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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 1st May, 2019

+ Crl.Appeal No. 908/2002

KRISHAN KUMAR

..... Appellant

Through: Mr. M.M. Singh, Adv. with
appellant in person.

versus

STATE

..... Respondent

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

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. This appeal assails the judgment of court of sessions whereby the appellant was held guilty and convicted on charge of attempted armed robbery and possession of a knife and punishment awarded for such offence.

2. On 06.10.1997 Sub Inspector Ghanshyam Dass (PW-9), the investigating officer (IO) made an endorsement on the statement (Ex.PW-7/A) of Ramesh Chand Inani (PW-7) and got first information report (FIR) no. 523/1997 (Ex.PW-1/A) registered at about 10.10 p.m. in the police station Sarai Rohilla concerning an incident that statedly had occurred at the bus stand of Kishan Kunj on old Rohtak Road, which falls within the jurisdiction of the police station Sarai Rohilla. At the time of making the endorsement, he had statedly apprehended the appellant herein with assistance of Constable Mahesh Kumar (PW-

2) and Head Constable Anwar Ahmad (PW-3), he being formally arrested after personal search (Ex.PW-2/B) in the presence of PW-2, PW-3 and PW-7.

3. It is stated that during interrogation of the appellant, he had made disclosure (Ex.PW-2/D), *inter alia*, showing complicity on the part of two others i.e. Bishan Kumar (A-2) and Azad Singh (A-3) in the offences allegedly committed under Sections 393/397 read with Section 34 of Indian Penal Code, 1860 (IPC). It is also stated that at the time of commission of the said offences, the appellant (A-1) was also found having in his possession a knife (Ex.P1) which was seized vide memo (Ex.PW-2/C), its sketch (Ex.PW-2/A) having been prepared at the time of recovery at the same point of time.

4. The appellant, and the said two others (A-2 and A-3), were brought to trial (in sessions case no.75/1998) in the court of Additional Sessions Judge, charges having been framed against all the three for offence under Section 393 read with Section 34 IPC, the gravamen whereof was that at about 8.30 p.m. on 06.10.1997 at the aforementioned place, they in furtherance of their common intention had attempted to rob PW-7 by forcing him at the point of knife to hand over ten gold biscuits of the purported value of Rs.5,34,000/-. Additionally, separate charge was also framed against the appellant (A-1) for the offence under Section 393 read with Section 397 IPC on the accusations that he had used a knife at the time of commission of the offence of the attempted robbery. Separate charge under Section 25 Arms Act was also framed against the appellant.

5. The trial court, by its judgment dated 26.09.2002, found that the prosecution had failed to bring home the case against A-2 and A-3 and thus acquitted them, the said result having attained finality, there being no appeal against the acquittal. The trial Judge, however, held the appellant guilty and convicted him for offence under Section 393 read with Section 398 IPC and separately on charge under Section 25 of Arms Act. By order dated 27.09.2002, rigorous imprisonment for seven years was awarded as punishment on the first count in addition to rigorous imprisonment for one year on the second count, both substantive sentences directed to run concurrently, the benefit of set off under Section 428 of Code of Criminal Procedure, 1973 (Cr.P.C.), having been accorded.

6. This appeal challenging the judgment and order on sentence was filed in November, 2002. The appellant was released on bail, the sentence having been suspended by order dated 25.07.2005. The turn of the appeal for hearing has come up more than sixteen years after it was presented.

7. It appears that at the time of registration of the afore-mentioned FIR, on the statement of PW-7, the investigating officer had reasons also to suspect the complainant himself *vis-a-vis* the ten gold biscuits, which were found to be in his possession and in which respect he was unable to immediately give any satisfactory account. Thus, vide DD no. 17A of 6-7 of October, 1997 in police station Sarai Rohilla, a case was also registered under Section 103, Delhi Police Act, 1978, the gravamen whereof was the possession of property of which no

satisfactory account could be given. The copy of *kalandara* (complaint) in respect of the said case against PW-7 was introduced as material on record by the prosecution itself at the trial and was referred to in the evidence at the instance of the appellant (vide Ex.PW-9/DA). It also appears PW-7 had later moved an application (mark DX) on 13.10.1997, through counsel seeking release of the ten gold biscuits in his favour, which property had been subjected to seizure in context of the said *kalandara* under Section 103 of Delhi Police Act, 1978.

8. During the pendency of the appeal, the appellant moved an application under Section 391 Cr.P.C. seeking opportunity to lead additional evidence primarily by recall of PW-7, the complainant, for further cross-examination. The prayer of the appellant for opportunity for additional evidence was granted by a learned single judge of this Court in terms of Section 391 Cr.P.C. by order dated 31.01.2003. Pursuant to the directions that were given, PW-7 was recalled and cross-examined by the counsel for the appellant on 15.07.2006. In the said statement, the moving of the afore-mentioned application in the context of seizure under Section 103 of Delhi Police Act, 1978 was admitted, the witness also confirming on oath that the contents of the said application are true and correct.

9. In the FIR, registered on the complaint of PW-7, it was projected that PW-7 had come to Delhi from Bhilwara (Rajasthan) to purchase gold because he was dealing in said commodity. The said statement was not entirely correct inasmuch as it has come out in the

later deposition of PW-7 that he himself is not a trader in gold, he being only an employee of a jeweller firm in the name and style of *Chaar Bhujia Abhushan Bhandar*, his employer having sent him on errand for purchase of gold. In the complaint, reference was made to purchase of gold from shop no.1164, Kucha Mahajani, Chandni Chowk of Ramanand. It later turned out that the particulars of shop owner were also not truthfully narrated, the purchase having been made actually from a firm named M/s Dhancholia & Sons, Kucha Mahajani, Chandni Chowk of Badri Narain Sharma (PW-6).

10. The evidence of PW-6 has brought out that the consideration for the gold which was to be paid was Rs.5,31,295/- as is the amount actually received by the firm through PW-7 on 06.10.1997 much later. PW-6 referred to demand drafts, one dated 17.10.1997 and the other dated 6.01.1998. The ledger accounts of the firm and the documents do indicate that on 06.10.1997, PW-7 had only picked up the gold, presumably for being taken to Bhilwara (Rajasthan), the consideration being paid by demand drafts later to the seller. It follows from the evidence that on 06.10.1997, PW-7 was not in possession of any document worth the name confirming that he was legitimately in possession of the gold. He was thus, booked appropriately on the suspicion of involvement in offence under Section 103 of Delhi Police Act, 1978 vide *kalandra* (Ex.PW-9/A).

11. It must, however, be added here itself that the above-said *kalandra* was not pressed for any action against PW-7 presumably because the documents obtained from the employer (the original

owner), as confirmed by PW-6 from whom the gold biscuits had been purchased, had been mustered in due course and presented to account for the lawful possession of such valuable property.

12. The case of PW-7 leading to registration of FIR was primarily that, after purchase of the gold biscuits, having put them for safety in the pockets of a belt tied across his waist, he had started for Inter State Bus Terminus (ISBT) on foot since he had to take a bus back to his native place from there. He alleged that after he had walked for some distance, from the shop of PW-6, he felt being stalked by three persons including the appellant herein. He had boarded a bus from ISBT, just out of precaution, but the stalkers (including A-1) also followed him into the bus. According to PW-7, when the bus had reached Kishan Ganj area where he saw some police personnel present, he had alighted but only to be accosted by A-1, and his two associates, all of whom had also come down from the bus, A-1 pointing a knife at his stomach asking him to hand over whatever he was carrying, threatening to stab him in case of defiance. PW-7 stated that he had raised alarm for help ("*bachao bachao*") upon hearing which police personnel came and caught hold of A-1 with knife, his two associates having fled away.

13. According to the prosecution case, PW-9 assisted by PW-2 and 3 were on law and order (checking) duty when the afore-mentioned bus had reached the place. PW-7 had raised alarm upon which they (the police personnel) had swung into action and caught hold of A-1,

his associates having fled away. As per the prosecution, a knife was found upon search of the right side pocket of trousers of A-1.

14. PW-2, PW-3, PW-6, PW-7 and PW-9 deposed along the lines of the afore-mentioned version of the prosecution at the trial. It is on the basis of their testimony that the trial court held that the prosecution had proved that complicity of A-1 in the crime had been established. But, as has been pointed out at the hearing on the appeal, some discrepancies in the narration of the sequence of events (at the place of alleged apprehension of A-1) seem to have been glossed over. They may be noted hereinafter.

15. According to PW-7, as soon as he had got down from the rear door of the bus, three persons including the appellant had alighted and had encircled him. It is at that point of time that he had raised alarm attracting the attention of PW-2, PW-3 and PW-9. PW-9 also deposed that the bus had halted ten paces ahead of the bus stand where he was present on checking duty when he had heard the alarm raised by PW-7. A-1 had also got off the bus along with other passengers. Strangely, however, PW-9 had not seen any act of commission being indulged in by A-1 or his associates.

16. The depositions of PW-2 and PW-3 raise some doubts as to the truthfulness of the prosecution story as to the attendant circumstances. PW-2 stated that A-1 was still in the process of getting down from the place of the bus when he was apprehended. If A-1 had accosted the victim after both of them (as also associates of A-1) had come down, there was no question of A-1 to be apprehended while he was still de-

boarding the bus. PW-2 also contradicted the IO by stating that the knife was recovered from the right “dub” of the trousers of A-1, this in contrast to the seizure memo (Ex.PW-2/C) reflecting the recovery to be from the right side pocket of the trousers. PW-3 would put the presence of PW-7 and A-1 together, 10-15 feet away from the bus stand thereby materially contradicting PW-2.

17. The above discrepancies could also have been ignored but for what has been brought out during the further cross-examination of PW-7 pursuant to the order on the application under Section 391 Cr.P.C., by this Court. That exercise has rendered the case of the prosecution highly doubtful. In the application (mark DX) dated 13.10.1997, PW-7 while praying for release of the gold biscuits had explained his position, *inter alia*, with reference to the instructions of his employer at whose instance he had come to Delhi for such purchase, the sequence of events leading to the registration of the present case having been set out entirely differently. The relevant portion of the said application may be quoted as under:

“4. That Shri Badri Narain Sharma is the sole proprietor of M/s Dhan Cholia Sons.

5. That the petitioner was asked by his employer Shri Ramesh Chander Ladha to collect the aforesaid 10 pieces of Gold Biscuits from the firm M/s Dhan Cholia Sons and in persuasions of the orders and instructions given by his employer, the petitioner collected the said 10 pieces of gold biscuits from Shri Badri Narain Sharma on 06.10.1997. The receipt issued by M/s Dhan Cholia Sons to this effect is enclosed herewith as Annexure A.

6. That the petitioner further submits that the petitioner was leaving for Bhilwara and at that time 4-5 persons started chasing the petitioner and the petitioner apprehended danger to his life and property and as such he reported the matter to one Constable, who met him at I.S. B.T. in uniform.

7. That the said police constable, took the petitioner to the police station Sarai Rohilla, at about 7.30 p.m. and those persons still continued to follow the petitioner and the said Police Constable. The petitioner was asked to sit in the police station till mid-night and then the police officers of Police Station Sarai Rohilla, managed to arrest two persons, out of those 4-5 persons, those who were chasing the petitioner and the said two persons were arrested in Arm case. The petitioner was also asked to sign documents in respect of the recovery shown from those two persons as a witness to the recovery.

8. That during the course of investigation, something was disclosed by those persons and the police officers as such started demanding money from the petitioner but the petitioner refused to pay any amount by saying that he is the only employee of his employer and it was only the petitioner, who had informed the police that he was carrying on with him 10 pieces of Gold Biscuits under the instructions of his employer, which were legally purchased by him from M/s Dhan Cholia Sons. The petitioner further requested them that he could produce the documents as well as he could also given the proof of ownership of those 10 pieces of Gold Biscuits; he also disclosed that he can give the account of the said Gold which is lying in his possession but the police officers, did not pay any heed to the legal and genuine request of the petitioner and booked the petitioner in the aforesaid false case under Section 103 of Delhi Police Act.

9. That the petitioner further submits that the petitioner is legally bound to produce the gold to his employer as the

abovesaid gold biscuits were collected by him for and on behalf of his employer Shri Ramesh Chander Ladha.”

18. PW-7, under further cross-examination (carried out on 15.07.2006), affirmed the truthfulness and correctness of the assertions to the above effect in the aforesaid application. It is clear that such story, if true, renders the prosecution case suspect. Both versions cannot co-exist.

19. The benefit of doubts will have to be extended to the appellant. The judgment and order on sentence of court of sessions are set aside. The appellant is acquitted. His bail bonds are discharged.

20. The appeal is disposed of in above terms.

R.K.GAUBA, J.

MAY 01, 2019

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