

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

% Date of Decision: 13.01.2014

+ CRL. A. No.65/2013

ANNISUDDIN @ ANNISH Appellant

Through: Mr S.B. Dandapani, Adv.

versus

STATE (GOVT. OF NCT OF DELHI) Respondent

Through: Mr. Feroz Khan Ghazi, APP.

+ CRL. A. No.553/2013

YUSUF @ BINDU @ BASHIR Appellant

Through: Ms Inderjeet Sidhu, Adv.

versus

STATE (NCT OF DELHI) Respondent

Through: Mr. Feroz Khan Ghazi, APP.

+ CRL. A. No.1137/2012

NAFEES Appellant

Through: Ms Nazima Siddiqui, Adv.

versus

STATE Respondent

Through: Mr. Feroz Khan Ghazi, APP.

CORAM:
HON'BLE MR. JUSTICE V.K.JAIN

JUDGEMENT

V.K.JAIN, J.

On the night intervening 10-11th September, 2006, on receipt of information from Police Control Room with respect to use of knife in an incident near MV-I red light on the national highway, SI Rupesh Khatri of Police Station Mandawali reached the spot, where two home guard officials, namely, Pankaj and Parikshit produced the appellants Yusuf and Anisuddin along with a knife stained with blood. The injured Jitender Singh Bist was stated to have been taken to hospital. When the Investigating Officer reached Kailash Hospital, the complainant Sandeep Negi met him there and made a statement Ex.P-1-1/A, alleging therein that he along with Jitender was going on motorcycle DL7SAB-3836 towards DDA flat, Ghazipur and the motorcycle was being driven by Jitender. At about 10.30 PM, when they reached NH-24 near Khichripur Bridge, the motorcycle was parked by Jitender on the slip road, so as to ease himself. When Jitender was easing himself, two boys came from the side of a stationary Maruti van. One of them was carrying a country-made pistol which he put on the temple of Jitender and asked him to handover whatever he had. He thereupon intervened, asking him to take whatever they had, whereupon the other person took out a knife, threatened to kill him and removed his Nokia mobile phone,

a purse containing about Rs.50-60/- and some documents from him. When Jitender refused to handover his articles to the boy carrying knife, he attacked him with the knife. Jitender, however, kept on resisting him. In the meanwhile, two more companions of the robbers reached there. Seeing Jitender being injured, the complainant apprehended the boy who was carrying knife and raised alarm. In the meanwhile, the boy who was carrying country-made pistol and another boy fled away from motorcycle and the members of the public started beating the two persons who were apprehended on the spot. They were also joined by two home guard constables. The names of the persons who were apprehended on the spot were later found to be Yusuf and Anisuddin, both of whom are appellants before this Court.

2. Thus, the case as set out in the FIR is that four persons were involved in the incident, out of whom, one person who was carrying a country-made pistol with him, managed to run away from the spot and the person who was carrying a knife and had injured Jitender was apprehended on the spot. One more person who was not armed, namely, Anisuddin was also apprehended on the spot, whereas the fourth person also managed to run away.

3. This is also the case of the prosecution that on search of the appellant Anisuddin on the spot, the purse of the complainant along with articles contained therein was recovered from him. This is also their case that during the course of investigation, one of the convicts, namely, Naseem, who has not challenged the conviction, got recovered the key of motorcycle belonging to Jitender from his flat in Gali No. 6, Mustafa Bad, Gokul Puri, Delhi on 21.12.2006. One razor was also alleged to have been got recovered from Naseem.

4. Charges under Section 395 IPC read with Section 34 thereof were framed against all the four convicts, whereas charges under Section 397 read with Section 34 thereof were framed against Yusuf and Naseem and charges under Section 412 read with Section 34 thereof were framed against Anisuddin and Nafees to which they pleaded not guilty and claimed trial.

5. The prosecution examined as many as 18 witnesses in support of its case. No witness was examined in defence. The complainant Sandeep Negi came in the witness box as PW-1 and stated that on 11.09.2006, he along with Jitender who was working as a Constable in Delhi police, was going on the motorcycle being driven by Jitender. At about 10.00 PM when they reached Khichripur Bridge, NH-24, Jitender stopped the

motorcycle, and went aside the road, for easing himself. In the meanwhile, two boys came there from the side of a stationary Maruti van. One of them was having a country-made pistol with him. The person carrying the country-made pistol put it on the temple of Jitender. When he intervened and volunteered to handover whatever they had, the other boy took out a knife, put the same on his neck, threatened to kill him and took out his mobile made of Nokia as well as his purse containing currency notes of Rs 60/-, his identify card and some other documents. Those boys tried to take the articles which Jitender was carrying with him, to which Jitender has objected. The boy who was carrying the knife with him attacked Jitender, as a result of which received injuries. In the meanwhile, two other companions of those boys also reached the spot. According to the complainant, he then came to the rescue of Jitender and apprehended the boy who was carrying the knife with him. One of the assailants was apprehended by Jitender. He raised an alarm and the boy who was having country-made pistol with him and his other companion fled away from there taking motorcycle of Jitender with them. The names of the assailants who were apprehended on the spot were later revealed to be Yusuf and Anisuddin. The witness identified both Yusuf and Anisuddin in the Court during trial and also

stated that Yusuf was the person who was having knife with him. This witness also identified the remaining two accused, namely, Nafees and Naseem as the persons who along with Yusuf and Anisuddin and committed robbery from their person and claimed that Nafees and Naseem were the persons who had joined the commission of robbery later on. He also stated that his purse containing Rs 60/-, his identity card and some documents were recovered from the possession of Anisuddin, whereas one knife was found with Yusuf.

6. Jitender, who was injured during commission of the robbery came in the witness box as PW2 and stated that when they reached near Khichripur and he was easing himself after parking the motorcycle, one boy came there, put a countrymade pistol on his head and asked him to hand over whatever he had with him. He further stated that three-four more boys came and started beating his brother who was with him at that time and one of the assailants gave a knife blow in his abdomen. Thereafter the assailants started pushing him down, whereas he started pushing them up. In the meanwhile, the person from the public helped them and apprehended the two persons. In the examination-in-chief, this witness identified the appellants Yusuf and Nafees as the persons who were apprehended on the spot but during cross-examination by the

learned Additional Public Prosecutor he admitted that the second person who apprehended on the spot was Annisuddin and not Nafees who was earlier wrongly identified by him. He also stated that he could not identify the other assailants. Thus, finally the appellant-Nafees was not identified by this witness, who claimed that it was Annisuddin and not Nafees who along with Yusuf was apprehended on the spot.

7. PW12, P.C. Parikshit, who was working as Constable in Delhi Home Guard on 11.9.2006 stated that on being informed about a stabbing incident on the road of NH-24, he along with Constable Narender of Delhi Home Guard went to the spot and found that the public had apprehended three persons, whereas two had fled away. He further stated that the names of the two apprehended persons were disclosed as Yusuf and Annisuddin, but he was unable to recollect the name of third person. He further stated that one knife having blood stain was also recovered from the hand of Yusuf. The other Home Guard Constable Narender came in the witness box as PW15 and stated that when he reached the spot they found that the appellant Yusuf and Annisuddin had been apprehended by the police.

8. Though it has come in the deposition of PW2, Jitender Singh that 3-4 other boys had come to the spot and three out of them had managed

to run away from the spot while two were apprehended on the spot, this part of his deposition does not inspire confidence for two reasons. Firstly, the case set out in the FIR is that only four persons were involved in the incident out of which three were apprehended on the spot and the remaining two managed to flee away. The second reason why this part of the deposition of Jitender cannot be accepted is that according to the complainant Sandeep only four persons were involved in the incident and the aforesaid witnesses identified all the four in the Court. Since only four persons were involved in the incident of robbery, no offence punishable under Section 395 of IPC is made out because a robbery becomes dacoity only if five or more persons participate in the robbery.

9. As far as appellant Yusuf is concerned, he was apprehended on the spot and has been identified by both the eye-witnesses of the incident, namely, Jitender and Sandeep. There is no contradiction in their deposition as far as this appellant is concerned. According to Home Guard Constable, namely, PW12 P.C. Parikshit and PW15 Narender Kumar also he was one of the persons found apprehended by public and a blood-stained knife was recovered from his possession.

In his statement under Section 313 Cr.P.C., the appellant Yusuf did not explain his presence on the spot and rather claimed that he was picked up from his house and implicated in this case. The appellant does not claim any previous enmity between him on the one hand and the witnesses Jitender and Sandeep on the other. Therefore, there could be no reason that either of them to depose falsely against him and impute commission of robbery to him. The recovery of blood-stained knife from him on the spot also corroborates depositions of PW1 and PW2 as regards his involvement in the incident.

10. In **Phool Kumar Vs. Delhi Admn.** AIR 1975 SC 905 the accused was carrying a knife in his hand at the time the robbery was committed. It was found from the deposition of PW-16 that the appellant/accused Phool Kumar had a knife in his hand. The Hon'ble Supreme Court held that he was therefore carrying a deadly weapon. In *Salim Vs. State* 1987 (3) Crimes 794 the Hon'ble High Court of Delhi held that to categorise knife or to fix its size for it to be a deadly weapon may not be appropriate. It was held that to say that a knife to be a deadly weapon should be of a particular size would not be a correct statement. In *State of Maharashtra Vs. Vinayak* 1997 Cr.L.J. 3988 Bombay High Court held that knife is a deadly weapon within the ambit of expression

‘deadly weapon’ used in section 397 of IPC. Therefore, irrespective of the size, any knife is a deadly weapon and therefore, accused Rajesh is liable to be punished under Section 392 of IPC read with Section 397 thereof.

PW1/D is the sketch of the knife recovered from the possession of the appellant-Yusuf. The knife has a 26.7 cms. long blade and the length of the handle of the knife is 11.5 cms. This is not a kitchen knife and it was actually used in the commission of the robbery by causing injury to Jitender Singh. It can hardly be disputed that a knife having a blade of 26.7 cms. would be a deadly weapon. The appellant Yusuf, who not only was carrying it during the commission of robbery, but actually used it by threatening PW1 and injuring PW2, is, therefore, clearly guilty of offence punishable under Section 394/397 of IPC.

11. As far as appellant Annisuddin is concerned, the deposition of PW1 Sandeep Negi and PW2 Jitender, which find corroboration from the deposition of PW12 P.C. Parikshit and PW15 Narender Kumar would show that he was also apprehended from the spot along with appellant Yusuf. Though the case of the prosecution is that the stolen purse containing identity card, documents and cash belonging to the complainant was also recovered from his possession, the aforesaid part

of the case of the prosecution appears to be doubtful considering that according to PW1 Sunil Negi and PW2 Jitender, only two persons were involved in actual commission of robbery out of whom, one who was armed with a countrymade pistol had managed to run away. There is no evidence that the appellant, Yusuf having handed over the purse, which he had removed from the possession of the complainant to the appellant, Annisuddin. In fact, considering the manner in which this incident took place, there was hardly any scope for the appellant Yusuf to hand over the purse of the complainant to Annisuddin. It would be appropriate to note here that according to PW1 Sandeep Negi and PW2 Jitender it was Yusuf who had made the complainant part with his purse. Therefore, the probability is that the stolen purse of the complainant was recovered from the possession of Yusuf and not from the possession of Annisuddin. However, considering that Annisuddin has been apprehended on the spot, there is no escape from the conclusion that he was one of the persons who had later joined the two boys who had committed the actual robbery. The overt act on the part of Annisuddin in coming to the help of Yusuf and the other culprit, clearly shows that he shared a common intention with others to commit the robbery of the articles belonging to complainant and Jitender Singh. The fact that one

of the culprits was also armed with a countrymade pistol and the other was armed with a knife also shows that the appellant Annisuddin also shared a common intention with other accused to cause hurt to the victims in the commission of the robbery.

He cannot be the person carrying a gun with him, because, the case of the prosecution, as set out in the FIR, is that the person armed with a pistol had managed to run away. To the same effect is the deposition of PW1 Sandeep in the Court. Moreover, no weapon was actually recovered from him and this is not the case of the prosecution that he had passed on the gun to some other accomplice. The appellant Annisuddin is, therefore, liable to be convicted under Section 394 of IPC read with Section 34 thereof.

12. As far as the appellant Nafees is concerned, he has not been identified by the injured, Jitender, though he has been identified by the complainant Sandeep. It has also come in the deposition of PW2 Jitender that there was no electric pole near the place of incident which was somewhat dark. Therefore, it would be difficult to accept that the witnesses were in a position to identify appellant, Nafees, who admittedly did not participate in actual commission of robbery and joined at a later point of time. Had Nafees been one of the persons

involved in the commission of robbery, his name would have been disclosed by the appellant Yusuf and Annisuddin during interrogation by the police. Admittedly the name of Nafees was not disclosed either by Annisuddin or by Yusuf during the course of their interrogation and he was arrested later, on account of his involvement in some other case and the case of the prosecution is that when he was interrogated in that case he disclosed his involvement in the present case as well. In these circumstances, the appellant Nafees needs to be given benefit of doubt.

13. For the reasons stated hereinabove, the appellant Nafees is acquitted of the charges framed against him. The appellant, Yusuf, is convicted under Section 394 read with Section 397 of IPC and is sentenced to undergo RI for seven (7) years and to pay fine of Rs.1,000/- or to undergo SI for fifteen (15) days in default. The appellant Annisuddin is convicted under Section 394 IPC read with Section 34 thereof and is sentenced to undergo imprisonment of three (3) years and to pay fine of Rs.1,000/- or to undergo SI for fifteen (15) days in default. The appellants Yusuf and Annisuddin are entitled to benefit of Section 428 of the Code of Criminal Procedure.

The appeals stand disposed of accordingly. One copy of the order be immediately sent to the Jail Superintendent for conveying the same to

the appellants. The Trial Court Record be sent back along with a copy of this order.

JANUARY 13, 2014
BG

V.K. JAIN, J.