

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

RESERVED ON : 05th DECEMBER, 2013

DECIDED ON : 15th JANUARY, 2014

+ CRL.A. 326/2001

KHALID QURESHI Appellant
Through : Ms.Suman Chauhan, Advocate.

VERSUS

THE STATE (NCT OF DELHI) Respondent
Through : Mr.M.N.Dudeja, APP.

**CORAM:
HON'BLE MR. JUSTICE S.P.GARG**

S.P.GARG, J.

1. Khalid Qureshi (the appellant) challenges the legality and correctness of a judgment dated 29.03.2001 of learned Addl. Sessions Judge in Sessions Case No. 24/99 arising out of FIR No. 106/99 PS Lajpat Nagar whereby he was convicted for committing offence punishable under Section 392 read with Section 397 IPC. By an order on sentence dated 09.04.2001, he was awarded RI for seven years with fine ₹ 10/- under Section 392/397 IPC.

2. Allegations against the appellant were that on 30.01.1999 at about 07.45 P.M. near District Park, opposite Kailash Hills, Kalkaji, he and his associate Jeetu Chaudhary @ Jitender (since acquitted) committed robbery and deprived Puran Singh and Jagannath Dass of cash ₹ 50/- and ₹ 40/-, respectively. The Investigating Officer lodged First Information Report, after recording Puran Singh's statement (Ex.PW-1/A). During the course of investigation, statements of the witnesses conversant with the facts were recorded. After completion of investigation, a charge-sheet was filed against Khalid Qureshi and Jeetu Chaudhary @ Jitender. They were duly charged and brought to trial. The prosecution examined nine witnesses to establish their guilt. In their 313 statements, the accused persons denied complicity in the crime and pleaded false implication. The trial resulted in conviction of the appellant under Section 392 read with Section 397 IPC whereas Jeetu Chaudhary @ Jitender was acquitted of the charge. It is apt to note that State did not challenge his acquittal. Being aggrieved, Khalid Qureshi has preferred the appeal.

3. I have heard the learned counsel for the parties and have examined the record. In his statement (Ex.PW-1/A), the complainant Puran Singh, disclosed that on 30.01.1999 at about 07.45 P.M. whey they were returning after purchasing flowers to Kothi No. 205, Kailash Hills,

both the accused persons met and robbed them of cash, driving licence and other papers in their possession at the point of 'ustra' and knife. The assailants went towards the forest after committing robbery. When they came back to Kothi No. 205, Kailash Hills, they informed the security guards on duty who accompanied them to the forest. After a little search, they were able to apprehend Khalid Qureshi whereas Jeetu Chaudhary @ Jitender succeeded to flee from the spot. The robbed cash and one 'ustra' was recovered during search of the appellant. PW-1 (Puran Singh) and PW-2 (Jagannath Dass), however, gave conflicting statements as to the circumstances leading to the arrest of the accused persons and recovery of robbed articles and weapons from their possession. Soon after the occurrence, neither PW-1 (Puran Singh) nor PW-2 (Jagannath Dass) reported the occurrence to the police. They went to their residence and informed the security guards posted at Kothi No.205, who in turn did not deem it proper to inform the police to set the police machinery into motion. Without taking prior permission of the occupant of the kothi, with whom they were attached, allegedly, they all HC Satbir Singh, Const.Shalender Singh and Const.Ramesh Singh went along with the victims towards the forest to apprehend the culprits. Even after apprehension of the appellant, police was not informed and the guards

took his search and allegedly recovered the robbed articles. The prosecution witnesses have given inconsistent statements as to at which place the Delhi Police arrived. PW-1 (Puran Singh) and PW-2 (Jagannath Dass) have deposed that after apprehension and search of the appellant, he was taken to police station and necessary proceedings were conducted there. Contrary to that, other prosecution witnesses have revealed that PW-6 (SI Arun Dev) was on patrolling duty and was called by SI K.L.Yadav, Incharge, Police Post Garhi to reach at Kailash Hills. There, the appellant was handed over by the security guards along with robbed articles. The prosecution has failed to reconcile the two versions. PW-1 (Puran Singh) and PW-2 (Jagannath Dass) have given inconsistent version as to who accompanied the security guards to the forest to apprehend the culprits. PW-1 (Puran Singh) stated that they both accompanied the security guards to the forest whereas PW-2 (Jagannath Dass) disclosed that only Puran Singh had accompanied them and they returned after about fifteen minutes. PW-3 (HC Satbir Singh) on the contrary disclosed that both PW-1 (Puran Singh) and PW-2 (Jagannath Dass) were with them at that time. There is major discrepancy in the testimony of the prosecution witnesses regarding the recovery of 'ustra' (Ex.P1). PW-1 (Puran Singh), in his Court statement disclosed that ustra (Ex.P1) was

lying at the place of apprehension of the appellant. He did not depose if it was recovered in the search of the appellant by the security guards. PW-2 (Jagannath Dass) was silent about recovery of 'ustra' from the appellant. The prosecution witnesses have also given contradictory statements as to the exact amount of cash recovered from the appellant. PW-1 (Puran Singh) deposed that on search of the appellant, one purse containing ₹ 40/- and some papers were recovered. However, when the case property recovered was shown to the witness, it consisted of eight currency notes of ₹ 10/- and two currency notes of ₹ 5/-. The witness was unable to identify the cash recovered from the appellant. PW-2 (Jagannath Dass) was also not sure that the currency notes produced belonged to him. There is inconsistent version as to when the appellant was arrested and handed over to Delhi Police. No attempt was made to chase Jeetu Chaudhary @ Jitender who allegedly escaped under the cover of dark. PW-1 (Puran Singh) and PW-2 (Jagannath Dass) did not describe his features. The police officials have alleged that after the appellant's apprehension, his disclosure statement was recorded and at his instance, Jeetu Chaudhary @ Jitender was arrested from his jhuggi and robbed cash and knife was recovered from there. The Trial Court did not believe the prosecution story and benefit of doubt was extended to Jeetu Chaudhary @ Jitender.

Apparently, on the same set of evidence, the prosecution story was not accepted and it resulted in acquittal of co-accused Jeetu Chaudhary @ Jitender. It is relevant to note that none of the memos Ex.PW-3/1 (sketch of ustra), Ex.PW-3/2 (seizure of ustra), Ex.PW-3/3 (seizure of purse), Ex.PW-3/4 (site plan), Ex.PW-5/A (disclosure statement), Ex.PW-6/1 (personal search memo of Jeetu Chaudhary @ Jitender), Ex.PW-6/2 (disclosure statement of Jeetu Chaudhary @ Jitender), Ex.PW-6/3 (seizure of cash from Jeetu Chaudhary @ Jitender), Ex.PW-6/4 (sketch of the knife / daggar) and Ex.PW-6/5 (seizure of daggar) bears signatures of PW-1 (Puran Singh) and PW-2 (Jagannath Dass). This creates doubt about the presence of both these witnesses at the time of conducting the said proceedings. Jeetu Chaudhary @ Jitender, who had escaped and had seen the complainant with security guards whereby his companion Khalid Qureshi was apprehended was not expected to conceal the robbed articles and knife soon thereafter in his jhuggi. It appears that the prosecution has not presented true facts. No independent public witness was associated at any stage of the investigation. Khalid Qureshi was not arrested at the spot. Rather he was apprehended after a gap of about 1 or 2 hours of the incident. Possibility of mistaken identity cannot be ruled out.

4. In the light of above discussion, the impugned judgment cannot be sustained. The appeal is accepted. Conviction and sentence awarded to the appellant are set aside. Bail bond and surety bond stand discharged. Trial Court record be sent back forthwith.

(S.P.GARG)
JUDGE

JANUARY 15, 2014/*tr*