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

% **Reserved on: December 04, 2023**
Decided on: January 16, 2024

+ **CRL.A. 708/2023&CRL.M.(BAIL) 1229/2023**

ALI HUSSAIN S/O MOHD. ALI Appellant
Through: Ms. Astha, Advocate
(DHCLSC)

V

THE STATE NCT OF DELHI Respondent
Through: Mr. Utkarsh, APP for State
with Insp. Vikas Pannu, P.S.
Nizamuddin

CORAM

HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

J U D G M E N T

1. The present criminal appeal is filed under sections 374(2) read with section 383 of the Code of Criminal Procedure, 1973 (hereinafter referred to as **“the Code”**) to set aside the judgement dated 10.03.2023 (hereinafter referred to as **“the impugned judgment”**) and order on sentence dated 03.07.2023 (hereinafter referred to as **“the impugned sentence order”**) passed by the court of Sh. Sachin Sangwan, Additional Sessions Judge-01 (Fast Track Court), South-East, Saket Courts, New Delhi (hereinafter referred to



as **“the trial court”**) in sessions case bearing number 1550/2016 titled as **State V Mohibul Islam & Ors** arising out of FIR bearing no 0374/2013 registered at P.S. Hazrat Nizamuddin.

2. The factual background of the case is that SI Ajay Kumar along with Ct. Baldev on 25.11.2013 after receipt of DD No.12A regarding robbery in House no. 6, 1st Floor, Sunder Nagar, New Delhi involving assault and confinement of a housemaid namely Sushma (hereinafter referred to as **“the complainant”**) reached there and met with owner Kapil Advani and his mother Kavita Advani. The house was found to be in ransacked condition. SI Ajay Kumar recorded statement of the complainant wherein the complainant stated that owner Kapil Advani had employed Islam for doing cleaning of house who used to come around 9/10 am every day. The complainant on 25.11.2013 at about 8.30 am was preparing breakfast for Kavita Advani who was sitting on a chair outside the kitchen. The doorbell was rung about 9 am and door was opened by Islam. Two unknown persons aged about 21/22 years entered into house and Islam claimed that those boys were known to him. The short heighted boy took out knife from his pocket and another tall boy caught hold of the



complainant and placed a knife at neck of the complainant. Those persons and Islam gave beatings to the complainant and her legs and hands were tied with crepe bandage. The tall boy placed knife on neck of Kavita Advani and threatened to kill her. The short heighted person and Islam went upstairs and after sometime came downstairs. Islam removed chain and bangle (*kara*) which were worn by the Kavita Advani. They also threatened Kavita Advani to kill her and family. They again beat the complainant and thereafter ran away from the spot. The complainant managed to untie her and informed owner Kapil Advani. Kapil Advani came at the spot and informed the police by calling at 100 number. Kapil Advani on checking found that cash amount of Rs.25 lacs and other valuable articles were missing. The mobile phone of the complainant was also found missing. FIR under sections 394/397/34 IPC was got registered and SI Ajay conducted investigation. SI Ajay seized one knife and crepe bandage from the spot. The nature of injuries stated to be received by the complainant was opined to be simple.

2.1 Mohd.Mohibul Islam and MA (who was determined as juvenile during trial) were arrested during further investigation and they



refused to participate in TIP. During investigation one bag containing Rs.16 lakhs and one chain with locket was recovered at instance of Mohd. Mohibul Islam. Rs.7,68,750/-, gold ring and knife recovered at instance of juvenile. The offence punishable under section 411 IPC was also added during investigation. Mohd. Ali Hussain could not be traced. The charge sheet after conclusion of investigation was filed against Mohd. Mohibul Islam and juvenile for offences punishable under sections 394/397/411/34 IPC before the court of concerned Metropolitan Magistrate. The case was committed to court of sessions vide order dated 15.03.2014 passed by the court of Ms. Neha, Metropolitan Magistrate-03, South-East, Saket.

2.2 Mohd. Ali Hussain surrendered on 06.03.2014 before the concerned court and was accordingly arrested. He refused to participate in TIP. During investigation one bangle (*kara*) and one pearl chain kept in a green coloured purse were recovered which were identified by Kapil during TIP of the case property. The supplementary charge sheet after conclusion of investigation was filed against Mohd. Ali Hussain (hereinafter referred to as “**the appellant**”) for offences under sections 394/397/411/34 IPC.



2.3 The court of Sh. Jitendra Mishra, Additional Sessions Judge-06, South-East, Saket Courts, New Delhi vide order dated 21.07.2014 framed the charges for the offences punishable under sections 394/397/411/34 IPC against Mohd. Mohibul Islam and MA (juvenile) to which they pleaded not guilty and claimed trial. The charges for offences punishable under sections 394/397/34 IPC were framed against the appellant to which he pleaded not guilty and claimed trial. The court of Dr. Neera Bharihoke Additional Sessions Judge-06, South-East, Saket Courts, New Delhi vide order dated 08.03.2019 also framed for the offence punishable under section 411 IPC against the appellant to which he pleaded not guilty and claimed the trial. Subsequently MA was determined to be juvenile on date of commission of offence vide order dated 01.08.2016 passed by the court of Sh. Sudhir Kumar Sirohi, Metropolitan Magistrate-03, South-East, Saket and accordingly was referred to Juvenile Justice Board vide order dated 22.08.2016 passed by the court of Sh. Raj Kumar Tripathi, Additional Sessions Judge-02, South-East, Saket.

3. The prosecution in support of its case examined 17 witnesses including the complainant as PW1. The complainant as PW1



supported the case of the prosecution and deposed that she was working as a cook on 25.11.2013 at house no.6, 1st Floor, Sunder Nagar, New Delhi being employed by owner Kapil Advani. She was present in the house with Kanta Advani, the mother of Kapil Advani and was present in kitchen. The doorbell rang around 9 am and Islam who was working as cleaner was present at door. The doorbell again rang after few minutes and two persons were present at the door and they inquired about Islam after she opened the door. Suddenly one of the two persons took out one knife and threatened to kill her. The two persons along with Islam started assaulting her with fists and blows. The complainant fell down and sustained injuries to her face and head. They also tied her hands and legs with crepe bandage and gagged her with cloth to silence her. They also tied Kavita Advani and one of them put knife at neck of Kavita Advani to threaten her. Thereafter they started to commit theft and snatched jewelry from Kavita Advani. The complainant/PWI correctly identified the all three accused i.e. Islam and his two associates including the appellant. The complainant PW1 also identified juvenile MA and appellant who had shown knife to threaten her and Kavita Advani at



time of commission of offence. The complainant PW1 further deposed they fled away from the spot and she could manage to untie her and Kavita Advani and called Kapil Advani who reached at spot. The complainant PW1 detailed incident to Kapil Advani. Kapil Advani called the PCR and checked the valuables in the house and found that around Rs.25 lakhs had been stolen along with other valuables. They also took away mobile phone of the complainant PW1. The police came at the spot and recorded statement Ex.PW1/A of the complainant. The complainant was taken to AIIMS for medical examination. The complainant PW1 also correctly small knife as Ex.P1 which was used to threatened Kavita Advani and long knife as Ex.P2 which was used to threaten her.

3.1 The prosecution also examined the police witnesses who remained connected or associated with the investigation including first Investigating Officers SI Ajay Kumar as PW12 and Inspector Ajay Kumar who filed supplementary charge sheet qua the appellant as PW17. PW17 Inspector Ajay Kumar who conducted investigation qua the appellant deposed that the appellant on 05.03.2014 surrendered before the court and he interrogated the appellant on



06.03.2014 with the permission of the court. The appellant during interrogation has disclosed his involvement in the present case vide disclosure statement Ex. PW15/C. The appellant was arrested vide arrest and personal search memos Ex. PW15/A and PW15/B. The appellant refused to participate in TIP proceedings. Inspector Ajay Kumar PW17 also prepared pointing out memo Ex. PW1/D at instance of the appellant. The complainant being the eye witness also identified the appellant as the person who committed the offence with his friends/co-associates. Inspector Ajay Kumar PW17 07.03.2014 again recorded disclosure statement Ex. PW17/B of the appellant wherein he stated that he can get recovered some of the articles from his *jhuggi*. The appellant led the police party to *jhuggi* no 86 of Mustkin at Sunder Nagar, New Delhi and got recovered one pearls neckless having gold colour hook (*kunda*) on one side which was kept inside a small green colour purse and one *kara* similar to Astha Dhatu which was having golden colour on both edges of the *kara* kept under the newspaper from the corner of the said *jhuggi* and these articles were seized vide seizure memo Ex. PW17/C after converting into a *pullanda* sealed with seal of AK. PW3 Kapilendu Advani



identified neckless of pearls and small green colour purse during the TIP. Inspector Ajay Kumar PW17 after completion of investigation filed supplementary charge sheet against the appellant. The prosecution evidence was ordered to be closed vide order dated 16.01.2020.

3.2 The appellant was examined under section 313 of the Code wherein he denied incriminating evidence and pleaded false implication and innocence. The appellant stated that he had no concern with the alleged offence. He did not make any disclosure statement and the IO obtained his signatures on blank papers. He had not committed any robbery. The appellant preferred to lead defence evidence. The appellant examined his wife Mehrul Nisha as DW1 who deposed that no police came at her residence in year 2013.

3.3 The appellant was convicted for the offence punishable under sections 394/34 IPC and for offence punishable under section 411 IPC vide impugned judgment. The appellant was also convicted for offence punishable under section 397 IPC as he used knife to threatened Kavita Advani. The appellant vide impugned order on sentence was sentenced to undergo simple imprisonment for a period



of 07 years for the offence punishable under sections 394/34 read with offence punishable under section 397 IPC along with fine of Rs.10,000/- and in default of the payment of fine to further undergo simple imprisonment for a period of 04 months. The appellant was also sentenced to undergo simple imprisonment for the offence under section 411 IPC along with fine of Rs. 5,000 and in default to undergo simple sentence for two months. Both sentences were ordered to be run concurrently. The benefit under section 428 of the Code was extended to the appellant. The appellant has not paid the fine.

4. The appellant being aggrieved filed the present appeal to challenge the impugned judgment dated 10.03.2023 and impugned order on sentence dated 03.07.2023 primarily on the grounds that the impugned judgment is wrong, erroneous and deserves to be set-aside. The trial court has over looked the material contradictions, manipulations, non-corroboration of facts and circumstances which had created doubts about prosecution case and has not extended benefit of doubt to the appellant. The prosecution has failed to prove its case beyond reasonable doubts as statements of the witnesses are



not consistent and not corroborative with the case of the prosecution. The knife alleged to be used in the crime was not a deadly weapon which can attract section 397 IPC. The evidence of prosecution is filled with discrepancies, contradictions and improbable versions which cannot lead to the conviction of the appellant. The complainant has not sustained grievous hurt and there is no evidence to prove that the attempt was made to cause death or grievous hurt to the victim. The knife stated to be used at the time of alleged crime was not a deadly weapon. The prosecution could not prove its case beyond any reasonable doubt. It was prayed that the impugned judgment and order on sentence be set aside.

5. The trial court while passing the impugned judgment has primarily relied upon the testimony of the complainant PW1 and observed that the complainant PW1 has deposed categorically against the appellant as well as co-convict Mohibul Islam and has described the role of each of them in detail. The trial court also observed that the testimony of the complainant also supported by other evidence and placed reliance on MLC Ex. PW-10/A of the complainant PW1 which reflects that the complainant PW1 received injuries. The trial



court also observed that the testimony of Ct. Ashwini PW11 also reflects that the entire house was ransacked as appearing from the photographs taken by the Ct. Ashwini PW11. The complainant also identified the appellant as well as co-convict Mohibul Islam as the persons who committed the robbery. The complainant PW1 also deposed that the appellant has threatened the Kavita Advani with a knife and also identified said knife as Ex.P-1. The appellant refused to participate in the TIP as such the trial court drawn adverse influence against the appellant for refusing to participate in TIP. The trial court also observed that the jewellery recovered from the possession and at the instance of the appellant was duly identified by the concerned witness i.e. PW3. The trial court as such relied upon the testimony of the complainant PW-1 which is also supported by other evidence led by the prosecution.

6. The counsel for the appellant argued the appellant is a 35 years old young man having responsibility of his aged parents, wife, and two kids. The appellant was not named in FIR and surrendered himself before the court. Neither the weapon nor any currency notes was recovered from the appellant. The complainant PW1 and PW3



did not give any list of stolen articles. The manner in which the case property was recovered itself cast serious doubts about prosecution case. The identification of the appellant by PW1 was not devoid of doubts. The counsel for the appellant argued that the impugned judgment and order on sentence be set aside as the prosecution has failed to prove its case beyond reasonable doubt.

6.1 The Additional Public Prosecutor for the respondent/State argued that from the evidence led by the prosecution particularly in the light of testimony of the complainant PW1, the prosecution is able to prove its case beyond reasonable doubt. The impugned judgment and impugned sentence order were passed by the trial court after proper appreciation of the evidence and cannot be set aside. The present appeal is liable to be dismissed.

7. The careful perusal of the testimony of the complainant PW1 proved that the appellant was present at the spot at the time of commission of robbery and had participated in the commission of robbery. The testimony of the complainant PW1 has proved that the appellant has threatened Kavita Advani by using a knife Ex. P1 at the time of commission of offence. It is also proved that during the



robbery, the complainant PW1 also received injuries as reflected from the MLC Ex. 10/A. The evidence led by the prosecution also proved that at the instance of the appellant, few jewellery articles were recovered which were taken into possession vide seizure memo Ex. PW17/C and were duly identified by PW3 Kapil Advani during TIP.

7.1 There is no reason to disbelieve the evidence led by the prosecution qua the appellant which is consistent, coherent and the respective testimony of various prosecution witnesses is corroborating each other immaterial particulars. The prosecution witnesses were also cross-examined by the counsel for the appellant during trial and there is nothing in the cross-examination of the witnesses which can raise any doubt about credibility of the testimony of the prosecution witnesses. The prosecution is able to prove that on 25.11.2013 the appellant committed robbery at the house bearing no. 6, 1st Floor, Sunder Nagar, New Delhi belonging to Kapil Advani, and while doing so, injuries were caused to the complainant PW1 and Kavita Advani was also threatened by the appellant with a knife during the robbery.



7.2 The counsel for the appellant argued that weapon of offence was not recovered at the instance of the appellant. However, it was surfaced during the evidence that the knife Ex. P1 was recovered at the spot which was taken into possession vide seizure memo Ex. PW17/C and the said knife was identified by the complainant as Ex. P1 and knife Ex. P1 was stated to have been used to threaten Kavita Advani. Accordingly, the said arguments advanced by the counsel for the appellant is without any force. The appellant in the grounds of the appeal also stated that there are material contradictions, manipulation and discrepancies in the evidence led by the prosecution which are good enough to raise doubt about the prosecution case. The careful perusal of the evidence led by the prosecution reveals no material contradiction, discrepancy or variation which can affect the case by the prosecution. If there is any variation, discrepancy or contradiction in the evidence led by the prosecution being marginal and minor in nature does not affect the case of the prosecution.

7.3 The counsel for the appellant also argued that the Ex. P1 i.e. the knife is not a deadly weapon as such the offence punishable under section 397 IPC is not made out. It is for the prosecution to prove that



the weapon used in commission of offence as per section 397 IPC was a deadly weapon by producing or leading convincing evidence. In the present case, the appellant is stated to have used knife Ex.P1 and it was for the prosecution to prove that knife Ex.P1 was a deadly weapon. The issue which needs judicial consideration is that whether the prosecution could prove that the knife Ex P1 was a deadly weapon within the meaning of section 397 IPC. The perusal of sketch Ex.PW4/B of knife Ex. P-1 reflects that the knife was having a blade measuring 22 cm and handle measuring 12 cm and was capable of inflicting fatal injury being sharp edged weapon. The prosecution as such is able to prove that the knife Ex.P2 was a deadly weapon within the meaning of section 397 IPC. There is no force in the arguments advanced by the counsel for the appellant that the knife Ex. P-1 was not a deadly weapon within the meaning of section 397 IPC.

8. The judgment passed by the trial court is based on sound reasoning and was passed after proper appreciation of evidence. The trial court has also considered in detail the defence taken by the appellant during the trial. The trial court has rightly relied upon the



testimony of the complainant PW1 and there is no reason to disbelieve her testimony. The testimony of the complainant PW1 inspires confidence and cannot be disbelieved. The trial court has rightly held that the prosecution is able to prove the guilt of the appellant for the offences punishable under sections 394/397/411/34 IPC qua the appellant. The impugned judgment and order on sentence do not call for any interference.

9. The present appeal along with pending applications if any is dismissed.

10. Copy of this judgment be sent to the appellant through concerned Jail Superintendent for information and be also sent to the trial court for information.

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11. In view of the above, the present application stands dismissed being infructuous.

**DR. SUDHIR KUMAR JAIN
(JUDGE)**

JANUARY 16, 2024

J/ABK