which was identified by Constable Nagar Singh. He told that the accuseds had snatched the purse containing Rs.4000/-. The purse also contained a summon of the Court of Sh. M.L. Sahni in the name of Constable Nagar Singh. From the personal search of accused Surender Kumar a buttondar knife was recovered kept in the right dub of his pant. A dagger was recovered from the right dub of the pant of accused Banwari Lal. SI Sunil Kumar took over the investigation about the recoveries from accused Satish and Surender Kumar and he took up the investigation of the recovery of dagger from accused Banwari Lal. The currency notes were 40 in number of Rs.100/- denomination. The purse and the currency notes were sealed with the seal of SKS and were taken into possession by SI Sunil Kumar. In cross-examination, this witness has stated that they started from the Police Station at about 11 a.m. When they reached the spot via Ritz Cinema, they had seen accused persons running from a distance of 40 to 50 paces and complainant was 10 paces behind the accused persons. It is stated that it was a working day and hardly one or two persons were passing from that place at that time. It is further stated that it was wrong to suggest that huge crowd of public is always available at the place of occurrence.

9. PW7 SI Sunil Kumar has deposed that on the date of incident he was on patrolling duty along with other police staff and going from Mori Gate Chambri via School road. When they reached near Mori Gate chambri they saw a person running after the accused persons whose name was later revealed as Constable Nagar Singh. They with the help of Constable Nagar Singh overpowered the accused persons. From the hand of accused Satish one purse of mahroon colour containing Rs.4,000/- and a court summon was recovered and from the possession of accused Surrender one buttondar knife

was recovered. From the possession of accused Banwari Lal one dagger was recovered. In his cross examination this witness has deposed that they had started from police station after making their departure report at about 9 a.m. Before reaching the spot they were patrolling near ISBT. They remained near ISBT for 2-2½ hours. The accused were running in the ground of St. Stephens College and they apprehended them there. They saw accused persons running from a distance of 10-15 paces. The accused were coming from the opposite side where they were going. On seeing them, the accused persons took a turn towards college ground. Earlier they were running on the patri. This witness has stated that it was wrong to suggest that there is boundary wall of 4-5 feet on the play ground in fact there is no boundary wall there. He has also stated that no medical examination of the Complainant was got done.

10. A perusal of the testimony of PW5 shows contradictions as this witness has stated a different version of the incident to what has been stated by PW6 and PW7. The area of incident is also relevant in the present case as it is a crowded place and no public person has been joined in the investigation despite the Complainant deposing that traffic was moving at the relevant time. The testimony of the witnesses that there were no passersby at the time of incident does not inspire confidence as PW6 and PW7 have also stated that there were a few passersby. Furthermore there are contradictions in the testimony of PW3, PW4, PW6 and PW7 in regard to the time as to when they started from the police station on the day of incident. Different timings have been given by each one of the witness and no documentary proof (DD entry) or any other proof in this regard has been produced to show when they reached the spot and apprehended the accused

persons. The recovery of currency notes is not proved in the present case as PW5, who had taken the notes on superdari, could not produce the same during trial.

11. It is trite law that the testimony of a witness cannot be completely ignored or brushed aside just for the fact that the witness is a police person. Conviction can be based even upon the testimony of a police personnel. However, the testimony of PW5 is full of contradictions, embellishments and improvements. He has deposed in his examination-in-chief that after finishing his duty he was going at about 8.00 a.m. whereas in his cross-examination he stated that he did not remember whether his duty hours were 8.00 p.m. to 8.00 a.m. or 9.00 p.m. to 9.00 a.m. It may be noted that even if his duty hours were from 9.00 p.m. to 9.00 a.m. he would have reached the spot latest by 10.00 a.m. His deposition in his cross-examination that he left his office at 11.00 a.m. is an afterthought to fill in the lacuna of the prosecution version. PW5 stated that he became semi-conscious when the accused kept knife on his neck whereas other prosecution witnesses have deposed that they heard noise of pakdo-pakdo and all the three accused person were being chased by Constable Nagar Singh (PW5). In case PW5 had turned unconscious for 25 minutes as stated he would not have been found running after the accused. It is highly improbable that the accused kept waiting at the spot for 25 minutes to be followed by PW5 on regaining consciousness. The testimony of Complainant in the present case does not inspire confidence.

12. In the present case where both the victim and all the other prosecution witnesses are police persons only and no independent witness to the incident is examined by the prosecution, it becomes necessary to exercise a

greater caution. The prosecution case is not free from material contradictions and in view thereof it cannot be said that the prosecution has proved its case beyond reasonable doubt against the Appellants. Thus keeping in view the facts and circumstances of the case the present appeals are allowed. The Appellants are acquitted of the charge framed. Appellant Satish Kumar is in custody. Superintendent, Tihar Jail is directed to release the Appellant Satish Kumar forthwith, if not required in any other case. Appellant Surinder Singh is on bail. The bail bond and the surety bond of the Appellant Surinder are discharged.

13. Appeals and applications are disposed of accordingly.

(MUKTA GUPTA)
JUDGE

JULY 16, 2012
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