

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved on: 26th February, 2015
Judgment Pronounced on: 17th March, 2015

CRL.REV.P. 527/2008

NEK RAM

..... Petitioner

Through: Mr. S.K. Anand, Advocate

versus

STATE OF N.C.T. OF DELHI

..... Respondent

Through: Mr. P.K.Mishra, APP for State.

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

P.S.TEJI, J.

1. Aggrieved by the judgment of conviction dated 18.09.2007 and order on sentence dated 21.09.2007 passed by the learned Metropolitan Magistrate, awarding the sentence to the petitioner to undergo simple imprisonment for a period of one year and fine of Rs.1,000/- under Section 406 IPC, in default of payment of fine to further undergo simple imprisonment for a period of ten days and upholding the judgment of conviction by the learned Additional Sessions Judge vide judgment dated 11.08.2008, the present revision petition has been filed by the petitioner.

2. Factual matrix, as emerges from the record, is that on 13.02.1997, the complainant Gopal had gone to Mayapuri from his village Sakra, U.P. for purchase of tractor with Rs.55,000/-. He was accompanied by petitioner Nek Ram, Rambir and Ashok Kumar. They went to Shop No.W-84, Kabari Bazar, Maya Puri. The bag of the complainant containing Rs.55,000/-, driving licence and pass book was handed over to the petitioner. It was alleged that when the complainant was talking with the shopkeeper, the petitioner along with co-accused Rambir slipped with the bag and did not return the same. On the basis of complaint made by Gopal, FIR No.50/1997, PS Mayapuri was registered. On completion of investigation, charge-sheet was filed.
3. Charge under Section 406/34 IPC was framed against both the accused. Accused persons including the petitioner Nek Ram pleaded not guilty to the charge framed.
4. To prove its case, the prosecution examined 9 witnesses. After conclusion of prosecution evidence, the statements of the accused persons were recorded under Section 281 read with Section 313 Cr.P.C. in which they had claimed innocence. Both the accused persons chose not to lead evidence in their defence. The learned Metropolitan Magistrate vide judgment dated 18.09.2007 held the petitioner guilty for the offence punishable under Section 406 IPC and convicted him for the said offences, whereas co-accused was acquitted. The order on sentence was passed on 21.09.2007.

5. Thereafter, the petitioner filed criminal appeal bearing Criminal Appeal No.66/2007. The learned Additional Sessions Judge vide judgment dated 11.08.2008 confirmed the conviction of the petitioner.
6. Feeling aggrieved by the same, the petitioner has preferred the present revision petition to set aside the judgments rendered by the Courts below and claiming acquittal.
7. The arguments advanced by the learned counsel for the petitioner are that delay of 5 days in lodging the FIR not explained; a new story was put forth by the complainant; there was no proof that the complainant was having Rs.55,000/-; complainant never entrusted money to the petitioner; and complainant was having grudge against the petitioner.
8. Perusal of record shows that the complainant Gopal (PW1) duly supported the case of the prosecution. He stated that on 13.02.1997, he had withdrawn Rs.55,000/- from the bank for purchasing tractor; said amount was kept in a bag along with bank pass book and licence; he went to Paharganj Chuna Mandi; three persons Nekram, Ramvir and Ashok Kumar met him there; those persons were from his village and he asked them to accompany him; they all went to shop no.84, Mayapuri Kabari Bazar; he started talking with the proprietor of the shop and bag was handed over to Nek Ram; when he talking with proprietor, all three persons had slipped away; Ashok met at some distance; after sometime Ramvir

met them; they all searched for Nek Ram but he could not be found; thereafter they went to PS Mayapuri and FIR was lodged.

9. Apart from the complainant, the prosecution had also examined another public witness Ashok Kumar (PW2) who duly corroborated the testimony of the complainant Gopal to the effect that he along with Gopal, petitioner and Rambir had gone to Maya Puri for purchasing tractor as Gopal wanted to purchase the same; Gopal was having a bag containing Rs.55,000/- which he handed over to the petitioner; the petitioner took away that bag and did not return. The testimony of the complainant is found to be reliable and trustworthy which has duly been corroborated by PW2 Ashok Kumar. It is a settled proposition of law of evidence that it is not the number of witnesses that matters but it is the substance. It is also not necessary to examine a large number of witnesses if the prosecution can bring home the guilt of the accused even with a limited number of witnesses.
10. The Hon'ble Apex Court in case of ***Govindaraju @ Govinda Vs. State by Srirampuram P.S. and Anr. AIR 2012 SC 1292*** has observed that the evidence of a sole witness should be cogent, reliable and must essentially fit into the chain of events that have been stated by the prosecution. Relevant portion from the judgment reads as under :

“In the third category of witnesses, the Court has to be cautious and see if the statement of such witness is corroborated, either by the other witnesses or by other

documentary or expert evidence. Equally well settled is the proposition of law that where there is a sole witness to the incident, his evidence has to be accepted with caution and after testing it on the touchstone of evidence tendered by other witnesses or evidence otherwise recorded. The evidence of a sole witness should be cogent, reliable and must essentially fit into the chain of events that have been stated by the prosecution. When the prosecution relies upon the testimony of a sole eye-witness, then such evidence has to be wholly reliable and trustworthy. Presence of such witness at the occurrence should not be doubtful. If the evidence of the sole witness is in conflict with the other witnesses, it may not be safe to make such a statement as a foundation of the conviction of the accused. These are the few principles which the Court has stated consistently and with certainty. Reference in this regard can be made to the cases of Joseph v. State of Kerala [MANU/SC/1084/2002](#) : (2003) 1 SCC 465 and Tika Ram v. State of Madhya Pradesh (2007) 15 SCC 760. Even in the case of Jhapsa Kabari and Ors. v. State of Bihar [MANU/SC/0776/2001](#) : (2001) 10 SCC 94, this Court took the view that if the presence of a witness is doubtful, it becomes a case of conviction based on the testimony of a solitary witness. There is, however, no bar in basing the conviction on the testimony of a solitary witness so long as the said witness is reliable and trustworthy.”

11. There is enough evidence on the record to establish that the complainant entrusted his bag containing money and other articles to the petitioner. As per the law laid down in case of **Govindaraju** (supra), the complainant is a reliable and trustworthy and even his testimony has duly been corroborated by PW2 Ashok Kumar.

12. Next argument advanced by the learned counsel for the petitioner is

that there are several material contradictions in the testimony of complainant and other public witness which raises a doubt about the case of the prosecution.

13. This Court has gone through the testimony of the complainant Gopal (PW1) and Ashok Kumar (PW2). The testimony of these witnesses shows that there are minor discrepancies or contradictions in the testimony of witnesses, but the same are not material. It is a settled law that minor discrepancies and that is too on trivial matters do not affect the case of prosecution and on the basis of same, entire case of the prosecution cannot be discarded.
14. In ***Raj Kumar Singh @ Raju @ Batya Vs. State of Rajasthan AIR 2013 SC 3150***, the Hon'ble Apex Court has observed that minor discrepancies which do not affect the core of the case of the prosecution must not prompt the Court to reject the evidence in entirety. Relevant portion from the judgment reads as under :

“In the instant case, there have been major contradictions/improvements/embellishments in the deposition of witnesses which cannot be ignored when they are examined in the correct perspective. The chain of links connecting the Appellant with the crime appears inconclusive. It is a settled legal proposition that, while appreciating the evidence of a witness, minor discrepancies on trivial matters, which do not affect the core of the case of the prosecution, must not prompt the Court to reject the evidence thus provided, in its entirety. The irrelevant details which do not in any way corrode the credibility of a witness, cannot be labeled as omissions or contradictions. Therefore, the courts must be cautious and very particular, in their

exercise of appreciating evidence. The approach to be adopted is, if the evidence of a witness is read in its entirety, and the same appears to have in it, a ring of truth, then it may become necessary for the Court to scrutinize the evidence more particularly, keeping in mind the deficiencies, drawbacks and infirmities pointed out in the said evidence as a whole, and evaluate them separately, to determine whether the same are completely against the nature of the evidence provided by the witnesses, and whether the validity of such evidence is shaken by virtue of such evaluation, rendering it unworthy of belief. "Exaggerations per se do not render the evidence brittle. But it can be one of the factors to test the credibility of the prosecution version, when the entire evidence is put in a crucible for being tested on the touchstone of credibility." It is in fact, the entirety of the situation which must be taken into consideration. While appreciating the evidence, the Court must not attach undue importance to minor discrepancies, rather must consider broad spectrum of the prosecution version. The discrepancies may be due to normal errors of perception or observation or due to lapse of memory or due to faulty or stereotype investigation. After exercising such care and caution, and sifting through the evidence to separate truth from untruth, embellishments and improvements, the Court must determine whether the residuary evidence is sufficient to convict the accused."

15. The testimony of the complainant which has duly been corroborated by another independent witness duly proves the case of prosecution that the bag of the complainant containing money and other articles was entrusted to the petitioner which he did not return to the complainant and thus, the offence under Section 406 IPC was duly established.

16. I have gone through the ratio of judgment in case of ***Ram Briksh Singh and Others vs. Ambika Yadav and Another (2004) 7 SCC 665*** in which it was observed that the revisional court does not function as a court of appeal and, therefore, cannot re-appreciate the evidence. Sections 397 to 401 of the Code are group of sections conferring higher and superior courts a sort of supervisory jurisdiction. These powers are required to be exercised sparingly. The jurisdiction can be invoked to correct the wrong appreciation of evidence. Though the High Court is not required to act as a court of appeal but at the same time, it is the duty of the court to correct manifest illegality resulting in gross miscarriage of justice. The High Court is not required to interfere in the concurrent finding of facts. *This Court is of the considered opinion that the present case is not a fit case where the revisional jurisdiction is required to be exercised on the concurrent finding of facts recorded by the Courts below.*
17. On the quantum of sentence, the submission made by the learned counsel for the petitioner is that the petitioner has faced the trial for about 18 years; petitioner is the sole bread earner of his family and entire family is dependent upon him. It is submitted that a lenient view may be taken while awarding sentence to the petitioner.
18. In the present case, it is apparent from the record that FIR was registered on 17.02.1997; charge sheet was filed on 21.10.1997; judgment of conviction was passed on 18.09.2007; order on sentence was passed on 21.09.2007; criminal appeal filed by the

petitioner was dismissed on 11.08.2008 and now we are in the year 2015.

19. In view of discussion made above, the judgments passed by the Courts below are upheld. However, this Court is of the considered opinion that it would not serve any purpose to send the petitioner behind the bar. Accordingly, the sentence of imprisonment is modified to the period already undergone by the petitioner, subject to enhancement of fine from Rs.1,000/- to Rs.20,000/- for offence under Section 406 IPC, in default the petitioner shall undergo simple imprisonment for four months and the adjustment of fine already paid.

Fine realised be paid to the complainant Gopal.

20. The petitioner shall appear before the Chief Metropolitan Magistrate (South West) within the period of one month from the date of order to pay the fine, failing to which surrender to serve the sentence in default of payment of fine.
21. The present revision petition is disposed of accordingly. File of the trial Court be sent back.

P.S.TEJI, J.

March 17, 2015
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