

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

DATE of ORDER: 23rd March, 2010

+ **Crl. A. 920/2004**

ISTKHAR Appellant
! Through: Mr. Yogendra Singh
Chaudhary, Adv.

versus

\$ STATE OF DELHI Respondent
^ Through: Mr. Jaideep Malik, APP.

+ **Crl. A. 28/2005**

INTZAR Appellant
! Through: Mr. Yogendra Singh
Chaudhary, Adv.

versus

\$ STATE OF DELHI Respondent
^ Through: Mr. Jaideep Malik, APP.

Crl. A. 231/2005

ISHRAR AND ANR. Appellant
! Through: Mr. Yogendra Singh
Chaudhary, Adv..

versus

\$ STATE OF DELHI Respondent
^ Through: Mr. Jaideep Malik, APP.

+

Crl. A. 819/2005

#

RUKSHAR

!

.....Appellant
Through: Mr. Yogendra Singh
Chaudhary, Adv.

versus

\$

STATE OF DELHI

^

..... Respondent
Through: Mr. Jaideep Malik, APP.

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CORAM:

HON'BLE MR. JUSTICE V.K. JAIN

1. Whether the Reporters of local papers
may be allowed to see the judgment? No
2. To be referred to the Reporter or not? No
3. Whether the judgment should be
reported in the Digest? No

: V.K. JAIN, J. (ORAL)

1. By this common judgment, I shall dispose of all the four appeals referred above, which are directed against a common Judgment dated 18th November, 2010 and Order on Sentence dated 25th November, 2010, whereby the appellants were convicted under Section 395 and Section 120B IPC and were sentenced to undergo RI for 7 years each and to pay fine of Rs.3,000/- or to undergo FIR for six months in default under Section 395 of IPC and were further sentenced to undergo FIR

for 5 years each and to pay fine of Rs.2,000/- each or to undergo imprisonment for 4 months each in default under Section 120-B IPC.

2. On 2nd February, 2006, on receipt of information about an incident of robbery, the Investigation Officer of this case went to Bagh Kare Khan, Sarai Rohilla, Delhi where the complainant Smt. Madhu Gupta met him. The complainant alleged that she was in the business of selling foam-cloth and that on 30th January, 2002, she had sold cloth worth Rs.9,30,000/- and had kept the cash in her almirah. In the morning of 31st January, 2002, four persons came to her godown and talked about purchase of cloth. Out of those four boys, two again came to her godown in the morning of 2nd February, 2002. Recognizing them, she opened the door. Two other boys, who were present outside, also entered the godown alongwith them. Those persons gave beatings to her. After tying the complainant, they removed the jewellery which she was wearing and also removed the cash and some jewellery which had been kept in the almirah.

3. The appellants were arrested during investigation of this case and part of the stolen property is alleged to have been recovered from each of them.

4. The prosecution examined 19 witnesses in support of his case. One witness was examined in defence.

5. The complainant, Smt. Madhu Gupta, came in the witness box as PW-5 and supported the version set up in the FIR. She stated that on 31st January, 2002, four boys came to her house and told her that they were sent by her son Nikhil for purchasing foam cloth. She told them that she had sold foam cloth to some customer from Tamil Nadu for Rs.9,25,000/- and asked them to come after one or two days so that she could arrange foam cloth for them in the meanwhile. She identified the appellants Istkhar, Ishrar, Akhtiyar and Rukshar as those four persons. She further stated that on 2nd February, 2002, at about 6.00 am, two boys knocked at the door. When she opened the door, those boys, alongwith two other boys, who were present outside, entered her place. One of them forcibly poured something in her mouth and thereafter, those persons robbed her of four bangles, four rings and one chain. Her hands and legs were then tied and the cash and ornaments kept in the almirah were taken away. When she regained consciousness and went to the main door, she saw four persons who had come on that day alongwith the appellant Intzar. She identified two *karas* Ex. P-1, four bangles Ex.P-2,

two rings Ex.P-3, three silver rings Ex.P-4 and one hathphool Ex.P-5, as the articles of jewellery, which were stolen from her possession.

6. PW-3 Constable Raj Kumar stated that on 06th April, 2002, the appellant Rukhshar was arrested at the pointing out of an informer and was interrogated. He led them to his house in Gali Masjid Wali and got recovered one hathphool and three rings Ex.P-3/D. He identified the hathphool and rings in the Court. PW-10 Constable Vijay stated that on 06th February, 2002, they received a secret information that three persons involved in this robbery will be leaving for Badayun from Anand Vihar ISBT. Thereupon, a raiding party was organized. At about 9-10 pm, the appellants Istkhar, Ishrar and Akhtiyar were apprehended at the pointing out of the informer and were interrogated. On checking the polythene bags which they were carrying, Ishrar was found carrying two karas besides some cash. Akhtiyar was found carrying two bangles alongwith some cash and Istkhar was found carrying some cash and a briefcase alongwith two gold chains. All these articles were seized vide memos Ex.PW-10/K, PW-10/L and PW-10/M.

7. PW-12 Constable Rajiv has corroborated the testimony of PW-10 Constable Vijay Kumar regarding arrest of the appellant Istkhar, Ishrar and Akhtiyar. He also identified the recovered articles, four bangles, Ex.P-2 and two karas Ex.P-1.

8. PW-14 Deepak Sharma stated that on 15th March, 2002, the appellant Intzar was arrested on the pointing out of the informer and was interrogated. He took them to a jhuggi in Gali No. 8, Kailash Nagar, Railway Line and took out cash amounting to Rs.30,000/- alongwith two ring which were seized vide memo Ex.PW14/D.

9. PW-16 Constable Manoj Kumar corroborated the deposition of PWs-10 and PW-12 regarding arrest of appellants Istkhar, Ishrar and Akhtiyar and recovery from them.

10. PW-19 SI Umesh Sharma is the IO of the case. He stated that on 05th March, 2002, the appellant Intazar was arrested by them and he took them to Gali No. 8 from where Rs.30,000/- alongwith two rings were recovered and were seized vide memo Ex.PW-3/D.

11. PW-13 Shri Inderjeet Singh, Metropolitan Magistrate stated that on 08th March, 2002, he conducted Test Identification

Parade of the case property which was identified by the complainant vide proceedings Ex.P-13/A.

12. Pw-17 Rakesh Syal, who was working as Metropolitan Magistrate, at the relevant time stated that the appellant Akhtiyar refused to join TIP before him and in jail on 11th February, 2002 despite the warning that an adverse inference can be drawn against him during trial on account of his refusal to join TIP. He further stated that the appellant Istkhar also refused to join TIP before him on 07th February, 2002. According to him, on 12th February, 2002, the complainant Madhu Gupta identified the appellant Ishrar before him in a judicial TIP.

13. The original Trial Court Record in this case is not traceable and the record was, therefore, reconstructed to the extent it could be done with the copies provided by the parties. The statement of accused persons could not be reconstructed since neither the appellants nor the learned APP had the copies of the statements in their record. On an enquiry being directed by this Court, the Registrar reported that the Trial Court Record could not be traced despite efforts made by him. He also identified the Court official responsible for the loss of the record and was

directed to initiate action, on administrative side, against the official found at fault for the loss of the record.

14. The arguments in these appeals were heard on 19th March, 2010, 22nd March, 2010 as well as today. After extensive arguments spread over three days, the learned counsel for the appellant states that considering the evidence which was led during trial, the appellants do not dispute their conviction on merits and only seek reduction of the sentence awarded to them.

15. Considering the fact that the incident of robbery took place more than eight years ago and the appellants have already spent considerable period in custody, I feel that there is a scope for reducing the substantive sentence awarded to the appellants.

16. A perusal of the nominal roll of the appellants Ishrar and his brother Akhtiyar shows that as on 14th March, 2005, they had spent more than three years each in custody without including the period of remission earned by them. They were granted bail by this Court vide order dated 30th January, 2006. Thus, they have spent three years and 9 months each in custody. A perusal of the nominal roll of the appellant Istkhhar shows that as on 4th February, 2005, he had spent two years 11 months and 23 days in custody without including the remission earned by him. He

was granted bail vide order dated September 8, 2005. Therefore, he also has spent about more than 3 years in custody without taking into consideration the remission earned by him. The nominal roll of the Rukhsar shows that as on 26th April, 2006, he had already spent more than 4 years in custody, without including the remission earned by him. He was granted bail by this Court vide order dated 27th July, 2006. Therefore, he has spent more than four yours in custody. The nominal roll of the appellant Intzar shows that as on 1st September, 2005, he had spent more than three years and two months in custody without including the period of remission. He was granted bail by this Court vide order dated 08th September, 2005. Therefore, he also has spent more than three years in custody.

17. Taking into consideration all the fact and circumstances of the case, including loss of original record and the period already spent by the appellants in custody, they are sentenced to imprisonment for the period already spent by them in jail. They shall also deposit the fine imposed upon them by the Trial Court within four weeks. In default of payment of fine, they shall undergo SI for three months each.

The reconstructed record be sent back immediately along with a copy of this judgment. If the fine is not deposited within four weeks, the Trial Court will take appropriate steps for committing the appellants to the prison to undergo the sentence imposed upon them.

One copy of this order be given dasti to the appellants in order to enable them to deposit the amount of fine.

Crl.A.Nos. 920/2004, 28/2005, 231/2005 and 28/2005 stand disposed of.

(V.K. JAIN)
JUDGE

MARCH 23, 2010
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