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

+ **CRL.L.P. 643/2019**

STATE

..... Petitioner

Through: Ms Meenakshi Chauhan, APP for State.
SI Pramod Kumar, P.S. Seemapur, Delhi.

versus

SANJEEV @ SANJU

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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18.12.2019

1. The State has filed the present petition seeking leave to appeal against a judgment dated 08.08.2019, whereby the respondent was acquitted of the offences under Sections 392/397/411/34 of the IPC.
2. The said FIR was registered at the instance of Manish Kumar Meena (the complainant). He deposed as PW 6.
3. The complainant had alleged that on 28.11.2015, at about 4.30 PM, he and his friend, Sunil, were strolling in District Park, Dilshad Garden, New Delhi. At that stage, two boys approached them and one of the boys demanded the belt from his friend Sunil, which he readily handed over. He alleged that thereafter, the said boy had also demanded a sum of ₹200 from Sunil. He thereafter snatched his mobile phone which was described as a white coloured phone, Model LAVA X-1. The complainant alleged that the said boy had placed a knife on his neck and taken out his wallet which

contained cash amounting to ₹5,900/-, his voter Identity Card, two photographs and his school Identity Card. He stated that thereafter, the accused removed the sim card from his mobile phone and handed it back to him. Thereafter, he fled along with the said articles – belt robbed from Sunil, complainant's wallet and his mobile phone.

4. The complainant reiterated that one person who was present there had informed him that the name of the accused as Sanju and that he was a resident of Seema Puri *Jhuggi*.

5. The FIR was registered and subsequently, on 29.11.2015, the respondent was apprehended from near Seemapuri, on identification by the complainant. It is alleged that the stolen mobile phone of the complainant, along with his voter ID card, open school I card, two passport sized photographs and some documents were recovered from the respondent. On completion of investigation, charge sheet was filed against the respondent for the offences punishable under Sections 392/397/411/34 of the IPC. To prove its case, the prosecution examined seven witnesses.

6. The respondent in his statement, under Section 313 of the CrPC, pleaded that he was innocent. He stated that on the date of the incident, he was playing cricket in the park and around 40-50 persons were present there, when he got to know that a robbery had been committed of the mobile phone of Sunil, who was known to him. He claimed that he was a resident of Seemapuri. He asked Sunil about the identity of the robber, and he denied knowing the same. Thereafter, the police came to his house and arrested him in a false case. He alleged that Sunil and Manish indulge in the consumption of smack, and they had implicated him in the present case because he would

not give them money when they demanded the same. The respondent did not examine any witness in his defence.

7. The Trial Court observed that in his deposition, the complainant (PW6) had stated that one person had disclosed the name of one of the accused persons as Sanju (respondent herein). However, PW6 had not disclosed the identity of the said person who had identified the respondent. Further, the testimony of the IO (PW7) reflected that no efforts had been made to identify the said person, who was a witness to the incident, and include him in the investigation. In view of the same, the Trial Court concluded that a vital link in the entire case was left missing as an eye witness was left unexamined.

8. Thereafter, the Trial Court examined the evidence adduced with reference to the articles alleged to have been stolen from the complainant. As per the deposition of the complainant, he was robbed of his purse which contained ₹5,900/-, voter I- card, open school I- card, two photographs and his mobile phone. The Court noted that none of the said articles were produced before the Court. Admittedly, the cash was not recovered from the accused and the other articles, including the mobile phone, were taken on *superdari* by PW6. However, he never produced the same in Court. He stated that he had thrown the purse since it was torn, the I-card was destroyed and the mobile phone was broken. He had merely identified the said articles from the photographs (Ex. PW 6/B, Ex. PW 6/c, Ex. PW 6/D). The Trial Court also noted that neither the purchase receipt of the purse or the belt nor any identification mark, was mentioned by PW1, who was also present at the time of the incident.

9. With reference to the mobile phone which was robbed from the complainant, the Trial Court noted that the IMEI number of the phone was stated in the complaint (Ex. PW3/A), but he never deposed regarding the same before the Court. Further, the said IMEI number was not visible in the photographs of the items produced before the Court. The purchase bill of the said mobile phone (Mark B) was never proved during the trial as per law. PW6 had also not provided any identification mark of the phone or other articles, allegedly recovered from the accused, either in his complaint or in his deposition, to enable identification through photographs.

10. In view of the same, the Trial Court concluded that it cannot be said with certainty that the articles allegedly recovered from the respondent were those that had been robbed from the complainant and PW1. The Court also opined that it was unnatural that a person committing robbery would carry the I- Card and photographs of the victim in the purse, a day after committing the alleged incident.

11. With reference to the amount of ₹5,900/- contained in the wallet of the complainant, the Court noted that the complainant was about 21 years of age at that time and there was no explanation provided as to why the complainant was carrying such a large sum in his wallet. The complainant also failed to provide the denomination of the currency notes.

12. The Trial Court examined the inconsistencies in the testimony of PW1. The Court also took note of the fact that PW1 had not joined the investigation, even though he was an eye witness. In his examination in chief, PW1 did not depose with reference to how he came to know the respondent. Whereas, in his cross examination, PW1 revealed that he had

known the respondent for about six months or a year and was able to identify the respondent since he knew him. The Trial Court concluded that this indicated that the story that some person had disclosed the identity of the respondent was false and concocted.

13. The Court noted that certain aspects of PW1's testimonies was at variance with the testimonies of other witnesses. As per the testimony of PW1, he stated that the respondent was brought from his house to the Police Station in his presence. Whereas, PW6, PW7 and PW4, all deposed that the respondent was apprehended from the Reliance Fresh Stores, near Semmapuri and the recoveries were affected from him at spot.

14. The Court thereafter, proceeded to examine the testimony of PW1 with reference to the articles alleged to be stolen. PW1 stated that his belt and ₹200/- were robbed by the respondent. The belt was identified in the photographs of the articles taken on the *superdari*, but none of the witnesses deposed that the said belt was recovered. The Trial Court noted that the belt was not mentioned in the recovery memo (Ex. PW4/C) but was mentioned in the order dated 21.12.2015, passed by the Learned MM, whereby the recovered articles were released on *superdari*. The Court concluded that the said facts established that manipulation had been done with the recovered articles.

15. The Trial Court also noted that PW6 had admitted, in his cross examination, that the IO of the case had identified the respondent present outside the Court and told him that he was the accused in the matter. Hence, the Trial Court held that such identification was not valid. PW6 had not deposed that the respondent was known to him prior to the said incident.

However, PW7/IO had deposed in his cross examination that PW6 and the respondent knew each other and were residing in the same colony.

16. When the respondent was arrested, several public persons were present but none were joined in the investigation. PW4 and PW7 deposed that they had asked persons to join but they had refused. Whereas, PW6 stated that no persons had been asked to join.

17. The Trial Court also noted that there were inconsistencies in the accounts of PW1 and PW6, the two victims of the alleged incident. PW6 stated that they were strolling in the park, whereas PW1 deposed that they were sitting in the park. PW6 deposed that 15-20 persons were present in the park at the time of the incident, but no attempt to shout for help was made. In this regard, PW1 deposed that they were at great distance but within the audible range.

18. The Court noted that it was unnatural that PW1 did not accompany PW6 when he went to the Police Station to lodge a complaint, given the fact that both persons had been robbed. This was evident from the cross examination of PW3 (formal witness who had prepared the *ruqqa*), who had explicitly stated that PW6 was alone when he came to lodge the complaint. Further, the Court noted that it was unnatural that no effort had been made by the IO to recover the knife, allegedly used in the incident.

19. In view of the above noted inconsistencies and analysis, the Trial Court held that a reasonable doubt had been created in the prosecution version and accordingly, acquitted the respondent of the offences punishable under Sections 392/397/34 and Section 411 of the IPC.

20. This Court concurs with the view of the Trial Court that concealment

of the fact that Sunil (PW 1) was acquainted with the respondent raises a serious doubt as to the allegations and the case set up by the prosecution. PW 1 had admitted that he knew the respondent for about six months to a year and, therefore, he was able to name and identify the respondent. However, the FIR did not disclose that Sunil – who was also one of the victims of the alleged robbery – had identified the respondent or was otherwise acquainted with him. The complainant had stated that he was informed about the identity of the respondent by another person. It is also relevant to note that H.C. Mahesh (PW 4) had deposed that on 29.11.2015 (the day after the incident) he had joined the investigation and had met the complainant at Mrignaini Chowk. The complainant had accompanied him and SI Rajpal Singh, and on reaching near reliance fresh store had pointed out the respondent as the culprit. Thus, the import of PW 4's testimony is that the complainant had taken the police officials directly to the respondent. Although, it is the prosecution's case that respondent was arrested from a spot near reliance fresh store, no public witness was asked to join the proceedings despite the spot being in a thickly populated area. Thus, the fact that one of the victims was acquainted with the respondent and yet the same was concealed, coupled with the fact that the complainant had taken the police team directly to the respondent and recoveries were effected without joining any public witness, does raise doubts as to the prosecution's case.

21. The Trial Court had also found it improbable that the respondent would continue to retain the Voter I Card and School I Card of the complainant on person even one day after the incident. This doubt is further accentuated by the complainant's statement that the respondent had removed

the Sim Card of the mobile phone and handed it over to the complainant. On one hand, the respondent was careful enough to remove the sim card and hand over the same to the complainant at the time of committing of the robbery but, on the other hand, he would continue to retain the complainant's Voter I Card and School ID Card along with his photographs.

22. Undeniably, such a conduct is improbable.

23. The Trial Court had evaluated the evidence as obtaining in this case and has found that the prosecution had not established its case beyond reasonable doubt. The Trial Court's view is a plausible one and, therefore, this Court finds no compelling reason to interfere with the same.

24. It is well settled that this Court would not interfere with a decision of acquittal, unless it finds the same to be manifestly erroneous. A plausible view would warrant no interference by the appellate court. [See: *Ghurey Lal v. State of U.P.*: (2008) 10 SCC 450].

25. In view of the above, the present petition seeking leave to appeal is dismissed.

VIBHU BAKHRU, J

DECEMBER 18, 2019

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