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

+ CRL.L.P. 108/2016

STATE (NCT OF DELHI) Petitioner
Through: Ms.Neelam Sharma, APP.

versus

HARPREET SINGH @ HARMEET SINGH & ANR..... Respondents
Through: Mr.Rajesh Dua and Mr.Ankit Mathur,
Advs.for R-1&2.

CORAM:
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ORDER
% **18.05.2017**

The Government of NCT has called in question the judgment dated 28.09.2015 passed by the learned Additional Sessions Judge/West-04, Tis Hazari Courts in SC No.59/1/14 in connection with FIR No.54/2011 (P.S.Kirti Nagar) instituted for the offences under Sections 392/34/397/411/471 IPC and Section 27 of the Arms Act whereby the respondents have been acquitted of all the charges by giving them benefit of doubt.

On 27.02.2011, one Smt.Sarla Behl (PW-4) was divested of her gold chain by two miscreants who drove past her on a black Yamaha motorcycle. Her son, Sanjeev Behl (PW-3) is said to have caught hold of the hands of one of the miscreants, when the miscreant is said to have taken out a knife and managed to free himself. PW-3 raised alarm and also chased the miscreants on his scooter. On his alarm, police officers also chased the

miscreants. The motorcycle of the miscreants fell down. Respondent No.2 who was said to be driving the motorcycle managed to run away from the spot while respondent No.1 was alleged to have been overpowered by the police. Respondent No.2 was arrested subsequently.

On the basis of the complaint lodged by PW-3, FIR was instituted and after investigation, chargesheet was submitted against the respondents under Section 392/394/411 and 34 of the IPC along with Sections 25/27/54 and 59 of the Arms Act. As against respondent No.1, charges were framed under Section 392/34/397/411 IPC and Section 27 of the Arms Act whereas against respondent No.2, charges were framed under Sections 392/34 and 471 of the IPC.

Sanjeev Behl (PW-3) has stated that on 27.02.2011 he had accompanied his mother (PW-4) to the market on foot. No sooner had they come out of a grocery shop, two boys on a motorcycle came from a lane. Respondent No.1 who was said to be sitting on the back, pointed out one knife towards his mother and thereafter snatched the chain which her mother was wearing. The mother of the complainant raised hue and cry. The aforesaid witness thereafter left his bag on the road and took one scooter of a passerby and chased the miscreants. The grocery shop near where the accident had taken place is only at a distance of about 100 yards from the house of PW-3. It has been further deposed by PW-3 that on his alarm, two police officials also joined the chase. The respondent No.1 is said to have taken out his knife. From amongst the crowd which had collected at the place where the miscreants had fallen down, someone hit respondent No.1 on his hand with a danda/pipe and as a result of that, the grip of respondent over the knife loosened and the knife fell down. Respondent No.1 is then

said to have been overpowered. The gold chain was found in the possession of respondent No.1.

Smt.Sarla Behl (PW-4) narrated a different version wherein she claimed to have been divested of her gold ring from behind and thereafter respondent No.1 is said to have showed a knife to her. On her raising alarm, a shopkeeper of the neighbouring shop came and made her sit there. She thereafter narrated about the incident. After hearing her alarm, it is stated that PW-3 came and chased the miscreants after taking a scooter of somebody else. She could not identify respondent No.2 as he was allegedly wearing a helmet at the time of the occurrence. She has deposed that the chain was recovered and was given to her on superdari.

A Head Constable Jai Narain (PW-5) who claims to have chased the respondents along with PW-3 has deposed that while he was on patrolling duty at Ramesh Nagar, he came to learn that after snatching the chain of a lady, two persons have run away. On this information he approached the place of occurrence and found that some members of public were chasing one miscreant.

He has deposed that when the motorcycle slipped and fell down, the respondent No.1 took out his knife and started threatening the public. Someone from the crowd hit his hand and thereafter he was overpowered. Respondent No.1 is also said to have been assaulted. His name was disclosed as that of respondent No.1.

ASI Suresh Kumar (PW-6) is the IO of this case who has spoken about the stages of the investigation.

The Trial Court, on the analysis of the deposition of PWs.3, 4, 5 and 6 came to the conclusion that the statements of the witnesses were different

from the narration in the complaint (Exh.PW-3/A). In the complaint, the PWs 3 & 4 are said to have come out of their house together for buying grocery and the respondents divested PW-4 of her gold chain. PW-3 is then alleged to have caught hold of the hand of the miscreant who in turn showed a knife and made good his escape. This is absolutely different from what has been deposed by PWs.3 & 4. This was taken as material contradiction so far as the vitals of the prosecution case is concerned.

With regard to the factum of chase of the respondents also, there is variance in the deposition of the witnesses. The witnesses have made conflicting statements with regard to overpowering of respondent No.1.

The Trial Court has taken note of the fact that both PWs.3 & 4 have only identified respondent No.1 and have not identified respondent No.2 and the explanation offered was that he, at the time of the occurrence, was wearing a helmet. This fact does not find mention in the complaint (Exh.PW-3/A). So far as identity of respondent No.1 is concerned, that also is not free from doubt. He has been identified by PW-4 for the first time in Court. It may be noted here that when respondent No.1 was overpowered by police and the public, PW-4 was not present. PW-4 never made any statement before the police that she could identify the accused. In her cross examination, PW-3 has admitted that she had not stated to the police that she could identify the snatcher of the gold chain. Thus the identification of respondent No.1 for the first time in Court by PW-4 does not appear to be reliable. Even his identification at the instance of PWs-3 & 4 does not inspire confidence because of the different versions given by them during the trial. No member of the public was made to join the investigation even though it was alleged that several persons had collected during the

occurrence. No independent person has neither made been made to join the investigation or examined as a witness during trial. Even the recovery of the chain has not been conclusively proved. The witnesses have attributed different weight to the gold chain which was said to have been snatched. As per the seizure memo (Exh.PW-2/C), the weight of the chain was 9.97 grams. Thus the chain was of a very small size and its identity could not be easily established. It also does not appear to be probable that such a small/negligible chain would be witnessed by any person and that accused persons would try to snatch it. There has not been any identification of the chain. Thus the circumstances leading to the alleged recovery, the recovery and the identification of the respondents remain shrouded in doubt.

The Trial Court also took note of the fact that the prosecution version of the miscreants using a forged number plate on their motorcycle, leading to a charge under Section 471 of the IPC, also could not be proved. The records reveal that neither any proper investigation was carried out in that regard nor any specific or reliable evidence was brought on record during the trial for substantiating the aforesaid charge against the respondents.

Thus finding the allegations against the respondents to be not beyond reasonable doubts, benefit of doubt was given to the respondents.

This Court does not wish to interfere with the aforesaid finding of the Trial Court.

Leave is declined and the petition is rejected.

ASHUTOSH KUMAR, J

MAY 18, 2017

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