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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 14th August, 2019

+ CRL.A. 753/2002

ANWAR HUSSAIN

..... Appellant

Through: Mr. S.P. Singh Chaudhari,
Advocate with Mr. Y.R.
Sharma, Mr. Udhav Pratap, &
Mr. Ujjwal Goel, Advocates
along with Appellant in person.

versus

STATE

..... Respondent

Through: Mr. Kewal Singh Ahuja, APP
for the State

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The appellant was arrested on 20.09.1996 in the wake of registration of first information report (FIR) No.853/1996 by Police Station Punjabi Bagh, the investigation eventually resulting in his trial (in Sessions Case No.37/1997) in the court of Additional Sessions Judge (ASJ) on the charge for the offences punishable under section 394 read with section 397 of the Indian Penal Code, 1860 (IPC) and section 27 of the Arms Act, 1959. On conclusion of the said trial, he was held guilty and convicted, as charged, by the trial court, by its judgment dated 16.08.2002. By order dated 17.08.2002, rigorous

imprisonment for seven years with fine of Rs.5,000/-, in default in payment of fine the appellant to undergo simple imprisonment for six months was awarded as punishment for the offence under section 394 read with section 397 IPC. Further, by the same order, rigorous imprisonment for three years with fine of Rs.5,000/- with simple imprisonment for six months was awarded as punishment for offence under section 27 of the Arms Act, 1959.

2. The appellant challenged the above-said judgment of conviction, and order on sentence, by the present appeal presented in September, 2002. The appeal was admitted and directed to come up in due course from the list of '*Regular Matters*'. By subsequent order dated 24.08.2004 the sentence was suspended and the appellant was released on bail. The turn of the appeal for final hearing has come up almost seventeen years after it had been presented.

3. While the appeal had been admitted, the trial court record had been called for by the registry. The said record, however, along with similar records in a large number of appeals went missing. Though there have been some administrative inquiries made, the accountability for the said loss has not been fixed against any individual, the matter to that extent having been closed reportedly with the approval of Hon'ble the Chief Justice.

4. Against the backdrop of the loss of the trial court record, administrative instructions were also issued for its reconstruction. Pursuant to the said directions, the ASJ now presiding over the concerned court made a report on 13.01.2012 submitting therewith

reconstructed record, to the extent it has been possible to do so. The record so re-constructed, unfortunately, does not include the crucial documents in the nature of seizure memo, medico-legal certificate, etc. It, however, does include the statements of Gulshan Grover (PW-6) and Subhash Chander (PW-7).

5. As is clear from the perusal of the copy of the judgment under appeal, the offence of armed robbery was committed against the person of PW-6, the other witness (PW-7) being his maternal uncle, he also being present at the scene. Both PW-6 and PW-7, as per their court testimonies, did support the prosecution case about sequence of events wherein the former (PW-6) had been way-laid on road No.29, in the vicinity of Tridev Travel on Old Rohtak Road within the jurisdiction of Police Station Punjabi Bagh at about 9:45 p.m. on 20.09.1996. PW-6 statedly was carrying at that point of time a cloth bag in which, besides certain documents, he was also having in his possession cash amount of Rs.1,75,000/-. As per prosecution charge, the appellant had accosted PW-6 at the point of a *dagger* and snatched away the said cloth bag and had started running away, he being later apprehended and the stolen money recovered from his possession. According to the prosecution case, the appellant had caused injuries with *dagger* which he was carrying at the time of commission of the robbery. The prosecution case also stated that the said *dagger* was also recovered.

6. The FIR had been registered not at the instance of PW-6 who, it is stated, had been taken to hospital for medical aid. Instead, the case

was registered and the investigation was taken up on the basis of statement of PW-7 who had been present with the former at the time of commission of offence.

7. The court testimonies of PW-6 and PW-7 show that both of them had refused to identify the appellants as the perpetrators of the offences. Though it does appear that PW-6 had earlier pointed out the appellant as the sole perpetrator. But then, under cross-examination he expressed doubts also adding that he had been earlier tutored to identify the appellant as the perpetrator. PW-7, in contrast, was totally hostile to the prosecution case refusing to identify the appellant thereby failing to connect him in any which way with the crime.

8. Given the long period of almost twenty three years which have passed by, no useful purpose would be served by remitting the case for *de novo* trial on account of the loss of record, particularly in view of the hostile nature of the evidence of the two crucial witnesses, i.e., PW-6 and PW-7.

9. In the above facts and circumstances, benefit of doubts will have to be given to the appellant. The appellant is acquitted. The impugned judgment and order on sentence are set aside.

10. The appeal is disposed of accordingly.

R.K.GAUBA, J.

AUGUST 14, 2019

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