

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

RESERVED ON : 2nd APRIL, 2014

DECIDED ON : 25th APRIL, 2014

+ CRL.A. 515/2011 & CRL.M.B.No. 562/2014

MAQSOOD AHMED

..... Appellant

Through : Mr.Vijay Kinger, Advocate.

versus

THE STATE (GOVT. OF NCT OF DELHI)

..... Respondent

Through : Mr.Lovkesh Sawhney, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. The present appeal is directed to challenge the legality and correctness of a judgment dated 17.03.2011 of learned Addl. Sessions Judge in Sessions Case No. 71/2009 arising out of FIR No. 671/2006 PS Seelampur by which he was convicted under Section 392 read with Section 397 IPC. By an order dated 01.04.2011, he was sentenced to undergo RI for three years with fine ₹ 1,000/- under Section 392 IPC; RI for seven years with fine ₹ 1,500/- under Section 397 IPC. Both the sentences were to operate concurrently.

2. Briefly stated, the prosecution case as reflected in the charge-sheet was that on the night intervening 05/06.11.2006 at around 12.30 (night) at ISBT Road, in front of Shastri Park, the appellant and his associate – Sonu Kumar (since dead) in furtherance of common intention robbed the complainant – Pappu Kumar Gupta of ₹ 540/- at ‘ustra’ point. Daily Diary (DD) No. 35A (Mark P-10/A) was recorded at PS Seelampur regarding the incident at 12.50 (night). The investigation was assigned to SI Kamal Singh who went to the spot and lodged First Information Report after recording complainant – Pappu Kumar Gupta’s statement (Ex.PW-1/A). Efforts were made to find out the culprits. Further case of the prosecution is that on 06.11.2006, Maqsood Ahmed and Sonu Kumar were apprehended and arrested when they were going on motorcycle No. DL-7S-AX-1342 by PW-8 (Insp. Kishan Lal) and Const.Sanjay who were on patrolling duty. Two knives and an ‘ustra’ were recovered from their possession. Their involvement emerged in the instant case upon disclosure statements made by them in case FIR No. 389/2006 PS New Usmanpur. Necessary intimation was given to the concerned Investigating Officer of this case. Statements of the witnesses conversant with the facts were recorded and after completion of the investigation, a charge-sheet was submitted in the Court. Sonu Kumar expired during trial and proceedings

against him were dropped as abated. The prosecution examined ten witnesses to establish appellant's guilt. In 313 statement, he denied complicity in the crime and pleaded false implication. The trial resulted in his conviction as aforesaid. Being aggrieved and dissatisfied, the appellant has preferred the appeal.

3. I have heard the learned counsel for the parties and have examined the record. It is pertinent to mention that complainant – Pappu Kumar Gupta expired during trial and his statement could not be proved in the Court. The prosecution examined PW-1 (Mahender Kumar) who was present with the complainant – Pappu Kumar Gupta at the time of the occurrence. He deposed that on 06.11.2006 at around 12.30 A.M. when he and Pappu Kumar Gupta were coming on a cycle rickshaw being driven by him, two boys picked up a quarrel with them and gave them beatings. One of the said boys pointed out a 'churra' at him. Thereafter, they robbed Pappu Kumar Gupta of ₹ 540/- consisting of five currency notes of ₹ 100 each and four currency notes in the denomination of ₹ 10. They were on motorcycle and he could note down incomplete number i.e. DL-A-1342. He identified Maqsood Ahmed who had pointed out a 'churra' at him and commanded him not to move. Thereafter, he and his associate robbed

Pappu Kumar Gupta. The conviction is based upon the sole testimony of this witness.

4. The incident occurred on the night intervening 05/06.11.2006 at around 12.30 A.M. Daily Diary (DD) No. 35A (Mark P-10/A) was recorded at 12.50 (night). However, rukka (Ex.PW-10/A) was sent for lodging First Information Report at 02.20 A.M. The delay has not been explained. The police of PS Seelampur was unable to trace the culprits or to recover the motorcycle whose number was disclosed in statement (Ex.PW-1/A). It was also not ascertained as to whom the motorcycle belonged. Both Maqsood Ahmed and Sonu Kumar were allegedly arrested on 06.11.2006 by the police of PS New Usmanpur and two knives and an ustra were recovered from their possession. A separate case under Section 25 Arms Act vide FIR No. 389/2006 was registered at the said Police Station. The disclosure statements of both the accused persons were recorded and their involvement in the present case and in case FIR No. 705/2006 PS Kamla Market emerged. FIR No. 705/2006 was registered on the complaint of Mohd.Zubair who disclosed that at about 01.00 or 01.30 A.M. (mid night) on the night intervening 05/06.11.2006, he was robbed of ₹ 2,000/- by two boys who arrived on a motorcycle No. DL-7S-AX-1342 near Bus Stand JLN Marg Petrol Pump, Kamla Market.

Maqsood Ahmed and Sonu Kumar were arrested in the said proceedings and were sent for trial. A copy of the judgment dated 20.07.2010 in Sessions Case No. 2/08 has been placed on record by the appellant whereby he was given benefit of doubt and was acquitted of the charges. In the instant case also, the prosecution failed to prove the guilt of the accused beyond reasonable doubt. The complainant / victim could not be examined as he expired during trial. PW-1 (Mahender Kumar) disclosed that after the police arrived at the spot they took them to PS Seemapuri. Both the accused persons present in the Police Station were shown to them and he identified and recognized them to be the assailants. Contradictory and conflicting version has come on record as to when and where both these persons were apprehended and arrested. PW-8 (Insp.Kishan Lal), SHO PS New Usmanpur, disclosed that both the accused persons were arrested at about 02.15 - 02.30 A.M. on 06.11.2006 when they had arrived near Zero Pusta on motorcycle. Two knives and an 'ustra' along with some currency notes were recovered from their possession. The witness did not identify the crime weapon nor it was shown to him during examination. The currency notes allegedly recovered from the possession of the accused persons were also not shown and identified by him. PW-7 (Const. Sanjay) who was a driver attached with

the SHO (PW-8 Insp.Kishan Lal) disclosed the time of the arrest of the accused persons at about 11.30 P.M. on 06.11.2006. He disclosed that ₹ 2,000/- were recovered from Sonu Kumar and ₹ 540/- were recovered from Maqsood Ahmed. He talked about recovery of only a knife from Maqsood. He was unable to identify the currency notes recovered from the accused persons. During his examination, he was shown two currency notes in the denomination of ₹ 100/- each, five currency notes of ₹ 50/-, two currency notes of ₹ 20/- and five currency notes of ₹ 10/- (Total ₹ 540/-). The witness fairly conceded that these were not the currency notes recovered from Maqsood Ahmed. Both these witnesses gave inconsistent version about the time of arrest of both the accused persons. Contrary to that, PW-1 (Mahender Kumar) claimed that they were taken soon after lodging of the report to PS Seelampur where both the accused persons were present and they identified them. It belies the prosecution case about appellant's apprehension on 06.11.2006 at night time. There was no useful purpose to move application for holding Test Identification Proceedings when the accused persons had already been shown at PS Seelampur to the material witnesses. The prosecution did not examine any witness to show regarding the recovery of the motorcycle or to whom it belonged. In the

Daily Diary (DD) No. 35A (Mark P-10/A) there is mention of snatching of ₹ 500/-. It does not record that the assailants had arrived on a particular motorcycle or that the amount was robbed at knife point. The Trial Court in FIR No. 705/2006 did not believe the prosecution regarding the arrest and recovery of the articles from their possession and they were acquitted in the said case. PW-5 (ASI Tahir Hussain) in his examination did not reveal if any robbed cash was produced before him. PW-6 (Const.Manvir Singh) did not identify the currency notes shown to him in his deposition.

5. In the light of above discussion, it would not be safe to base conviction on the sole testimony of PW-1 (Mahender Kumar). The appellant deserves benefit of doubt. The appeal is accepted. Conviction and sentence of the appellant is set aside. Pending application also stands disposed of. Trial Court record be sent back immediately with the copy of the order. A copy of the order be sent to the Superintendent Jail for information. The appellant shall be released forthwith if not required in any other case.

(S.P.GARG)
JUDGE

APRIL 25, 2014 / *tr*