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

RESERVED ON : JUNE 01, 2016

DECIDED ON : JULY 13, 2016

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**CRL.A. 966/2015 & Crl.M.B.956/2016**

GOPAL

..... Appellant

Through : Mr.Abhishek Kumar, Advocate.

versus

STATE (GOVT OF NCT OF DELHI)

..... Respondent

Through : Mr.Amit Gupta, APP.

**CORAM:**

**HON'BLE MR. JUSTICE S.P.GARG**

**S.P.GARG, J.**

1. Challenge in this appeal is a judgment dated 29.07.2015 in Sessions Case No.32/12 arising out of FIR No.117/12 registered at Police Station Civil Lines whereby the appellant-Gopal was held guilty for committing offences under Sections 392/34 read with Section 397 IPC. By an order dated 01.08.2015, he was sentenced to undergo Rigorous Imprisonment for four years under Section 392/34 IPC and Rigorous Imprisonment for seven years under Section 397 IPC. He was further sentenced to pay a total fine of ₹5,000/-. The sentences were to operate concurrently.

2. Briefly stated, the prosecution case as stated in the charge-sheet was that on 6.7.2012 at 7.25 p.m. on the footpath inside Bonta Park, Civil Lines, the appellant in furtherance of common intention with his associate

Kishan @ Bishan (since acquitted) committed robbery upon the complainant Harish Khare and deprived him of cash ₹4,000/- and one Seiko watch by using knives. The Investigating Officer after recording victim's statement lodged First Information Report. Statements of witnesses conversant with the facts were recorded. On 14.07.2012 both the appellant and Kishan @ Bishan were apprehended and they recovered knives. Necessary memos were prepared. Subsequently, one Gautam Singh @ Sachin was arrested on 18.07.2012 and from his house, a Seiko wrist watch was recovered which was identified by the complainant in Test Identification Proceedings. Upon completion of investigation, a charge-sheet was filed against all of them in the court. In order to establish its case, the prosecution examined sixteen witnesses. In 313 statement, the appellant denied his involvement in the crime and pleaded false implication. After hearing the rival contentions of the parties and on appreciating the evidence on record, the Trial Court by the impugned judgment convicted the appellant for the offences mentioned previously. It is relevant to note that Kishan @ Bishan was acquitted of the charges. Accused Gautam Singh @ Sachin was convicted under Section 411 IPC and was sentenced to undergo Simple Imprisonment for one year. It is unclear if Gautam Singh @ Sachin has challenged his conviction.

3. I have heard the learned counsel for the parties and have examined the file. The occurrence took place on 06.07.2012 at around 7.25 p.m. inside Bonta Park, Civil Lines. The incident was, however, reported to the police next date i.e. 07.07.2012. Delay in lodging the FIR has not been explained by the complainant. In the FIR (Ex.PW-1/A), the complainant did not name the assailants. Admittedly, the assailants were not known to the victim. He disclosed in the FIR that he was assaulted by two individuals who

were in muffled faces; he was unable to see their faces. The assailants were not arrested on his pointing out. The prosecution case is that on 14.07.2012, on the basis of secret information, both the assailants were apprehended from Bonta Park, Civil Lines at around 5.30 p.m. They were arrested and pursuant to their disclosure statements (Ex.PW-5/J and Ex.PW-5/K), knives were recovered from the ground in Bonta Park, Civil Lines. Subsequently, they also recovered certain mobiles, jewellery articles from their respective houses. An application for conducting Test Identification Proceedings was filed. However, the appellant and his associate Kishan @ Bishan declined to participate in the Test Identification Proceedings stating that they were shown to the complainant.

4. Material testimony is that of PW-3 (Harish Khare). The complainant in his Court statement did not identify Kishan @ Bishan and it resulted in his acquittal. Regarding the appellant-Gopal, the complainant was not very sure. He merely stated that the accused Gopal 'might' be the person who was present in the court of Ms.Chhavi Kapoor, Ld.Metropolitan Magistrate on the day of Test Identification Proceedings. He was not categorical and specific to state that 'Gopal' was one of the assailants who had committed robbery upon him. He did not assign any definite and specific role to him. Hence appellant's identification by the complainant in the court is wavering and does not connect the appellant with the crime beyond reasonable doubt. No other corroborating evidence has emerged on record to establish the appellant's involvement in the crime. Robbed amount of ₹4,000/- was not recovered from the appellant or at his instance. Wrist watch make Seiko (Ex.P-1) is alleged to have been recovered from the residence of co-accused Gautam Singh @ Sachin's on 18.07.2012 at Thane,

Mumbai. This Seiko watch was not recovered at the instance of the appellant from Gautam Singh @ Sachin's possession. It is unclear as to how and under what circumstances, Seiko watch came into Gautam Singh @ Sachin's possession. The appellant had implicated only two individuals to be the assailants. Presence of Gautam Singh @ Sachin at the time of incident along with the appellant-Gopal is thus highly doubtful. There is no other incriminating piece of circumstance against the appellant. Recovery of certain other articles i.e. jewellery, watches and mobiles at the appellant's house is not sufficient to connect him with the crime. The prosecution is required to establish its case beyond reasonable doubt and appellant's involvement in other criminal proceedings cannot be a factor to connect him with the incident in question. On the same set of evidence, co-accused Kishan @ Bishan was acquitted.

5. In the light of the above discussion, I am of the view that the prosecution has failed to establish its case beyond reasonable doubt. On the scanty evidence, conviction and sentence recorded by the Trial Court cannot be sustained and are set aside.

6. The appeal is allowed. The appellant shall be released forthwith if not required to be detained in any other case. Copy of this order be sent to the concerned Jail Superintendent for information and necessary action. Trial court record be sent back along with a copy of this order. All pending application(s) also stand disposed of.

**(S.P.GARG)**  
**JUDGE**

**JULY 13, 2016/sa**