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

+ CRL.REV.P. 221/2016

HUNNY

..... Petitioner

Through : Mr. Vimal Puggal, Adv.

versus

THE STATE

..... Respondent

Through : Mr. Tarang Srivastava, APP.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

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22.02.2017

By this revision petition under Section 397 of the Code of Criminal Procedure, 1973 ('the code' in short), petitioner has challenged the concurrent findings of the courts below; whereby he has been convicted under Sections 392/34 IPC and sentenced to undergo rigorous imprisonment for a period of three years with a fine of ₹3,000/- and in default of payment of fine to further undergo simple imprisonment of one month.

A perusal of the judgments of the trial court and appellate court makes it clear that both the courts have meticulously scrutinized the evidence on record and have returned the findings of guilt of the petitioner. It is a well settled law that revisional jurisdiction is of the supervisory nature exercised by the Court for correcting the miscarriage of justice and that the powers of

a revisional court cannot be equated with the power of an appellate court. High Court, in exercise of its revisional powers is not to re-appreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to a gross miscarriage of justice. In State of Kerala Vs. Putthumana Ilayath Jathavedan Namboodiri, MANU/SC/0100/1999: 1999CriLJ1443, the Supreme Court has observed as under:-

“ 5. Having examined the impugned Judgment of the High Court and bearing in mind the contentions raised by the learned Counsel for the parties, we have no hesitation to come to the conclusion that in the case in hand, the High Court has exceeded its revisional jurisdiction. In Its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of Supervisory Jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an Appellate Court nor can it be treated even as a second Appellate Jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to re-appreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring

feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice. On scrutinizing the impugned Judgment of the High Court from the aforesaid stand point, we have no hesitation to come to the conclusion that the High Court exceeded its jurisdiction in interfering with the conviction of the respondent by re-appreciating the oral evidence. The High Court also committed further error in not examining several items of evidence relied upon by the Additional Sessions Judge, while confirming the conviction of the respondent. In this view of the matter the impugned Judgment of the High Court is wholly unsustainable in law and we, accordingly set aside the same. The conviction and sentence of the respondent as passed by the Magistrate and affirmed by the Additional Sessions Judge in appeal is confirmed. This appeal is allowed. Bail bonds furnished stand cancelled. The respondent must surrender to serve the sentence.”

In Amar Singh Vs. State, MANU/DE/9203/2007, a learned Single Judge of this Court has held thus:

“The scope of revisional jurisdiction in matters where the Court has to examine the factual findings, and concurrent ones at that, are extremely limited. The High Court can, if it is convinced that the approach of the Courts was palpably illegal or led to a manifest failure of justice, intervene under exceptional circumstances”.

In the backdrop of the settled legal position, as enumerated above, I have examined the judgments of the Courts below and do not find any infirmity of such nature so as to exercise the revisional jurisdiction.

Petitioner was sent to face trial on the allegations that on 4th April, 2011 at about 6:00 pm, near 32 Quarters, Near Gali Tel mill, Nabi Karim, Delhi, he, along with his co-accused Bhairon @ Sonu, in furtherance of their common intention, robbed the complainant Shri Satish Kumar @ Sunny of his mobile phone make Nokia 2110 Black Colour containing Idea SIM having number 9540761739, ₹4,500/- in cash, election ID card and some other documents, that is, one courier packet, numbers list and one temporary bill. PW-1 Satish Kumar @ Sunny has fully corroborated the above story. He has identified the petitioner in court correctly.

PW1 has deposed that on 4th April, 2011, he was returning home from his office at about 6:00 pm. When he reached near 32 Quarters, Gali Tel Mill, Nabi Karim, Delhi, petitioner and the co-accused caught hold of him. One of them caught his neck the other one caught hold of his hands. Thereafter, they took away ₹4,500/- in cash, the documents and a mobile phone make Nokia 2110 containing Idea SIM having number 9540761739 forcefully. He chased the petitioner and caught hold of him. Thereafter, police arrived there and petitioner was arrested. ₹4,500/- and the documents were recovered from his possession. He proved his statement recorded by the Investigating Officer as Ex.PW-1/A, on the basis whereof FIR was

registered. He has identified his signatures on the seizure memo Ex.PW-1/B, which was with regard to the recovery of cash and the documents. He also identified his signatures on the arrest memo Ex.PW-1/C and personal search memo Ex.PW-1/D of petitioner. He was cross examined but his testimony had remained unshattered on material points. PW-6 SI Suresh Pal is the Investigating Officer and has supported PW-1 with regard to the arrest of petitioner at the spot and recovery of money and documents from him.

Learned counsel for the petitioner has vehemently contended that version of PW-1 in Court is at variance with what he had stated in Ex.PW-1/A. In Ex.PW-1/A, complainant had alleged that one of the two accused had held him from the neck and also took out his mobile phone from his pocket while the other had taken out cash of ₹4,500/-, ID card and the other documents from his right side pocket of the pant. Trial court and the appellate court have rightly observed that discrepancies, as pointed out, were minor in nature. Such discrepancies are bound to occur as the statement of PW-1 was recorded in court after a gap of one and a half years from the date of incident. Discrepancies, as pointed out, did not shake the basic version of PW-1 that the petitioner and his co-accused had waylaid him and robbed his mobile phone, ₹4,500/- and other documents. Appellate court has rightly

concluded that testimony of the witness is to be considered in entirety and upon touch stone of the reliability and acceptance.

In Bhoginbhai Hirjibhai Vs. State of Gujarat, AIR 1983 SC 753, Supreme Court, while dealing with such discrepancies, has observed as under:-

“5..... Over much importance cannot be attached to minor discrepancies. The reasons are obvious:

(1) By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen:

(2) Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.

(3) The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind whereas it might go unnoticed on the part of another.

(4) By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.

(5) In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or

reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person,

(6) Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.

(7) A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross examination made by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The sub-conscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him-Perhaps it is a sort of a psychological defence mechanism activated on the spur of the moment.

6. Discrepancies which do not go to the root of the matter and shake the basic version of the witnesses therefore cannot be annexed with undue importance. More so when the all important "probabilities-factor" echoes in favour of the version narrated by the witnesses."

For the foregoing reasons, petition is dismissed being devoid of merits.

A.K. PATHAK, J.

FEBRUARY 22, 2017/dk