

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

+ **CRL.A. 331/2009**
%

Reserved on: 14th December, 2011
Decided on: 4th January, 2012

IRFAN Appellant
Through Mr. Ajay Verma, Adv.
versus

STATE Respondent
Through Mr. Manoj Ohri, APP for State with
SI Ashish PS New Usmanpur

AND

+ **CRL.A. 660/2010 & CrI.M.B. 778/2010**

YUSUF @ GALKATA Appellant
Through Mr. Ajay Verma, Adv.
versus

THE STATE (NCT OF DELHI) Respondent
Through Mr. Manoj Ohri, APP for State with
SI Ashish PS New Usmanpur

Coram:
HON'BLE MS. JUSTICE MUKTA GUPTA

1. By these appeals the Appellants lay a challenge to the judgment dated 26th November, 2008 convicting the Appellants for offences under Section 393/398/34 IPC read with Section 27 Arms Act and the order dated 3rd December, 1998 directing them to undergo Rigorous Imprisonment for a period of 7 years under Sections 398/34 IPC, Rigorous Imprisonment for 3 years and fine of Rs. 500/- each and in default of payment of fine to further undergo Simple Imprisonment for 5 days for offences under Sections 393/34

IPC and to undergo Rigorous Imprisonment for 3 years and to pay a fine of Rs. 500/- each and in default of payment of fine to further undergo Simple Imprisonment for 5 days for offence under Section 27 Arms Act. The Appellant Irfan is in custody, however the Appellant Yusuf was released from jail on 28th October, 2011 after completion of his sentence of 7 years R.I. and fine of Rs. 1000/-.

2. Learned counsel for the Appellant contends that the evidence of PW1 the complainant Brij Kishore is not supported by PW2 Ajay, though he had claimed that he had witnessed the incident and had intervened in the matter. Despite PW1 stating that he was given fist blows, no injury was found on his body. Further it is alleged that the Appellants showed him the knife, however there is no injury by the knife on the body of the complainant. Though PW1 has stated that there were 200 people at the spot, PW3 has stated that there were 50-100 people at the spot and PW5 stated that there were 20 people at the spot chasing the accused, however no public witness has been examined. PW2 is an introduced witness and this is evident from the fact that PW1 himself has stated that PW2 did not go to the Police Station and his statement was not recorded in PW1's presence. The Police Officers PWs 3, 5 & 6 claim to be on patrolling duty, however no DD entry has been exhibited to prove that they were on patrolling duty. On the same day the Appellants were arrested in two other FIRs, however they have been acquitted in those two matters. The case of the prosecution being highly improbable and based on conjectures and surmises the Appellants are entitled to the benefit of doubt. Thus they be acquitted of the charges framed.

3. Learned APP on the other hand contends that the Appellants were apprehended at the spot. Though PW2 had turned hostile, however he admits that a quarrel had taken place. The Appellants were apprehended with the knives which were seized from them. The case of the Appellants is that they were lifted from their respective houses, however in cross-examination PW3 had denied this suggestion. Further this suggestion is contrary to the statement of the Appellants recorded under Section 313 Cr.P.C. wherein they have admitted that they had consumed beer and they were going together to purchase articles for the birthday of Irfan's nephew and on the way Police officials stopped them and falsely implicated in this case.

4. I have heard learned counsel for the parties and perused the record. PW1 Brij Kishore @ Pappu has stated that on 9th July, 1995 he was present at his shop on 2nd Pusta, First Gali when the Appellants came there and attacked his gold chain which he was wearing in his neck. He saved himself by moving at the back. The Appellants put their hand on his neck to break the chain when he raised an alarm. In the meantime his neighbours Ajay PW2 and some other persons came there. When they tried to apprehend them, the Appellants ran away showing their knives in the air. However, they were apprehended at a distance by the Police officials and public persons and they sustained injuries while being apprehended. This witness has identified the knives and the gold chain which was also seized by the Police. This witness in his cross-examination has stated that in the process of snatching, the chain broke and fell down. He clarified that it did not break but opened from its lock and fell down on the ground outside the shop. He

lifted the chain immediately and gave it to the Police who seized it. Nothing much has been elicited from the cross-examination of this witness.

5. PW2 the other independent witness has turned hostile. However, in his testimony he had stated at about 4/5 PM he had come to the shop of Brij Kishore @ Pappu PW1 for taking tea, he saw the quarrel taking place near the shop. He however denied the identity of the persons i.e. Appellants.

6. PW3 Constable Lalit Kumar, PW5 ASI Rishi Pal Singh and PW6 Constable Satish Kumar were on patrolling duty. According to them while patrolling they heard Bachaoo - Bachaoo and when they went near, they saw both the Appellants running away with open knives in their hands and the public was chasing them. They chased and apprehended the Appellants with the help of the public. Two knives were seized from the possession of Appellants at the spot. Further the gold chain of PW1 which was tried to be snatched was also seized. The witnesses have duly identified the knives and the chain seized on that date. Despite asking the public witnesses to join the investigation, they refused to do so. A perusal of the testimony of PW-1 clearly show that the Appellants attempted to commit robbery by snatching the chain of PW1 and when the public collected, they ran away. They were apprehended by PWs 3, 5 & 6 with the help of public.

7. In the present appeal it is being contended that the Appellants have been falsely implicated at the instance of PW1 who is a stock witness of the Police. However, no such suggestion has been given to the witness during cross-examination. The explanation of the Appellant Irfan is that on 9th July, 1995 he along with co-accused Yusuf @ Galkata were going to Seelampur market in the day time i.e. 12/12.30 PM for making some purchases for the

birthday of his nephew and on the way Police officials stopped them and falsely implicated them in this case. Appellant Yusuf @ Galkata has stated that he along with Irfan had come from Theka after consuming beer, when two Police officers came on scooter and without any rhyme or reason falsely implicated them. This explanation has not been put to the witness PW1. The fact that PW2 has not supported the case of the prosecution will not belie the credible testimony of PW1. Though PW1 has stated that he was beaten, however no MLC has been placed on record. The non-placing of MLC would not be material as the statement of PW1 is that the Appellants put their hand on his neck to break the chain when he raised the alarm. Though in his cross-examination he stated that he was beaten for about 10 minutes by the Appellants, however he has also clarified that his MLC was not prepared. Mere beating by the slaps and fist blows, as stated, may not have necessarily resulted in external injuries. Thus non-preparation of the MLC of the PW1 would not falsify his statement.

8. In view of the evidence of PWs 1, 3, 5 & 6, I am of the opinion that the prosecution has proved its case beyond reasonable doubt against the Appellants. Since the minimum sentence prescribed is 7 years for an offence under Section 398 IPC I find no reason to reduce the sentence in the present case. The appeals and application are accordingly dismissed. The Appellant Irfan, who is in custody, would undergo the remaining sentence.

(MUKTA GUPTA)
JUDGE

JANUARY 04, 2012
‘ga’