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

+ **CRL.L.P. 113/2017 & CrI.M.A. No. 3503/2017**

STATE

..... Petitioner

Through: Mr. Rajat Katyal, APP

versus

AMAR & ORS.

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

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01.03.2017

Crl.M.A. No. 3504/2017

Exemption allowed, subject to all just exceptions. The application stands disposed of.

CRL.L.P. 113/2017 & CrI.M.A. No. 3503/2017

1. The State has preferred the present leave petition to appeal against the judgment dated 07.10.2016 passed by the learned ASJ- Fast Track Court in new sessions case 53054/2016 arising out of FIR 27/2016 u/s 392/397/34 IPC. By the impugned judgment, the accused have been acquitted by the Trial Court of the charges levelled against them. The petitioner also seeks condonation of 47 days delay in filing the leave petition. I have heard the learned APP and perused the impugned judgment. Since I am not inclined to

issue notice on the leave petition, no useful purpose would be served in issuing notice in the delay application.

2. The case of the prosecution was that PW-3 Chandreshwar was returning on the night between 09.01.2016 and 10.01.2016 to his home. He took the road via park situated behind the fire brigade. He claimed that both the accused persons suddenly came there and accused Rohit showed a knife and asked him to handover whatever he had. Thereafter the accused Amar snatched one mobile phone (make NZ) from him. He claimed that he mustered courage and gave a fist blow on the face of Rohit, but the accused were able to flee and that they ran towards the Britannia chowk. The prosecution claimed that PCR officials who were on duty in that area heard the shout and started chasing them. Both the accused were apprehended by PCR officials as well as by local police.

3. The complainant also identified them at the spot. Both the accused persons were searched and one vegetable cutting knife was recovered from the possession of accused Rohit. The robbed mobile phone was recovered from the possession of Amar.

4. The charges were framed u/s 392/34 IPC. The accused Rohit was also charged u/s 397 IPC. Since the accused pleaded not guilty and claimed trial, the trial proceeded and the prosecution examined 9 witnesses including the complainant PW-3. The accused pleaded innocence while recording their statement u/s 313 Cr PC.

5. The Trial Court in the impugned judgment has brought out a host of unexplained aspects in the case of the prosecution in para 14 of the impugned judgment. The Trial Court finds that a call was made on no.100 from no.9540324254 which belonged to the complainant. The complainant

only during the trial claimed that he had one other instrument with another mobile number. However, the CDR of neither of the two numbers were produced. The Trial Court also finds contradiction in the statements of the witnesses with regard to the apprehension of the accused and how they were brought back to the spot where the crime was allegedly committed by them. The Trial Court also takes notice of the fact that the offence was allegedly committed close to a fire station. No independent witnesses were associated at the stage of recovery. The mobile instrument was examined by the court and it was found not to contain a sim card. The same was explained during the course of trial by stating that the sim card had been removed from the instrument and returned to the complainant. However, no record with regard to removal of the sim card from the mobile instrument was led in evidence.

6. The unexplained aspect of the case as set out in para 14 of the impugned judgment read as follows:

“14. I came across few perplexing and unexplained aspects which have in fact agitated my mind. I would like to mention those right away. These are as under:-

i) When PW3 Chandreshwar was robbed of his mobile phone, he did not make any immediate call to the police. As per story projected by police, he was carrying one mobile phone and since such solitary mobile phone had been robbed away, he was in no position to make any call. In his statement Ex. PW3/A also, he nowhere mentioned that he was carrying two mobile phones. He has tried to complex the entire scenario by claiming that he was having two handsets at that time. According to him, he was carrying one Chinese instrument and one Nokia handset. Such Chinese instrument was the one which had been looted away and it was containing number as 9540324254. Surprisingly, the police was also informed from the same mobile number. This is hardly digestible. If Chinese handset containing said mobile number had been stolen away, there

was no occasion for the complainant to have made any call from said mobile number which was not even in his possession but DD No. 5B (Ex. PW1/A) shows to the contrary. As per said DD, information was received at 1.24 a.m. at PS Keshav Puram that two persons had snatched mobile on knife point and had fled towards Britannia. Such call had been made from mobile number 9540324254.

ii) Another explanation given by PW3 Chandreshwar is also not compelling enough. He claimed that he was asked by PCR and SI Suraj Pal to make a formal call to the police and, therefore, he dialed 100 from such recovered mobile. This is not believable because if by that time, both the accused had been caught and had been brought before him by the police and PCR officials, then he would have, in order to show enough of transparency, mentioned that those two persons had also been apprehended. Such call made in presence of police and PCR officials tells a different tale. No such fact is mentioned in the first information received by PS Keshav Puram at 1.24 a.m. and this itself is sufficient to create a doubt about the case of prosecution. Moreover, neither PCR officials nor IO corroborate complainant on said aspect.

iii) Interestingly, PW3 complainant Chandreshwar has no bill with respect to such Chinese instrument. A Court question was put to him whether he had any ownership proof or not. He evaded and ducked the answer by claiming that such instrument was purchased by him 3-4 months back from one shop of Lawrence Road and he did not have any bill. Investigating agency did not even bother to collect the call detail record of such mobile number. It would have certainly reflected the IMEI number of the handset being used by the caller. There is no CDR. There is no purchase proof and, therefore, it becomes hard to believe that PW3 Chandreshwar was its owner.

iv) Another interesting aspect is regarding the Sim Card. If PW3 Chandreshwar is to be believed, then he was carrying two handsets and both were containing separate numbers but when the alleged robbed mobile phone was opened during the trial, it was not found containing any SIM at all. Again, PW3

Chandreshwar came-up with a fantastic reply. He claimed that SIM card was there in the handset but it was removed by SI Suraj Pal and was handed over to him. This again goes on to show that after the recovery of the alleged robbed mobile, the police had tried to tamper with the same without mentioning any such fact on record. Moreover, SI Suraj Pal has not given any satisfactory answer on this aspect. In his cross-examination, he simply claimed that he did not recall whether such mobile was containing any SIM or not. He also admitted that he did not make any effort to obtain any CDR of such mobile phone of complainant. PW8 Ct Khem Chand also remained associated with the investigation and was present with IO all along. He also does not remember whether such mobile phone was containing any SIM card or not. He even does not remember the make of such mobile.

v) Moreover, it is not clear as to where exactly both the accused were brought after their apprehension. If complainant Chandreshwar is to be believed, he remained at the fire brigade office and all the police officials came there along with the accused persons at said fire brigade office. However, PW8 Ct Khem Chand has something else to say. According to him, they all had taken accused persons to a park situated near fire station and they met complainant in such park. As per PW9 SI Suraj Pal, they had rather brought the accused persons on the service road near the park where complainant met them. Thus, it is not clear as to what was the exact location of complainant-fire brigade office or park or service road. Moreover, police should have gone for judicial TIP instead of showing accused to complainant in the aforesaid manner in order to bring element of complete transparency.

vi) No effort was made to join anyone from fire brigade office. PW9 SI Suraj Pal has admitted in his cross-examination that no official from said fire station was called to join the investigation. Undoubtedly, the incident had taken at late hour of the night but since the fire brigade office was situated right at the spot where even complainant had waited for half an hour, the police should have called the officials of fire brigade to witness the recovery proceedings. This would have certainly

given strong impetus to the case of prosecution as corroboration from neutral corner goes a long way.

vii) It is also not clear as to how PCR officials learnt about the incident. According to specific testimony of PW3 Chandreshwar, both the accused fled away and thereafter, he travelled distance of 50-60 steps where he noticed a PCR van. He then informed PCR staff and thereafter, PCR vehicle started chasing those accused persons. However, his such story does not match with the version of PCR officials. As per PW5 ASI Gajender Singh, he heard shouts of "chor-chor" and alighted down from PCR and saw two persons running. He deposed that one person was following them and then he also started chasing those persons on foot and asked his driver to chase them on vehicle. PW5 ASI Gajender Singh never claimed that complainant had met him and told him about the incident and then, they chased those persons. Moreover, it is also not clear whether the complainant had also indulged in chase or not because different versions are appearing on record in this regard.

viii) If PW9 SI Suraj Pal is to be believed, then he was along with Ct Ramesh. PW8 Ct Khem Chand met them during patrolling. It was thereafter only that they had seen both the accused running and they apprehended them on suspicion. However, PW6 Ct Ramesh has something else to say. He claimed that he was on duty along with PW8 Ct Khem Chand and they saw two persons running and they stopped them. Thereafter, PCR staff also reached there and PCR informed them that those two persons had robbed mobile of some person. Thereafter, they took both the said accused to a place near fire brigade station where complainant was already present and complainant identified them and also told them that accused had robbed him of his mobile at knife point. He deposed that thereafter, they called SI Suraj Pal and SI Suraj Pal then conducted further investigation. This has created utter chaos as even the police officials are not corroborating one another. If PW6 Ct Ramesh is to be believed, then PW9 SI Suraj Pal had reached later on when both the accused had already been apprehended and were identified by the complainant but as per

PW9 SI Suraj Pal, he himself had apprehended the accused.

ix) As per IO SI Suraj Pal, he had recorded supplementary statement of complainant at PS. They all had returned to PS at about 4.00/5.00 a.m. and thereafter, according to PW9 SI Suraj Pal, he had recorded such supplementary statement. However, PW8 Constable Khem Chand does not corroborate him in this regard as according to PW8 Ct Khem Chand, complainant was freed from the park itself. Moreover, I have not been able to decipher as to why such supplementary statement was recorded. In supplementary statement, complainant Chandreshwar tried to supplement that knife was pricked and wanted to clarify that due to some confusion, he could not reveal such fact in his previous statement. Fact, however, remains that such aspect is found mentioned in the first statement also. Curiously, in witness box, complainant has taken somersault and categorically asserted that knife was shown from distance only.

x) It is also not made clear by the prosecution as to why PCR form was not collected. Such PCR form would have also given some revelation about the manner in which the concerned control room was informed and the investigational aspects related to PCR officials.

xi) Interestingly, as per PW9 SI Suraj Pal, nothing was added or subtracted in the memos after Ct Ramesh returned to the spot with copy of FIR. If that is so, would prosecution explain as to how FIR number stands mentioned in the memorandums? These must have been mentioned by PW9 SI Suraj Pal himself but PW9 SI Suraj Pal has categorically denied any addition or subtraction in the memos. Curiously, there is overwriting in the title with respect to the penal sections on almost all such memos. Such overwriting is also reflected in arrest memos which signifies some interpolation.

xii) Ct Khem Chand was handed over seal after use but his testimony is conspicuously silent about any handing over of seal to him. He has not even given the description of seal”.

7. The submission of Mr. Katyal, learned APP is that both the accused were apprehended at the spot soon after they had fled after committing the crime. He submits that two PCRs were involved in the present case i.e. the first PCR which responded to the alarm raised by the complainant while chasing the accused which was stationed in close vicinity, and the other which had responded to the call made on no.100 by the complainant from his aforesaid mobile phone number. He further submits that PW-3 had deposed that he was having two mobile phones with two sim cards, but he was not sure as to which sim card was installed in which mobile instrument.

8. Having heard Mr. Katyal and perused the impugned judgment, I am not impressed by these submissions. The aspects highlighted by the Trial Court, in my view, are weighty and create a serious doubt with regard to the occurrence itself. Merely because the accused may have been apprehended from the spot does not by itself lead to the inference that the offence was committed by them.

9. In view of the aforesaid, I do not find any merit in this petition. The same is, accordingly, dismissed.

VIPIN SANGHI, J

MARCH 01, 2017

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