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

Decided on: 13th June, 2017

+ CRL.A. 962/2015 and Crl. M.(B) Nos.391/2017 & 955/2016

GOPAL

..... Appellant

Through: Mr. Abhishek Kumar, Adv.

versus

STATE (GOVT OF NCT DELHI)

..... Respondent

Through: Mr. Tarang Srivastava, APP for
State with SI G.P. Pal, PS Civil
Lines.

+ CRL.A. 1205/2015

GAUTAM SINGH @ SACHIN

..... Appellant

Through: Mr. Mohammad Faraz, Adv.

versus

STATE

..... Respondent

Through: Mr. Tarang Srivastava, APP for
State with SI G.P. Pal, PS Civil
Lines.

+ CRL.A. 1380/2015 and Crl. M. (B) 2230/2016

KISHAN @ BHISHAN

..... Appellant

Through: Mr. Dinesh Malik, Adv.

versus

STATE

..... Respondent

Through: Mr. Tarang Srivastava, APP for
State with SI G.P. Pal, PS Civil
Lines.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The appellants in these three appeals were sent up for trial on the basis of the report under Section 173 of the Code of Criminal Procedure, 1973 (Cr. P.C.) submitted on 09.10.2012 in the court of the Metropolitan Magistrate on conclusion of investigation into first information report (FIR) no.118/12 of police station Civil Lines. After the Magistrate had taken cognizance and issued process, and compliance had been made with the provisions contained in Section 207 Cr. PC, the case was committed to sessions. The sessions court, presided over by Additional Sessions Judge-03 (Central), put the appellants on trial on charge for offences punishable under Sections 392/394/397 read with Section 34 of Indian Penal Code, 1860 (IPC) framed on 26.11.2012. The prosecution led evidence and on conclusion of the trial, the appellants were held guilty and convicted, as charged, by judgment dated 29.07.2015. By subsequent order dated 01.08.2015, punishment was meted out to each of them. The said judgment and order on sentence have been assailed through the appeals at hand.

2. The background facts need to be taken note of, *albeit* briefly, for purposes of directions that are found necessary in these proceedings.

3. The FIR no.118/12 of police station, Civil Lines from which the present case arises was registered on 07.07.2012 at 8.15 p.m. on the statement (Ex. PW1/A) of Kulwant Rai (PW-1), the victim of the offences. The incident which was reported by PW-1 in the said FIR had statedly occurred at about 8.00 p.m. on the previous day i.e. 06.07.2012 in the area of Bonta Park, Civil Lines, Delhi. It is stated that PW-1, accompanied by his friends Purushottam (PW-2) and Sushil (PW-3), had gone to the said place for an evening walk. While three of them were sitting on a stone slab near a jhuggi, they were accosted by two persons each aged about 25 years. It is alleged that the two said persons were armed with knives and at the pointing of the said weapons, they asked for the valuables to be handed over. While PW-2 and PW-3 fled away from the scene, the first informant (PW-1), a person aged 61 years, could not escape. He alleged in the FIR that he was assaulted by the said two young persons who inflicted knife injuries on him and relieved him of his valuables which included cash Rs.6,000/-, a mobile phone make Nokia E-71 (Ex. P1), a wrist watch make Titan, a *kada* of gold weighing about 7 tolas and some personal documents.

4. It is stated that PW-1 after having been robbed in the above manner rushed out of the park and made a call to the police using the mobile of a fruit vendor and went to nearby Aruna Asaf Ali Hospital where he was medically examined and treated. He went to the police station on the next evening to lodge the FIR.

5. It is the prosecution case that on the same date, i.e. 06.07.2012, another person named Harish Khare, aged about 65 years, also taking

a stroll in the same park was also robbed at about 7.25 p.m. by two persons in similar manner. The said other victim Harish Khare is stated to have lodged FIR no.117/2012 at 00.20 hours on 07.07.2012.

6. While FIR 117/12 was handed over for investigation to SI Parveen Kumar, FIR no.118/12 of the present case was entrusted for investigation to SI Ranvir Singh (PW-17). The other FIR i.e. 118/12 was eventually taken over for investigation by Inspector Sanjeev Kumar PW15/PW-21.

7. The chargesheet and the material on record indicates that the appellants Kishan @ Bhishan and Gopal were arrested by Inspector Sanjeev Kumar, Inspector (investigation) of police station Civil Lines, on 14.07.2012, in the course of investigation into FIR 117/12. Later, their formal arrests for the purposes of the case at hand arising out of FIR 118/12 were effected. It is also the case for the prosecution that the third appellant Gautam Singh @ Sachin was arrested from a jhuggi in the area of Ram Nagar Road Nagar 28, Waghle Road, Thane (West), Maharashtra, on 18.07.2012 by Inspector Sanjeev Kumar, who appears to have been accompanied at that time by SI Manish Kumar and HC Sanjay Kumar both of police station Civil Lines. The said arrest of appellant Gautam Singh @ Sachin, initially effected in FIR 117/12, was accompanied by recovery by Inspector Sanjeev Kumar from him of the stolen mobile phone of PW-1, it having later been released on *superdari* and produced in evidence (as Ex. P1). The trial court record contains photocopy of seizure memo dated 18.07.2012 (referred to as Ex.PY-1), purportedly prepared under the signatures of Inspector Sanjeev Kumar and attested by SI Manish Kumar and HC

Sanjay Kumar. It is stated in the prosecution case that the said recovered mobile phone was passed over by Inspector Sanjeev Kumar to the IO of the present case and, thus, the investigation of this case was also completed on the basis of the evidence gathered during the investigation of FIR 117/12.

8. A perusal of the record of the trial court, gives rise to serious concerns as to the role of the additional public prosecutor who was in charge of the case, as also the control and understanding of the proper procedure on the part of the presiding trial judge. This may be illustrated by the following aspects :-

(i). Inspector Sanjeev Kumar, who had caused the arrest of all the three appellants and also effected the recoveries including of the stolen mobile phone, the last from the area of Thane (West), Maharashtra, was examined as PW-15 on 11.03.2014. The examination-in-chief of the witness could not be completed on that date for the reason the original documents were not available, they being part of the record of the case arising out of FIR 117/12 pending at that stage in another sessions court. The chief-examination was, thus, deferred. It is stated that both the cases were later brought before the same court and were decided by the same Additional Sessions Judge on same date (29.07.2015). Inspector Sanjeev Kumar was again called for evidence. But, for reasons which are not clear, his earlier testimony as PW-15 was not continued. Instead, he was examined as a fresh witness, now as PW-21, on 09.02.2015. A very cryptic examination-in-chief was recorded wherein he simply spoke about the arrest of first two appellants in FIR 117/12 and about the disclosures having been

made by them which were reduced into writing besides the fact of recovery of the mobile phone which was the case property of the present case. He was not called upon to prove the facts leading to any of the three appellants being located or traced or the circumstances in which the arrests had been effected, there being no reference to documents relating to arrest of any of them or about the recovery of the stolen mobile phone allegedly made from the possession of the third appellant.

(ii). The copy of the seizure memo dated 18.07.2012 (Ex.PY-1), as mentioned earlier, purports to have been attested by the witnesses SI Manish and HC Sanjay Kumar. The charge-sheet mentions two police witnesses bearing the same name and description i.e. HC Sanjay, one at serial no.6 and the other at serial no.12. But the personnel number (435/N) shows that both police witnesses refer to one and same individual. HC Sanjay Kumar was examined as PW-4 on 03.04.2013 by an additional public prosecutor. All that the said witness was called upon to depose about was the fact that in his capacity as the duty officer on 07.07.2012, he had registered FIR no.118/12. There was no question put to him as to his role leading to the arrest of the third appellant or about recovery of the stolen property from him at Thane (West), Maharashtra on 18.07.2012. SI Manish Kumar, the other witness purportedly of the said recovery was examined on 16.05.2013 by additional public prosecutor representing the State. He was called upon to depose the facts concerning the arrest of the first two appellants on 14.07.2012 and recovery of certain knives and robbed articles. No question was put, nor any information elicited

from him, by the public prosecutor respecting the arrest of the third appellant or recovery made from him on 18.07.2012 in Thane (West), Maharashtra.

(iii). The prosecution did not produce any witness after PW-21 had been examined on 09.02.2015. By proceedings recorded on 17.03.2015, the additional sessions Judge had adjourned the matter for prosecution evidence to 08.04.2015. The short proceeding recorded on 08.04.2015 do not reflect as to whether any witness had been summoned or produced. It simply shows that the matter stood adjourned to 13.04.2015 for recording of statements of the accused persons, the case to be taken up with the connected matter. The case came to be adjourned for same purposes on 13.04.2015 and then on 22.04.2015. On 05.05.2015, the Additional Sessions Judge recorded his proceedings as under :-

“The endorsement of SI Ranveer Singh is exhibited as Ex.PX-1 and the copy of FIR is exhibited as Ex. PX-2. Case file of FIR no.117/12 which is pending in this court and fixed for arguments for today, is taken up alongwith this case and the photocopies of documents of FIR no.117/12 which are the part of FIR no.118/12, are verified with original documents of FIR no.117/12 and same are exhibited as Ex.PY-1 to Ex. PY-7.

Put up for recording of statement of accused under Section 313 Cr. PC on 11.05.2015.”

9. It is after the above proceedings that the statements of the accused persons (appellants) were recorded on 11.05.2015 followed by the judgment and order on sentence which are impugned in these appeals.

10. The manner in which the public prosecutors have been selective in putting questions to the witnesses or eliciting information from them has left much to be desired. Since the charge-sheet and the material submitted therewith indicated the evidence that had to be brought on record, it could not be a matter of whims, caprice or fancy of the public prosecutor to choose as to what he would ask or what he would avoid asking of the witnesses. The duty of the public prosecutor is one of great responsibility. He holds an office of trust. He is the spokesperson for the society at large. It was the bounden duty of the public prosecutor to examine the witnesses so as to bring on record the evidence in entirety. The manner in which the task of adducing the evidence on behalf of the prosecution has been handled reflects total callous and irresponsible conduct.

11. The manner in which the trial was presided over by the Additional Sessions Judge is also very disturbing. The Additional Sessions Judge did not bear in mind the proceedings that had been earlier recorded. The part testimony of PW-15 having been abandoned midway and he having been examined as a fresh witness (PW-21) on later date shows poor control, if not apathetic attitude.

12. The proceedings recorded on 05.05.2015, as extracted above, cannot be justified in any which way. There was no witness present before the court on the said date. It may be that certain common evidence was available in the record of the corresponding file relating to the other FIR no.117/12. But if common evidence was to be led against same set of accused, the proper course was to club the proceedings and hold a joint trial. The Additional Sessions Judge

could not have taken it upon himself to treat the documents proved on the basis of material that was available in the file of the other case. The act of taking on board documents exhibited as Ex. PY-1 to PY-7 is a procedure unknown to law.

13. Similarly, putting of exhibit (PX-1) on the endorsement of SI Ranvir Singh (PW-17) or similar exhibit (PX-2) on copy of FIR without the corresponding witness(s) being called upon to affirm the said facts on oath was impermissible.

14. The procedure adopted by the trial court is thus found bad and vitiating the end result. In this view, the impugned judgment and the order on sentence must be set aside. But given the gravity of the offences involved, this cannot mean that the appellants have to be acquitted. The proper procedure will have to be followed and completed so that the case is taken to the logical end.

15. For the foregoing reasons, the appeals are allowed. The impugned judgment and order on sentence are set aside. The trial of the case, from which these appeals arose, is remitted to the trial court for further proceedings in accordance with law from the stage of prosecution evidence. The pending applications also stand disposed of.

16. The learned trial Judge shall take up the matter for further proceedings in light of above directions on 10.07.2017. The appellants shall be produced accordingly before the trial court.

17. Given the old pendency of the case and the reasons for which the matter is being remitted, it is necessary to further direct that the case shall be proceeded with on day-to-day basis till fresh final adjudication. Needless to add, the witnesses in whose examination

deficiencies have been noted, some referred to above, will have to be recalled and examined further, of course, with fresh opportunity given to the defence for cross-examination. The trial court will be properly advised to keep available the record of the case relating to the other FIR no.117/12 of police station Civil Lines so that the witnesses can refer to the original documents as and when required for their statements.

18. This court is informed that the Additional Sessions Judge who passed the impugned judgment and order on sentence has since been transferred to another jurisdiction. The Additional Sessions Judge now in charge as the successor court will pass a fresh judgment uninfluenced by the view taken in the judgment and order on sentence which have been set aside by this court.

19. Given the deficiency in the manner in which the prosecution was conducted, lapses of such nature coming to the notice of this court too frequently for comfort, it is necessary that suitable action is taken and advice or instructions are issued by the prosecution department to the concerned quarters. Therefore, a copy of this judgment shall also be sent to the Principal Secretary (Home) of the Govt. of NCT of Delhi for appropriate action at their end.

R.K. GAUBA, J.

June 13, 2017

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