

\$~R-45-A to 45-C

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

% *Judgment reserved on : 24.11.2015.*
Judgment delivered on : 30.11.2015

+ CRL.A. 1431/2012
PRAVEEN

..... Appellant
Through Mr. Biswajit Patra, Adv.

versus

STATE

..... Respondent
Through Mr. Tarang Srivastava, APP for
the State

+ CRL.A. 1258/2012
MOHD. IMRAN

..... Appellant
Through Ms. Nikita Sharma, Adv.
versus

STATE

..... Respondent
Through Mr. Tarang Srivastava, APP for
the State

+ CRL.A. 1288/2012
MUJIB

..... Appellant
Through Ms. Nikita Sharma, Adv.

versus

STATE

..... Respondent
Through Mr. Tarang Srivastava, APP for
the State

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 These appeals are directed against the impugned judgment and order on sentence dated 12.09.2012 and 27.09.2012 respectively wherein each of the appellants namely Praveen, Mohd. Imran and Mujib stand convicted under Section 392/394/397 read with Section 34 of the IPC. Each of them has been sentenced to undergo RI for a period of 10 years and to pay a fine of Rs.1 lac and in default of payment of fine to undergo SI for one year.

2 The nominal roll of the appellants has been requisitioned. It reflects that as on date, appellant Praveen has undergone incarceration of 5 years and 5 months; Mohd. Imran has undergone incarceration of 5 years and 3 months and so also Mujib who has also undergone incarceration of 5 years and 3 months. This includes the remissions earned by the appellants.

3 The version of the prosecution was unfolded in the statement of the complainant namely Anita Soni. She was examined as PW-1. Her version was to the effect that on the fateful day i.e. on 10.09.2007 at

about 03:30 pm, when she had come back from her nursing job and was in the house along with her son (PW-7) and her daughter (PW-3), the door bell rang. She opened the door. One boy aged 25 years was standing there. He asked about her husband. He along with three other persons thereafter forcibly entered her house. Three of them were having knives and one of them was having a pistol. They caught hold of her children i.e. her son and daughter aged 13 & 10 years respectively. On the point of knife, her children were directed to sit on the ground. PW-1 was pushed and her back struck on the wall of the bathroom. They forcibly removed her gold mangalsutra, her gold chain, four rings, her Nokia mobile phone as also Rs.1,200/-. Meantime, her husband returned. The accused persons however managed to flee.

4 Apart from the statement of PW-1, the statement of her daughter Bhavya (PW-3) was also recorded and so also the statement of her son Shubankar (PW-7). The husband of the victim Anil Soni was examined as PW-11. The victim was medically examined by Dr. Siddharth Sankar Das (PW-14); bruises were found on her body.

5 The Investigating Officer SI Surya Prakash was examined as PW-16. He had collected the call details of the complainant's mobile number

Crl. Appeal Nos.1431/2012, 1258/2012 & 1288/2012

9811053614 which revealed that after the incident of robbery, one mobile call had been made on mobile No. 9313565665 which was ultimately traced out to be one Geeta's phone. Inquiry from said Geeta revealed that appellant Mujib had called her after the robbery on her phone; he was residing near the Ganda Nala, Johri Pur. It was this link in the evidence which has set the investigation into motion and the Investigating Officer along with his team reached the house of Mujib on 19.09.2007. Mujib was apprehended, interrogated and arrested vide memo Ex.PW-4/A. He had made a disclosure statement. Pursuant to his disclosure statement, a Nokia mobile phone (Ex.P-3) and a knife (Ex.P-4) were recovered. He disclosed the role of Mohd. Imran in the present crime. Mohd. Imran was subsequently arrested vide memo Ex.PW-4/G. His disclosure statement was recorded. He got recovered the gold mangalsutra/gold chain as also a knife both of which were taken into possession. The disclosure statement of Mohd. Imran had also revealed the role of co-accused Praveen. Praveen was also arrested on the same day vide memo Ex.PW-4/N. He also made a disclosure statement and pursuant thereto, he had got recovered a gold chain and an air pistol which were taken into possession vide memo Ex.PW-4/R.

6 The accused were produced in a muffled face before the Court of Magistrate; Mohd. Imran was identified in the TIP proceedings by the complainant but Mujib and Praveen had refused to join TIP. Their submission was that they had been shown to the complainant party and that is why they refused to join TIP.

7 On the basis of the aforementioned evidence collected by the prosecution, the accused persons were apprehended, arrested, tried, convicted and sentenced as aforementioned.

8 On behalf of the appellants, arguments have been heard at length. The foremost submission made by appellant Mohd. Imran is that he is a juvenile. The plea of juvenility has not been considered in the correct perspective by the Trial Judge and the testimony of CW-1 and CW-2 i.e. father of Mohd. Imran and Principal of school who had brought his school record was illegally ignored. The ration card produced before this Court on which a verification report had been called and which has been filed in Court shows that although this ration card had been prepared in the year 2005 and Mohd. Imran has been shown as 15 years of age in the year 2005 yet a further verification shows that this ration card was not accompanied by any document to substantiate the statement of the father

of Mohd. Imran that he was 15 years of age in the year 2005. Submission on the juvenility of the appellant has vehemently been argued by the learned counsel for the appellant. Her submission being that the Juvenile Justice (Care and Protection of Children) Act, 2000 is social legislation and if at all there is any doubt and there are two views possible, the benefit must accrue to the appellant and he accordingly be declared as a juvenile.

9 On merits, all the counsels submit that the identity of the appellants is not established and there are clear admission in the version of the eye-witnesses namely PW-1, PW-3, PW-7 and PW-11 that the faces of the appellants were covered and if they were covered by handkerchief as is their case, how they were identified in the Court without giving any description of the appellant has not been answered. The appellants are entitled to a benefit of doubt and a consequent acquittal on this ground alone. It is further pointed out that the recoveries are doubtful and there is no explanation as to why no public witness had joined these recoveries. On this ground also, the appellants are also entitled to a benefit of doubt. In the alternate, it has been argued that if at all the conviction of the appellants is to be maintained, the

Crl. Appeal Nos.1431/2012, 1258/2012 & 1288/2012 Page 6 of 13

sentence be reduced.

10 Needless to state that these arguments have been refuted.

11 This Court shall first deal with the submission of Mohd. Imran i.e. on his aspect of juvenility. The Trial Court had examined two witnesses on the aspect of the submission of the learned counsel for the appellant that he is a juvenile. They were examined as CW-1 and CW-2. CW-1 Mirza Khalid Beg was the Head Master of Shri Jassi Mal Primary Vidyala who had produced the admission record of Imran showing his date of birth is 06.08.1991. In his cross-examination, he admitted that there was no document regarding the date of birth of Mohd. Imran to support this statement. The father of Mohd. Imran was examined as CW-2. He had also admitted that he had no document to show that Mohd. Imran was born in the year 1991. In his cross-examination, he admitted that he has six children and he does not remember the time, year and date of birth of any member of his family except for Mohd. Imran. This evidence has been appreciated by the Trial Judge and the Trial Judge vide order dated 23.08.2008 had dismissed the plea of juvenility set up by appellant Mohd. Imran. Admittedly no revision had been filed against this order. This order has attained a finality. Learned

Crl. Appeal Nos.1431/2012, 1258/2012 & 1288/2012 Page 7 of 13

counsel for the appellant has submitted that the plea of juvenility can be raised even at the appellate stage and even presuming that no revision has been filed against the order dated 23.08.2008 the fact that new documents have been filed in the Court i.e. ration card, the same should be considered. As noted supra, a verification report had been called on this document and the Investigating Officer in his report clearly stated that even this document was without any documentary evidence to substantiate the fact that Mohd. Imran was 15 years of age in the year 2005. The document relied upon by the appellant before this Court i.e. the ration card does not advance the submission of the learned counsel for the appellant any further as even this ration card is unsupported by any document to substantiate the plea that Mohd. Imran was 15 years of age as in the year 2005; in fact the admission of CW-2 in his cross-examination that he does not remember the date, month or date of birth of any of his children except that of Mohd. Imran clearly throws a doubt on the veracity and credibility on his testimony. The Trial Judge had appreciated the evidence in the correct perspective. There was no illegality in the order passed by the Trial Judge. This finding of the Trial Judge does not call for any interference. The appellant Mohd. Imran is

held to be an adult.

12 Having arrived at this conclusion, this Court shall now examine the merits of the controversy. PW-1 was the eye-witness and so also PW-3 and PW-7. All of them have narrated the incident in the manner in which it had occurred. Although in one part of her cross-examination, PW-1 had stated that out of four persons, two had put handkerchiefs on their faces but faces of the other two persons were covered. PW-3 had described them to be between 20-25 years having a dark complexion and three of them were holding knives and one of them was having curly hair and was healthy. They were identified by her in Court. She categorically denied the suggestion that she had seen the accused persons prior to the TIP or their photographs had been shown to them. So also the version of PW-7 who had also admitted that two boys had put handkerchiefs on their faces and when they came near him, he had seen them. This testimony shows that the said two boys had covered their faces by handkerchiefs later on. PW-11 who had come at a later point of time had stated that when these two boys were coming out, they had covered their faces by handkerchiefs but he could identify them as they passed through him, he had then identified the accused as Mujib.

13 On the aspect of identification, the TIP proceedings conducted by the learned MM are also relevant. Learned MM Mr. Balwant Rai was examined as PW-17. He had conducted the TIP of all the three accused namely Mohd. Imran, Praveen and Mujib. The appellants Mujib and Praveen had refused to join TIP. Their TIP Ex.PW-17/D to Ex.PW-17/G have been noted. They had refused to join TIP for the reasons that they had been shown to the complainant but the evidence of the complainant (PW-1) clearly shows that the accused persons had not been shown to the complainant and in fact PW-1 inspite of categorical suggestion on this count has denied this and has clearly stated that although some photographs had been seen by her in the police station yet they were not the photographs of the appellants. Thus the refusal of Mujib and Praveen to join TIP was for a unjustified reason.

14 The TIP proceedings of Mohd. Imran have been proved as Ex.PW-17/B which shows that the complainant (PW-1) had identified Mohd. Imran in the said proceedings.

15 The recovery from each of the appellants has also been noted. From appellant Mujib, the mobile phone of the complainant and a knife had been recovered. From appellant Mohd. Imran, a knife and a gold
Crl. Appeal Nos.1431/2012, 1258/2012 & 1288/2012

mangalsutra had been recovered and from appellant Praveen, one gold chain and a pistol had been recovered. All these recovered were carried out by the Investigating Officer (PW-16) and were witnessed by HC Vinod Kumar (PW-4) and SI Naveen (PW-18). Their signatures on the recovery memo and their oral deposition has also been noted. Nothing has been dented in their cross-examination which could dis-credit them. The submission of the learned counsel for the appellants that these recoveries were not witnessed by the public persons and the testimony of the police officials should be ignored is an argument which has little weight as the testimony of the police witnesses cannot be thrown out ipso facto on the ground that they are police officials; unless and until, the accused is able to point out that the version of the police official is un-worthy of credit or is suspicious or that they have the ulterior motive for implicating the appellant, their version cannot be ignored.

16 In this context, the observations of the Apex Court in 2012 (3) SCALE 414 Govindaraju @ Govinda Vs. State of Srirampuram P.S. and Anr. had held as under:-

“In our opinion no infirmity attaches to the testimony of the police officials, merely because they belong to the police force and there is no rule of law or

evidence which lays down that conviction cannot be recorded on the evidence of the police officials, if found reliable, unless corroborated by some independent evidence. The Rule of Prudence, however, only requires a more careful scrutiny of their evidence, since they can be said to be interested in the result of the case projected by them. Where the evidence of the police officials, after careful scrutiny, inspires confidence and is found to be trustworthy and reliable, it can form basis of conviction and the absence of some independent witness of the locality to lend corroboration to their evidence, does not in any way affect the creditworthiness of the prosecution case.”

17 The TIP proceedings of the recovered articles were conducted by PW-16 and have been proved as Ex.PW-17/K. These proceeding sheets show that apart from the recovered articles, a gold mangalsutra, a gold chain and a mobile phone, there were four similar types of articles which had been mixed along with the recovered articles but the complainant was able to identify her property which also further advances the case of the prosecution. TIP of the case property also stands proved.

18 The conviction of the appellants calls for no interference. Their conviction is maintained under Sections 392/394/397 read with Section 34 of the IPC.

19 This Court is however inclined to modify the sentence. This is particularly in view of the fact that each of them is in young years and

all of them have families. Parokars of the appellants were present on the date of hearing. Praveen is stated to be aged 37 years. His wife is present. He has two children aged 5 and 2- ½ years respectively. He is a first time offender. Mohd. Imran and Mujib also have no criminal history. They both are stated to be in their late 20's and have families to support. This Court accordingly modifies the sentence of the appellants and the period of RI 10 years is reduced to RI 7 years for each of the appellants. The fine of Rs.1 lac which has been imposed upon them is also reduced to Rs.10,000/- each (noting the financial crunch of each of the appellants and their families present in Court and they are substantiating this argument). In default of payment of fine, each of the appellants shall undergo SI for a period of 3 months.

20 With these directions, appeals disposed of.

INDERMEET KAUR, J

NOVEMBER 30, 2015

A