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IN THE HIGH COURT OF DELHI AT NEW DELHI

RESERVED ON : FEBRUARY 04, 2016

DECIDED ON : March 11, 2016

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CRL.A. 1552/2013 & CRL.M.B. 7073/2015

DEEPAK SAINI @ MOHD. ALI Appellant

Through : Mr.Rejender Chhabra, Advocate.

VERSUS

STATE Respondent

Through : Mr.Vinod Diwakar, APP.

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CRL.A. 4/2013 & CRL.M.B. 7820/2015

SHOKEEN Appellant

Through : Ms.Manika Tripathy Pandey,
Amicus Curiae with Mr.Ashutosh
Kaushik,
Advocate.

versus

STATE Respondent

Through : Mr.Tarang Srivastava, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Aggrieved by a judgment dated 26.05.2012 of learned
Additional Sessions Judge in Sessions Case No.78/10 arising out of FIR

No.124/06 registered at Police Station Kotwali by which the appellants- Deepak Saini @ Mohd.Ali (A-1) and Shokeen (A-2) were held guilty for committing various offences punishable under Sections 392/397/307 IPC and 27 Arms Act, they have filed the instant appeals. By an order dated 04.06.2012, they were awarded various prison terms with fine. Substantive sentences were to run concurrently.

2. Briefly stated, the prosecution case as stated in the charge-sheet was that on 23.03.2006 at 8.45 p.m. at shop No.539, Old Lajpat Rai Market, Delhi, belonging to complainant Navdeep Gupta, the appellants along with their associates Ummardin @ Ummer (since acquitted) and Munna (since Proclaimed Offender) while armed with deadly weapons committed robbery and inflicted injuries to him. The police machinery came into motion on receipt of an information about the incident at 9.00 p.m. recorded by Daily Diary No.41 (Ex.PW12/A). The Investigation was assigned to SI Ishwar Singh who with Ct.Amar Pal went to the spot. The Investigating Officer after recording victim's statement (Ex.PW-8/A) lodged First Information Report. A-1 was apprehended at the spot whereas his associates managed to flee the spot. The victim was medically examined. Statements of witnesses conversant with the facts were recorded. Robbed articles and the crime weapons lying at the spot

were collected and seized. Initially, charge-sheet was filed against A-1 and Umardeen @ Ummer. Subsequently upon A-2's arrest, supplementary charge-sheet was filed against him. Exhibits collected during investigation were sent to Forensic Science Laboratory for examination. The prosecution examined eighteen witnesses to substantiate its case. In 313 statement, the accused persons denied their involvement in the crime and pleaded false implication. The Trial Court after considering the rival submissions of the parties and on appreciation of the evidence, acquitted Umardeen @ Ummer of the charges. It is apt to note that the State did not challenge the acquittal. Being aggrieved and dissatisfied, the appellants have preferred the instant appeals.

3. Learned counsel for the appellants urged that the Trial Court did not appreciate the evidence in its true and proper perspective. Material discrepancies and contradictions emerging in the statements of the prosecution witnesses were over-looked on trivial grounds. Material prosecution witnesses remained unexamined. FSL reports did not connect the appellants with the crime. Learned Additional Public Prosecutor urged that no valid grounds exist to disbelieve the complainant.

4. So far A-1's complicity in the crime is concerned, admittedly, he was apprehended at the spot and his 'custody' was handed

over to the police. A-1 did not deny his presence at the spot. Suggestions were put to the complainant in the cross-examination that when A-1 had gone to the shop to purchase certain goods/articles, some 'boys' entered the shop to commit robbery. When one of the assailants took out a knife, it was snatched by A-1 and he broke it into two pieces as a result of which he sustained injuries in his hands. A-1 did not produce any evidence whatsoever in defence to prove as to what was the purpose of his visit to the shop or whether he had actually gone there to make purchases. The complainant in his statement (Ex.PW-8/A) given to the police at the first instance named A-1 to be one of the assailants and assigned specific and definite role to him in the crime. In his Court statement as PW-8 also, he implicated A-1 and deposed that he was armed with a knife and he sustained injuries due to fire by his associate at the spot. In his confessional statement (Ex.PW-1/E) recorded by PW-1, learned Metropolitan Magistrate, A-1 did not claim if he had visited the shop as a customer. Rather he implicated himself and his associates for the crime. The complainant identified knife (Ex.P-1) used by him at the time of occurrence. The complainant was cross-examined at length. However, no infirmity has been elicited in his cross-examination to suspect his version. No ulterior motive was assigned to the complainant for falsely implicating

A-1 with whom he had no prior acquaintance. In the absence of any prior enmity or ill-will, the independent public witness is not expected to falsely implicate an innocent one. The complainant himself had sustained 'simple' hurt on his body during crime and he must be interested to bring the real culprits to book. No sound reasons exist to disbelieve the testimony of PW-8 regarding the role assigned to A-1 in the incident. The Trial Court has discussed all the relevant statements of the prosecution witnesses to establish A-1's guilt and the findings cannot be faulted merely because certain minor or trivial discrepancies have emerged in the statements of prosecution witnesses.

5. So far as A-2 is concerned, admittedly, he was not apprehended at the spot. He was a stranger unacquainted with the complainant and the other witnesses present at the shop. His involvement surfaced when confessional statement (Ex.PW-1/E) was made by A-1. However, the prosecution was unable to produce any evidence to corroborate his version. Earlier A-2 was declared Proclaimed Offender and proceedings under Section 174A IPC were initiated against him. However, by the impugned judgment, A-2 was acquitted of the charge under Section 174A IPC as the prosecution had not properly conducted the proceedings under Sections 82 and 83 Cr.P.C. The prosecution did

not examine any witness to prove as to how and in what manner A-2 was arrested in 2009. Record reveals that application for conducting his Test Identification Proceedings was moved by the Investigating Officer. However, the TIP proceedings were dropped by the learned Metropolitan Magistrate on 08.04.2009 as the Investigating Officer was unable to produce the witnesses. The fact remains that no TIP for identification of A-2 took place. Adverse inference is to be drawn against the prosecution for not conducting Test Identification Proceedings particularly when A-2 was apprehended after a long gap of more than two years and was not known to the complainant and other eye-witnesses.

6. The complainant in his initial version to the police did not give A-2's specific description. In his Court statement as PW-1, at the time of his examination on 04.03.2009, he gave inconsistent statement and identified Umardeen @ Ummer (since acquitted) to be the person who had fired from the 'katta' as a result of which A-1 had sustained injuries on his body. He did not assign any role to A-2 that time. The learned Additional Public Prosecutor cross-examined him after seeking Court's permission. In the cross-examination by learned Additional Public Prosecutor, he admitted that on 04.05.2006, he was shown the 'photograph' in the police station and he had identified the individual to be Umardeen @ Ummer

one of the assailants. This witness was recalled for further cross-examination by learned Additional Public Prosecutor on 29.01.2010. This time, he deposed that on 04.05.2006 his supplementary statement was recorded. He further deposed that he had come to know the name of the individual who had fired as A-2. He further deposed that A-2 is the culprit who had fired at him and A-1. He admitted that the police did not bring A-2 to his shop from January 2009 to December, 2009. He further admitted that A-2 was seen by him for the first time in the court after the crime. There appear material contradictions in the testimony of the complainant regarding the identification of A-2 on two different dates of his examination. The prosecution did not examine any other witness as to when and in what manner A-2 was apprehended. No recovery of any robbed article was effected from A-2 or at his instance. FSL reports (Ex.PW6/A, Ex.PW6/B, Ex.PW6/C and Ex.PW6/D) do not connect him with the crime. PW-8's testimony was considered deficient to record conviction against Umardeen @ Ummer though he had identified him in the Court. He was the individual who was allegedly standing outside the shop to guard the spot.

7. The investigation conducted in this case is not up to the mark. Material prosecution witnesses including Devender Kumar and

Chander Shekhar Kureel were not examined. Process given to PW-14 SI Joginder Singh was returned unexecuted with the report that they were not traceable. PW-11 (Virender), another witness to the incident though spoke about the occurrence of robbery, was unable to identify A-2 to be one of the assailants. Under these circumstances, A-2's conviction cannot be sustained and is set aside.

8. In the light of the above discussion, A-1's (Deepak Saini @ Mohd.Ali)'s appeal lacks merits and is dismissed. A-2's (Shokeen)'s appeal is allowed and his conviction and sentence are set aside. Pending applications stand disposed of.

9. Copy of this order be sent to the Jail Superintendent for information and necessary action. Trial court record be sent back along with a copy of this order.

10. A-2 (Shokeen) be released forthwith if not required to be detained in any other case.

(S.P.GARG)
JUDGE

March 11, 2016/sa