

\$~8

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

Date of Decision: 13.03.2014

+

CRL.A. 1473/2010

IMRAN @ IRFAN

..... Appellant

Through: Mr Deepak Vohra and Saurabh Shandilya,
Advts.

versus

STATE NCT OF DELHI

..... Respondent

Through: Mr Feroz Khan Ghazi, APP

CORAM:

HON'BLE MR. JUSTICE V.K. JAIN

JUDGEMENT

V.K. JAIN, J. (Oral)

On 17.01.2009, at about 8.25 PM, Police Station Mansarovar Park was informed of a robber having been caught red handed near water overhead tank, Railway Station Street, Shri Ram Nagar. The information was recorded vide DD No. 38A, copy of which was given to ASI Pawan Singh of the aforesaid Police Station for investigation. When the police officer reached the spot, Head Constable Parmod Kumar and Constable Manoj Kumar produced the appellant Imran, alongwith a *buttondar* knife and the stolen earrings. The complainant Jyoti was also present on the spot along with her husband. The statement of the

complainant was recorded by the police officer. She, *inter alia*, told him that on the aforesaid date, at about 7.30 PM, she along with her husband got down from an auto rickshaw near the water tank and thereafter both of them proceeded through the street adjoining water tank. They claimed that there was darkness in the street at that time. After they had walked a little bit in the street, a boy all of a sudden came in front of them, took out a knife and threatened to kill her, unless she parted with her earrings. When she objected to it, the aforesaid person forcibly removed the earrings she was wearing in her right ear. When her husband tried to catch hold of him, the boy ran in the street towards the railway station. She as well as her husband chased him raising alarm at the same time. Two police officials came from the opposite direction and apprehended the boy along with earrings. The appellant Imran, according to the complainant, was the boy who had robbed her of the earring, after threatening her with a knife. She also stated that in her presence, a knife was seized from the right side of the pant of the appellant and her stolen earring was recovered from the left side pocket of his pant.

2. The appellant was prosecuted under Sections 392/397 of IPC and Section 25 of Arms Act. Since he pleaded not guilty to the charge, as many as six witnesses were examined by the prosecution. One witness was examined in defence.

3. The complainant Jyoti came in the witness box as PW-1 and *inter alia* stated that on 17.01.2009, she along with her husband got down from an auto-rickshaw near water tank, Shahdara. When they were proceeding towards the Metro Station, Shahdara through the street, the accused all of a sudden came in front of her, took out a knife and asked her to hand over her earring to him. When she refused to do so, the accused snatched the ear ring from her right ear and ran towards GT Road, Shahdara. Her husband chased him and raised an alarm for help. Two police officials, who were coming from the front direction, over-powered the appellant. She also reached there and one knife was recovered from the possession of the accused along with her earring, both of which were seized by the police. She identified the appellant Imran as the person who had threatened her with knife and had removed the earring from her ear and was later apprehended on the spot.

4. PW-2 Sukhbir Singh is the husband of the complainant. He corroborated the deposition of his wife and identified the appellant as the person who had shown knife to his wife and snatched her earring. He further stated that when he chased the appellant, two police officials coming from the front side, over-powered him and the knife was recovered from the right side of his pocket, whereas the ear-ring of his wife was recovered from the left side of his trousers. He also stated that the appellant was taken to Police Station where

documents were prepared and statement of his wife was recorded. Both the complainant as well as her husband identified ring Ex.P-1 which was recovered from the possession of the appellant. The knife recovered from the appellant was also identified by the complainant.

5. Head Constable Pramod Kumar PW-3 is one of the two Constables who claimed to have apprehended the appellant while being chased by the husband of the complainant. He *inter alia* stated that on 17.01.2009, he was on patrol along with Constable Manoj Kumar. When they were going towards the water tank, Shahdara from the side of Shri Ram Nagar, the appellant came running from the front. He was being chased by Jyoti and her husband, who were also raising the alarm. He along with Constable Manoj apprehended him and on his search one earring was recovered from the left pocket of his lower pant, whereas a button actuated knife was recovered from his right pocket of his lower pant.

6. PW-5 Manoj Sharma, Constable corroborated the deposition of PW-3 Head Constable Pramod. He also stated that the appellant was apprehended by him when he was being chased by the complainant and her husband and on his search the earring of the complainant as well as a knife was recovered from his possession. He further stated that they produced the appellant along with the case property to the IO who prepared the sketch of the knife as well as the

earring.

7. PW-6 ASI Pawan Singh *inter alia* stated that when he reached the spot on 17.01.2009, on receipt of copy of DD No. 38A, the appellant was produced before him by Head Constable Pramod and Head Constable Manoj along with a knife and gold ring which they had recovered from him. According to the witness, the complainant and her husband were also present on the spot at that time.

8. In his statement under Section 313 Cr.P.C, the appellant denied the allegations against him and stated that he was taken to the police station on the previous day where the case property was planted on him at the instance of the husband of Jyoti who is a secret informer of the police. He claimed that he had some altercation between him and Sukhbir and on that pretext he had been falsely implicated.

9. DW-1 Mustafa Khan is the father of the appellant. He *inter alia* stated that he had heard that Rupa, niece of the complainant and her husband was infatuated with her son and for that reason, he was beaten by them many a times. He claimed that for this reason he had turned the appellant out of the house. According to him, incident of beating his son had taken place on 15.01.2009.

10. Vide impugned judgment dated 16.04.2009, the appellant was convicted

under Section 392/397 IPC as well as under Section 25 of the Arms Act. Vide Order on Sentence dated 18.04.2009, he was sentenced to undergo RI for seven years and to pay a fine of Rs 2,000/- or to undergo RI for three months in default. He was further sentenced to undergo RI for one year and to pay a fine of Rs 1,000/- or to undergo RI for one month in default under Section 25 of Arms Act.

Being aggrieved from his conviction and sentence, the appellant is before this Court.

11. The impugned judgment has been assailed by the learned counsel for the appellant primarily on the following grounds:

- (a) There is contradiction in the deposition of the witnesses as regards the place where the documents were prepared;
- (b) According to PW2, the appellant while running in the street had the open knife in his hand whereas the case of the prosecution is that the knife was recovered from the right side pocket of his pant when the appellant was apprehended;
- (c) According to PW5 – Constable Manoj, the knife and the ear rings were sealed after he had returned from the police station whereas the case of the prosecution is that the sealing work had been done before the ruqqa was sent to the police station.

12. In my view, the contradictions/ discrepancies pointed out by the learned counsel for the appellant are not material and can be safely attributed to the loss of memory and poor recollection with the passage of time. Not everybody has equal capacity to recollect the details of an event witnessed by him and in fact some contradictions here and there are bound to occur in the testimony of truthful witnesses. It is only in the case of a tutored witness that the statement flow parrot like without even any natural variation.

13. There is no contradiction in the deposition of the witnesses as regards the core part of the case of the prosecution. The complainant as well as her husband have been emphatic in saying that it was the appellant who had intercepted them while they were going in the street, had shown a knife to the complainant and asked her to take out her ear rings. The appellant, after he had removed the ear ring from the ears of the complainant was chased by both, the complainant as well as her husband. Both of them have testified to the appellant being the person who was apprehended by the two constables coming from the opposite directions and the knife as well as the ear rings having been recovered from the pant he was wearing.

The deposition of the complainant finds corroboration from PW3 – HC Pramod Kumar and PW5 – Constable Manoj Sharma, Delhi Police officials who apprehended the appellant on the spot at the time he was being chased by

the complainant and her husband. It is these two constables who had taken out the knife and the stolen ear rings of the complainant from the pocket of the appellant. Since the appellant was apprehended on the spot and the stolen ring as well as the knife were recovered from him, there can be no doubt with respect to the identity of the appellant as the person who had robbed the complainant of her ear rings.

14. The appellant has not offered any credible explanation of his being found running at the place he was apprehended and the recovery of stolen ear rings and the knife from his possession. This is not the case of the appellant in his statement under Section 313 Cr.PC that he was apprehended on account of a mistaken identity and in fact the robbery was committed by some other person. The plea taken by him was that the police officials had taken him to the police station one day prior to the arrest meaning thereby that he was taken to the police station on 16.01.2009 and the case property was planted on him. Since the robbery took place only on 17.01.2009, there was no possibility of the stolen ear ring having been planted upon the appellant on 16.01.2009.

I also find that though according to DW1 – Mustafa Khan, who is the father of the appellant, his son had been beaten a number of times by the complainant and her husband on account of their niece being infatuation with him, no such suggestion was given either to the complainant or her husband. In

fact, in his statement under Section 313 of Code of Criminal Procedure, the appellant did not claim that niece of the complainant was infatuated with him and for this reason, he had been implicated in this case, in connivance with them. Though according to DW1 his son was beaten on 15.01.2009, there is no report lodged with respect to the alleged beatings of the appellant on the said date. In these circumstances, the otherwise contradictory defence taken by the appellant cannot be accepted.

15. The appellant committed robbery of ear rings which the complainant was wearing, by showing a knife to her. The obvious purpose behind showing knife to the complainant would be to intimidate her so that she does not resist the commission of robbery. If the weapon is carried in the view of the victim, that by itself amounts to its use within the meaning of Section 397 of IPC. In the present case, not only was the appellant carrying a knife with him, he actually intimidated the complainant using the said knife.

16. A perusal of sketch of the knife Ex.PW2/A seized from the appellant would show that it was a button actuated knife having blade length of 10.8 cm. Though, every knife irrespective of its size would be a deadly weapon, since it is capable of causing death of a human being, particularly when used as a weapon of offence, on a vital part of the body, as far as the knife having blade which is 10 cm long is concerned, there can be no dispute with respect to its

deadliness. The appellant, therefore, has rightly been convicted under Section 392 of IPC read with Section 397 thereof.

17. Since the appellant was carrying and a buttondar knife, at a public place, he also quality of the offence punishable under Section 25 of the Arms Act as he was carrying, in a public place, a button actuated knife in violation of the notification issued by Delhi Government Vide notification No.E-13/203/78-Home (C) dated 17th February, 1979, the Administrator of the Union Territory of Delhi, directed that Section 4 of the Arms Act shall apply to possession and carrying of spring actuated knives, gararidar knives or *buttondar* knives which open or close with any of the mechanical device with a blade of 7.62 or more in length and 1.72 cms. or more in breadth. Thus, the said notification prohibits possession the of a knife of the aforesaid nature. The appellant, therefore, has rightly been convicted under Section 25 of the Arms Act.

18. For the reasons stated hereinabove, I find no ground to interfere with the conviction of the appellant and the sentence awarded to him. It is, however, directed in the event of default in payment of fine imposed under Section 397 of IPC, he shall undergo SI for one month whereas in default of payment of the fine imposed under Section 25 of the Arms Act, he shall undergo SI for 15 days.

The appeal stands disposed of accordingly.

A copy of this order be sent to the concerned Jail Superintendant for information and necessary action.

Trial court record be sent back forthwith along with a copy of this order.

MARCH 12, 2014
bg/rd

V.K. JAIN, J.