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

+ **CRL.A. 310/2011**

% Judgment reserved on 3rd December, 2012
Judgement delivered on 2nd January, 2013

AMIT KAPOOR @ PUNJABI Appellant
Through: Mr.Ravindra Narayan and
Mr. Mukul Gupta, Advs.

versus

STATE OF NCT OF DELHI Respondent
Through: Mr. Mukesh Gupta, APP

CORAM:
HON'BLE MR. JUSTICE A.K. PATHAK

A.K. PATHAK, J.

1. Appellant has been convicted under Sections 186/333/353/34 IPC by the trial court and sentenced to undergo rigorous imprisonment for three months under Section 186/34 IPC; sentenced to undergo rigorous imprisonment for five years with fine of Rs.1,000/- and in default of payment of fine to undergo simple imprisonment for one month under Section 333/34 IPC; sentenced to undergo rigorous imprisonment for one year under Section 353/34 IPC. All the sentences have been directed to run

concurrently and benefit of Section 428 Cr.P.C. has also been given to the appellant.

2. Appellant along with Jagjeet Singh @ Jagga was sent up to face trial for the offences under Sections 186/332/353/411/34 IPC by the police station Anand Vihar by filing a charge-sheet in the court of Metropolitan Magistrate, Delhi. Subsequently, case was committed to Sessions Court. Charges under Sections 186/332/353/34 IPC were framed against appellant and Jagjeet Singh @ Jagga. However, Jagjeet Singh @ Jagga has been acquitted by the trial court in view of the discrepancies in the statements of witnesses regarding role played by as well as on the point of identity. It may be noted that all the relevant witnesses to the incident happen to be police officials, thus, their statements have to be scrutinized with care and caution they being seasonal witnesses. Same set of witnesses have been disbelieved qua Jagjeet Singh @ Jagga.

3. As per the prosecution, on 23rd October, 2007 Home Guard Constable Sunil (PW1) and HC Sanjeev Kumar (PW3) were on duty of checking vehicles at road no. 56, Ramprasth Park. They

were checking vehicles coming from Raghunath Mandir side. At about 6:45 pm a secret informer informed PW3 HC Sanjeev Kumar that two boys would be coming on a stolen silver colour pulsar motorcycle with an intention to commit chain snatching in Anand Vihar area. At about 7:00 pm appellant and his accomplice (whose names were disclosed after their apprehension) were seen coming on the motorcycle bearing no. UP-15S-8841 from Seema Puri border side. They were given signal to stop by PW3 H.C. Sanjeev. They were asked to show the relevant papers of motorcycle at which they became furious and the Sardar (Jagdish @ Jagga) who was sitting on the pillion seat of motorcycle pushed HC Sanjeev Kumar while appellant started motorcycle and tried to take a U-Turn but in the process motorcycle got slipped and they fell down and sustained injuries. Thereafter, appellant got up and gave a helmet blow to Home Guard Constable Sunil resulting injuries on his nose. Appellant was over powered, however, his accomplice succeeded in escaping.

4. PW1 Home Guard Constable Sunil was removed to Hedgewar Hospital (for short, hereinafter referred to as the

‘hospital’) by ASI Desh Raj (PW9) of Police Control Room. PW1 was examined by the doctor vide MLC Ex.PW6/A. Since there was fracture of nasal bone doctor opined injuries as grievous. Constable Harbir, who was posted in the hospital, sent information regarding admission of Home Guard Constable Sunil in the hospital to police station Preet Vihar pursuant whereof, DD No. 28-A was recorded and handed over to HC Rakesh (PW10) who along with Constable Dev Dutt reached hospital and obtained MLC of Home Guard Constable Sunil. Thereafter, PW 10 HC Rakesh reached at the spot and recorded statement of PW3 HC Sanjeev Kumar wherein he narrated the incident in the manner as has been described in para no. 3 hereinabove. On the basis of his statement FIR No. 602/2007 was registered at police station Preet Vihar. Appellant was present at the spot and was arrested. Pursuant to the disclosure statement of appellant Jagjit Singh @ Jagga was arrested.

5. After completion of investigation charge-sheet was filed in the court of Metropolitan Magistrate along with a complaint under Section 195 Cr.P.C.

6. Trial court has found statements of PW1 Home Guard Constable Sunil, PW3 HC Sanjeev and PW10 HC Rakesh trustworthy and reliable and has concluded that from their testimonies it was proved that the appellant had deterred PW1 and PW3 from performing their duties, inasmuch as had caused grievous injuries on the person of PW1 in order to deter police officials to perform their duties and further that the appellant was apprehended at the spot.

7. I have heard the learned counsel for the appellant and learned APP and have also perused the trial court record carefully and am not able to concur with the view taken by the trial court, I find statements of material witnesses, that is, PW1 Constable Sunil, PW3 HC Sanjeev and PW10 HC Rakesh to be discrepant in nature, inasmuch as the statements of injured and eye witnesses are inconsistent and are not sufficient to prove the prosecution case beyond the shadow of reasonable doubt. It may further be noted that their statements have not been found trustworthy and reliable by the trial court with regard to accomplice of the appellant.

8. That apart, there is a delay of about three and a half hours in registration of FIR which has not been sufficiently explained leaving the scope of coloured version creeping in the prosecution story. Delay in the peculiar facts of this case is fatal more particularly because despite availability of injured in the hospital his statement was not recorded immediately; instead Investigating Officer chose to go to spot and record the statement of PW3 HC Sanjeev. As per PW 10 HC Rakesh, on receipt of information regarding the incident, he reached the hospital and obtained MLC of PW1 Home Guard Constable Sunil, who had sustained injuries. Reason for not recording his statement, as per him, was that PW1 was under observation. Meaning thereby he was not fit for making a statement. However, his this version is belied from the documentary evidence, that is, MLC Ex. PW6/A. A perusal of Ex.PW6/A makes it clear that the doctor had not made any endorsement “Under Observation”. Instead, doctor has written on the MLC “fit for statement”, meaning thereby PW1 Home Guard Constable Sunil was fit for making a statement. Despite this, PW10 HC Rakesh did not record his statement who is victim to the

offence and could have described the incident. He was the best person to narrate the incident at the first available opportunity. There is no reason as to why PW 10 HC Rakesh could not have recorded his statement for the prompt registration of FIR. Instead, he chose to proceed to the spot and record statement of PW3 HC Sanjeev.

9. Besides above, statements of PW1 and PW3 are discrepant so as to make their presence at the spot together suspicious. PW1 Home Guard Constable Sunil has deposed that he was on duty from 2:00 pm to 10:00 pm; he was present along with PW3 Sanjeev on picket duty. However, as per PW3, he was on duty along with PW1 between 6:00 pm to 10:00 pm. Above all there is material contradiction in this statement regarding roles ascribed to the appellant and his accomplice are concerned. As per the prosecution story, appellant was driving the motorcycle while his accomplice was sitting on the pillion who pushed PW3. PW3 while deposing in Court, has stated that it is the appellant who was driving the motorcycle. As against this, PW1 Home Guard Constable Sunil has said that accomplice of appellant was driving

the motorcycle while appellant was sitting on the pillion seat. In his cross-examination by the learned public prosecutor, PW1 denied that appellant was driving the motorbike. As per PW1 Home Guard Constable Sunil and PW3 Sanjeev, both, that is, appellant and his accomplice were wearing helmets however, accomplice of the appellant being Sardar probability of his wearing helmet was not there and in fact this is one of the reason for which appellant's accomplice has been acquitted. There is yet another major lacuna in the prosecution case which makes the prosecution story suspicious. As per PW10 statement of HC Sanjeev was recorded at the spot, however, PW3 in his cross-examination, that he had narrated the incident to HC Rakesh at the spot but his statement was got signed in the police station.

10. In view of the sketchy, shaky and inconsistent stand taken by the above-noted material witnesses it would not be safe to conclude against the appellant that he had committed the offences for which he had been charged. I am of the view that trial court ought to have given benefit of doubt to the appellant in the light of evidence discussed herein above.

11. For the foregoing reasons, conviction of the appellant is set aside. He be set free forthwith, if not wanted in any other case.

12. Appeal is disposed of in the above terms.

13. Copy of this order be sent to the Jail Superintendent for serving it on the petitioner as also for compliance.

A.K. PATHAK, J.

JANUARY 02, 2013

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