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Naseeb Vs. State of Nct of Delhi

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Court : Delhi

Decided On : Mar-23-2015

Judge : A. K. Pathak

Appellant : Naseeb

Respondent : State of Nct of Delhi

Advocate for Def. : Mr. Amit Ahlawat

Advocate for Pet/Ap. : Mr. Rana Ranjit Singh, Mr. Vivek Kr. Singh, Mr. Sidhartha Shankar

Judgement :

$~15 * IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.A. 146/2011 Decided on 23rd March, 2015 NASEEB ..... Appellant Through: Mr. Rana Ranjit Singh, Mr. Vivek Kr. Singh and Mr. Sidhartha Shankar, Advs. Versus STATE OF NCT OF DELHI Through: ..... Respondent Mr. Amit Ahlawat, APP for the State along with SI Vivek Sharma, P.S. Gokul Puri. CORAM: HON'BLE MR. JUSTICE A.K. PATHAK A.K. PATHAK, J.(ORAL) 1. Appellant has been convicted for the offence under Section 489-C of the Indian Penal Code, 1860 (for short, hereinafter referred to as IPC) by trial court and sentenced to undergo rigorous imprisonment for five years with fine of `50,000/- and in default of payment of fine to undergo simple imprisonment for one year. Aggrieved by his conviction as also sentence awarded to him, appellant has preferred this appeal.

2. Prosecution story, as unfolded, is that on 14th September, 2004, SI Jagbir Singh along with Const. Raj Kumar, Const. Shyam Lal and Const. Harinder was patrolling in the area falling within the jurisdiction of police station Gokul Puri. At about 7:00 am one secret informer contacted SI Jagbir Singh near State Bank of India and informed him that one person namely Naseeb was dealing in counterfeit currency notes. He used to supply counterfeit currency notes. He further informed that one person namely Prem Chand @ Guddu @ Fighter would supply counterfeit currency notes to Naseeb at Brijpuri Bus Stand at about 7:30 am. On receiving this information, SI Jagbir Singh along with Const. Raj Kumar, Const. Harinder, Const. Shyam Lal and secret informer reached near Brijpuri Bus Stand. Five-six persons were requested by him to join the police party but they declined. At about 8:00 am, one person (Naseeb) alighted from the bus and started talking to secret informer. At about 8:15 am another young man (Prem Chand, who could not be arrested and was declared Proclaimed Offender) got down from the other bus. He was carrying a blue colour handbag in his hand. Thereafter both of them started walking towards Gokul Puri side. After moving about 10 steps he handed over a polythene packet to the appellant after taking out from his blue bag who had deboarded the bus earlier. At that stage, secret informer gave signal at which SI Jagbir Singh along with abovenamed three constables ran towards them and apprehended the person (appellant) who was having a polythene packet in his hand. The other person scuffled with the police officials and ran towards Yamuna Vihar. Const. Shyam Lal and Const. Harinder chased him but could not apprehend him.

3. From the polythene bag 300 currency notes of `500/- denomination each were recovered. Currency notes were sealed in a pullanda with the seal of JSN and taken in possession vide seizure memo dated 14th September, 2004. CFSL Form was filled at the spot itself. SI Jagbir Singh wrote rukka and sent the same to the Gokul Puri Police Station for registration of FIR, pursuant whereof FIR No.426/2004 under Sections 489-B/489-C/34 IPC was registered. Investigation was handed over to SI Pawan Kumar, who reached the spot and took in his possession the seized articles. Appellant was arrested by him. Seized property was sent to FSL and its report was obtained according to which currency notes were counterfeit currency notes. After completion of investigation charge sheet

was filed in the court of concerned Metropolitan Magistrate.

4. After completing the formalities as stipulated in Section 207 Cr.P.C., Metropolitan Magistrate committed the case to the Sessions Court since offence under Section 489-C IPC is exclusively triable by the Sessions Court. On 20th October, 2007 charge under Section 489-C IPC was framed against the appellant to which he pleaded not guilty and claimed trial.

5. Prosecution examined seven witnesses in all. Const. Harinder was examined as PW1. Head Const. Rattan Lal was examined as PW2. Anurag Sharma, Senior scientific officer of FSL was examined as PW3. Constable Raj Kumar was examined as PW4. SI Pawan Kumar was examined as PW5. SI Jagbir Singh was examined as PW6. Const. Shyam Lal, who was one of the members of the raiding party, was not examined. PW2 HC Rattan Lal is a formal witness. He had recorded the FIR Ex. PW2/A on the basis of rukka sent by PW6 SI Jagbir Singh. PW3 Anurag Sharma, Senior Scientific Officer, Forensic Department has proved the FSL report as Ex. PW3/A. He deposed that on examining currency notes through scientific instrument, he found them to be counterfeit currency notes.

6. After prosecution closed its evidence statement of appellant under Section 313 Cr.P.C. was recorded wherein entire incriminating material, which had come on record, was put to him. Appellant denied his complicity in the offence. He denied that he was apprehended by the raiding party comprising of Const. Harinder (PW1), Const. Raj Kumar (PW4), SI Jagbir Singh (PW6) and Const. Shyam Lal. He denied recovery of currency notes from him. He claimed himself to be innocent. He stated that on 10 th September, 2004 he de-boarded a train at Shahdara Railway Station. He was asked by the police officials to become a witness in a case against Prem Chand Shukla, Asif and others and when he declined, he was implicated in this case. He also examined his maternal uncle Mohd. Naeem Ansari as DW1.

7. It is evident from the facts narrated hereinabove that material witnesses in this case are PW1, PW4 and PW6 as regards to apprehension of appellant at Brijpuri Bus Stand and recovery of counterfeit currency notes from him. Trial court has found the testimony of these witnesses to be trustworthy and reliable and

concluded that appellant was indeed apprehended at Brijpuri Bus Stand with 300 currency notes of `500 denomination which were established to be counterfeit currency notes by the FSL report Ex. PW3/A duly proved by PW3 Anurag Sharma.

8. I have heard learned counsel for the appellant, learned APP for the State and have perused the trial court record carefully more particularly the statements of PW1, PW4 and PW6 and am of the view that appellant is entitled to benefit of doubt in view of the inconsistencies as pointed out by the learned counsel in the prosecution story vis-a-vis statements of material witnesses. Statement of SI Jagbir Singh PW6, is contrary to the prosecution story.

9. Learned counsel has vehemently contended that no independent witness was joined during the raid conducted by PW6 SI Jagbir Singh and in absence of independent witness, it is not safe to convict the appellant only on the statements of police officials, who are seasoned witnesses and are interested in the success of prosecution case. Indubitably, in this case, no independent public witness had joined the raiding party through efforts were made. However, there is no law that police officials cannot be believed without corroboration of their version by an independent witness. In Pradeep Narayan Madgonker and Ors.vs.State of Maharashtra MANU/SC/0372/1995, Supreme Court held that statements of police witnesses must be subject to strict scrutiny, however, the evidence of police officials cannot be discarded merely on the ground that they belong to the police force and are either interested in the investigation or in the prosecution.

10. PW6 SI Jagbir Singh has deposed that first person had delivered the polythene packet to the second person; meaning thereby the person who had alighted from bus first had delivered the packet to the person who had alighted the bus subsequently. As per the prosecution story, appellant had alighted the bus first at about 8:00 am. Thereafter, Prem Chand had alighted another bus at 8:15 am. They started walking towards Gokul Puri side. At that stage, secret informer gave a signal and police party chased them and apprehended the appellant; while Prem Chand succeeded in escaping. However, this statement of PW6 SI Jagbir Singh is not in line with the prosecution story as set up in the FIR as also the statements of PW1 and PW4. It would be pertinent to mention here that FIR was registered at

the instance of PW6. He is the complainant in the sense that FIR was registered on the basis of rukka sent by him. He is the author of FIR. PW6 was leading the raiding party. According to the FIR, the person who had alighted subsequently, that is, Prem Chand had delivered the packet to the person who alighted first, that is, appellant. However, as per deposition of PW6 it is the appellant who had handed over the polythene packet to Prem Chand. If that is so, then no such packet could have been recovered from the appellant. Thus, whole prosecution story becomes suspicious and doubtful.

11. There is yet another factor which goes in favour of the appellant. PW1, PW4 and PW6 have categorically deposed that they were in civil dress. They were not adorning police uniform. They were moving in the streets as any other ordinary person. It was a crowded place. PW6 has admitted in his cross-examination that secret informer was not known to him. He has also not deposed that secret informer was known to PW1, PW4 and Constable Shyamlal. PW1 and PW4 have also not deposed that secret informer was known to them. If that is so, then how secret informer could identify PW6 SI Jagbir Singh has remained a mystery. It has remained unexplained. On the contrary, PW6, in his cross-examination, has stated that he does not know as to how secret informer identified him and contacted him and divulged information regarding exchange of counterfeit currency notes.

12. For the foregoing reasons, appeal is allowed and impugned judgment is set aside, consequently, order on sentence also goes. Personal bond and surety bond are discharged. A.K. PATHAK, J.

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