

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

RESERVED ON : 11th SEPTEMBER, 2013

DECIDED ON : 13th SEPTEMBER, 2013

+ CRL.A. 1123/2011

NASIM

..... Appellant

Through : Ms.Nandita Rao, Advocate with
Ms.Neha Mam, Advocate.

versus

STATE (Govt. of NCT of Delhi)

..... Respondent

Through : Mr.Navin K.Jha, APP.
SI Brajveer Singh, PS Seelampur.

AND

+ CRL.A. 630/2011

PUNEET @ ASHU

..... Appellant

Through : Mr.Anurag Jain, Advocate.

versus

STATE (Govt. of NCT of Delhi)

..... Respondent

Through : Mr.Navin K.Jha, APP.
SI Brajveer Singh, PS Seelampur.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Nasim (A-1) & Puneet @ Ashu (A-2) challenge correctness of a judgment dated 10.02.2011 of learned Additional Sessions Judge in Sessions Case No. 88/2009 arising out of FIR No. 129/2009 PS Seelampur whereby they were held guilty for committing offence punishable under Section 392 read with Section 397 IPC. By an order dated 08.03.2011, they were directed to undergo RI for four years with fine ₹ 2,000/- each under Section 392 IPC and RI for seven years with fine ₹ 3,000/- each under Section 397 IPC.

2. Allegations against the appellants were that on 05.04.2009 at about 01.00 A.M. at Old G.T. Road, near Mandir Shastri Park, they were armed with 'ustara' and 'knife' and robbed Manoj and Gulbir of cash ₹ 150/-, purse & wrist watch. First Information Report was lodged at PS Seelampur after recording complainant Manoj's statement (Ex.PW-1/F). Both the accused persons were arrested. Statements of the witnesses conversant with the facts were recorded. After completion of investigation, a charge-sheet was filed against them in the Court. The prosecution examined seven witnesses to prove their guilt. In 313 Cr.P.C. statements, they claimed themselves to be innocent and alleged false implication. They did not prefer to examine any witness in defence. The

Trial Court after appreciating the evidence and taking into consideration the rival contentions of the parties, held both the appellants perpetrators of the crime.

3. Appellants' counsel urged that the Trial Court did not appreciate the evidence in its true and proper perspective and fell into grave error to base its conviction on the testimonies of PW-1 (Manoj) and PW-2 (Gulbir) who were interested and partisan witnesses. The appellants being bad character (B.C.) of the area were falsely implicated by the police of PS Seelampur. The story presented by prosecution is full of contradictions and loopholes. It is alleged that the appellants were first taken to PS Kashmiri Gate, however, no proceedings regarding recovery of the articles from their possession were conducted there. PW-1 (Manoj) and PW-2 (Gulbir) have given contradictory version about arrival of PW-2 in PS Seelampur. Investigating Officer did not move any application for holding TIP of the articles or of the assailants. It was not possible for the victims to identify the assailants due to darkness. PCR officials were not examined to corroborate the complainant's version. Section 397 IPC is not attracted as weapons were not used to cause injuries. Learned Addl. Public Prosecutor urged that there were no sound reasons to discard the testimonies of the victims who had no prior animosity with the assailants.

4. The occurrence took place at about 01.00 A.M. on the night intervening 4/5.04.2009. Daily Diary (DD) No. 24A (Ex.PW-5/B) was recorded at PS Seelampur at 03.20 A.M. on getting information that PCR officials had caught hold two snatchers near ISBT and they were taking them to PS Seelampur. Manoj (TSR driver) lodged complaint (Ex.PW-1/F) and gave vivid details of the incident as to how when he was driving the TSR No. DL-1RE-6094 with passenger Gulbir and reached near Seelampur Metro Station, two individuals, whose names were ascertained as Nasim (A-1) and Puneet (A-2) entered in the TSR forcibly and robbed them at the point of ustara / knife. They directed to take the TSR as per their command. At about 01.30 A.M. at ISBT, on finding a PCR van located there, he informed PCR officials who caught hold of A-1 and A-2 and took them to PS Kashmiri Gate. They were asked to report at PS Seelampur as the incident of robbery took place in their jurisdiction. Rukka (Ex.PW-7/A) was prepared and First Information Report was lodged at 05.50 A.M. There was no delay in lodging the report. Early reporting of the occurrence by the informant with all its vivid details gives an assurance regarding truth of the version. In the case of '*Jail Prakash Singh v.State of Bihar & Anr.*', 2012 CRI.L.J.2101, the Supreme Court held:-

“The FIR in criminal case is vital and valuable piece of evidence though may not be substantive piece of evidence. The object of insisting upon prompt lodging of the FIR in respect of the commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of actual culprits and the part played by them as well as the names of eye-witnesses present at the scene of occurrence. If there is a delay in lodging the FIR, it loses the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of large number of consultations/deliberations. Undoubtedly, the promptness in lodging the FIR is an assurance regarding truth of the informant’s version. A promptly lodged FIR reflects the first hand account of what has actually happened, and who was responsible for the offence in question.”

5. While appearing as PW-1, the complainant fully proved the version given to the police at the first instance without major variations. He identified A-1 and A-2 in the Court and ascribed specific role to them. He was categorical that A-1 robbed him of ₹ 150 at the point of ustara and A-2 robbed PW-2 (Gulbir) of purse, wrist watch and clothes putting knife on him. He also identified ustara (Ex.P2) and knife / dagger (Ex.P3) used to commit robbery. In the cross-examination, he explained that there was darkness when A-1 put ustara on his neck and thereafter they gave beating to Gulbir and robbed him. He disclosed that Puneet’s mother had visited him 2 -3 times to induce him to change his statement implicating her son. He further explained that PCR was stationed under the flyover at ISBT.

Search of the accused persons were taken at PS Kashmiri Gate where they stayed for about 45 minutes / one hour. He denied the suggestion that he was put behind the bars for not having relevant documents to ply TSR. He fairly admitted that accused persons did not try to run away. PW-2 (Gulbir), a passenger in the TSR also corroborated PW-1's statement on relevant facts and identified A-1 and A-2 to be the assailants who robbed them at the point of chura/ knife. Firstly, they robbed Manoj and took ₹ 150 from him. A-2 robbed his wrist watch, a purse containing ₹ 1,500/- and an unstitched lehanga. He was strangulated and become unconscious. He fell down on the road and regained consciousness after 30 minutes. A rickshaw puller lifted him and dropped at a liquor shop at Shastri Park. From there, he went to Chandni Chowk and informed his co-workers. He also identified the weapons of offence and the wrist watch. In the cross-examination, he admitted that the police had called him at PS Seelampur after the incident. He denied the suggestion that the accused persons were falsely implicated at the instance of police.

6. On scrutinising the testimonies of PW-1 and PW-2, it transpires that the appellants could not elicit any material discrepancies in their cross-examination to discard and disbelieve their version. They were not acquainted with the appellants and had no prior animosity. In the

absence of prior ill-will, they were not expected to identify them on the mere asking of the police officials. In fact, they were apprehended by PCR officials who had no concern with the involvement of the appellants in various other criminal cases registered at PS Seelampur. PW-4 (HC Loban Singh) on duty in PCR from 8.00 P.M. to 8 A.M. at ISBT, Kashmiri Gate disclosed that at 01.30 A.M. one TSR driver informed that two thieves were sitting in his TSR. He overpowered those two persons sitting in the TSR and took them to PS Kashmiri Gate. When he was told that the area was within jurisdiction of PS Seelampur, he took them there after informing the control room and handed over the custody of both Puneet (A-2) and Nasim (A-1) to the Investigating Officer. Both were arrested and he put signatures on various memos prepared there. No ulterior motive was assigned to this PCR official for deposing against them. His testimony is in consonance with the version narrated by PW-1 and PW-2 in the Court. Both the appellants were apprehended at the spot and were identified by the complainant and PW-2 (Gulbir). Since the witnesses had direct confrontation for long with the assailants, they got ample opportunity to note and observe their features to recognise them. There was no requirement to hold Test Identification Proceedings during investigation for their identification. Since the incident of robbery had

occurred within jurisdiction of PS Seelampur, no case was registered at PS Kashmiri Gate and for that reason no benefit can be given to the appellants. It is true that PW-1 and PW-2 have given divergent version as to how and under what circumstances PW-2 (Gulbir) reached PS Seelampur. However, that does not dilute the cogent version narrated by prosecution witnesses to establish the appellants' involvement in the incident. While appreciating the evidence, Court has to take into consideration whether the contradictions/ omissions had been of such magnitude that they may materially affect the trial. Minor contradictions, inconsistencies, embellishments or improvements on trivial matters without effecting the core of the prosecution case should not be made a ground to reject the evidence in its entirety. Exaggerations per se do not render the evidence brittle. Mere marginal variations in the statements are not enough to discredit the otherwise cogent and reliable deposition of independent witness. Non-examination of PCR officials other than PW-4 is inconsequential. The Court is required first to assess the trustworthiness of the evidence available on record and if it finds the evidence adduced worthy of being relied upon, then the testimony has to be accepted and acted upon though there may be other witnesses available who could also have been examined and produced. I find no substance in the appellants'

plea that Section 397 IPC is not attracted. The appellants were found in possession of 'ustara' and knife respectively and were charged for committing offence under Section 25/27 Arms Act. The sketches of the weapons describe their dimension and size. Possession of such weapons without licence in violation of the Notification dated 12.08.1964 was an offence. It makes no difference if injuries were not caused with the weapons used for committing robbery.

7. The appeals filed by the appellants are unmerited and are dismissed. The conviction and sentence of the appellants are maintained. Trial Court record be sent back forthwith.

(S.P.GARG)
JUDGE

SEPTEMBER 13, 2013

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