

R-16, 17 & 18

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

+ CRL.A. NOS. 14/2002, 41/2002 & 702/2002

Date of decision : 4th October, 2010

MOHD. SALIM & ORS..... Appellants in CRL.A. No. 14/2002.
MOHD. SALIM Appellant in CRL.A. No. 41/2002.
MOHD. ISAMUL@GUDDU..Appellant in CRL.A. No.702/2002.
Through Mr. A.J. Bhambhani & Ms. Nisha
Bhambhani, Advocates.

versus

STATE Respondent
Through Ms. Fizani Husain, APP for the
State.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

JUDGMENT (ORAL)

1. This judgment will dispose of two appeals filed by Mohd. Salim against his conviction under Section 394/397 of the Indian Penal Code, 1860 (hereinafter referred to as IPC, for short) in FIR No. 195/1999 and FIR No. 196/1999 both relating to Police Station I.P. Estate. This judgment will also dispose of the appeal of Mohd. Isamul who has been convicted under Section 394/34 IPC in FIR No. 195/1999.

2. The two appellants have been sentenced to rigorous imprisonment of seven years with fine of Rs.5,000/- and in default of payment of fine undergo simple imprisonment for a period of six months for offences under Section 394/34 IPC in FIR No. 195/1999. The appellant Mohd. Salim has been sentenced to rigorous imprisonment for seven years with fine of Rs.5,000/- and in default of payment of fine to undergo simple imprisonment of six months for offences under Section 394/397 IPC read with Section 34 IPC in FIR No. 196/1999.

3. FIR No. 195/1999 was registered on a complaint made by Ravinder Singh. He has stated that on 8th May, 1995 at about 4.00 AM he had hired a TSR from I.S.B.T. to go to his brother's place in trans Yamuna. The TSR driver stopped the scooter on Yamuna Bridge where two persons were already standing. These two persons took out knife while he was sitting in the TSR and gave him knife blows. He suffered injuries on his right arm and on his back. They robbed him of Rs.2400/- which was in his purse and took with them a brown coloured bag with his clothes. The driver and the two persons drove away in the TSR. A two wheeler scooterist gave him lift and they tried to catch the TSR but without success. Thereafter he contacted a PCR Van and was taken to hospital and was medically examined. He has given description of the TSR driver and of the two boys who had hurt him and had stated that he could recognize them.

4. FIR No. 196/1999 was registered on a complaint made by Mohd. Abid. He has stated that on 10th May, 1999, he boarded a TSR numbered DL 1 RC 3670 from ISBT to go to Khureji. He sat in between two other passengers who told him that they were also going to Khureji. He came to know their names later. As the TSR reached ITO one of the co-passengers, Musrat Ali, put a knife on the neck of the complainant and asked him to handover whatever money he was carrying. The other passenger, Mohd. Salim caught hold of his hands tightly from behind and there was a scuffle as the complainant struggled. Musrat Ali then told his companions that they should stop the TSR, kill the complainant, rob him and throw his body in Yamuna. Thereafter the TSR was stopped and the complainant was made to alight the TSR. While the knife was kept pointed at the chest of the complainant, the driver of the TSR robbed him of Rs. 5000/-. The complainant raised an alarm. On hearing noise, Constable Tej Pal, who was on patrol duty noticed them and came to the spot. Mohd. Salim and Musrat Ali were arrested on the spot but the TSR

driver managed to escape in the TSR with the complainant's money and belongings. A knife was recovered from the possession of Musrat Ali. The complainant was hurt/injured.

5. Subsequently on the basis of the disclosure statement made by Mohd. Salim Exhibit PW-4/E, search was conducted in the premises occupied by Mohd. Salim and a brown bag belonging to the complainant- Ravinder Singh in FIR No. 195/1999 was recovered along with his belongings.

6. After investigation, the police filed charge sheets in the two FIRs 195/1999 and 196/1999 and by two separate impugned judgments both dated 12th December, 2001, the appellants have been convicted and by the impugned orders dated 14th December, 2001, respective sentences have been imposed. For the purpose of record it is mentioned that Mohd. Iqbal was also co-appellant along with Mohd. Salim in Criminal Appeal No. 14/2002 and Criminal Appeal No. 41/2002. However, his name was struck off vide order dated 28th January, 2008 as it was directed that the sentences awarded to Mohd. Iqbal in the two separate cases would run concurrently. The said order also records that Mohd. Iqbal had already served the sentence and his name as appellant No. 2 should be deleted.

7. Ravinder Singh had appeared as PW-4 and has fully supported the prosecution's case in FIR No. 195/1999. He has reiterated the allegations made in the FIR. He identified Mohd. Salim as the person who had given him knife blows. He identified Mohd. Ismaul and has stated that he was present with Mohd. Salim and they had snatched Rs.2,400/- from his pocket and a bag which had his clothes. He has identified Mohd. Iqbal as TSR driver. He has identified the knife which was used by Mohd. Salim and the same was marked Exhibit P-1. He also identified the bag which is marked as Exhibit P-2 and clothes in the bag which were given Exhibits P-3 to P-6.

8. Learned Amicus Curiae has pointed out that in his cross-

examination PW-4, Ravinder Singh has admitted that after the occurrence, the accused persons were shown to him in the police station on arrest. It is accordingly submitted that the identification of the accused-appellant by PW-4, Ravinder Singh in the court loses its sanctity and value. It is not possible to accept the said contention in the present case. PW-4, Ravinder Singh had identified both Mohd. Salim as well as Mohd. Isamul in the court, while he was giving his evidence as a witness. Identification in the court is substantive evidence. The statement of PW-4, Ravinder Singh in the court has to be examined to evaluate whether or not the same is reliable and should be acted upon. On the question of identification of the accused on their arrest by the victim/eye witness, reference can be made to *Manu Sharma versus State*, (2010) 6 SCC 1, wherein it has been observed as under:

“250. It is further submitted that after the refusal of TIP it is only thereafter that the accused Manu Sharma was shown to the witnesses PW 6, PW 20 and PW 24 and their statements under Section 161 CrPC were recorded with regard to the identification of accused Manu Sharma. The said process of identification was necessary for the IO to be certain that this is the man that the said witnesses had witnessed/seen as the person responsible. In the light of Manu Sharma’s refusal, the police had little choice but to formally show the photo to the witnesses and record their statements in that regard. Thus, firstly his refusal is not justified on the ground that he has been shown to the witnesses, moreover, he was shown to the witness only after his refusal of TIP so that it is verified that he is the same person who is involved in the incident and no adverse inference on this count can be taken against the prosecution.”

9. In addition to the identification of the two appellants in the court by PW-4, Ravinder Singh, we have independent corroboration in form of disclosure statement of the appellant Mohd. Salim Exhibit PW-8/F, which had resulted in recovery Exhibit P-2 to 6 i.e. the bag and the clothes of the complainant PW-4 Ravinder Singh. He has also identified

the knife which was recovered on the basis of disclosure statement of Mohd. Isamul Exhibit PW-8/E. The TSR No. DL-1RA-5941 was seized vide seizure memo Exhibit PW 7/C.

10. Learned counsel for the appellant submitted that the PW-4, Ravinder Singh in his statement Exhibit PW-4/A had given the TSR scooter number as DL-1-RC-5341 but the scooter which was found parked outside the residence of Mohd. Isamul was DL-1RA-5941. It is accordingly submitted that PW-4, Ravinder Singh is not a reliable witness and there is contradiction in his statements. The TSR scooter was hired by PW-4, Ravinder Singh on 8th May, 1999 at about 4 a.m. A passenger normally does not note down the TSR scooter number. The statement Ex PW-4/A was made by PW-4 Ravinder Singh on the basis of his memory and recollection. As noticed above, most of the alphabets and digits of the scooter number tally. I do not think that in these circumstances the difference in one alphabet and one digit in any way shows that the statement of PW-4, Ravinder Singh is not reliable. It may be noted that PW-4, Ravinder Singh had suffered knife injuries in the said incident both on his hand as well as on his back. It is creditable that he was able to substantially remember the TSR number and state it to the police. Injuries suffered by PW-4 Ravinder Singh have been proved in his statement and in the statement of PW-2 HC Ajit Singh.

11. PW-8, SI Naveen Kumar, who was the Investigating Officer has stated that after the FIR no. 195/1999 was registered, he started investigation. On 10th May, 1999, accused Mohd. Iqbal, Mohd. Salim and another boy had tried to commit robbery at the same site in the morning and FIR No. 196/1999 was registered. Thereafter, Mohd. Salim and Mohd. Iqbal made disclosure statements about their role in committing robbery on 8th May, 1999 along with Mohd. Isamul. Application was moved in the court of Metropolitan Magistrate for interrogation of the Mohd. Iqbal. On the basis of disclosure statements,

they searched jhuggi No. 710, Indra Colony, Raj Ghat Power House, residence of Mohd. Isamul and recovered the bag. On the disclosure statement made by Mohd. Isamul, they also recovered the knife which was used and the same was seized vide seizure memo Exhibit PW-7/D. The knife was recognized by PW-4, Ravinder Singh. Knife in fact was not recovered at the jhuggi of Mohd. Isamul but at a distance of about 30 metres. The knife was concealed in a tree and was recovered at the instance of Mohd. Isamul in terms of his disclosure statement Exhibit PW-8/E vide seizure memo Exhibit PW-7/D.

12. Both appellants in their statements under Section 313 of the Code of Criminal Procedure, 1973 had claimed that they were innocent and had been arrested from the house and detained by the police for two days and falsely implicated in the case. They had produced DW-1, Mohd. Ali who had stated that all the accused persons were his neighbours and he had known them for the last 7/8 years. He had further stated that the police had arrested the accused persons on the suspicion that they were Bangladeshi. None of the police officers were given the said suggestion in their cross-examination.

13. In view of the aforesaid findings, the appeal filed by Mohd. Salim and Mohd. Isamul against the conviction in FIR No. 195/1999 does not have any merit and the same is dismissed.

14. On the question of sentence, the sentence imposed on Mohd. Salim does not require any interference. Mohd. Salim has been convicted under Section 397 IPC where the minimum punishment is seven years. It is also noticed that Mohd. Salim is involved in other cases as per his nominal roll. Mohd. Isamul has been convicted under Section 394 IPC. The nominal roll of Mohd. Isamul shows that he does not have any other case registered against him and his conduct in the jail was satisfactory. Mohd. Isamul was released on bail as per nominal roll dated 5th December, 2006 on 6th December, 2005 after he had been in prison for

nearly five years and six months, including the remission period. His sentence is accordingly modified to the period undergone.

15. As far as conviction of Mohd. Salim in FIR No. 196/1999 is concerned, there is no merit in his appeal. Appellant Mohd. Salim was caught on the spot by the PW-4, Mohd. Abid and PW-5, Constable Tej Pal on 10th May, 1999. PW-4 Mohd. Abid has stated that on 10th May, 1999 at about 4.30 a.m. he had boarded TSR No. DL 1 RC 3670 to go to Khureji along with two other passengers, who were already sitting in the said TSR. He sat in between the two persons and Musrat Ali, whose name he came to know later on had put a knife on his neck and asked him to give whatever money he had. Mohd. Salim, whose name he later on came to know, had caught hold his hands behind his back. The scooter was stopped on the ITO bridge and he was made to alight from the scooter and Mohd. Salim pointed out the knife on his chest. He was robbed of Rs.5,000/- and the TSR driver ran away from the spot along with Rs.5,000/- and his luggage. In the meanwhile, one Constable had come to the spot and had apprehended the two accused, i.e., Mohd. Salim and Musrat Ali. He correctly identified Mohd. Salim and Musrat Ali in the court. He identified Mohd. Iqbal as the TSR driver. A knife was also recovered from Musrat Ali. He identified the knife as Exhibit P-1 and his belongings which were later on recovered as Exhibit P-2 and P-3 collectively. PW-4, Mohd. Abid was taken to hospital and was medically examined and given medical treatment.

16. Similarly, PW-5, Constable Tej Pal has stated that he was on patrol duty on Vikas Marg from 11 p.m. to 6 a.m. in the morning. On 10th May, 1999, he saw a TSR and heard some noise. When he reached the spot, the accused persons had nothing in their hands and the complainant was lying on the ground. The accused Mohd. Salim and Musrat Ali had caught hold of the complainant. Subsequently, Constable Subhod Anand and Abdul Karim reached the spot after about 15

minutes. There is nothing in the cross-examination to discredit these two witnesses PW-4 and PW-5 whose statements are reliable, clear and categorical. Whether or not the Musrat Ali had the knife in his hands or the knife was in his pocket when he was arrested is not really material for the present decision and is merely a minor discrepancy.

17. PW-6, Constable Abdul Karim has corroborated the prosecution case. He has identified the knife Exhibit P-1 which was recovered from personal search of Musrat Ali.

18. Mohd. Salim in his statement under Section 313 Cr.P.C. has stated that he was falsely implicated in the case and he was apprehended as a Bangladeshi suspect and had been made to sit in the police station three days prior to his arrest. He had also produced DW-1, Mohd. Ali who stated that he had known the accused for the last 7-8 years, who were his neighbours and persons of good antecedents and were working as rickshaw pullers. It was stated that they were arrested as they were suspected to be Bangladeshi. The said defence stand cannot be accepted. PW-4, Mohd. Abid's statement is lucid and merits acceptance. Mohd. Salim was apprehended right at the spot on 10th May, 1999 and this fact has been proved beyond doubt in view of the statements made by PW-4, Mohd. Abid, PW-5, Constable Tej Pal and PW-6, Constable Abdul Karim.

19. In view of the aforesaid findings, I do not find any reason to interfere with the conviction of the appellant-Mohd. Salim under Section 394 IPC in FIR No. 196/1999. However, conviction of the appellant-Mohd. Salim under Section 397 IPC cannot be sustained. As per the evidence of PW-4, Mohd. Abid, knife was shown to him by the accused Musrat Ali and by the appellant-Mohd. Salim. As noted above, appellant-Mohd. Salim was nabbed at the stop, but no knife has been recovered from him. PW-5, Constable Tej Pal and PW-6, Constable Abdul Karim have stated that the knife was recovered from the accused

Musrat Ali. The appellant-Mohd. Salim cannot accordingly be punished under Section 397 IPC. This however does not affect his conviction for the charge under section 394 IPC. On the question of quantum of sentence, learned trial court has sentenced the appellant-Mohd. Salim rigorous imprisonment of seven years with fine of Rs.5,000/- and in default of payment of fine undergo simple imprisonment of six months. As noticed above, Mohd. Salim has also been convicted in FIR No. 195/1999 under Section 394 and 397 IPC. I do not see any reason to interfere with the sentence awarded to Mohd. Salim in respect of conviction under Section 394 IPC.

The appeals are accordingly disposed of.

SANJIV KHANNA, J.

OCTOBER 04, 2010
VKR/J