

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

**RESERVED ON : 9th FEBRUARY, 2017
DECIDED ON : 15th FEBRUARY, 2017**

+ CRL.REV.P. 546/2016

ARJUN @ CHANGA

..... Petitioner

Through : Mr.Lav.K.Agrawal, Advocate with
Mr.A.K.Mishra & Mr.Shiv Kumar
Khinchi, Advocates.

VERSUS

THE STATE (NCT OF DELHI)

..... Respondent

Through : Mr.Kamal K.Ghei, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Present Revision Petition has been preferred to challenge the legality and correctness of a judgment dated 18.03.2016 of learned Addl. Sessions Judge in Crl.A.No.07/2016 whereby the conviction by a judgment dated 24.09.2015 of learned Metropolitan Magistrate was upheld.

2. Briefly stated, the case of the prosecution as set up in the charge-sheet was that on 23.02.2012 at around 07.30 p.m., the petitioner in furtherance of common intention with his associate – Ritesh snatched a purse containing cash ₹3,000/-, voter ID card and other documents from the complainant and fled the spot. On raising alarm by the complainant, the petitioner and his associate were apprehended near the spot. The

Investigating Officer after recording victim's statement (Ex.PW-1/A) lodged First Information Report. The snatched articles were recovered from Ritesh's possession. Statements of the witnesses conversant with the facts were recorded. Upon completion of investigation, a charge-sheet was filed against the petitioner and his associate in the Court. In order to establish its case, the prosecution examined five witnesses. In 313 Cr.PC. statement, the petitioner denied his involvement and pleaded false implication in the crime. He opted not to lead any evidence in defence. The Trial resulted in conviction under Section 379/34 IPC. The petitioner was sentenced to undergo SI for three years with fine ₹10,000/-; default sentence being SI for six months. In CrI.A.No.07/2016 the Appellate Court upheld the conviction by a judgment dated 18.03.2016 and modified sentence to SI for two years with fine ₹10,000/-. Being aggrieved and dissatisfied, the instant revision petition has been preferred by the petitioner. It is relevant to note that co-convict – Ritesh has not challenged the impugned judgment.

3. I have heard the learned counsel for the parties and have examined the file. Petitioner's counsel urged that material discrepancies and infirmities in prosecution's case have been overlooked by the Courts below. Material witness PW-Nawab Singh was not produced for examination. The prosecution witnesses have given divergent and conflicting statements regarding the 'spot' where the occurrence allegedly took place. Learned APP urged that there are no sound reasons to disbelieve the complainant who was a victim at the petitioner's hands.

4. The occurrence took place on 23.02.2012 at around 07.30 p.m. when complainant Rajnish Gupta and his friend Nawab Singh had alighted from a cycle-rickshaw at the spot. At that moment, the complainant was

deprived of his purse containing ₹3,000/-, voter ID card and other documents. On raising alarm, the police officials present on patrolling duty were able to apprehend the petitioner and his associate. In the complaint (Ex.PW-1/A) the complainant gave detailed account as to how and in what manner, his purse was snatched. He identified both the petitioner and his associate to be the perpetrators of the crime. Apparently, there was no delay in lodging the FIR. The petitioner was named in the FIR and specific role was assigned to him. Earlier reporting of the occurrence by the informant with all its vivid details gives an assurance regarding truth of the version. There was least possibility of falsely roping the petitioner in this short duration. The complainant was not having any acquaintance with him to falsely implicate him. Being a victim, he was not expected to let the real culprit go scot free.

5. In his Court statement as PW-1, he fully proved the version given to the police at the first instance. He identified the petitioner and his associate to be the individuals who had snatched the purse from his possession. He also deposed that the snatched articles were recovered from Ritesh's possession. Definite role was assigned to the petitioner. Despite lengthy cross-examination, nothing material could be extracted to disbelieve him. The accused persons did not claim themselves to be present at any other specific place. No ulterior motive was assigned to the complainant for falsely implicating the petitioner in the crime. The accused did not explain as to from where else, he was apprehended by the police.

6. Victim's statement has been corroborated in material particulars by police officials who also deposed about their apprehension at the spot and the recovery of the stolen articles from Ritesh's possession. Their cross-

examination did not yield any material infirmity to discredit the statement of the complainant. PW-4 (Const.Sanjeev Kumar) who was a member of patrolling party was not even cross-examined despite an opportunity given. His testimony on material facts remained unchallenged.

7. True, the prosecution was unable to examine PW-Nawab Singh. Trial Court record reveals that process was issued to Nawab Singh, however, it was received back unexecuted with the report that he was 'untraceable'. Apparently, the prosecution had made attempts to produce Nawab Singh as a witness, however, due to his non-availability, he could not be examined. No adverse inference can be drawn against the prosecution for his non-examination. It is not imperative that in all cases all the witnesses present at the time of occurrence should be examined, that too on the same issue / point. The non-examination of one of the eye-witnesses to speak on the same fact would not impair the prosecution case when the complainant / victim examined fully supported the prosecution case. It is the quality of the evidence and not merely the quantity that really matters.

8. Minor contradictions or discrepancies highlighted by the petitioner's counsel are inconsequential as these do not affect the core of the prosecution case. No sound reason exists to deviate from the concurrent findings recorded by the Courts below. The Appellate Court has already taken lenient view while modifying the sentence awarded by the Trial Court. Nominal roll dated 30.08.2016 reflects that the petitioner is involved in two other FIRs No.165/2016 registered under Sections 324/342 IPC at PS Paharganj & 212/2013 at PS Nabi Karim. He has already been convicted in FIR No.78/2012 registered under Sections 379/411/34 IPC at PS Paharganj

for similar offence. Apparently, the petitioner is not a first time offender. Sentence Order needs no further modification.

9. The Revision Petition lacks in merits and is dismissed. Trial Court record (if any) be sent back forthwith with the copy of the judgment. Intimation be sent to the Superintendent Jail.

(S.P.GARG)
JUDGE

FEBRUARY 15, 2017 / *tr*

