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

Decided on: 11th May, 2017

+ CRL.L.P. 254/2015

THE STATE (NCT OF DELHI)

..... Petitioner

Through: Mr. Tarang Srivastava, APP

versus

RAKESH @ DHILLU & ORS

..... Respondents

Through: Mr. Sumer Kumar Sethi &
Ms. Dolly Sharma, Advocate

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The three respondents stood trial in the court of sessions on the charge for offences punishable under Sections 397/411/34 of Indian Penal Code, 1860 (IPC) framed on 16.04.2014 on the basis of evidence gathered during investigation on the conclusion of investigation into First Information Report (FIR) No.523/2013 of Police Station Sun Light Colony, the gravamen being that on 12.12.2013 at about 11:30 p.m. at *khatta* near masjid kilokari they in furtherance of their common intention had committed robbery by taking away cash amount of Rs.1300/- and one mobile phone from the possession of Naseem son of Moinuddin (PW-2) at the point of a knife. On the conclusion of the trial court, by judgment dated 21.08.2014, they were acquitted by the court of sessions. The State

has come up with the present petition seeking leave to appeal under Section 378(4) of the Code of Criminal Procedure, 1973 (Cr.P.C.).

2. On notice, respondents have appeared through counsel. The trial court record has been called for. The learned Additional Public Prosecutor for the State and the learned counsel for the respondents have been heard at length. Having regard to the explanation offered, the delay in re-filing the petition is condoned and the application (Crl. M.A.5136/2016) is disposed of.

3. On careful reappraisal of the evidence led by the prosecution during the trial, this court finds that the view taken by the trial court extending benefit of doubts cannot be said to be perverse or erroneous. The reasons may be set out hereinafter.

4. The FIR was registered on the statement (Ex.PW-6/A) of Shakeel Ahmed (PW-6) recorded sometime before 12:20 p.m. on 13.12.2013, the incident having occurred at 11:30 p.m. on 12.12.2013. The investigating officer SI Jagdish Parsad (PW-9) had reached the place of the said first informant, accompanied by Constable Naresh Kumar (PW-7) pursuant to the intimation that had been logged in the Police Station vide DD entry nos. 21-A (Ex.PW-4/A) and 22-A (Ex.PW-4/B) respectively. The first DD entry (DD no.21-A) had been logged at 11:30 p.m. on the night intervening 12-13.12.2013 on the information received through Police Control Room (PCR) about a quarrel near house no.B-28, kilokari masjid. Second intimation (DD no.22-A) had been logged at 11:35 p.m. on the same night about money having been snatched after assault on a person. In the FIR,

PW-6 stated that he was working at a *dhaba* of his maternal uncle Akbar Ali where Rakesh @ Dhillu (the first respondent) would also come for taking food. He alleged that the first respondent would not pay the bill for the food taken and instead extend threats. He stated that at about 11:30 p.m. Naseem (PW-2), another employee in the same eating establishment, had gone to fetch soap from a nearby shop when he was waylaid by the first respondent with his two associates and at the point of knife relieved of money, cash of RS.1300/-, with his mobile phone. He reported that PW-2 had raised alarm, on hearing which he had also reached the place but the first respondent with his associates, who had their faces muffled with cloth, had run away from the place.

5. The prosecution case alleged that the three respondents were apprehended, after pursuit, and upon search being made one knife and cash of Rs.640/- was recovered from the first respondent, while mobile phone of PW-2 snatched during the robbery that had been reported was recovered from the second respondent. Necessary formal proceedings were drawn with regard to seizures made and the arrests effected.

6. During trial, the first informant PW-6 deposed that when he had reached the place of occurrence, after being informed that Naseem (PW-2) had been robbed, he had seen three young persons with muffled faces running away. It is clear from his statement in the court that he was not a witness to the robbery, or the events that occurred immediately thereafter, wherein he may have sighted any of the three

respondents at the place where the crime was committed. Prosecution made no effort to confront this witness, the first informant, with his version in FIR based on his statement Ex.PW-6/A wherein he had statedly seen the first respondent clearly with a knife while running away with two of his associates immediately after the occurrence.

7. Naseem (PW-2) the victim of the crime, in turn, was totally hostile and would not identify or connect any of the three respondents with the crime. He stated that he was robbed by three persons at the point of knife but he was unable to identify any of them. He stated that he had raised alarm and some persons had gathered at the scene and that his employer Akbar Ali had also reached the spot after sometime. He was cross-examined by the public prosecutor. But, in the said effort, nothing substantial came out except that his cash amount of Rs.640/- had been recovered *“from the accused persons”*. This statement, obviously cannot take the case of the prosecution any further and there is nothing unique about the currency notes which are stated to have been recovered during the investigation of the case so as to be connected with the currency notes which were carried at the time of robbery by PW-2. The recovery of the mobile phone is not very convincing, in that in the FIR or in the statement of the victim under Section 161 Cr.P.C. there was no description of the phone instrument, which had been taken away, by the perpetrators of the crime, from PW-2. Some proof as to the ownership of the mobile phone in the form of duplicate bill (Ex.PW-8/P-1) showing its purchase on 18.07.2013 was submitted later. The prosecution only proved the

seizure of the said duplicate bill dated 13.01.2014 by memo Ex.PW-8/A with no corroborative evidence whatsoever as to its authenticity.

8. In the above facts and circumstances, the trial court found it difficult to return finding of guilt against the accused persons merely on the basis of recovery of money and of the mobile phone. The fact remains that there is no cogent evidence brought on record as to the role of any of the three respondents in the crime. Thus, they are found to have been rightly acquitted by the trial court.

9. The petition for leave to appeal, thus, is devoid of substance and is dismissed.

R.K.GAUBA, J.

MAY 11, 2017

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