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

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

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CRL. A. No. 391 of 2017

Between:-

STATE (NCT OF DELHI)

.....APPELLANT

*(Through: Shri Pradeep Gahlot, Additional Public Prosecutor
for the State)*

AND

MOHIT KUMAR SINGHLA

S/O SH. SURENDER SINGH

R/O H.NO. NEW T-20, GALI NO. 3, BINDAPUR,

MATIYALA ROAD, UTTAM NAGAR,

DELHI.

.....RESPONDENT NO. 1

GAUTAM MEHARA @ KAKE

S/O SH. RAJ KUMAR

R/O H.NO. T-137, PART-I, JAIN COLONY,

UTTAM NAGAR, DELHI.

.... RESPONDENT NO.2

DAMAN DEEP CHAWLA

S/O SH. KAMAL KISHOR

R/O H.NO. T-190,

PART-1, JAIN COLONY,

UTTAM NAGAR, DELHI.

.... RESPONDENT NO.3

PUNIT SAHNI

S/O LATE SH. BALDEV SAHNI

R/O H.NO. D/5C, SHIVAJI ENCLAVE,

VIDHWA COLONY, RAGHUBIR NAGAR,

DELHI

....RESPONDENT NO. 4

(Through: Shri Arjun Malik, Advocate for R-1 & R-3)



% Pronounced on : 20.01.2023

J U D G M E N T

1. The instant appeal under Section 378 of the Code of Criminal Procedure (hereinafter referred to as “Cr.P.C.”) is directed against the judgment dated 27.07.2015 passed in Sessions Case No.129/01/13 by the learned Additional Sessions Judge - 01, North-West, Rohini Courts, New Delhi, acquitting the respondents in a case arising out of FIR No.67/13 under Sections 394/397/411/34 of the Indian Penal Code, 1860 (hereinafter referred to as “IPC”) registered at Police Station South Rohini, New Delhi.

2. Learned counsel appearing for the appellant/State states that the impugned judgment passed by the learned Additional Sessions Judge (hereinafter referred to as “ASJ”) is perverse, palpably wrong, manifestly erroneous and demonstrably not sustainable in the eyes of law. He further submits that the findings of the learned ASJ is based on conjectures and surmises and as such cannot stand the scrutiny of law and thus, deserve to be quashed.

3. Learned counsel appearing on behalf of the respondents, on the other hand, opposed the prayer and submitted that the learned trial court has rightly concluded that the prosecution has failed to prove its case beyond a reasonable doubt. According to him, the reasoning given by the learned trial court for acquittal of the respondents is based on the sound legal principle that the accused cannot be convicted unless the prosecution proves the case beyond a reasonable doubt. In the instant case, he submits that the respondents have been falsely implicated in the case and there is no reason to believe the prosecution story.

4. I have heard the learned counsel appearing for the parties and perused the record.

5. The case of the prosecution is that on 06.03.2013, Mr. Praveen Sharma (PW-9) happened to visit his friend Rajeev Grover having his office at Vardhman Grand Plaza, Sector-3, Rohini at about 10:15 PM in his Hyundai Verna car driven by his driver Dharambir Singh (PW-5). He was carrying Rs.2 lakhs with him and asked his friend whether he wanted any monetary help. Rajeev Grover (PW-10) demanded a sum of Rs.30,000/-. Praveen Sharma took out Rs. 30,000/- and the balance amount of Rs.1,70,000/- was placed in a laptop bag. Thereafter, the bag was kept in the dickey of the aforesaid car along with other important papers like chequebooks, driving licence, ration card etc. Praveen Sharma (PW-9) instructed his driver (PW-5) to remain in the car and to wait for him and left to meet his friend at his office. In the meanwhile, all four accused persons came there, one of them knocked on the window of the car and tried to interact with PW-5 on the pretext that he wanted to inquire about some address. However, Dharambir Singh (PW-5) did not know about that area and, therefore, pleaded his helplessness. Thereafter, all the accused tried to mislead him by claiming that their car had malfunctioned and they were not able to start the same. On this, Dharambir Singh (PW-5) came out of his Verna car and then one of the accused persons pushed him and two of them entered inside his car and tried to start the same but could not do that.

6. Thereafter, one of the accused persons Gautam took out one pistol-type object and threatened the driver. When they were not able to start the car, which they wanted to rob away, they checked the dickey and picked up the laptop bag containing Rs. 1,70,000 and fled away in one Accent car of white colour bearing registration number

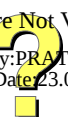
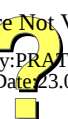


plate of DL-4CA-2202. Then Dharambir Singh (PW-5) immediately apprised about the incident to his employer Mr. Sharma (PW-9). Police were also informed. Police reached at the spot and an FIR was registered on the basis of the statement of the said driver.

7. After the above-mentioned incident, the four accused persons were caught in another case i.e., FIR No. 62/2013, under Sections 392/394/120B/34 IPC at Police Station Mianwali Nagar, wherein they all made disclosure of their involvement in the instant case. Accordingly, the information was given to Police Station South Rohini. Resultantly, all four accused persons were arrested in the present case and they were directed to undergo the Test Identification Parade (TIP), but they refused.

8. On 04.04.2013, driver Dharambir Singh (PW-5) happened to visit Police Station and identified all the four accused persons as robbers. Thereafter, the residential premises of all the four accused persons were also searched on the same day and various stolen articles viz chequebook, data card, black colour bag, ration card and passbook etc. were recovered. However, neither the cash amount nor the laptop as such could be recovered. It is in these circumstances that all the four accused persons have been charge-sheeted. During the investigation, names of two more persons, i.e., Maddu and Ranjha cropped up. They were alleged to be the members of the gang which had committed the robbery in question. However, no incriminating material surfaced against them and their names were put in column No. 12.

9. Thereafter, chargesheet was submitted before the concerned Magistrate on 30.06.2013 but since the offence under Section 397 IPC



was exclusively triable by the Court of Sessions, the case was accordingly committed.

10. Arguments on the charge were heard and accused No.1-Mohit Kumar Singhla, accused No.3-Damandeep Chawla and accused No.4 Punit Sahni were charged under Sections 394, 411 & 34 of the IPC. Accused No.2 Gautam @ Kake was charged under Sections 394, 397 & 34 of the IPC.

11. The respondents/accused pleaded not guilty and claimed trial. The prosecution has examined 13 witnesses to prove its case. After the closure of the prosecution evidence, the statement of the respondents/accused under Section 313 of the Cr.P.C. was recorded. The list of prosecution witnesses is as under: -

SR. NO.	NAME	ROLE OF THE WITNESS
PW1	ASI Ajeet Singh	He was posted as In-charge, Crime Team on the date of incident.
PW2	HC Mohan Lal	He was posted as Duty Officer at PS South Rohini from 4 pm to 12.00 midnight.
PW3	Mahender Nath Singh	He brought the summoned record.
PW4	Ct. Ranbir	He accompanied ASI Devender at the spot.
PW5	Dharambir	He was working as driver in Gorner India Pvt. Ltd Co, Gurgaon from 12-13 years.
PW6	Ct. Ravi Malik	He was posted as Constable at the time of incident.
PW7	Ct. Praveen Kumar	He was posted as Constable at the time of incident.
PW8	HC Balraj Singh	He was posted as Head Constable at the time of incident.
PW9	Parveen Sharma	He gave Rs. 30,000 to Rajeev Grover

PW10	Rajeev Grover	He asked Parveen Sharma for cash.
PW11	Sunil Sehra	He brought the summoned record.
PW12	Ambrish Pathak	He brought the summoned record.
PW13	ASI Devender Singh	He was posted at Police Station South Rohini and on receipt of DD no. 48A, he along with Ct. Ranbir reached the spot.

12. The learned Additional Sessions Judge after considering the entire material available on record acquitted the respondents.

13. In the present case, Dharambir (PW-5) is the only eye witness. His examination-in-chief was conducted on 29.01.2014. After careful perusal of the testimony of Dharambir (PW-5), it can be seen that his testimony is reliable as far as the incident is concerned. It is undoubted that Dharambir (PW-5) was able to provide a proper sequence of events involving the incident. He also testified in court that the lads were between the ages of 20 and 25. He also testified that the crime team was called to the scene; it investigated the spot, took pictures, and even took chance prints from the vehicle.

14. It is important to note that the incident in question had taken place on 06.03.2013 and on 28.03.2013, Police Station South Rohini received information from Police Station Mianwali Nagar and reduced it in DD No. 57B. They were informed that all the accused who were involved in the present case had been arrested in the said case of Police Station Mianwali Nagar and they had even made disclosure statements and had admitted their involvement in the present case. Assistant Sub Inspector Devender (PW-13) accordingly moved an application on 30.03.2013 before the concerned Magistrate and prayed that production warrants be issued against all the four accused

persons. Such application was allowed and learned Magistrate issued production warrants of all the four accused persons for 02.04.2013.

15. All the four accused persons were produced before the learned ASJ on 02.04.2013, who observed that all the four accused persons are produced from judicial custody. IO also requested that the interrogation of all the accused persons is required. On his request learned ASJ allowed 20 minutes to interrogate the accused persons. As a result, the interrogation was conducted. Following that, ASI Devender Singh sought one day judicial custody of all the four accused persons and prayed that the accused may be remanded to Judicial Custody. The aforesaid request was accepted and learned ASJ directed for production of all the accused on 03.04.2013.

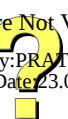
16. Thereafter, on 03.04.2013, all the four accused persons were produced before the concerned court. On the same day i.e., 03.04.2013, all four accused persons refused to participate in Test Identification Parade (TIP). The learned Link Metropolitan Magistrate had recorded the proceedings as Ex. D-1. The defence counsel did not dispute that all the accused refused to participate in the TIP as their photograph was taken. Thereafter, Assistant Sub Inspector (ASI) Devender Singh sought five days of Police Custody of all the four accused persons. However, the learned court granted Police Custody for two days only.

17. Further, the prosecution said that on 04.04.2013, all the accused persons were in Police Custody. PW-5 visited the police station to ascertain the progress in the matter and learnt that the robbers had been caught and identified as all the four accused persons. A supplementary statement to that effect was also recorded on 04.04.2013.



18. It is not disputed that the incident had occurred at the late hour of the evening i.e., 10:15 PM, and as per the statement of Dharambir Singh (PW-5), the accused persons were in the age group of 20 to 25 years. He also claimed that he could identify only one person with whom he had a scuffle. However, as per the police case, Dharambir Singh (PW-5) made one more statement to the police which was recorded by the police on the next day i.e., 07.03.2013. In that statement, Dharambir Singh (PW-5) gave the description of the physical appearances of all the four accused persons and also claimed that he had hazy memory about the other persons and that he may be able to identify them also. Thereafter, in his last statement made before the police i.e., on 04.04.2013, he identified all the four accused persons and also gave their respective roles.

19. PW-5 in his deposition before the concerned court created mystification and perplexity. In his statement, he said that the accused Mohit Kumar Singhla sat in the driver's seat, but in the witness box, he claimed that it was the accused Punit who took the steering. Before the police, he stated that Punnet Sahni sat in the back seat, while in the witness box, he claimed that accused Mohit Singhla sat in the backseat. He also stated that accused Mohit showed him the gun. He then testified that the bag was taken by a child with a brownish complexion, but that boy was not present in court. Thus, in his deposition before the learned ASJ, which was recorded on 29.01.2014 i.e., less than one year after the occurrence of the incident, he was not able to identify the primary accused who was allegedly armed with a pistol. He has also given inconsistent role to the accused persons. So much so, according to him, police had apprehended only three accused and the fourth accused had not even been arrested. Thus, as per his first deposition, the accused Gautam had not been caught or was in

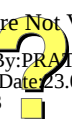


police custody and he never saw him at Police Station that day *i.e.*, on 04.04.2013.

20. On 30.04.2014, the learned prosecutor cross-examined PW-5, wherein he stated that due to lapse of time and hopelessness, he was not able to reveal some of the facts as he had forgotten the same but now since those facts were pointed out to him, he had been able to recollect the same. He was also able to identify the fourth accused as well whom he could not identify on 29.01.2014. On 29.01.2014, he was very specific and claimed that the fourth person was not present in the concerned court. From the aforesaid discussion, it is clear that the testimony of PW-5 as regards to the identification of the accused persons, does not seem to be convincing and above board.

21. After ascertaining the cross-examination of Dharambir Singh (PW-5), the same does not synchronise with the case set up by the prosecution and rather goes against the prosecution. PW-5 testified unequivocally that he never told the police about the accused person's facial characteristics. He said that he had never told police that he could only identify the accused with whom he had a fight. When confronted with his prior statement Ex. PW-5/A, he stated unequivocally that he had never given such a statement to the police and had instead claimed that he could identify all the accused. He claimed he never went to the Police Station after 06.03.13 till 04.04.13. If this is the case, then the statement dated 07.03.2013 is not a reliable document.

22. As per Assistant Sub Inspector Devender Singh (PW-13), who is the IO of the case, he was the one who had taken police remand of all the accused persons. He has deposed in his cross-examination that on 04.04.2013, he had taken out all the accused persons from the lock-



up at about 10.00 AM and thereafter all of them were put back in the lock-up at about 10.30 PM. In between, the police team had gone to the spot as well as to the residences of the accused persons and had even carried out search and recovered some of the stolen articles. However, as per Constable Praveen (PW-7), the police team had returned to lock-up by 9.00 PM., whereas, as per Head Constable Balraj Singh (PW-8), the police team had returned by 7.00 PM.

23. The Hon'ble Supreme Court in the matter of *State of Maharashtra v. Sujay Mangesh Poyarelar*¹ while considering its earlier pronouncements including the decision in the case of *Chandrappa & Ors. v. State of Karnataka*², has held that the power of the appellate court in an appeal against acquittal cannot be said to be restrictive and the High Court has full power to re-appreciate, review and reweigh at large the evidence on which the order of acquittal is relied and to reach its own conclusion on such evidence. Both questions of fact and of law are open to determination by the appellate court. It has also been held that nonetheless it is not correct to say that unless the appellate court in an appeal against acquittal under challenge is convinced, that the finding of acquittal recorded by the trial court is 'perverse', it cannot interfere. If the appellate court on re-appreciation of evidence and keeping in view the well established principles comes to a contrary conclusion and records a conviction, such conviction cannot be said to be contrary to law.

24. The Hon'ble Supreme Court in the matter of *Hakeem Khan & Ors. v. State of M.P.*³ has again considered the powers of the appellate court for inference in cases where acquittal is recorded by the trial court. In the said decision, it has been held that if the

¹ 2008 9SCC475

² (2007)4 SCC415

³ (2017) 5 SCC 715

‘possible view’ of the trial court is not agreeable to the High Court, even then such ‘possible view’ recorded by the trial court cannot be interdicted. It is further held that so long as the view of the trial court can be reasonably formed, regardless of whether the High Court agrees with the same or not, the verdict of the trial court cannot be interdicted and the High Court cannot be supplanted over the view of the trial court.

25. In the present case, if Dharambir Singh's (PW-5) testimony is to be believed, it automatically invalidates the testimony of ASI Devender Singh (PW13) testimony, according to which none of the accused was in the Police Station between 10:00 AM and 10.30 PM. This logically implies that the second statement purportedly provided by complainant Dharambir Singh on 04.04.2013 is not of sterling quality, and there is an element of suspicion with respect to the alleged manner of identification.

26. The learned ASJ while passing the impugned judgement has made observations in paragraph No.50 with regard to the conduct of the Investigation Officer and laps in the investigation. In light of the fact and circumstances of the present case, it is pertinent to peruse the position of the law in this regard.

27. In the decision of *State of West Bengal v. Mir Mohammad Omar & Ors.*⁴, the Hon’ble Supreme Court has directed the courts to ordinarily desist from castigating the investigation even while ordering acquittal.

28. In the decision of *Testa Setalvad v. State of Gujarat*⁵, the Hon’ble Supreme Court in paragraph No.9 has observed that the courts should not make remarks against individuals or authorities

⁴(2011) 12 SCC 689

⁵ (2004) 10 SCC 88

unless they are absolutely required for the matter to be decided.

Paragraph No. 9 of the aforesaid is reproduced herein below:

9. Observations should not be made by courts against persons and authorities, unless they are essential or necessary for decision of the case. Rare should be the occasion and necessities alone should call for its resort. Courts are temples of justice and such respect they also deserve because they do not identify themselves with the causes before them or those litigating for such causes. The parties before them and the counsel are considered to be devotees and pandits who perform the rituals respectively seeking protection of justice; parties directly and counsel on their behalf. There is no need or justification for any unwarranted besmirching of either the parties or their causes, as a matter of routine.

29. For the reasons stated above and relying on the observations of the Hon'ble Supreme Court, the remark against the investigating agency at paragraph No.50 of the impugned judgement dated 27.07.2015 passed by the learned ASJ is hereby expunged.

30. Having considered the material available on record and testimony of Dharambir Singh (PW-5) and Assistant Sub Inspector Devender Singh (PW-13), this court is not inclined to take a different view than the view which has already been taken by the court below. Accordingly, the present appeal is dismissed.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

JANUARY 20, 2023
UR/SD