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

% Judgment delivered on: 19.07.2019
+ CRL.REV.P. 90/2019

SUKHBIR KUMAR Petitioner

versus

STATE & ANR Respondents

Advocates who appeared in this case:

For the Petitioner : Mr.Vinay Kumar Sharma, Adv.

For the Respondent : Ms.Meenakshi Dahiya, Addl. PP for the State with SI
Kamlesh Kumar, P.S.Kalkaji.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns judgment dated 03.12.2018 whereby the appeal of the petitioner impugning order on conviction dated 03.12.2018 was dismissed.
2. Petitioner was convicted of an offence under Section 394 read with Section 34 IPC and sentenced by the Trial Court to undergo three years rigorous imprisonment. The Appellate Court reduced the sentence to two years rigorous imprisonment.
3. The case of the prosecution is that the complainant along with her sons had gone to Kalkaji temple and there was heavy rush on account of the festival of Navratri. At around 5 AM when she was

offering prayers at the counter on Mandir Parikarma, one person standing on her right side with a jerk removed her gold ear ring from the right ear and handed over the same to his associate. The associate fled away from the spot.

4. As per the prosecution the complainant caught hold of the arm of the person who had snatched the ear ring. Her sons were in front of her, in a close proximity. She called them and all of them apprehended the said person.

5. It is contended that the petitioner is the one who had snatched the ear ring and removed the ear ring from her ear by giving a jerk. He was handed over to the police.

6. As per the MLC of the complainant she suffered lacerated wound on her right ear.

7. Learned counsel for the petitioner submits that the Trial Court as well as the Appellate Court have erred in not appreciating that there was no material to suggest that petitioner was present at the spot. He submits that no public witness has been joined by the prosecution and even CCTV footage was not obtained from the temple to corroborate the allegations against the petitioner. He further submits that no recovery was made from him of either the ear ring or any sharp object. He submits that as per the MLC injury was caused with a sharp object. He further submits that no PCR call was made by the complainant after the alleged occurrence.

8. In support of the prosecution the complainant and her two sons

who were eye witnesses were joined as prosecution witnesses apart from police officers as well as the doctor who proved the MLC.

9. In her testimony before the Trial Court the prosecutrix has stated that she along with her two sons, PW2 and PW3 had gone to Kalkaji Temple. While she was offering prayers a person standing to her right snatched her gold ear ring with a jerk and handed over the same to the co-accused. The co-accused fled from spot. The person who snatched the ear ring was identified by her as the petitioner. She also identified him in the Court.

10. She deposed that she along with her sons apprehended the accused by holding his hand and handed him over to the police officers at police post, Kalkaji Temple.

11. The contention of the learned counsel for the petitioner that no PCR call was made is of no consequence because as per the evidence on record, there were police personnel present in the temple and there was also a police post in the temple. The case of the prosecution is that petitioner was handed over to the police officers present in the police post, Kalkaji Temple. Thus, there was no cause for the complainant to make any PCR call.

12. Further contention of the learned counsel for the petitioner that no public witness was associated despite several persons being present is again of no consequence in as much as the testimony of PW-1, 2 & 3 is very categorical and in my view, by the cross examination the accused has not been able to shake the credibility of the witnesses or

raise any doubt with regard to the version of the prosecution.

13. Further contention of learned counsel for the petitioner that CCTV footage from the temple was not produced, is of no consequence in as much as CCTV footage is only to corroborate the testimony and lend credence to the same.

14. As noticed above, I am of the view that the evidence led by the prosecution i.e. in the form of testimony of PW-1, 2 & 3 inspires confidence and their cross examination does not shake the credibility of the witnesses.

15. Further statement of the prosecutrix is that on snatching the ear ring, the same was handed over by the petitioner to the co accused who fled from the spot. Accordingly, there is no merit in the contention of the learned counsel for the petitioner that no recovery was affected from him.

16. The reference drawn by learned counsel to the MLC to contend that it records that a sharp object was used and in the testimony the doctor has also confirmed that a sharp object was used, to my mind does not discredit the testimony of PW-1. She has categorically stated that the ear ring was snatched from her ear. When an ear ring, which is worn by a woman, is snatched with a jerk, there is possibility that there would be a lacerated wound which may resemble a lacerated wound by a sharp object.

17. The Trial Court as well as the Appellate Court in my view have rightly opined that the prosecution has not been able to prove the case

beyond reasonable doubt and the accused has not been able to offer any plausible explanation to the incriminating evidence appearing against him.

18. Trial Court has also noticed that minor contradictions emerging in the testimony of the police witnesses do not go to the root of the matter.

19. On perusal of the record as well as the judgments of the Trial Court as well as the Appellate Court, I am of the view that there is no infirmity in the view taken by the Trial Court as well as the Appellate Court in returning a finding that the prosecution has been able to prove the guilt of the petitioner beyond reasonable doubt.

20. It may further be noticed that the Appellate Court has granted benefit to the accused by reducing the sentence from three years to two years.

21. In view of the concurrent finding of fact returned by the Courts below, I find no merit in the petition.

22. The petition is accordingly dismissed.

23. Order *dasti* under signatures of the Court Master.

SANJEEV SACHDEVA, J

JULY 19, 2019

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