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

+ **CRL.L.P. 266/2017**

STATE (GOVT OF NCT OF DELHI)

..... Petitioner

Through: Ms Meenakshi Chauhan, APP.
ASI Upender Singh, P.S. Nand
Nagri.

versus

VIJAY @ POLISH & ANR

..... Respondents

Through: Mr Nitesh Gupta, Advocate for
R-2.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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19.12.2019

VIBHU BAKHRU, J

1. The State has filed the present petition seeking leave to appeal against a judgment dated 11.11.2016 (hereafter 'the impugned judgment') passed by the ASJ-04, Shahdara District, Karkardooma Court, whereby the respondents were acquitted of the offences under Sections 392/397/34 of the Indian Penal Code, 1860 (IPC).

2. By an order dated 02.08.2019, this Court had noted that respondent no. 1 had expired and thus, the petition *qua* respondent no. 1 stood abated.

3. The State contends that the impugned judgment is liable to be set aside as the Trial Court has mechanically relied upon the testimony of the respondents and has not placed any reliance upon the testimony of the prosecution. It is contended that the Trial Court has erred in not

considering the testimony of the complainant/eye-witness (PW1) who has completely supported the case as set out by the prosecution. Further, there are no material contradictions between the testimonies of PW1 and PW3. It is contended that the Trial Court has further not considered the recovery of ₹300/- along with the purse and Aadhar card, from the respondents during their search.

4. The case of the prosecution before the Trial Court was that information was received in the Control Room, Police Headquarters on 09.06.2013 at 08:30 pm that certain persons had snatched ₹300/- from the caller's son. It was stated that the caller's son knew the snatchers. Thereafter, ASI Suphal Ram (PW8) went to the spot (Khatta/dump site near Kaachipura Chowk) where PW1 (the complainant) narrated the incident to him. PW1 stated that he is engaged in carrying on the work of iron soldering. On 09.06.2013 at about 08:15 pm, he was returning to his house and when he was near Kaachipura Chowk, he found three boys, who he knew, standing there. The said boys called the complainant and took him aside and thereafter, one of them (namely Ajeet @ Sonu – respondent no. 2) took the complainant's brown coloured leather wallet from the rear pocket of his trousers and removed ₹300/-, two photographs, Aadhar card and his father's identity proof and visiting cards. The second boy (namely, Chandni) brandished a knife at him and told him not to raise any alarm and the third boy (namely, Polish – respondent no. 1) also threatened the complainant with an *ustra* and told him that if he reported the matter to the police, he would be set right. Thereafter, all three boys fled from the spot.

5. On the basis of the complaint, FIR No. 290/2013, under Sections 392/397/34 of the IPC, was registered with PS Nand Nagri. One of the accused, Chandini, was not traceable and the chargesheet was filed against the respondents herein. Both the respondents were charged with the offences under Sections 392/397/34 of the IPC. Both pleaded not guilty and the matter was set down for trial.

6. Respondent no. 2 was also charged with the offence under Section 411 of the IPC on the ground that on 10.06.2013 at about 08:20 am near bus route no. 212, bus stand Nand Nagri, a brown coloured leather purse containing ₹300/- (three currency notes in the denomination of ₹100/-), two photographs, the complainant's Aadhar card, the complainant's father's voter ID card and five visiting cards, was recovered from him.

7. In the course of the trial, the prosecution examined eight witnesses and the defence examined one witness, apart from the accused persons.

8. A plain reading of the impugned judgment indicates that the Trial Court found several material inconsistencies in the testimonies of the witnesses, which did not corroborate the case set up by the prosecution. The three major inconsistencies as noted by the Trial Court were regarding the time of arrest of the accused, the person who made the PCR call and the number of accused persons who had committed the alleged crime.

9. With reference to the person who made the PCR call, the Trial Court noted that PW3 (father of the Complainant, PW1) stated that he had informed the police about the incident when PW1 came back home and had informed him about the incident. However, as per the PCR call record (Ex. PW5/A), the name of the informer is mentioned as 'Pintoo Saini', which is neither the name of PW1 nor PW3. Further, DD No. 37-A dated 09.06.2013 mentions that ₹300/- was snatched by the accused, however, in his statement to the police, PW1 stated that apart from the aforesaid currency, two photographs, the complainant's Aadhar card, the complainant's father's voter ID card and five visiting cards were also stolen from his possession. Moreover, the incident as described is not that of snatching.

10. The Trial Court noted the inconsistency between the testimonies of PW1 and PW3 inasmuch as, PW1 states that there were three culprits and PW3 mentions that there were only two culprits. Even on being confronted with his statement (Ex. PW3/A), wherein he had mentioned that three persons were responsible for the alleged incident, he denied the same and said two persons were involved. Further, PW1 stated that the police came to his residence after PW3 informed them about the alleged incident. However, PW3 stated that the police never came to their residence on the day of the incident and as per the *rukka* and the testimonies of PW4 (Ct. Ram Avtar Meena) and PW8 (ASI Suphal Ram), the statement of PW1 was recorded at the site where the alleged incident took place. Further, there was an improvement in the testimony of PW1 inasmuch as, in his complaint he stated that he already knew

the accused persons. However, in his examination in chief, he stated that he knew the accused by face. In his cross-examination, he deposed that he got to know of the accused persons after the incident and not prior to the same. Curiously, the PCR call record mentions the names of the three accused (the two respondents and Chandini)

11. The Trial Court also noted that there were material inconsistencies with reference to the time of the arrest of the accused person. The accused were allegedly arrested on 10.06.2013 at about 08:20 am and 08:00 am (Ex. PW1/D and Ex. PW1/C) at the instance of PW1, as he had identified the accused. However, in his examination in chief, PW1 stated that the accused were arrested at 06:30 pm on 10.06.2013 and he was, thereafter, called to the police station to identify them. The Trial Court reasoned that the same did not inspire confidence because if the accused persons been arrested in the morning hours of 10.06.2013, PW1 would have deposed so. However, PW1 mentioned that they were arrested during the evening hours of the said date. Further, this also implies that the accused were arrested without identification by the complainant. The Trial Court noted that there was a gap of about ten hours between the time of arrest, as mentioned in the arrest memo (stated to be 08:00 am to 08:20 am on 10.06.2013) and the visit of the complainant to the police station at about 06:30 pm in the evening to identify the accused. According to the Trial Court, this raises the question as to how did the police proceed to identify and arrest the respondents without the complainant identifying them first.

12. Secondly, the Trial Court also doubted the recovery made by the police, allegedly, at the instance of the complainant. It noted that PW8 stated that the site plan was prepared when PW4 had gone to the police station to register a FIR. PW4 stated that he left the spot of the alleged crime at about 09:20 pm and came back at about 10:00-10:10 pm. However, PW1 stated that he had gone to the police station from his residence in order to show the police officials where the alleged incident had occurred. The Trial Court also noticed that the departure timing on the *rukka* was mentioned as 09:20 pm and as per the statement of PW4, when he came back to the spot at about 10:10 pm, PW8 was at the spot. According to the Trial Court, the material timings and presence of the said persons at the one place at the same point of time did not reconcile. And this cast a shadow of doubt on the version of the prosecution.

13. This Court finds the view taken by the Trial Court to be a plausible one. It is well settled that the court would not interfere with the decision of acquittal unless it finds a manifest error or any compelling reason to do so. (*See: Ghurey Lal v. State of Uttar Pradesh: (2008) 10 SCC 450*)

14. In view of the above, no interference with the impugned judgment dated 11.11.2016 is warranted.

15. Accordingly, the petition is dismissed.

VIBHU BAKHRU, J

DECEMBER 19, 2019

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