

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

RESERVED ON : 16th December, 2013

DECIDED ON : 24th January, 2014

+ CRL.A. 355/2003

JAGBIR @ JAGGI

..... Appellant

**Through : Mr.Mir Akhtar Hussain, Advocate
with appellant present in person.**

VERSUS

STATE & ANR.

..... Respondents

Through : Mr.Lovkesh Sawhney, APP.

CORAM:

MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Jagbir Singh @ Jaggi (the appellant) impugns the legality and correctness of a judgment dated 12.05.2003 of learned Additional Sessions Judge in Sessions Case No.17/2002 arising out of FIR No.609/1999 registered at Police Station Paschim Vihar by which he was convicted for committing offence under Section 392 and 186 IPC. By an order on sentence dated 16.05.2003, he was awarded rigorous imprisonment for seven years with fine ₹5,000/- under Section 392 IPC and rigorous imprisonment for two months under Section 186 IPC. Both the sentences were to operate concurrently.

2. Allegations against the appellant were that on 03.07.1999 at about 03.20 P.M. in front of House No.373, Behra Enclave, Paschim Vihar, he committed robbery and deprived complainant-Vivek of ₹40,000/- when he was keeping it in the dicky of the scooter. The appellant was given chase by the complainant and public persons and was apprehended from inside the park with the assistance of Const.Raj Kumar and Const.Mukesh who arrived at the scene. In the process, the appellant inflicted injuries to Const.Raj Kumar by a knife on his left arm. During the course of investigation, statements of witnesses conversant with the facts were recorded. Both the appellant and Const.Raj Kumar were medically examined. After completion of investigation, a charge-sheet was filed against the appellant for committing offences punishable under Sections 379/386/411/506/186/353/307 and 25/27 Arms Act. The appellant was charged under Section 186/394 read with Section 397 IPC by an order dated 23.03.2002 and brought to trial. The prosecution examined seven witnesses to establish his guilt. In 313 statement, the appellant denied complicity in the crime and claimed that he was falsely implicated in the case after he was lifted from Jwala Heri market where he had gone to purchase some articles with his wife and was given beatings. He examined DW-1 (Lajjo), his mother, in defence. On appreciating the

evidence and after considering the rival contentions of the parties, the Trial Court by the impugned judgment convicted the appellant for the offences mentioned previously. Being aggrieved, the appellant has come in appeal.

3. I have heard the learned counsel for the parties and have examined the record. SI Dilip Kaushik lodged first information report after recording Vivek statement (Ex.PW-1/A) by making endorsement (Ex.PW-6/C) over it at 05.50 P.M. on 03.07.99. In the complaint, the complainant gave detailed account of the occurrence and named Jagbir @Jaggi for snatching an envelope containing ₹40,000/- from his possession when he was putting it in the dickey of the scooter. He further disclosed that he raised alarm and the appellant was chased by him and public persons. Jagbir was arrested from inside the park and the stolen cash was recovered from his possession. The accused had attempted to inflict injuries to the public persons and caused stab wound on the left arm of Const.Raj Kumar who with the aid of Const. Mukesh was able to apprehend him. However, in the Court statement as PW-1, the complainant did not subscribe to the version given to the police at the first instance though he stood by the story of snatching of the cash ₹40,000/- from his possession when he was keeping it in the dickey of the scooter.

He did not identify Jagbir @ Jaggi to be the assailant who had snatched the envelope containing cash and from whom the stolen cash was recovered. He was declared hostile and was cross-examined by learned Additional Public Prosecutor after obtaining court's permission. In the cross-examination also, nothing material could be elicited to establish the identity of the appellant to have snatched the envelope containing cash from him. He rather gave a conflicting statement that after the envelope containing cash was snatched, he went to Mr.S.L.Banga, from whom he had taken the cash, to inform him about the incident. Thereafter he saw a crowd of people standing across his house. The police informed him that they had recovered the cash from the individual who was in their custody. The complainant, however, did not recognize the assailant who was in the custody of the police that time. He further gave contradictory statement that he was not able to see the individual who had snatched the envelope containing ₹40,000/- when he was putting it in the dickey. The complainant did not depose that the assailant was apprehended by the police officials in his presence or that the envelope containing cash was recovered from his possession. No ulterior motive was assigned to the complainant who was the victim to resile from the statement (Ex.PW-1/A) made to the police at the first instance. He disclosed that his statement

was recorded at the police station and the signatures were taken on various documents there. He was not even aware if any knife was recovered from the appellant's possession or he had injured Const. Raj Kumar with that knife.

4. It is alleged that PW-4 (Const.Mukesh) and PW-5 (Const.Raj Kumar) were able to apprehend and recover the stolen cash and knife from the appellant. PW-4 (Const.Mukesh) and PW-5 (Const.Raj Kumar) have supported the prosecution in this regard, however, they did not lodge any report with the police for the alleged incident. PW-6 (SI Dilip Kaushik) happened to reach at the spot all of a sudden and took the investigation on his own and lodged first information report after recording complainant's statement. Statements of PWs 4, 5 and 6 are full of contradictions and no implicit reliance can be placed to establish the guilt of the appellant beyond reasonable doubt. The appellant sustained multiple injuries on his body and was taken to DDU hospital at 12.50 A.M. on the night intervening 3/4-07-1999. Allegedly the injuries were inflicted to the appellant by public persons when they confronted him inside the park to apprehend him. No explanation has been offered as to why the appellant was taken to hospital for medical examination after an inordinate delay at 12.15 A.M. No independent public witness was

associated during investigation. Name of the public persons who allegedly gave beatings to the appellant never emerged. No action was taken against any such individual who inflicted multiple injuries to the appellant when he had not caused any harm to any such individual with the knife allegedly in his possession. Const.Raj Kumar who allegedly sustained injuries at the hands of the appellant in an attempt to apprehend him was taken to DDU hospital at 01.35 A.M. in the night intervening 3/4-07-1999. Again no explanation has been given as to why Const.Raj Kumar was taken for medical examined belatedly. PW-5 (Const.Raj Kumar) has given contradictory version that he was taken to hospital soon after the apprehension of the appellant and was medically examined at 10.00 P.M. Apparently Const. Raj Kumar was medically examined after the medical examination of Jagbir @ Jaggi.

5. Recovery of stolen articles in the manner claimed by the prosecution is suspect. PW-1 (Vivek-Complainant) did not support the prosecution on this aspect and did not claim if any stolen cash was recovered in his presence from the appellant. PW-4 (Const.Mukesh) and PW-5 (Const.Raj Kumar) who allegedly apprehended the appellant and recovered the bag containing the envelope having ₹40,000/- cash are not witnesses to the seizure memo (Ex.PW-4/A). Their signatures also do not

find mention in Ex.PW-6/A (sketch of the knife), Ex.PW-6/B (seizure memo of knife), Ex.PW-6/D (site plan) and Ex.PW-6/F (personal search memo). The investigating officer did not explain as to why the signatures of material witnesses (PWs 4 and 5), who had handed over the knife and bag containing cash were not taken on the respective seizure memos. PW-5 (Const.Raj Kumar) in examination-in-chief deposed that polythene was not checked in his presence and he was unable to say as to what was lying therein. He recollected subsequently that the polythene contained currency notes but he was not aware as to the amount of cash. The lapses in the investigation are writ large. The investigation officer did not examine Mr.S.L.Banga to corroborate the testimony of PW-1 (Vivek).

6. The family members of the appellant sent telegrams to various authorities for false implication of the appellant and a complaint case was filed against police officials in which some of the police officials have been summoned by the concerned Metropolitan Magistrate. The revision petition against the summoning order is pending before the Ld.Additional Sessions Judge. Since the matter is pending before the competent court, no observation or comments are made about the merits of the said proceedings in these proceedings. Though it is not believable that the police officials would plant a huge recovery of ₹40,000/- cash

from their possession, nevertheless, the prosecution was unable to establish its case beyond reasonable doubt and to prove and establish that the cash was recovered from the possession of the appellant in the manner and on the day and time alleged by it. It appears that the prosecution has not presented true facts.

7. In the light of the above discussion, conviction and sentence of the appellant cannot be sustained. The appeal is accepted. Conviction and sentence awarded to him are set aside. Bail bonds and surety bonds stand discharged. It is, however, made clear that the observation in the judgment will have no impact on the complaint case instituted by the appellant and the Trial Court will record its own findings on merits.

8. Trial Court record be sent back forthwith.

(S.P.GARG)
JUDGE

January 24, 2014
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