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

+ CRL. A. No. 245/2011

Reserved on 20th January, 2015

Decided on 28th January, 2015

UDAY KUMAR SINHA Appellant
Through : Mr. S.B.S. Vashishtha, Adv.

Versus

STATE Respondent
Through : Mr. Amit Ahlawat, APP

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

A.K. PATHAK, J.

1. Aggrieved by his conviction under Sections 394/397 of the Indian Penal Code, 1860 (IPC) and Section 25 of the Arms Act, 1959 appellant has preferred this appeal.

2. Prosecution case, as set out in the charge-sheet, is that on 10th November, 2005, an information was received in the Police Station Tilak Nagar at about 4:45 PM that two/three persons, armed with revolver, had come to the premises bearing no. 5-B/17, Meenakshi Garden, Delhi, pursuant whereof DD No. 13-A was recorded and handed over to Sub Inspector D.P. Kajla for enquiry, who along with Constable Devender

reached the spot and recorded statement of Bhupinder Kumar, (Ex.PW3/A) wherein he stated that he was employed as an Accountant in Sudhir Printers. He was present in the office along with Ajit Khurana and Sunil Kumar when at about 4:20 PM, three boys, namely, Mushir Ahmed @ Babloo armed with desi katta, Uday Kumar Sinha (appellant) armed with a dagger and Shyam armed with a razor, entered in the room and bolted it from inside. Mushir Ahmed @ Babloo asked all of them to raise their hands by pointing desi katta. Mushir Ahmed @ Babloo removed purse from the pants pocket of Ajit Khurana, appellant took out the purse from the pocket of Sunil Kumar while Shyam removed purse from the pocket of Bhupinder Kumar. Thereafter, Mushir Ahmed @ Babloo commanded Ajit Khurana to hand over the keys of Almirah to him. When Ajit Khurana refused to do so, appellant and Mushir Ahmed @ Babloo gave beatings to him. Mushir Ahmed @ Babloo fired at Ajit Khurana and the bullet hit the right leg of Ajit Khurana. Sunil Kumar was attacked by Shyam by the razor resulting injuries on the left hand of Sunil Kumar. Ajit Khurana and Sunil Kumar raised alarm at which Shyam threw the razor and took out a katta and fired in the air. Thereafter, appellant, Mushir Ahmed @ Babloo and Shyam started running in order to escape. Sunil Kumar apprehended Mushir Ahmed

@ Babloo near the door. However, appellant and Shyam succeeded in escaping. Bhupinder Kumar chased them while raising alarm “pakro-pakro”. Appellant was apprehended in the Gali by one Mr.Raghubir Singh @ Rinku and two police officials namely, Head Constable Sunder Singh and Constable Satender, who were on patrolling in the area. Ajit Khurana was removed to hospital. Mushir Ahmed @ Babloo and appellant were handed over to Sub Inspector D.P. Kajla, (Appellant and his accomplices were not known to Bhupinder, Ajit and Sunil and their names were disclosed after appellant and Mushir Ahmed were apprehended).

3. After recording the statement of Ajit Khurana, Sub Inspector D.P. Kajla wrote rukka (Ex. PW5/A) and sent it to Police Station at about 6:30 PM per hand constable Devender Kumar for registration of FIR, pursuant whereof FIR no. 729/2005 was registered in the Police Station Tilak Nagar under Sections 394/397/34 IPC read with Section 25 of the Arms Act. Investigation was thereafter handed over to Sub Inspector Ramesh Singh, who reached the spot and prepared site plan (Ex. PW14/A), prepared sketch of desi katta and empty cartridge (Ex. PW3/H); sketch of razor (Ex. PW3/J); sketch of dagger recovered from appellant (Ex. PW3/D). He prepared sketch of live cartridge recovered from Mushir Ahmed (Ex. PW3/A).

Dagger, razor, desi katta, live cartridge and pellets were seized vide seizure memos Ex. PW3/E, Ex. PW3/K, Ex. PW3/I, Ex. PW3/C and Ex.PW3/L respectively. Purse recovered from the appellant was seized vide seizure memo Ex. PW3/F, purse recovered from Mushir Ahmed was seized vide seizure memo Ex. PW3/G. Mushir Ahmed and appellant were arrested vide Arrest Memos Ex.PW3/M and Ex.PW3/P. Accomplice of the appellant, Shyam could not be apprehended. MLC of Ajit Khurana (Ex.PW1/A) and MLC of Sunil (Ex.PW1/B) was collected.

4. After completion of investigation, the appellant along with Mushir Ahmed were sent up to face trial by filing charge-sheet in the court of Metropolitan Magistrate, Delhi, who after making compliance of Section 207 of the Code of Criminal Procedure, 1973 (Cr.P.C.), committed the case to the Sessions Court for trial.

5. Charges under Sections 397/34 IPC were framed against the appellant and Mushir Ahmed on 1st March, 2006 to which they pleaded not guilty and claimed trial. Separate charge under Section 25 of the Arms Act was framed against the appellant on the same day to which he pleaded not guilty and claimed trial. During the trial, Mushir Ahmed jumped the bail and could not be apprehended. He was declared proclaimed offender vide order dated 7th

January, 2008.

6. Shri Bhupinder Kumar, Shri Ajit Khurana and Shri Sunil Kumar are material witnesses to prove the incident of robbery and they were examined as PW3, PW4 and PW9, respectively. As per the prosecution, Shri Raghubir Singh @ Rinku, Constable Satender and Head Constable Sunder Singh had apprehended the appellant. They have been examined as PW7, PW6 and PW13 respectively to prove that appellant was apprehended in the Gali immediately after the incident. PW3 Bhupinder Kumar had also given a chase to appellant and had deposed about the apprehension of the appellant. Deposition of PW5 Sub Inspector D.P. Kajla is also relevant since he had reached the spot after the incident and appellant was handed over to him. PW1 Dr. R.K. Mishra had medically examined Ajit Khurana and Sunil Kumar and has deposed in this regard. PW14 Inspector Ramesh Singh is the Investigating Officer and has given overall view of the investigation conducted by him. All other witnesses are formal in nature, having joined the investigation at one or the other stage.

7. Trial court has found testimonies of PW3 Shri Bhupinder Kumar, PW4 Shri Ajit Khurana, PW9 Sunil Kumar, PW6 Contable Satender, PW7 Shri Raghubir Singh @ Rinku, PW13 Head Constable Sunder Singh

trustworthy and reliable so as to conclude that appellant along with his accomplices, armed with dagger, had entered in the office of Sudhir Printers, where Bhupinder Kumar, Ajit Khurana and Sunil Kumar were present and robbed them of their purses containing money and certain other papers; while committing robbery appellant's accomplices caused injuries to Ajjit Khurana and Sunil; and further that appellant was apprehended by Raghubir Singh @ Rinku with the help of Head Constable Sunder Singh and Constable Satender in the Gali immediately after the incident of robbery and a dagger was recovered from him. Accordingly, appellant has been convicted under Sections 394/397 IPC and Section 25 of the Arms Act.

8. Learned counsel for the appellant has contended that appellant has been falsely implicated in this case. He was not apprehended at the spot. Dagger was not recovered from him. He was picked up from his place of work and implicated in this case. Learned counsel has vehemently contended that prosecution case suffers from various inherent discrepancies and material inconsistencies with regard to the time of incident as also about apprehension of the appellant from the spot. Statements of witnesses suffer from material inconsistencies on the above points thereby entitling the appellant benefit of doubt, resultantly in his acquittal. During the course of

hearing, such material inconsistencies have been elaborated. Per contra, learned APP has supported the view taken by the trial court. He has contended that PW3 Bhupinder Kumar, PW4 Ajit Khurana and PW9 Sunil Kumar have categorically deposed that appellant along with his accomplices had entered in the room on the fateful day. Appellant was armed with dagger while his accomplices were armed with desi kattas and razor. All the three witnesses have described the incident in the same manner in which it has been described in the FIR, inasmuch as appellant was apprehended immediately after the incident in the Gali while trying to escape, by PW7 Raghubir Singh @ Rinku with the help of two police officials, that is, Constable Satender and Head Constable Sunder Singh, who were on patrolling duty in the area. All these witnesses have corroborated each other with regard to apprehension of appellant in the Gali by them and also about recovery of dagger and purse from him. He has contended that there is no reason to disbelieve their statements, which are trustworthy and reliable.

9. I have considered the rival contentions of both the parties and perused the trial court record carefully and I am of the view that prosecution case suffers from material inconsistencies with regard to time of incident as also about apprehension of appellant at the spot. In his statement Ex. PW3/A,

PW3 Bhupinder Kumar has given the time of incident as 4:20 PM. Even in the rukka, time of incident has been mentioned as 4:20 PM. While deposing in Court also PW3 has given time of incident as 4:20 PM. PW4 Ajit Khurana has given time of incident as 4/4:30 PM. PW9 Sunil Kumar has given time of incident as 4:15/4:30 PM. As per DD No. 13-A also the information was received at about 4:45 PM. Meaning thereby that incident took place after 4:15 PM. However, PW1 Dr. R.K. Mishra has deposed that at 3:14 PM he had examined Ajit Khurana, who was brought in the hospital by one Constable from P.S. Tilak Nagar. He further deposed that on the same day at 3:16 PM he had examined Sunil Kumar. A perusal of MLCs of Ajit Khurana and Shri Sunil Kumar also shows that Shri Ajit Khurana and Shri Sunil Kumar were medically examined at 3:14 PM and 3:16 PM, respectively. PW1 is an independent witness and not related to any of the victims. There is no reason as to why he would tell a lie about the time of medical examination of Ajit Khurana and Shri Sunil Kumar. Besides this, time as mentioned in the MLCs, prepared immediately after the incident, has to be preferred and relied upon as against the ocular statements of witnesses. Meaning thereby incident, if at all had taken place, took place at least 15 minutes prior to the medical examination of Ajit Khurana and Sunil Kumar.

in the hospital since it would have taken that much of time in shifting the injured persons from the place of incident to hospital. If that is so, then Ajit Khurana and Sunil could not have sustained injuries in the incident allegedly took place at 4.15 PM. This difference in time has remained unexplained and makes the prosecution story suspicious and doubtful. This creates a doubt about the veracity of the version of witnesses in the FIR and subsequent deposition in Court.

10. Apprehension of the appellant at the spot is also doubtful. PW3 Shri Bhupinder Kumar has deposed that appellant ran away after the incident and was chased by him. When he reached in the gali, one Rinku and two police officials, who were present there, apprehended the appellant on the alarm raised by him. PW7 Shri Raghubir Singh has deposed that he apprehended the appellant and snatched dagger from him and handed over to the police officials, who also chased the appellant. PW6 Constable Satender has deposed that he saw two boys being chased by other two boys by raising alarm 'pakro-pakro' at which he along with Head Constable Sunder Singh also ran after them and with the help of public apprehended one boy (appellant). PW13 Head Constable Sunder Singh claimed that he had apprehended the appellant with the help of Constable Satender and one

public person, though as per PW6, appellant was apprehended by the public person. Be that as it may, it is, thus, clear that according to above witnesses, appellant was apprehended immediately after the incident. Meaning thereby, appellant would have been apprehended much prior to 4:45 PM. DD No. 13-A recorded after 4:45 PM and handed over to Sub Inspector D.P. Kajla for enquiry, who reached the spot thereafter. PW5 Sub Inspector D.P. Kajla has deposed, in his cross-examination, that when he reached the spot, appellant was not there. He was brought at the spot after 25 minutes of his reaching at the spot. His this statement creates a serious doubt about the apprehension of appellant at the spot immediately after the incident. Had appellant been apprehended in the manner as has been described by PW6 Constable Satender and PW7 Raghubir Singh @ Rinku and PW13 Head Constable Sunder Singh, appellant would have been very much present at the spot when PW5 Sub Inspector D.P. Kajla reached the spot. It may further be noted that appellant was arrested at 9:30 PM, as is evident from the arrest memo Ex. PW3/D. Why it took more than four hours to arrest the appellant, who was available at the spot, has also remained unexplained. In view of the discrepancies as noted hereinabove, apprehension of the appellant at the spot immediately after the incident, in the manner as has

been described by the concerned witnesses, is doubtful and suspicious and assumes importance in view of the inconsistency with regard to time of incident.

11. For the foregoing reasons, I am of the view that appellant is entitled to benefit of doubt. Accordingly, impugned judgment and order on sentence are set aside and appellant is acquitted. Appellant is in Jail and be released forthwith, if not wanted in any other case.

12. Appeal is disposed of in the above terms.

A.K. PATHAK, J.

JANUARY 28, 2015

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