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

+ CRL.A. 298/2002

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Judgment reserved on 6th December, 2012

Judgement delivered on 7th January, 2013

RAMESH

..... Appellant

Through: Mr. A.J. Bhambhani and Ms.
Nisha Bhambhani, Advs.
along with appellant in
person.

Versus

THE STATE (GOVT. OF NCT OF DELHI) Respondent

Through: Ms. Fizani Hussain, APP
with SI Prem Singh, P.S.
Malviya Nagar.

AND

+ CRL.A. 362/2002

RAJ KUMAR

..... Appellant

Through: Mr. A.J. Bhambhani and Ms.
Nisha Bhambhani, Advs.
along with appellant in
person.

versus

THE STATE (GOVT. OF NCT OF DELHI) Respondent

Through: Ms. Fizani Hussain, APP
with SI Prem Singh, P.S.
Malviya Nagar.

AND

+ CRL.A. 423/2003

VIJAY PAL

..... Appellant

Through: Mr. A.J. Bhambhani and Ms.
Nisha Bhambhani, Advs.
along with appellant in
person.

Versus

THE STATE (GOVT. OF NCT OF DELHI).... Respondent

Through: Ms. Fizani Hussain, APP
with SI Prem Singh, P.S.
Malviya Nagar.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

A.K. PATHAK, J.

1. All the above mentioned three appeals are disposed of together, since same arise out of the same incident, FIR and judgment of trial court.
2. Appellants have been convicted under Sections 392/34 IPC. Appellant Ramesh has also been convicted under Section 397 IPC.
3. Factual matrix, as unfolded from the record, is that the complainant PW2 Satya Narain Singh was intercepted by the

appellants on 8th April, 1992 at about 7:25 PM near the nursery at Gitanjali Enclave while he was passing through that area on his bicycle. Ramesh took out a knife and asked PW2 to handover all his belongings to them. Vijay Pal and Raj Kumar grappled with him. Finally, Raj Kumar snatched bicycle make Atlas, Vijay pal snatched wrist watch make HMT and Ramesh removed Rs.200/- from the pocket of PW2. On hearing the alarm raised by PW2 few police officials namely ASI Ramesh Dixit (PW5), Constable Brij Pal (PW4), SI Vijender Singh (PW3) and Constable Mool Chand, who were present in the nearby police picket, arrived there. PW5 SI Ramesh Dixit with the help of Constable Mool Chand apprehended Raj Kumar; PW3 SI Vijender Singh with the help of PW4 Constable Brij Pal apprehended Ramesh and PW2 Satya Narain Singh had apprehended Vijay Pal and handed over him to the police officials.

4. Appellants were searched. From the possession of Ramesh a buttondar knife and Rs.200/- were recovered; from Vijay Pal one wrist watch make HMT and from Raj Kumar one cycle make Atlas was recovered. Statement of PW2 Satya Narain Singh was

recorded at the spot by PW5 SI Ramesh Dixit, who prepared rukka and sent the same to Police Station Malviya Nagar for registration of FIR per hand Constable Mool Chand, pursuant whereof FIR No. 169/1992 under Sections 392/34 IPC was registered at Police Station Malviya Nagar.

5. Thereafter, appellants were arrested. Seizure memos were prepared which were signed by PW2 and Constable Mool Chand. These proceedings were conducted at the spot.

6. After completion of investigation, charge-sheet was filed in the court of Metropolitan Magistrate, who after completing the formalities committed the case to Sessions Court, since offence under Section 397 IPC is exclusively triable by the Sessions Judge.

7. Charges under Sections 392/34 IPC were framed against all the appellants on 16th November, 1992 to which they pleaded not guilty and claimed trial. Separate charge under Section 397 IPC was also framed on the same day against the appellant Ramesh to which he pleaded not guilty and claimed trial.

8. Constable Mool Chand was not examined by the prosecution. Material witnesses in this case are PW2 Satya Narain Singh, PW3 SI Virender Singh, PW5 SI Ramesh Dixit and PW4 Constable Brij Pal. PW2 is the victim who was robbed by the appellants. As regards PW3 to PW5 they had reached the spot after the incident and had apprehended Ramesh and Raj Kumar. Robbed articles were also recovered by them from the appellants in presence of PW2. PW1 Duty Officer HC Raghubir had simply recorded the FIR and is a formal witness. Trial court has found testimonies of PW2 to PW5 trustworthy and sufficient enough to conclude that it is the appellants who had robbed PW2 of his wrist watch make HMT, Rs.200 and bicycle make Atlas on 8th April, 1992 at about 7:25 PM and while committing robbery Ramesh had used the deadly weapon.

9. I have heard the arguments and perused the trial court record carefully, more particularly the statement of PW2 Satya Narain Singh and am of the view that the trial court was not right in accepting his testimony as trustworthy and reliable. Statement of PW2 not only suffers from inherent discrepancies but also is not in

line with the prosecution story. His statement is also not consistent with the statements of the police witnesses. His statement also makes the whole prosecution story doubtful and suspicious. As per the prosecution, on PW2 raising alarm PW3 to PW5 along with Constable Mool Chand reached the spot and apprehended Ramesh and Raj Kumar, who were trying to escape after committing robbery; while Vijay Pal was produced by PW2 before the police officials; meaning thereby PW2 had already apprehended Vijay Pal, while other police officials apprehended Ramesh and Raj Kumar who were trying to make their escape good. However, PW2 Satya Narain Singh has not deposed that he had apprehended Vijay Pal and handed him over to the police officials, who had arrived at the spot. According to him all the appellants were apprehended by the police officials. Statement of PW2 is at variance with the prosecution story and the statements of PW3 to PW5 on this point. PW3 to PW5 have deposed that when they reached the spot they saw that two boys were running towards the pahari; they chased them and apprehended them; while Vijay Pal was produced before them by PW2 Satya Narain Singh. Their this

statement is not in line with the statement of PW2. According to PW2, all the three appellants were apprehended by the police officials.

10. There is yet another major lacuna in the prosecution case, which makes the whole story of the prosecution as suspicious and doubtful. According to the prosecution, entire proceedings were conducted at the spot. However, this fact is not corroborated by PW2. According to PW2 he came to know about the names of appellants in the police station after his statement had already been recorded at the spot. Surprisingly enough, the names of appellants are found mentioned in the statement of PW2. If PW2 came to know about the names of appellants subsequent to recording of his statement then it becomes doubtful that the police officials had reached the spot immediately after the incident, apprehended the appellants and conducted the entire proceedings at the spot. PW2, in his cross-examination, has stated that the documents, which were signed by him at the spot, were blank. If that is so, then the whole story of recovery of robbed articles having been recovered from the appellants and its seizure at the spot becomes doubtful,

inasmuch as, two of the seized articles, that is, Rs.200/- and bicycle were not produced in court and the watch produced by PW2 was not of HMT make but was of Ricoh make. As per PW2, robbed watch was HMT make.

11. Other important factor which makes the prosecution story doubtful is the admission of PW2 in court, in his cross-examination, that he was briefed by the police officials outside the court as to what statement he was to give in court.

12. There is no gainsaying that while appreciating the evidence of a witness minor discrepancies on trivial matters, which do not affect the core of the prosecution case, may not prompt the court to reject the evidence in its entirety. The evidence of the witness must be read as a whole and the cases are to be considered in totality of the circumstances. However, in this case, omissions, contradictions and discrepancies, as noted above cannot be said to be minor or trivial. In fact, the same are on major issues and demolish the foundation of the prosecution case.

13. A cumulative effect of all the above-noted discrepancies makes the appellants to benefit of doubt.

14. In my view, trial court has overlooked the above vital aspects while concluding that PW2 was a trustworthy and reliable witness.

15. For the foregoing reasons, impugned order is set aside and the appellants are acquitted. Appellants are on bail their personal bonds and surety bonds are discharged.

16. All the above appeals are disposed of in the above terms.

A.K. PATHAK, J.

JANUARY 07, 2013

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