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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 30th November, 2015

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CRL.L.P. 609/2015

STATE

..... Petitioner

Through Ms. Aashaa Tiwari, APP with SI
Gajender, PS-Alipur.

versus

SANJAY & ORS.

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE R.K.GAUBA

SANJIV KHANNA, J. (ORAL)

Having heard learned counsel for the State, we are not inclined to interfere with the judgment of acquittal. The case of the prosecution is substantially predicated on the testimony of Ashok Kumar (PW4), the complainant, whose version is ambivalent and does not inspire confidence and suffers from uncertainty and contrariety. As per the version given by Ashok Kumar (PW4), he was a property dealer and had entered into an agreement for purchase of plot no. 104/14 admeasuring 50 square yards at Sant Nagar for Rs.4,70,000/-. On 25th June, 2007, at about 10.30 a.m., on being called, PW-4 proclaims that he had gone to the residence of the respondent-accused Pankaj Tyagi with Rs.1,00,000/- in cash, two

General Power of Attornies and two photographs. The reason was that the sale document was to be registered. Noticeably, Ashok Kumar (PW4) has not referred to any witness from his side or purchase and preparation of stamp papers/documents required for registry of sale papers.

2. Ashok Kumar (PW4) alleges that he sat in a Zen car in which Pankaj Tyagi, other respondents-accused Vikas Tyagi, Rohit and Sanjay were sitting. The car was driven to thokar no. 5 and 6 via Yamuna Pushta, and deliberately taken to a secluded place at Kharanja, near a tubewell. Why and for what reasons, Ashok Kumar (PW4) did not protested and allowed himself to be driven to a secluded place, is not stated and indicated. PW-4 alleges that at the said location, where no one was present, Pankaj Tyagi had tried to strangulate him, while Vikas Tyagi had caught hold of his hands. PW-4 had raised an alarm and had kicked the window of the car. Rohit at that time had closed the window of the car. Ashok Kumar (PW4) asserts that two *phawra dandas*, which were lying in the car, were taken out by Pankaj Tyagi and Vikas Tyagi and they had given him a beating. The place where the said dandas were purportedly kept in the car was not stated. Pankaj Tyagi had then snatched the polythene bag containing Rs.1 lac, two General Power of Attornies and two photographs from PW4. Pankaj Tyagi whereupon had asked Rohit to drive the car at a high speed and throw out PW-4 from the running car, so that PW4 would suffer injuries and die, yet the occurrence would appear and look like an accident. Rohit did as suggested and Pankaj Tyagi and Vikas Tyagi with the help of Sanjay

had thrown Ashok Kumar (PW4) on the road from the running car. Ashok Kumar (PW4) became unconscious and only after regaining consciousness informed the police at number 100. At the same very time, the car in question was intercepted by a PCR van near Libas Pur bus stand. Ashok Kumar (PW4) was taken in a police vehicle and on the way near Hiranki Burari Pushta crossing, two of the respondents, namely, Vikas Tyagi and Sanjay were found to be standing and were detained. PW4 with the police team then proceeded to bus stand at Libas Pur, where the PCR officers had already apprehended Pankaj Tyagi and Rohit in the Zen car. Pankaj Tyagi and Rohit had produced Rs.90,000/- in cash, two General Power of Attornies and two photographs, which were seized vide recovery memo Ex.PW3/A. To us, this version by PW4 has several aspects which are apparently implausible or questionable. As noticed by us, there are gaps.

3. In the cross-examination, Ashok Kumar (PW4) had accepted that he had entered into two transactions with Pankaj Tyagi; one for sale and another for purchase of a plot. Thus business transactions inter-se were accepted. Certain notices, allegedly written by the advocate of Ashok Kumar (PW4), were produced and confronted to Ashok Kumar (PW4). PW4 had accepted that he had filed a suit with regard to the property in question, which was subsequently settled and the case was withdrawn. The said suit was filed by the same advocate, who had issued these notices. In his cross-examination, Ashok Kumar (PW4) has stated that he was pushed out of the car at about 11.30 a.m., and had remained unconscious for

some time. He had made the call to the police after 15-20 minutes of regaining consciousness and the police had come to the spot after 10-15 minutes.

4. SI Shamim Khan (PW8), HC Banne Singh (PW7) and Constable Ramesh Singh (PW5) have stated that they had met the complainant Ashok Kumar (PW4) at Yamuna Pushta and had ascertained facts from him. At the same time and place, they had received information on wireless that two robbers had been apprehended near Libas Pus bus stand. How the said robbers were identified and thereafter detained is not clear. These police officers also state that on the way, two respondent-accused Vikas Tyagi and Sanjay per chance were found to be standing at Hiranki and were detained. SI Shamim Khan (PW8) has stated that they had reached Libas Pur at about 1.30 p.m. As per Constable Ramesh Singh (PW5), they had reached the spot at about 12.00 noon and thereafter had proceeded to Libas Pur. PW5 avers that statement of Ashok Kumar (PW4) was recorded at Libas Pur. SI Shamim Khan (PW8) has alleged that they had made inquiries about missing Rs.10,000/-, but the said amount could not be traced or recovered, for Head Constable Raj Pal Singh (PW3) had stated that only Rs.90,000/- and some papers were recovered from the car in which Pankaj Tyagi and Rohit were travelling.

5. Head Constable Raj Pal (PW3) has stated that at about 10.30-11.00 a.m., he had seen a Maruti Zen car and had given a signal to the driver to stop the car near the bus stop of village Libas Pur. Two persons were found in the car and on personal search, Rs.90,000/-,

some documents and two photographs were recovered and seized. During interrogation, the persons were identified as Pankaj Tyagi and Rohit. Head Constable Raj Pal (PW3) in his examination-in-chief has stated that he came to know about the robbery at about 11.46 a.m. on 25th June, 2007. Thus, there are gap and divergence on the time, identification and apprehension of the respondent-accused Pankaj Tyagi and Rohit.

6. The police control room records/ forms and call detail records were not produced and do not form part of the evidence produced and led. The police version that the respondent-accused Vikas Tyagi and Sanjay were found standing near Hiranki Bandh does not inspire confidence and appears to be a far-fetched version.

7. It may be noted that the original agreement-to-sell, which was executed on 12th March, 2007, marked Ex.PX, was produced by the complainant Ashok Kumar (PW4). The said document was in his custody. As per the agreement, Ashok Kumar (PW4) had initially paid Rs.1,00,000/- and thereafter had made five payments, which stand recorded on the backside but this factual position was not noticed by the trial court. The last payment as per the said agreement-to-sell was made on 21st June, 2007, just four days before the alleged occurrence.

8. We have also gone through the MLC marked Ex.PW1/A and observe that the injuries recorded therein were superficial and not serious in nature. The version given by Ashok Kumar (PW4) is that he was thrown out of a fast moving car with great force. If this assertion was correct, then PW4 would have suffered serious and tell

tale injuries. The MLC marked Ex.PW1/A is timed at 5.30 p.m. on 25th June, 2007. It is apparent that there was a substantial delay and gap between the stated time of occurrence, and when Ashok Kumar (PW4) was taken to the hospital for examination. In the MLC marked Ex.PW1/A, Ashok Kumar (PW4) had only spoken about assault and not deposed or stated as to any other detail.

9. Considering the facts of the present case in totality, we are not inclined to issue notice in this leave to appeal and the same is dismissed.

SANJIV KHANNA, J.

R.K. GAUBA, J.

NOVEMBER 30, 2015
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