

\$~19

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

+ CRL.L.P.327/2016

STATE (NCT OF DELHI) Petitioner

Through: Mr. Ashish Dutta, APP.

versus

HARVINDER KUMAR SURI & ORS Respondents

Through: Mr. Rohit Bansal, Advocate for R-1.
Mr. Rakesh Walia, Advocate for R-2
to 4.

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ORDER

% **11.05.2017**

The State has called in question the judgment dated 30.11.2015 in connection with S.C No.144/2015 whereby the respondents have been acquitted of the charges under Sections 397/394/392/365/34 of the IPC giving benefit of doubt to them.

A car was being driven in a zig zag manner on 06.12.2012, which caught the attention of the constables on patrolling duty in Sector 3, Dwarka near NSIT College. The car was stopped and was found to be occupied by five people. Four out of the aforesaid occupants tried to escape but were apprehended. One person in the car was shouting for help who disclosed his name as Kuldeep and also told the names of the respondents who had abducted him on gunpoint. A revolver was recovered from the possession of respondent No.1. Respondent No.4 was said to be holding document

concerning property No.35, Om Vihar which also was seized and taken into custody of the police.

Respondent No.2 was also having a pistol in his hand which was seized.

Aforesaid Kuldeep Kumar @ Bobby who claimed himself to be an auto driver by profession disclosed before the police that respondent No.1 had taken a loan of Rs.4 lakhs from him and had kept the property document of property bearing No.35 in Om Vihar with him as security. It was assured by respondent No.1 that after the return of the loan amount after two years, the property document shall be taken back. The loan amount was not returned even after two years. On the day of occurrence, aforesaid Kuldeep was asked to come over by the respondents along with the property document to collect the amount of loan, but later, on gunpoint, the document was snatched from Kuldeep and he was assaulted as well.

On the basis of the aforesaid information, FIR No.284/2012 (P.S.Dwarka North) was instituted for the offences under Sections 397/394/392/365 and 34 of the IPC. After investigation, chargesheet in the case was submitted whereafter charges were framed and the respondents were put on trial.

The Trial Court after examining nine witnesses on behalf of the prosecution and none on behalf of the defence acquitted the respondents by giving them the benefit of doubt. Out of the nine witnesses, Kuldeep Kumar/complainant was examined as PW-1 whereas PWs.3, 5, 6, 7, 8 & 9 are police officials and one Dr.Ajay Sharma was examined as PW-4.

Kuldeep Kumar @ Bobby (PW-1) deposed that he was called by respondent No.1 for collecting the money towards repayment of loan but

after being assaulted and closeted in the car, the property document was snatched from him. He proved his statement as Exh.PW-1/A and also identified two pistols as exhibit P-1 and exhibit P-2.

Head Constable Jai Prakash (PW-2) stated that he recorded the FIR No.284/2012 on the basis of rukka and he also proved the copy of the FIR (Exh.PW-2/A) and his endorsement on rukka (Exh.PW-2/B).

Head Constable Ashok Kumar (PW-3) testified to the fact that on 06.12.2012, a Wagon R was spotted moving in a zig zag manner and, therefore, it was stopped. PW-1 narrated the story before the police party. He has identified the accused persons in the Court.

Dr.Ajay Sharma (PW-4) has proved the MLC of PW-1 which was prepared by Dr.Tanuj Sehrawat (Exh.PW-4/A).

Constable Yudhvair Singh, Constable Shambhu Dayal, Constable Sheetal and SI Sandeep Yadav who have been examined as PWs.5, 6, 7 & 9 have also supported the prosecution version.

However, Sunil Kumar (PW-8) who runs his business in the name and style of Shivam Finance has stated that the respondent No.1 had taken loan of Rs.3.5 lakhs from him on interest, for which PW-1 had become a guarantor. When respondent No.1 did not pay the amount, PW-8 had asked PW-1 to get the amount returned. He admitted of having given the loan against the property document furnished by respondent No.1. It was further deposed by PW-8 that PW-1 paid the loan amount and took the property documents from him. However, he was absolutely ignorant about the source from where PW-1 had arranged the money.

The Trial Court took note of the fact that respondent No.1 in his statement under Section 313 Cr.P.C had stated that two policemen along

with complainant Kuldeep (PW-1) had come at his residence on the date of the occurrence and took him to police station in his car where he was produced before the SHO and the SHO told him to pay the amount till evening or he would be falsely implicated in this case.

Similarly, respondent Nos.2, 3 & 4 have also in their statements under Section 313 Cr.P.C stated that they sold shoes on road and the local police was demanding illegal gratification for permitting them to continue with their business.

What appears to have struck the Trial Court is that the entire case hinged on the deposition of PW-1 and police officials who had apprehended the accused persons and had rescued the complainant. The testimonies of PWs.2, 3, 5, 6, 7 and 9 were full of contradictions and were in derogation of the statement of each other.

PW-1 alleged in his complaint about the possession and use of fire arm by respondent No.1 but before the Court, he alleged that one firearm was used by respondent No.2 and 4, both. Though PW-1 is said to have been hurt on lips but no such injury was found in the MLC (Exh.PW-4/A). Even with respect to apprehending the car, PW-1 has made a different statement than the other witnesses. According to PW-1, the speed of the car was slowed down at the police picket but the police witnesses have not referred to any police picket and have stated that the car was stopped because it was moving in a suspicious circumstance. There is no statement of PW-1 and the respondents running away from the place of occurrence whereas the police witnesses have said that though the respondents tried to make good their escape, but were apprehended.

The paper proceedings were, according to the police witnesses, completed at the spot where the car was apprehended but there have been divergent statements of the other witnesses which makes the claim of the proceeding having been completed at the spot, doubtful.

With respect to recovery of firearms, sanction for prosecution was not granted under Section 39 of the Arms Act which again makes the story of use of firearm doubtful.

Finding all such inconsistencies in the depositions of PWs, the Trial Court did not find them trustworthy and their deposition not free from doubt. Thus the nature of accusation and the circumstances goaded the Trial Court into disbelieving the prosecution version. The respondents were, therefore, acquitted.

This Court does not find any anomaly in the findings arrived at by the Trial Court.

As such, this petition fails and is dismissed.

Leave declined.

ASHUTOSH KUMAR, J

MAY 11, 2017

k