

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

% Decided on: 19th July, 2018

+ **CRL.L.P. 528/2016**

STATE (GOVT OF NCT OF DELHI)

..... Petitioner

Represented by: Ms. Meenakshi Chauhan, APP
for State with Inspector Veer
Singh and SI Vipin Kumar, PS
Kotwali.

versus

NASEEM JAFRI @ BHAGU SINGH & ORS Respondents

Represented by: Mr. K. Singhal, Advocate for
Respondent Nos. 3 and 6.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. Though non-bailable warrants have not been served on respondent No. 5 however, this Court is proceeding to hear the leave to appeal with the assistance of Mr. K. Singhal, who was appointed as amicus curiae for respondent Nos. 3 and 6 before this Court and has assisted this Court besides learned APP for State.

2. Respondent Nos. 1 to 6 were charged for offence punishable under Section 395/412 IPC and pursuant to the trial of the respondents except Manoj Dashrath Gupta and Naseem Jafri, respondents have been convicted for offence punishable under Sections 356 and 379/34 IPC and awarded imprisonment for a period of one year and nine months and to pay a fine of ₹25,000/- in default whereof to undergo simple imprisonment for a period of three months for the offence under Section 356/34 IPC and sentence of imprisonment for a period of two years and nine months and a fine of

₹25,000/-, in default whereof to undergo simple imprisonment for a period of three months for the offence under Section 379/34 IPC.

3. Manoj Dashrath Gupta/respondent No.5 has been acquitted of the charges and Naseem Jafri has been convicted for offence punishable under Section 411 IPC and awarded imprisonment for a period of two years six months along with a fine of ₹25,000/- in default whereof to undergo simple imprisonment for three months.

4. The present leave to appeal is against acquittal of all the respondents under Section 395 IPC.

5. The case of the prosecution hinges on the statement of complainant (PW-4) who deposed as under:

“I am running a jewellery shop in the name and style of Facet Jewels at 1106, 3rd floor, Chhata Madan Gopal, Maliwala, Delhi.

On 7/11/2014 I got down from my office. It was about 3:20 pm when I left my shop. I was carrying bag red blue and while colour. The said bag was having a brown colour bag on which Kaushal Textiles was written. The said brown colour bag was containing ₹4,75,000/- cash, 32 gold and diamond rings, two pairs gold bangles and 4 pieces of diamond, one sun glass make Tomy hill figure in a box. I was going to my friend at Madhuras in order to take his auto. It was about 3:30 pm when I reached in front of shop no.341/342 Dariba. One person had put a bag on my shoulder. As soon as I moved towards him other person snatched my bag containing aforesaid articles and passed the same to other person. All the persons disappeared from there. On suspicion I apprehended accused Mohd. Ahmad present in Court today. I asked him about my bag. For sometimes, he tried to fool me. After that I took accused Mohd. Ahmad to PS Kotwali where my statement was recorded by the IO.”

6. From the statement of complainant PW-4 it is apparent that the bag

was snatched from him after Mohd. Ahmad had put another green colour bag on his shoulder and when the attention of the complainant was diverted to Mohd. Ahmad, other persons stole away the bag in possession of the complainant which contained ₹4.75 lakhs cash, 32 gold and diamond rings, two pair gold bangles, four pieces of diamond and one son glass make Tommy Hilfiger in a box. Mohd. Ahmad was apprehended at the spot and the entire incident was covered by the CCTV footage which was collected, checked and after the arrest of Mohd. Ahmad, he took the police to the hotel where his associate stayed. From the co-accused recoveries of ₹2.02 lakhs cash, 32 gold and diamond rings and two pairs of gold bangles were made. Thus no recovery of ₹2.73 lakhs cash, four pieces of diamond and one sun glass could be made.

7. From the evidence of PW-4 it is evident that no threat of life nor any fear of hurt or injury was extended to him. Hence the offence committed by the accused would fall under Section 379 IPC and not under Section 395 IPC as prayed for by the State. From the CCTV footage it was evident that Naseem Jafari was not present at the incident. Thus the learned Trial Court rightly convicted him for offence punishable under Section 412 IPC.

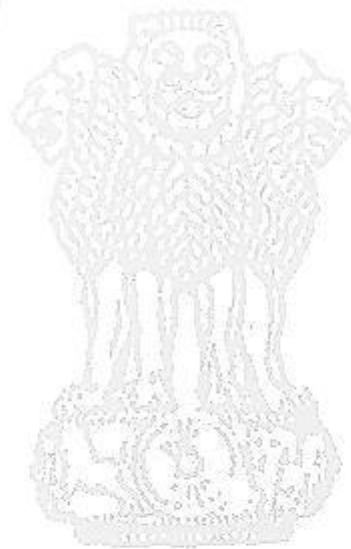
8. The learned Trial Court acquitted Manoj Dashrath Gupta on the ground that though he was seen in the CCTV footage but his presence at the spot though suspicious but was not as an accomplice of the other accused. Further no recovery of any robbed articles was made from Manoj Dashrath Gupta except cash of ₹2,000/-. Considering the role of Manoj Dashrath Gupta and that he did not act as an accomplice of the other co-accused and could be a passerby the learned Trial Court committed no error in acquitting Manoj Dashrath Gupta as he is entitled to the benefit of doubt.

9. Thus this Court finds no error or illegality in the impugned judgment of the learned Trial Court convicting the respondents Shamim Naseem Jafri @ Badshah, Salim Malik, Madan Sen and Mohd. Ahmad for offences punishable under Sections 379 and 356 IPC and awarding sentence as noted above or acquitting Manoj Dashrath Gupta or convicting Naseem Jafri only for offence punishable under Section 412 IPC.

10. Leave to appeal petition is dismissed.

(MUKTA GUPTA)
JUDGE

JULY 19, 2018
‘vn’



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