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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on : 23rd May, 2017

+ CRL.A. 471/2006

SONU SINGH

..... Appellant

Through: Mr. Rajender Chhabra & Mr.
Rajiv Gupta, Advs.

versus

THE STATE NCT OF DELHI

..... Respondent

Through: Mr. Tarang Srivastava, APP for
State with SI Deepak Panwar,
PS Defence Colony.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The appellant was summoned and put on trial in Sessions case No. 29/2004, along with another accused (Bijender @ Biju) on the basis of report under Section 173 of the Code of Criminal Procedure, 1973 (Cr.P.C.) submitted on conclusion of investigation into first information report (FIR) No. 181/2004 of police station Defence Colony, by chargesheet dated 2.9.2004 for offences under Sections 392 and 397 read with Section 34 IPC, the gravamen thereof being that on 6.4.2004 at about 8.30 p.m. in B Block, Defence Colony market within the jurisdiction of the said police station, he in furtherance of his common intention with the said co-accused had committed robbery by taking away the mobile phone of the first informant Marvan Ali al Hoshu (PW-1), a Libyan national, also

causing grievous hurt to him in the process. On conclusion of the said trial, by judgment dated 7.3.2005, the co-accused Bijender @ Biju was acquitted of the charge under Section 392 and 397 IPC but convicted for offences under Section 411 IPC and by subsequent order dated 9.3.2005, he was sentenced to undergo imprisonment for the period of detention already undergone (ten months). The appellant, however, by the said judgment dated 7.3.2005, was held guilty and convicted on the charge under Section 392 read with Section 397 IPC and, by the said order sentenced to rigorous imprisonment for seven years with fine of Rs.1,000/- with benefit of set off under Section 428 Cr.P.C.

2. By the appeal at hand, the appellant challenged the said judgment of conviction and order on sentence. The appeal was admitted by order dated 3rd July, 2006 and by subsequent order dated 10th October, 2006, the sentence was suspended and the appellant enlarged on bail pending hearing on the appeal.

3. Arguments on the appeal have been heard. During the course of hearing, the record has been perused with the assistance of learned counsel for the appellant and learned additional public prosecutor for the State.

4. This court, having accorded consideration to the submissions urged, in the light of the available evidence on record, is of the view that serious doubts persist with regard to the veracity of the prosecution case against the appellant of which he deserves benefit so as to be acquitted. The reasons are set out hereinafter.

5. PW-1 as mentioned above, is a Libyan National. Having regard to his evidence, recorded in the court, he was a 19 year old person, residing in Libyan Embassy pursuing studies here. The FIR (Ex.PW-2/A) had been registered at 10.30 p.m. on 7.4.2004. According to the evidence, the incident had occurred at about 0030 hours on 6.4.2004. The FIR was based on complaint (Ex.PW-1/A) which was signed by PW-1, the first informant, the complaint having been made over to Sub Inspector Shiv Charan Meena (PW-5) in Hill Touch Hospital, Sarita Vihar, New Delhi. Though supplementary statement dated 21.4.2004 under Section 161 Cr.P.C. attributed to PW-1 does indicate that it required assistance of a translator to record his version, the earlier statement under Section 161 Cr.P.C. dated 7.4.2004 or the endorsement on the complaint (Ex.PW-1/A) leading to registration of the FIR do not indicate any such step taken. It may also be mentioned here that the medical record (Ex.PW-3/A) prepared by Dr. A.J.S. Juneja (PW-3) in the aforementioned hospital reveals PW-1 had been brought before him at about 9.30 p.m. on 6.4.2004, giving history of assault. Neither the said medical record (Ex.PW-3/A), nor the oral testimony in court of PW-3, would state that the medical officer had any difficulty in conversing or communicating with PW-1 on account of any language barrier due to inability of the latter to speak without the assistance of an interpreter.

6. When PW-1 was called in the witness box at the trial, it was claimed that he was not conversant with English or local language (Hindi) and hence required the assistance of an interpreter who could translate the questions put to him or answers given in Arabic to

English and vice versa. The evidence of PW-1 in the court was recorded with the assistance of translator, thus, does not jell with the previous conduct before the medical officer in the aforementioned hospital or before the investigating officer at the time of registration of the FIR.

7. PW-1 did not so claim but PW-5 deposed during cross-examination that the complaint (Ex.PW-1/A) had been written by a relative of PW-1 who along with mother of PW-1 was present in the hospital. This fact should have been disclosed at the outset, since it was crucial as the scribe of the complaint was an important witness and his version had to be brought on record.

8. Be that as it may, the version in the FIR only vaguely stated that while PW-1 was going to Defence Colony market, two persons had hit him from the back side, one hitting at his mobile phone and running away whereafter a fight has ensued in which he got injured. There is no description of the assailants in the FIR. In the court, PW-1 added to his own role by claiming that he had caught hold of one of the assailants from his waist whereafter he was assaulted and injured including by tooth bite. As per his court testimony, both the assailants had run away after the physical assault which was not the sequence mentioned in the FIR.

9. PW-1 testified that he had gone to the police station and had informed about the incident whereafter he had gone to coffee shop and then informed his father who took him to the private hospital. It is not explained as to why he would go to a distant private hospital in Sarita Vihar if the incident had occurred in Defence Colony area. It is not

explained either as to what was the purpose of going to the coffee shop. It is also not explained as to how PW-1 was in a position to inform the police by going to the police station immediately after the incident if he was not in a position to converse even in English. His signatures in English on the complaint show reality to be to the contrary.

10. It has been the prosecution case that both the appellant and the other person (Bijender @ Biju) were arrested on the basis of secret information on 16.4.2004, twelve days after the occurrence. It is not explained as to how without the benefit of description of the assailants, the investigating officer was able to ascertain the involvement of the appellant in the crime. The evidence of PW-1 as to the complicity of the appellant in the crime does not inspire confidence.

11. The evidence presented at the trial showed that the mobile telephone instrument of PW-1 was recovered not from the appellant but from Bijender @ Biju. He was, therefore convicted for offence under Section 411 IPC. Mere presence of the appellant in the company of the said Bijender @ Biju, assuming the evidence of circumstances leading to the arrest to be correct, in the facts and circumstances, cannot clinch the case in favour of the prosecution against him.

12. For the foregoing reasons, the appeal is allowed. The judgment and order on sentence insofar as thereby the appellant was held guilty and convicted and sentenced for offences under Sections 392 read with Section 397 IPC are set aside.

13. The appellant is acquitted. His bail bonds stand discharged.

14. Trial court record shall be returned with a copy of this judgment.

R.K.GAUBA, J.

MAY 23, 2017

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