

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on : 12th June, 2018

Date of decision : 15th June, 2018

CRL.A 959/2004

MUKESH @ KIRPAL

..... Appellant

Through: Mr. Deepak Anand, Advocate.

versus

STATE

..... Respondent

Through: Ms. Suman Dhalla, APP for
State with SI Sapan, PS
Paschim Vihar.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The appellant/applicant Mukesh @ Kirpal s/o Sudan Singh vide the present Criminal Appeal No. 959/2004 assails the impugned judgment dated 21.08.2004 in Sessions Case No. 43/02 in relation to FIR No.750/01, PS Paschim Vihar wherein he was held guilty and convicted qua the offence punishable under Sections 392/394/397/384/34 of the Indian Penal Code, 1860 and vide the impugned order on sentence dated 23.08.2004, was sentenced to

undergo Rigorous Imprisonment for a period of 7 years and to pay a fine of Rs.500/- and in default of the payment of the fine to further undergo SI for a period of one month qua the offence punishable under Section 392 of the Indian Penal Code, 1860 and was also sentenced to undergo RI for a period of 7 years, to pay a fine of Rs.500/- and in default of the payment of the fine to further undergo SI for a period of one month qua the offence punishable under Section 394 of the Indian Penal Code, 1860 and was further sentenced to undergo RI for a period of 7 years qua the offence punishable under Section 397 of the Indian Penal Code, 1860 and was also sentenced to undergo RI for a period of 3 years, to pay a fine of Rs.100/- and in default of the payment of the fine to further undergo SI for a period of 10 days qua the offence punishable under Section 384 of the Indian Penal Code, 1860 with it having been directed that all the sentences would run concurrently with the benefit of Section 428 of the Cr.P.C., 1973 having been given to the convict, i.e., the appellant herein.

2. In terms of the proceedings dated 04.06.2018, the nominal roll dated 11.06.2018 has been received from the Superintendent Central Jail-01, Tihar, New Delhi indicating that the appellant as on 29.04.2008 had undergone a period of 6 years 4 months and 10 days of incarceration with the appellant having earned a remission for a period of 7 months and 20 days and having thus undergone his entire period of incarceration and having been released on 04.06.2008 after

paying his part of fine.

3. The charges framed against the appellant on 29.01.2003 were to the effect that on 14.11.2001 at about 1.00 am near Nukkad Gali, House No.B-798, Camp No.4, Jawalपुरi Delhi, within the jurisdiction of PS Paschim Vihar, the convict, i.e., the appellant had committed robbery on Sh. Vinod Mittal and on Smt. Kamla and robbed a gold chain from the neck of Vinod Mittal and a gold chain, two gold kadas and ear rings from Smt. Kamla and had also in the course of the commission of the robbery caused hurt to Mr. Vinod Mittal and Smt. Kamla with a knife, a deadly weapon and had intentionally put Mr. Vinod Goyal and Smt. Kamla in fear of injury and thereby dishonestly induced them to give Rs.20,000/- to him and had also thus committed an offence of extortion under Section 384 of the Indian Penal Code, 1860 whilst committing offences punishable under Sections 392/394 & 397 of the Indian Penal Code, 1860 to which the accused/appellant herein had pleaded not guilty and claimed trial.

4. The impugned judgment refers to the testimony of 15 prosecution witnesses examined by the State including that of Mr. Vinod Mittal, the victim examined as PW-1 who testified to the effect that on 14.11.2001 about 1.00 am at midnight, he was going to his house and the accused Mukesh @ Kirpal i.e, the appellant/convict herein met him at the corner of the gali and took out a knife and asked him to give whatever he had and from whose neck a gold chain was snatched on the point of the knife by the convict, i.e., the appellant

herein and on whose raising an alarm '*Bachao*' his mother Smt. Kamla, PW-5 came to his rescue and then the appellant herein also snatched gold chain from the neck of the mother of PW-1, Mr. Vinod Mittal, i.e., from the neck of PW-5 and also snatched two gold kadas and a ring which she was wearing at that time and tried to cause injuries with the knife to Vinod Mittal, PW-1 and hit him on the right side finger and after snatching the jewellery, he demanded Rs.10,000/- from PW-1 and also threatened him and asked him not to report the matter to the police and in the night, PW-1 did not make any report to the police and in the next morning, they disclosed the incident to their neighbours and then informed the police on the telephone and a PCR van came to their house and took them to the hospital and after his wounds were stitched, the police recorded his statement, i.e., Ex.PW1/A bearing his signatures thereon. *Inter alia* this witness, PW-1 testified to the accused, i.e., the convict/appellant herein having led the police to his house at B-751-52, Jawala Puri Delhi from where he produced the snatched two gold chains, one gold pair of ear rings and one lady gold ring before the police which were all taken into possession and sealed vide a seizure memo Ex.PW1/B which articles of jewellery were testified by PW-1 as being Ex.P1, Ex.P2, Ex.P3 & Ex.P4 produced during his testimony and duly identified by him. The testimony of PW-5, Smt. Kamla, the mother of PW-1 is categorical to the effect that PW-1, Mr. Vinod Mittal is her son and that she knew Mukesh @ Kirpal accused/convict/ appellant herein as he was a resident of their Mohalla and that on the date of the incident, she was present at her house and accused Mukesh @ Kirpal, i.e., the appellant

herein had taken away her son Vinod from the house and when he did not return she came out side and saw her son Vinod Mittal who was caught by the accused Mukesh @ Kirpal who had put a knife on the neck of his son and she and her husband reached there and Mukesh tried to cause injuries to her son with a knife and when her husband tried to save Vinod, the fingers of the right hand of her son were cut with the knife and Mukesh snatched the gold chain from the neck of her son Vinod and had also snatched the gold chain from her neck, two gold kadas and one pair of ear rings which she was wearing at that time at the point of the knife and also snatched one gold ring from her husband which he was wearing and after snatching all these articles and causing injuries to her son Vinod and to her, the accused, i.e., the appellant herein ran away from the spot and also demanded Rs.5,000/- from her husband and also threatened them if the money was not given till evening, there would be serious consequences and also threatened that if they reported the matter to the police, the result would be very bad. On being cross examined by the APP for the State, it was clarified by this witness that the accused had not taken her son Vinod Mittal from her house and clarified further that he had threatened them that if they would not give Rs.10,000/- till evening or if they would lodge the report to the police, the result would be very bad and stated that she has stated that the appellant had taken away her son from her house and demanded Rs.5,000/- inadvertently. The witness PW-2 Naresh Mittal, the father of PW-1 and husband of PW-5 is indicated to have testified to the effect that on the night of 13/14 in the month of Diwali in the year 2001 at about 1.00 am, he and his wife

came outside the house on hearing the noise of his son Vinod who was caught hold of by the accused showing the knife and he tried to rescue his son but the accused snatched the gold chain from the neck of his son and when the wife of PW-2 intervened, the accused had also snatched her ear rings, two gold kadas and one gold ring and the gold chain from his wife and after committing the robbery, he demanded Rs.10,000/- from them and threatened them if they lodged the report to the police, he would kill them and due to fear they remained inside the house the whole night and in the morning they narrated the incident to their neighbours and thereafter informed the police at hundred number and then the police came to their house and he sent his son Vinod to the Hospital in the PCR van as the three fingers of the right hand of his son were injured by the accused with the knife.

5. PW-3 Parveen Kumar also testified to the effect that on the night of 13/14-11-2001 at about 1.00 am when he was going to his house via C Block Market, he saw the accused Mukesh @ Kirpal in the electric pole light carrying an open knife in his hand and had put the knife on the neck of a person for snatching the chain and when that person raised an alarm and his parents also came there and scuffle ensued and the person received injuries on his hand and that the accused Mukesh @ Kirpal removed the articles of jewellery worn by Smt. Kamla and on seeing the knife in the hands of accused, he PW-3 ran away from the spot. He also testified to the effect that the name of the injured was Vinod Mittal.

6. PW-4 Samuel also testified to the effect that at about 1.00 am on the night intervening 13/14-11-2001, he along with Satish was

going towards C Block Market and when they reached near the market, they saw a knife in the hand of the accused Mukesh @ Kirpal in the street light and he was carrying an open knife at that time and put that knife on Vinod Mittal and had snatched the chain from the neck of Vinod Mittal and then Vinod Mittal called his parents at the spot and his parents had come at the spot after 4/5 minutes and the accused then removed the ring from the hand of the mother of Vinod Mittal and they left the spot.

7. The witness PW-6, Tribhuvan also testified to the effect that on the night intervening 13/14-11/2001 when he was going to his house in the night after distributing sweets/gifts of Diwali at different places, when he reached near the corner of House no.B-798, Jawalapuri, Delhi at about 1.00 am, he saw the accused Mukesh @ Kirpal carrying an open knife in his hand and putting the same on the neck of Vinod Mittal and he snatched a chain from the neck of Vinod on the point of the knife and then Vinod had raised an alarm and on hearing his cries, his parents also arrived there and when they intervened, the accused Mukesh @ Kirpal showed the knife to the mother of Vinod and he also snatched the jewellery from the mother of Vinod which she was wearing at that time and after snatching the jewellery, the accused Mukesh @ Kirpal ran away from the spot.

8. Through his testimony PW-7 Satish Kumar testified to the effect that on the night intervening 13/14-11-2001, he along with Samuel, PW-4 was returning to his house from the market at about 1.00 am on reaching near the corner of B-Block Gali at Jawalapuri Camp no. 4, he found the accused Mukesh @ Kirpal carrying an open

knife in his hand and snatched a chain from the neck of Vinod Mittal and he stated that he did not intervene due to fear and on hearing the cries of Vinod Mittal, his parents had also come there and the accused Mukesh @ Kirpal also snatched all the jewellery articles from the mother of the accused which she was wearing at that time and ran away from the spot.

9. Through their testimonies, PW-9 Constable Ramesh, PW-10 HC Phul Kumar, PW-14 SI Attar Singh testified to the arrest of the accused/appellant on 18.12.2001 and the accused/convict having made his disclosure statement Ex.PW9/A, pursuant to which a knife meant for cutting meat was recovered from near the bushes of the Ganda Nala Pull, Nihal Vihar, the sketch of which was prepared as Ex.PW9/C and which knife was placed into a sealed parcel with a seal of AS with the seal having been given to HC Phool Kumar after use and which knife was identified by the witnesses to be Ex.P5 during their testimonies. The IO examined as PW-14 SI Attar Singh also testified to the medical examination of Vinod Mittal having been conducted and also testified to the medical examination of the accused/convict/appellant having been conducted as he had been beaten by the public. The testimony of the IO, PW-14, SI Attar Singh and the testimonies of PW-11 Rakesh Kumar a resident of Jawalapuri Delhi and PW-12 Constable Maharaj Singh who joined the IO in the investigation on 20.12.2001 relate to the recovery of the recovered articles of jewellery belonging to Vinod Mittal and his mother Smt. Kamla, i.e., two gold chains Ex.P1 & Ex.P2, pair of ear rings Ex.P3 and a ladies gold ring Ex.P4, which were recovered from the iron box

from the room of the house of the accused Mukesh @ Kirpal as produced by him and which were seized vide seizure memo Ex.PW1/B. The MLC Ex. PW15/A of the injured Vinod Mittal indicates that there were clear incised wounds of 2cm X 1cm on palm aspect of right hand on the 4th and 5th fingers and there was decreased mobility of these fingers.

10. The appellant through his statement under Section 313 of the Cr.P.C. denied the incriminating evidence led against him and stated that he was innocent and falsely implicated in the case but led no evidence in defence.

11. The learned Trial Court, vide the impugned judgment held that the testimonies of the prosecution witnesses were categorical and consistent with each other in relation to all material particulars and the charges levelled against the accused Mukesh @ Kirpal, i.e., the appellant/convict herein had been established in toto beyond a reasonable doubt.

12. On behalf of the appellant, it has been contended that there are several discrepancies in the testimonies of PW-1 & PW-5, i.e., Vinod Mittal and Smt. Kamla, son and the mother respectively in relation to the aspect of the mother of the appellant having earlier stated that the accused/appellant had called Vinod Mittal from the house which she subsequently retracted and stated that she had so stated inadvertently that she made a statement in relation to an alleged extortion demand of Rs.5,000/- from the father of PW-1, Vinod Mittal, i.e., from PW-2 Naresh Mittal which she changed to a sum of Rs.10,000/- and it was further submitted on behalf of the appellant that the appellant was

arrested only on 18.12.2001, i.e., much after the alleged incident on 14.11.2001 and that false implication of the appellant in the instant case cannot be ruled out. It has further been submitted on behalf of the appellant that despite the presence of several eye witnesses at the time of the occurrence, i.e., PW-1 Vinod Mittal, PW-2 Naresh Mittal his father, PW-5 Smt. Kamla his mother, PW-3 Praveen Kumar, PW-4 Samual, PW-6 Tribhuvan and PW-7 Satish Kumar, none chose to apprehend the accused/appellant/convict herein and the same itself brought forth the falsity of the allegations against the appellant.

13. It is essential to observe that the testimonies of the witnesses PW-1, PW-2, PW-3, PW-4, PW-5, PW-6, PW-7 have been recorded during the period ranging from 03.03.2003 to 16.02.2004 in relation to an incident dated 14.11.2001 and it is essential to observe that all these testimonies are consistent with each other in relation to all material particulars in relation to the appellant having taken out a knife and put it on the neck of Vinod Mittal and of his having snatched the gold chain from his neck and also snatched the articles of jewellery worn by the mother of Vinod Mittal, i.e., PW-5 at the point of the knife. The minor discrepancies in the testimonies of these witnesses are only natural and do not detract from their veracity.

14. As regards the contention raised on behalf of the appellant that none of these witnesses tried to apprehend the appellant, it is essential to observe that the testimonies of PW-1, PW-2 and PW-5 brings forth that they were clearly under fear and they were under fear even to the extent that they did not lodge any complaint with the police on the night of 13/14-11-2001 and that rather information was given to the

police only the next morning after PW-2 first informed his neighbour at 6.00 am. It is essential to observe that the knife Ex.P5 recovered has been testified by the IO and PW-9 Constable Ramesh and PW-10 HC Phool Kumar to having been recovered from the bushes of the Ganda Nalla, Pull, Nihal Vihar on 18.12.2001, pursuant to the disclosure statement of the accused/appellant and the sketch of the said knife Ex.P1 placed on the record itself depicts as testified by the IO that it was a meat cutting knife which as per Ex. PW9/6 indicates a pointed tip with curved sharpened edges with the length of the blade of the knife being 20 cms and the width of the blade of the knife being 4.7 cms which itself shows the size of the knife and supports the version of the eye witnesses examined in relation to the fear that it could have caused. The recovery of the articles robbed from Vinod Mittal and Smt. Kamla is also established through the testimonies of the police personnel examined.

15. In the circumstances of the case, it is held that there is no infirmity in the impugned judgment nor in the impugned order on sentence and the appeal Crl.A.959/2004 is thus dismissed.

16. Copy of this judgment be sent to the Superintendent Jail, Delhi.

ANU MALHOTRA, J

JUNE 15, 2018/NC