

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

% *Judgment Reserved on: October 31, 2014*
Judgment Delivered on: November 05, 2014

+ **CRL.A. 1504/2013**

JAHANGIR @ IKKA @ IBRAHIM Appellant
Represented by: Mr.M.L.Yadav, Adv.

versus

STATE Respondent
Represented by: Mr.Lovkesh Sawhney, APP for
State.

+ **CRL.A. 1615/2013**

MD. KAREEM @ RAHUL Appellant
Represented by: Ms.Inderjeet Sidhu Adv.
alongwith Shruti Tiwari, Adv.

versus

STATE Respondent
Represented by: Mr.Lovkesh Sawhney, APP for
State.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. Jahangir @ Ikka @ Ibrahim and Md.Karim @ Rahul challenge the impugned judgment dated July 25, 2012 convicting them for offences punishable under Sections 395/397/34 IPC and the order on sentence dated August 09, 2012 whereby Jahangir @ Ikka has been directed to undergo

imprisonment for life and a fine of ₹10,000/- for offence punishable under Section 395 IPC and rigorous imprisonment for 10 years and a fine of ₹10,000/- for offence punishable under Section 397 IPC and Md.Kareem @ Rahul to undergo rigorous imprisonment for a period of 10 years and a sum of ₹10,000/- on both the counts i.e. Section 395 and 397 IPC. The judgment also clarifies that the sentences in the present case shall run consecutively to the sentences already imposed upon the convict in any other case and after the completion of period of sentence the convicts are to be handed over to the competent authority/ FRRO who would initiate appropriate proceedings for their deportation in accordance with law.

2. Learned counsels for the appellants contend that the appellants have been convicted merely on account of their previous criminal records. No recovery has been affected from them. The ballistic report does not connect the appellants to the offences committed. There are major contradictions in the testimonies of the alleged eye-witnesses. Son Gaurav Pratap Singh PW-14 and daughters Disha and Nisha PW-12 & PW-13 of Smt.Raj Kumari PW-5 and Devender Pal Singh PW-7 have not identified the appellants even in the Court. The witnesses are not consistent in their statements and have made material improvements besides contradictions. Hence, the appellants be acquitted.

3. No defence evidence has been led by Jahangir and Md.Kareem and they have pleaded innocence and false implication in their statements recorded under Section 313 Cr.P.C.

4. Process of law was set into motion on receipt of a PCR call at Police Station Ashok Vihar recorded vide DD No. 7A on February 08, 2011 informing that dacoits after entering the house at E-39 Ashok Vihar, Phase-I

have left after stabbing. ASI Om Pal Singh PW-21 was handed over the DD entry, who reached the spot alongwith Ct. Ashok Kumar and was informed that the injured had been shifted to Bara Hindu Rao Hospital. On reaching Bara Hindu Rao Hospital ASI Om Pal collected the MLCs of Raj Kumari PW-5 and her son Gaurav Pratap Singh PW-14. Statement of Raj Kumari was recorded who stated that she was residing at E-39, Phase-I, Ashok Vihar on rent with her family and was a housewife. On that night at about 3/3.30 AM they were sleeping in their house when she, her husband and her son who were sleeping in one room and her two daughters in the other room, heard noise from the room of her daughters on which they went to their daughter's room. They saw 6/7 boys had entered their house. On seeing them they also shouted on which one boy pulled her ear-rings. When she protested four boys entered into a scuffle with her son and her husband. They had knives in their hands and were threatening them to keep quiet. Her daughters kept on shouting and her son was scuffling with them. Her son received an injury on his right wrist, head etc. She received injuries by knife on her left hand and on the right ear due to forcefully pulling the ear-ring. Later these boys ran away after showing them knives. When she checked her articles she found her mangalsutra and the telephone Nokia No.838428736 missing. She stated that she could recognise the boys on seeing them.

5. Investigation at the house by ASI Om Pal Singh led to the recovery of one live cartridge and some other articles. The ear-ring pulled from the ear of Raj Kumari had been left at the spot by the miscreants, however they took away her mobile phone and her mangalsutra. Blood stained bed sheet, quilt cover lying in their bed-room were also seized and sealed.

6. On March 11, 2011 vide DD No. 32B Ex.PW-1/A an information with regard to arrest of Jahangir @ Ikka, Md.Kareem and Jagdish was received at PS Ashok Vihar after they were arrested in FIR No. 76/2011 under Section 399/402 IPC, Section 25 Arms Act and Section 14 Foreigners Act at PS Anand Vihar . The three disclosed the commission of offence in the present case hence they were formally arrested in this case. Before proceeding further, application for conducting of TIP (Test Identification Parade) was filed, however Jahangir @ Ikka @ Ibrahim and Md.Kareem @ Rahul refused to take part in the identification. Jagdish took part in the identification parade and the victim failed to identify him. Thus on that ground Jagdish has already been acquitted. Jahangir and Md.Kareem refused to take part in TIP proceedings on the pretext that their photographs were taken in the Police station and the same may have been shown to the witnesses as well. However in cross-examination the witnesses have not been suggested that before the TIP proceedings the photographs of the appellants were shown to them.

7. In Court the complainant Raj Kumari deposed in sync with her statement on the basis of which FIR was registered. She also identified Jahangir, Md.Kareem and Jagdish present in the Court and specified that they were having knives and were threatening them on the point of knife.

8. Devender Pal Singh PW-7 the husband of the complainant deposed that on February 08, 2011 at about 3/3.30 AM he along with his wife were in other room whereas their son and daughters were sleeping in another room. He suddenly woke up and heard the cries of his daughters and felt that somebody had put barrel of the country made pistol in his mouth. He noticed that 6/7 persons were there in the room and someone had put the

country made pistol in his mouth and threatened him not to raise any alarm. He could hear his children shouting and saw one person grappling with his son and hit him with the knife in his hand. He identified Jahangir as the person who was having the country made pistol in his hand which he put inside his mouth and Kareem was the person who was having knife in his hand and had inflicted injuries to his son.

9. It may be noted that besides Raj Kumari and Devender Pal Singh who identified the appellants in the dock the children i.e. Gaurav Pratap Singh, Disha and Nisha did not identify them and apparently for the reason that they were scared of the appellants, however they supported the prosecution case in its entirety except to this extent.

10. The main plank of arguments of learned counsels for the appellants is that the only evidence against them is the identification by the witnesses in the dock, however there are material contradictions therein and also in version of witnesses qua the incident. In order to appreciate the same it would be appropriate to note down the testimonies of the witnesses on the said account.

	Before Police	In-Chief	In –Cross
PW-5/ Complainant/ Raj Kumari	<u>On number of persons</u> 6-7 in the house & 4 in their room.	6-7 boys in our house. <i>“States nothing about four in their room”</i>	4-5 boys entered the room of daughters. Further stated at the same time these boys entered in our room.
PW-7/ Devender Pal Singh		6-7 boys in their room.	4-5 persons in their room.
PW-12/ Disha		Noticed 2 persons in her room- dragged by them to the adjoining room where her parents and	

		brother were sleeping where noticed more persons. <i>*Do not state the number of persons.</i>	
PW-13/ Nisha		6-7 persons in the parents room <i>"do not notice anyone in her room".</i>	
PW-14/ Gaurav Pratap Singh		2-3 persons surrounded me and my parents. Further states they were 6-7 boys who had entered the house	
PW-16 Neighbour on the first floor		saw 4 persons running from the house and called police at 100	
PW-5/ Complainant/ Raj Kumari	<u>Use of Weapon</u> they scuffled with four persons present in their room- all were having knives. Further states that all persons who had knives in their hand run away because of the screaming and shouting.	all boys were having knives.	All persons having knives also states that one of the boy was armed with desi katta wherein she was confronted by her earlier statement and thereafter the witness states that three accused (present in the court) were having knives only
PW-7/ Devender Pal Singh		Suddenly woke up and I heard the cries of my daughters and felt that somebody had put a barrel of the country made pistol in my mouth. Specifically points out-accused Jahangir (present in the Court) with pistol; accused Kareem having knife and accused Jagdish (Acquitted) with iron rod.	
PW-12/ Disha		Two persons carrying pistol and knives who	

		had entered her room. <i>*did not identify any of the accused either in TIP or before Court.</i>	
PW-13/ Nisha		No statement on use of weapon. Only states that the persons were threatening to my family. <i>*did not identify any of the accused either in TIP or before Court.</i>	
PW-14/ Gaurav Pratap Singh		Nothing in chief on the use of weapon but states that one of the persons who surrounded him gave him a knife blow. <i>"did not identify any of the accused either in TIP or before Court."</i>	
PW-16 Neighbour on the first floor		----	

11. Thus the consistent statements of all the witnesses are that there were six to seven accused and four of them were scuffling. It is a matter of common knowledge that when a group of persons are attacked by a number of assailants in that state of shock and panic, it is not necessary that each individual should observe each and every fact. Thus the contradictions pointed out by learned counsels for the appellants are not material.

12. This was not a case of fleeting glimpse but where there was sufficient time for the witnesses to have seen their assailants. Raj Kumari is an injured witness and version of Devender Pal Singh that a barrel of the country made pistol was put in his mouth so that he could not shout and to threaten him is supported by the fact that a live cartridge was recovered from the spot after the incident.

13. Learned counsels for the appellants have further assailed the prosecution case on the ground that no recoveries either of the mobile phone or the mangalsutra of Raj Kumari have been made from the appellants and in the absence thereof they cannot be connected with the offence committed. Recoveries of stolen articles is not a sine-qua-non for conviction for offences punishable under Section 395/397 IPC.

14. In view of the testimony of Raj Kumari and Devender Pal Singh duly corroborated by Gaurav Pratap Singh, Disha and Nisha, we find no reason to set aside the impugned judgment. Consequently, the judgment of conviction and order on sentence are upheld.

15. Appeals are dismissed.

16. T.C.R. be returned.

17. Three copies of the judgment be sent to the Superintendent Central Jail Tihar one for his record and the other two to be handed over to the appellants.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

NOVEMBER 05, 2014
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