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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL. A. 222/2015**

Judgment reserved on 24th November, 2016
Judgment pronounced on 6th December, 2016

NAVEEN Appellant

Through: Mr. Sunil Mehta, Adv.
Versus

STATE (NCT OF DELHI) Respondent

Through: Ms. Neelam Sharma, APP with SI
Surinder Kumar & ASI Banwari Lal,
P.S. Hari Nagar.

WITH

CRL. A. 510/2015

SANJEEV Appellant

Through: Mr. Sunil Mehta, Adv.
Versus

STATE Respondent

Through: Ms. Neelam Sharma, APP with SI
Surinder Kumar & ASI Banwari Lal,
P.S. Hari Nagar

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

A.K. PATHAK, J.

1. Vide judgment dated 24th December, 2014, impugned in these appeals, trial court has convicted the appellants under Sections 392/397/482/34 IPC besides Sections 25/27/54/59 of the Arms Act. Appellant-Naveen has also been convicted under Section 411 IPC. Vide order on sentence dated 24th December, 2014 appellants have been sentenced to undergo rigorous imprisonment for 7 years with fine of

₹2,000/- each and in default of payment of fine to undergo simple imprisonment for 2 months under Section 392/34 IPC; rigorous imprisonment for 7 years with fine of ₹2,000/- and in default of payment of fine to undergo simple imprisonment for 2 months under Section 397 IPC; rigorous imprisonment for 1 year with fine of ₹500/- and in default of payment of fine to undergo simple imprisonment for 1 month under Section 482/34 IPC and rigorous imprisonment for 2 years with fine of ₹1,000/- and in default of payment of fine to undergo simple imprisonment for 2 months for the offence under Section 25 of the Arms Act and rigorous imprisonment for 3 years with fine of ₹2,000/- each and in default of payment of fine to undergo simple imprisonment for 2 months under Section 27 of the Arms Act. Appellant-Naveen has also been awarded sentence of rigorous imprisonment for 2 years with fine of ₹500/- and in default of payment of fine to undergo simple imprisonment for 1 month for the offence under Section 411 IPC. All the sentences have been directed to run concurrently, inasmuch as, benefit of Section 428 Cr.P.C. has been given to the appellants.

2. Aggrieved by their conviction as also the quantum of sentences awarded to them, appellants have preferred these appeals, which are disposed of together.

3. As per the prosecution, at about 4 pm on 12th October, 2012 police control room sent an information to the police station Hari Nagar that one snatcher was apprehended with arms at 4/5, Vaidik Marg, Ashok Nagar, Delhi and pursuant to this information, DD No. 54B (PW6/A) was recorded and handed over to SI Surender Ahlawat (PW11) for investigation who, along with Const. Rajender Kumar (PW10), reached the spot and met victim-Smt. Jaswant Kaur (PW1) and recorded her statement (Ex. PW1/A); wherein she stated that on 12th October, 2012 at about 3:40 pm while she was returning home after buying bread from a *dhaba*, two boys came on a motorcycle bearing no. DL-6SAJ-5546 when she reached near the Satya Narayan temple and stopped the motorcycle near her. Pillion rider (Naveen) showed a knife to her while the other boy (Sanjeev), who was driving the motorcycle, showed her a pistol. Naveen snatched the gold chain which she was wearing. Thereafter, both of them started running. She raised an alarm *chor-chor, pakro-pakro*. One passerby, (PW2 Inder Mohan Singh @ Goldi) pushed the motorcycle as a consequence whereof Naveen and Sanjeev fell down on the road and were caught by the public which gathered there. In the meanwhile, PW11 SI Surender Singh along with his staff came there and took Sanjeev and Naveen in his custody. From the personal search of

Sanjeev, one loaded pistol with two live cartridges were recovered; while a knife and one gold chain weighing about 10 gms. were recovered from the personal search of Naveen.

4. PW11 wrote *rukka* (Ex. PW11/A) below the statement of PW1 Jaswant Kaur and sent the same to police station Hari Nagar for registration of the FIR and pursuant thereof, FIR No.374/12 under Sections 392/411/34 IPC and Sections 25/27/54/59 of the Arms Act was registered. As per the prosecution, Sanjeev was arrested vide arrest memo Ex. PW1/C after his personal search was taken vide personal search memo Ex. PW1/D. Naveen was arrested vide arrest memo Ex. PW1/E after his personal search was conducted vide personal search memo Ex. PW1/F. Gold chain P1 was seized vide seizure memo Ex. PW1/G. Sketch of knife Ex. PW1/L was prepared and same was sealed and taken in possession vide seizure memo Ex. PW1/M. Sketch Ex. PW1/J of pistol and live cartridges were also prepared. It was sealed and taken in possession vide seizure memo Ex. PW1/K. Pistol was sent to FSL and was found to be in working order, on examination. As per the prosecution, statement of PW1 was recorded and the documents were prepared at the spot by PW11 SI Surender Ahlawat and

were also witnessed by PW1 Jaswant Kaur, PW2 Inder Mohan Singh @ Goldi and PW7 Const. Naresh Kumar.

5. Charges under Sections 392/411/482/34 IPC were framed against both the appellants on 1st April, 2013 to which they pleaded not guilty and claimed trial. Separate charges under Sections 397 IPC and Sections 25/27 of the Arms Act were also framed against them on the same day to which they pleaded not guilty and claimed trial.

6. Prosecution examined 11 witnesses in all. PW1 Jaswant Kaur is the victim. PW2 Inder Mohan Singh @ Goldi is the eye witness. PW3 HC Kailash Chand is the duty officer, who had recorded the FIR and is a formal witness. PW4 HC Ajay Singh is also a formal witness. PW5 Devender Arya had granted sanction under Section 39 of Arms Act and has deposed on this point. PW6 Lady HC Santosh has proved the DD No. 54B as Ex. PW6/A. As per the prosecution, PW7 Const. Naresh Kumar Malik had joined the investigation on 12th October, 2012 and in his presence entire proceedings were conducted by PW11 SI Surender Ahlawat, including the preparation of arrest memos, seizure memos etc. He has deposed in this regard. As per the prosecution, PW8 Const. Gurvinder Singh was present at the spot on 12th November, 2012 when appellants were arrested, case

property was recovered and seized after sketches were prepared and the documents were prepared at the spot. He has deposed in this regard, however, none of these documents bear his signatures. PW9 Shri Puneet Puri, Sr. Scientific Officer has proved his report as Ex. PW9/A and according to him, pistol was found in working condition. This witness is also a formal witness as regards to the incident. PW10 Const. Rajinder Kumar is also a formal witness as none of the documents bear his signatures. PW11 SI Surender Ahlawat, is the Investigating Officer and has deposed about the investigation conducted by him.

7. Trial court has relied on the testimony of PW1 Jaswant Kaur as well as PW7 Const. Naresh Kumar Malik, PW8 Const. Gurvinder Singh, PW10 Const. Rajender Kumar and PW11 SI Surender Ahlawat and has concluded that their statements were trustworthy and reliable, sufficient enough to conclude that appellants had snatched the gold chain from PW1 Jaswant Kaur on the fateful day on the point of knife and pistol; Recovery of pistol, knife and gold chain also stands proved from their statements. Trial court has further noted that PW2 Inder Mohan Singh though had turned hostile but his statement corroborates the incident of chain snatching.

8. Arguments heard and trial court record perused. In my view, prosecution has failed to prove the involvement of appellants beyond the shadow of reasonable doubt, inasmuch as, appellants are entitled to the benefit of doubt, in view of the shaky evidence of PW1 Jaswant Kaur, which has been impeached in her cross-examination. She has wavered even in her examination-in-chief. As regards PW2 Inder Mohan Singh is concerned, he has completely turned hostile and has not supported the prosecution story. He has denied that he had witnessed the incident and apprehended the appellants.

9. In the FIR, PW1 has stated that at about 3:40 pm when she reached near Satya Narayan Mandir two boys came on the motorcycle. Pillion rider Naveen showed her a knife while the person, (Sanjeev) who was driving the motorcycle, showed her a pistol. Thereafter, Naveen snatched the gold chain which she was wearing. After snatching the gold chain they started running. On her raising alarm *chor-chor, pakro-pakro* one young man (PW2 Inder Mohan Singh) pushed the motorcycle as a consequence of which they fell down and were apprehended by the public persons. In the meanwhile, PW11 SI Surender Ahlawat arrived at the spot and recovered a loaded pistol from Sanjeev and a knife and gold chain from Naveen. All the

proceedings of sealing and seizure of recovered weapons and the gold chain were conducted at the spot itself. However, while deposing in Court, she has reversed the role of the appellants. She has identified Sanjeev as pillion rider who had snatched her gold chain while Naveen as the person, who was driving the motorcycle. She further deposed that one Sardar *ji* came out from the *gali* and asked her as to what had happened. One school bus and *rickshaw* blocked the road and when motorcycle took a turn, both the occupants of the motorcycle fell down and were apprehended by the said Sardar *ji* with the help of police officials who had arrived there. This is not in line with the case set up in the FIR. As per the prosecution, appellants had already been caught by the public persons and later on handed over to PW11 SI Surender Ahlawat who had reached the spot along with PW7 Naresh Kumar Malik and other police officials. It is also noted that learned APP, with the permission of Court had asked a leading question from the PW1 and in response thereto she stated that Naveen had shown her the knife and snatched her gold chain while Sanjeev, who was driving the motorcycle, had shown the pistol. She again said that she was not sure whether Sanjeev had shown her the pistol. In her examination-in-chief itself, in answer to the questions put by the learned APP, she denied that Sanjeev had shown her the

pistol. She also denied that Naveen had shown her the knife. In her cross-examination by the counsel for the appellants, she has taken a totally different stand. She has deposed that when her *dupatta* and chain were pulled, she fell down and became unconscious. After 5-10 minutes PW2 came there and gave *dupatta* and thread to her. While she was returning home, the police met her and took her to the police station where her signatures were taken on certain documents; which she did not read. She visited the police station on the date of incident as well as on the very next day. She saw the accused persons (appellants) in the police station on the next day. She further deposed that police had shown her the chain on the day of the incident, in the police station. She again said that her chain was shown on the next day of the incident. According to her, she did not see the accused persons being apprehended. She further said that she had told the police that she was a heart patient and snatching incident took place in a spur of a moment, therefore, she cannot identify the accused persons. The discrepancies noted above, makes her a totally unreliable witness.

10. PW2 Inder Mohan Singh has not deposed that he had apprehended the appellants. He has deposed that on 12th October, 2012 at about 3:40 pm he was present near Satya Narayan Mandir and saw that one old lady was

crying *Chor-Chor* and asking for help. The old lady had fallen on the ground and he picked her up. He saw two persons on a motorcycle. Both the motorcyclist had fallen down on the road and were apprehended. However, he has said that he had not apprehended them. He further deposed that he had not seen those motorcyclists who had fallen down on the road and were apprehended by the police with the help of public persons. It is noted that police officials arrived at the spot on receipt of DD No.54-B, much after the incident, therefore, question of police apprehending the appellants at the time of incident does not arise. PW2 has further deposed that he was called in the police station. Police officials told him that the appellants were thieves. He further deposed that his signatures were taken on the documents in the police station. He was told that these documents related to the release of the chain to PW1 Jaswant Kaur. Statement of PW2 is also, is no way helpful, even for corroboration purposes. In my view, trial court has erred in holding that appellants had snatched the chain of PW1 Jaswant Kaur from her neck on the point of knife and pistol, on the sketchy, shaky and suspicious statements of PW1 and PW2.

11. There is yet another major discrepancy, which creates suspicion about the whole prosecution story regarding involvement of the appellants in the

crime alleged against them. As per the prosecution, entire proceedings were conducted at the spot. However, as per the PW1 entire proceedings were conducted in the police station. She has deposed that while she was returning home, police officials met her and took her to the police station, where her statement was recorded and signatures were taken on certain papers. According to her, all the proceedings were conducted in the police station. This material discrepancy also makes the appellants entitled to the benefit of doubt.

12. For the foregoing reasons, impugned judgment of the trial court and order on sentence are set aside. Appellants are acquitted. Appellants are in custody. They be released forthwith, if not required in any other case.

13. Copy of the judgment be sent to the concerned Jail Superintendent for serving it on the appellants and for compliance.

14. Both the appeals are disposed of in the above terms.

A.K. PATHAK, J.

DECEMBER 06, 2016/ga