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

RESERVED ON : NOVEMBER 02, 2016
DECIDED ON : NOVEMBER 11, 2016

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CRL.A.280/2014

KAMALUDDIN

..... Petitioner

Through : Mr.Naveen Gaur with Mr.Neeraj
Gahlaut, Advocates.

Versus

STATE

..... Respondent

Through : Mr.Amit Gupta, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Aggrieved by a judgment dated 03.04.2013 of learned Additional Sessions Judge in Sessions Case No.02/2013 arising out of FIR No.61/2012 registered at Police Station Bara Hindu Rao by which the appellant was convicted for committing offences under Sections 392/397 IPC and Section 25/27 Arms Act, the instant appeal has been preferred by him. By an order dated 3.4.2013, the appellant was awarded various prison terms with fine.

2. Briefly stated, the prosecution case as set up in the charge-sheet was that on 08.10.2012 at about 12 noon at Hathikhana, Azad market, Delhi, the appellant and his associate in furtherance of their common intention

robbed the complainant of CBZ motorcycle No.DL5SR-6904, black colour purse containing ₹1,100/- by putting him in fear on the point of knife. The occurrence took place on 08.10.2012. The incident was reported to the police on 10.10.2012. After recording victim's statement (Ex.PW-2/G), the Investigating Officer lodged First Information Report by sending rukka (Ex.PW-7/A) at 01.50 p.m. The appellant was arrested and certain recoveries were affected from his possession. Statements of witnesses conversant with the facts were recorded. Upon completion of investigation, a charge-sheet was filed against the accused in the court. In order to establish its case, the prosecution examined seven witnesses. In 313 statement, the appellant denied his involvement in the crime and pleaded false implication. The trial resulted in conviction as aforesaid. Being aggrieved and dissatisfied, the instant appeal has been preferred.

3. It is relevant to note that appellant's associate could not be arrested during investigation; his identity could not be established.

4. I have heard the learned counsel for the parties and have examined the file.

5. Admitted position is that the victim Nazim Hussain and the appellant were acquainted with each other and they lived in the same locality. Though the occurrence took place on 8.10.2012 during day time, the victim or his companion PW-1 (Rizwan) did not lodge report with the police promptly. Only on 10.10.2012 PW-2 (Nazim Hussain) made complaint (Ex.PW-2/G) and lodged the FIR. No plausible explanation has been offered as to why there was inordinate delay in lodging the report particularly when one of the assailants was familiar with the complainant. In his statement before the court as PW-2, the complainant could not furnish

any reasonable explanation for the delay in lodging the report. Only in the cross-examination, he came up with the plea that he was afraid of the appellant. The prosecution did not collect any particulars of appellant's involvement in any other criminal activity. No complaint, whatsoever, was ever lodged by the complainant against the appellant for his terror in the locality. FIR in criminal case is vital and valuable piece of evidence though may not be substantive piece of evidence. The object of insisting upon prompt lodging of the FIR in respect of the commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of actual culprits and the part played by them as well as the names of eye-witnesses present at the scene of occurrence. If there is a delay in lodging the FIR, it loses the advantage of spontaneity; danger creeps in of the introduction of colored version, exaggerated account or concocted story as a result of large number of consultations/deliberations. Undoubtedly, the promptness in lodging the FIR is an assurance regarding truth of the informant's version. A promptly lodged FIR reflects the firsthand account of what has actually happened and who was responsible for the offence in question. Reference be made of *Mehraj Singh vs.State of UP* (1994) 5 SCC 188 and *Firoz Khan vs.State* 2014 (4) JCC 3038 Delhi in which also, it has been reiterated that unexplained delay can easily lead to suspicion regarding manipulation and should not be easily condoned. The explanation tendered by the complainant does not inspire much confidence.

6. The alleged incident took place during noon time at a crowded public place. The victim and his companion did not raise any alarm. No injuries/harm was caused to the victim or his worker by any weapon. Nothing was robbed from PW-1 (Rizwan). There is conflicting statement

about the relationship between PW-1 (Rizwan) and PW-2 (Nazim Hussain). PW-2-Nazim Hussain-the victim claimed Rizwan to be his 'worker' wherein PW-1 (Rizwan) informed that Nazim was his elder brother. PW-1 (Rizwan) talked of robbery of mobile belonging to the complainant which fact was not so stated by him.

7. The registration of the FIR and apprehension of the appellant along with robbed articles on 10.10.2012 itself is suspicious. No independent public witness was associated at the time of alleged recovery from the appellant's possession. It is informed that the appellant was arrested from the place of his residence where the occurrence had taken place i.e. Hathikhana. The recovered articles were having no specific mark of identification. There are contradictory statements regarding the exact amount robbed from the complainant. The motorcycle allegedly snatched from the complainant was never recovered during investigation. The Investigating Officer was unable to collect any document of its ownership. PW-3(Om Prakash Sharma) who was the original owner of the vehicle in question had sold it to one Mr. Bhagat about 8-10 years before. He was not aware as to whom Bhagat had sold the motorcycle in question. No document was collected from the Registration Authority about its owner. Neither PW-1 nor PW-2 was aware about the appellant's associate who could not be arrested.

8. Considering the inherent defects in the prosecution case and the conflicting statements of the prosecution witnesses, it would be unsafe to base conviction on the testimonies of PWs-1 and 2. Allowing the appeal, conviction and sentence recorded by the Trial Court are set aside.

9. The appellant be released forthwith if not required to be detained in any other case. Trial Court record (if any) along with a copy of the order be sent back forthwith. A copy of the order be sent to Jail Superintendent, Tihar Jail for intimation.

(S.P.GARG)
JUDGE

NOVEMBER 11, 2016/sa

