



2025:DHC:9869



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

%

Reserved on: 10.11.2025

Pronounced on: 11.11.2025

+

CRL.A.1050/2019

IMRAN KHAN

.....Appellant

Through: Mr Sabyasachi Mishra and Mr
Frankey Sharma, Advocates

Versus

STATE (NCTOF DELHI)

.....Respondent

Through: Mr Pradeep Gahalot, APP for State
with SI Shubham, P.S. Maurya
Enclave

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The subject appeal seeks to assail the judgment of conviction dated 11.07.2019 rendered by the Sessions Court for the trial conducted in the context of FIR No.466/2010 registered under Sections 392/34/394/397/411 IPC and 27 of the Arms Act.
2. The appellant was found guilty and convicted. He was to undergo Rigorous Imprisonment (RI) for 3 years and fine of Rs.2,000/- for offence punishable under Section 392/34 IPC and in default thereof, Simple Imprisonment (SI) for two months; RI for 3 years and fine of Rs.2,000/- for offence under Section 394 IPC and in default thereof, SI for two months; SI for 2 years and fine of Rs.2,000/- for offence under Section 411 and in default SI for two months; RI for a period of 7 years and fine of Rs.2,000/- for offence punishable under Section 397 IPC and in default, SI for two



months. All sentences were to run concurrently. Benefit of Section 428 CrPC was also extended to the appellant.

The sentence of the appellant was suspended by this Court on 18.05.2020.

Pertinently, the appellant was tried along with co-accused *Harun Pasa @ Saleem*, who also stands convicted vide the impugned judgment.

3. FIR was registered in the context of an incident that occurred on 26.11.2010 at around 9.00-9.15 PM in which the complainant has alleged that while he was about to sit along with his wife in the car, the accused persons came on foot and robbed them of a bag containing valuables at gun point. The complainant was also hit by the butt of pistol by one of the accused persons, whereafter they escaped by motorcycle, which was parked at some distance.

4. The records reveal that immediately after the offence committed in the present case, the accused persons were also involved in another offence where they committed another robbery at about 10.30 PM on the same day in which accused *Harun Pasa* was apprehended by the complainant therein, one *Neeraj Agarwal* (PW5). *Harun Pasa* disclosed his involvement in the present case and he also provided the details of the present appellant. With respect to the latter incident, a separate case being FIR No.403/2010 was registered at PS Vijay Vihar. Both the accused persons stand convicted in the trial held in the said offence.

5. Coming back to the present case, the charge-sheet came to be filed and the charges against the accused persons were framed under Sections 392/34/394/397/411 IPC. The present appellant was charged with Sections 392/34/394/397 IPC.



6. The prosecution had examined 14 witnesses in total. Besides examining the complainant (PW3) and his wife (PW8), the prosecution had also examined the complainant (PW5) in the subsequent case in which the accused *Harun Pasa* was apprehended at the spot.

Accused pleaded not guilty and prayed for trial.

7. The complainant/*Ramesh Wadhwa* examined as PW-3. In his deposition, he stated that he was running a jewellery shop in the name and style of *Wadhwa Diamonds*. On 26.11.2010 at about 9.45-10.00 PM, when he closed the shop and was about to sit in his car, which was parked in front of his shop and his wife was already sitting in the car, two boys approached them. One of them put a pistol on his right leg and asked him “*samajh gaye na, yeh kya hai*”. They also asked him to hand over the articles which he had kept in the dickey of his car. The witness being scared, opened the dickey. The other accused person went towards back side of the car and he took out a black-colored bag containing jewellery and keys of his shop and safe. The complainant was made to sit in the car and the accused even tried to snatch his rings from his finger. When the complainant raised alarm, the accused carrying pistol hit on his lower lip with the butt of the pistol. Both the accused persons ran away on a motorcycle. He identified the present appellant as the one who had hit him with the butt of pistol.

8. The witness further deposed that after 2-3 days of incident, he was informed by the IO that the robbed articles were recovered and that the accused were caught by the police staff of PS Vijay Vihar. He identified the jewellery articles which were robbed. While the appellant was



identified by the complainant in the judicial TIP, the other accused could not be identified.

9. When the robbed black-colored bag was produced, the same was identified by the complainant and was exhibited as Ex. P-1. The plastic container and the jewelry were exhibited as Ex. P-2 (Colly).

In cross-examination, a suggestion was given that the accused was falsely implicated at the behest of *Rakesh Agarwal* and *Neeraj Agarwal* in the latter case, which was denied. Further suggestion of jewelry being planted on the appellant for him being Bad Character in the area was also denied.

10. Ms *Anita*, wife of the complainant was examined as PW-8. While corroborating the testimony of her husband, she identified both the accused persons. The question was put to her whether CCTV camera installed in the shop covers the areas outside shop, to which she answered in negative. She also stated that the neighboring shops had already closed when the incident occurred.

11. SI *Virender*, who was examined as PW-10, deposed that he was posted at PS Vijay Vihar and received information of apprehension of a thief. It was accused *Harun Pasa*, who was apprehended by the complainant *Neeraj Aggarwal*. The accused made a disclosure that he was involved in both the cases with the appellant. Subsequent to which, the present appellant was apprehended from his house and he got recovered one country-made pistol beneath the bed. The appellant led to his house at his village *Shahabad* on the first floor and from the bed, got recovered plastic box containing 55 pieces/packets in all of artificial jewelry.

12. *Neeraj Aggarwal*, the complainant in subsequent case, was examined



as PW-5, who stated that on 26.11.2010 at about 10.30 PM, he was present in the shop along with his brother *Satish Agarwal* when two accused persons came on a motorcycle and asked them to show the coat pant piece length. As it was already late, the witness refused, on this, the accused asked him to handover cash, whatever he had at that point. At that time, one of the accused took out a pistol and fired on the younger brother *Satish Agarwal*, but the bullet did not hit him. Thereafter, scuffle ensued. One of accused was overpowered by them and the other managed to flee.

13. Recovery of articles were proved through HC *Sukhbir Singh* who was examined as (PW-9). The motorcycle used in the incident belonged to one *Chander Shekhar*, examined as PW-13, who stated that he had already lodged a complaint in LNJP Police Post, PS IP Estate regarding theft of a motorcycle on which FIR No. 160/11 under Section 379 IPC was registered.

14. The appellant in his statement under Section 313 CrPC claimed false implication.

15. Counsel for the appellant has contended that the present case is unbelievable as the prosecution has claimed that the appellant along with the co-accused had committed two robberies in quick succession with each other. While the complainant in the present case had stated that robbery with him occurred at 9.00 – 9.15 PM, the complainant in the latter case claimed that the second incident took place at about 10.30 PM. He submitted that the two places of robbery were at some distance and makes the case of the prosecution unbelievable. Further, no public witness was examined. It is contended that the identity of the appellant has been put in doubt by the admission of the complainant before the Court that he was shown the appellant in the police station, before his TIP was conducted.



16. The contentions of the counsel for the appellant were repelled by the learned APP, who submitted that the testimony of the witnesses is reliable and sufficient to uphold the conviction. He further submits that the appellant has involvement in as many as 24 cases out of which he has been convicted in 2 cases. The status report in this regard had already been handed over and taken on record.

17. I have gone through the testimonies of the witnesses. The complainant has described the incident in great detail, which has also been corroborated by his wife. However, in his examination-in-chief, he deposed that after 2-3 days of the incident, he received a call from PS Maurya Enclave informing that the culprits were caught at PS Vijay Vihar. Thereafter, he went to the police station where the police officials asked him if he could identify the accused. When the complainant replied in the affirmative, the appellant and the other accused were shown to him in the police station and he had identified them. He further deposed that after 1-2 months, he was called by the police to Tihar Jail where he identified the appellant in the proceedings conducted by the Ld. MM.

18. On this aspect, he was cross examined by the APP, and given suggestion to the effect that he was not shown the accused persons by the police and he identified the appellant for the first time before Ld. MM at Tihar Jail. However, the same was denied.

19. Thus, the appellant had already been shown to the complainant before the judicial TIP came to be conducted. The purpose of the TIP is that the witness, who claimed to have seen the culprit at the time of occurrence of the incident, is able to identify them in the midst of other people. The



Supreme Court, in the case of Gireesan Nair & Others v. State of Kerala¹ has held as follows:-

44. *This Court in Budhsen v. State of U.P. [Budhsen v. State of U.P., (1970) 2 SCC 128 : 1970 SCC (Cri) 343] , had directed that sufficient precautions have to be taken to ensure that the witnesses who are to participate in the TIP do not have an opportunity to see the accused before the TIP is conducted. In Lal Singh v. State of U.P. [Lal Singh v. State of U.P., (2003) 12 SCC 554 : 2004 SCC (Cri) Supp 489] , this Court had held that a trial would be adversely affected when the witnesses have had ample opportunity to see the accused before the identification parade is held. It was held that the prosecution should take precautions and establish before the court that right from the day of his arrest, the accused was kept “baparda” to rule out the possibility of his face being seen while in police custody. Later, in Lalli v. State of Rajasthan [Lalli v. State of Rajasthan, (2003) 12 SCC 666 : 2005 SCC (Cri) 822] and Maya Kaur Baldevsingh Sardar v. State of Maharashtra [Maya Kaur Baldevsingh Sardar v. State of Maharashtra, (2007) 12 SCC 654 : (2008) 3 SCC (Cri) 343] , this Court has categorically held that where the accused has been shown to the witness or even his photograph has been shown by the investigating officer prior to a TIP, holding an identification parade in such facts and circumstances remains inconsequential.*

45. *Another crucial decision was rendered by this Court in Sk. Umar Ahmed Shaikh v. State of Maharashtra [Sk. Umar Ahmed Shaikh v. State of Maharashtra, (1998) 5 SCC 103 : 1998 SCC (Cri) 1276] , where it was held : (SCC p. 107, para 8)*

“8. ... But, the question arises : what value could be attached to the evidence of identity of accused by the witnesses in the Court when the accused were possibly shown to the witnesses before the identification parade in the police station. The Designated Court has already recorded a finding that there was strong possibility that the suspects were shown to the witnesses. Under such circumstances, when the accused were already shown to the witnesses, their identification in the Court by the witnesses was meaningless. The statement of witnesses in the Court identifying the accused in the Court lost all its value and could not be made the basis for recording conviction against the accused. The reliance of evidence of identification of the accused in the Court by PW 2 and PW 11 by the Designated Court, was an erroneous way of dealing with the evidence of identification of the accused in the Court by the two eyewitnesses and had caused failure of justice. Since conviction of the appellants have been recorded by the Designated Court on wholly unreliable evidence, the same deserves to be set aside.”

¹ (2023) 1 SCC 180



(emphasis supplied)

48. Having considered the evidence of crucial eyewitnesses and the material indicating the conduct of the TIP, we are of the opinion that the witnesses had the opportunity of seeing the accused before the conduct of the TIP. Not only have the witnesses deposed that they had seen the suspects before the TIP, even Accused 2, at the end of the 1st TIP, had raised a grievance that the suspects were all photographed, videographed and were shown to the witnesses from the cabin of the IO (PW 84). At the end of the 2nd TIP, he had also stated that when Accused 1-19 were taken to court for the purpose of remand, and the presence of all the witnesses was arranged in the court by the police. In fact, all the accused collectively stated that they were wearing the very same dress, straight from their arrest, till the date of the TIP to indicate that the TIP did not serve its purpose. We find no reason to disbelieve the truthfulness of the statement of the accused because they had raised this contention right from the beginning and have maintained it all along.

49. In view of the above, we are of the opinion that there existed no useful purpose behind conducting the TIP. The TIP was a mere formality, and no value could be attached to it. As the only evidence for convicting the appellants is the evidence of the eyewitnesses in the TIP, and when the TIP is vitiated, the conviction cannot be upheld. ..

This view was reiterated by the 3 Judge Bench of the Supreme Court in Udayakumar v. State of Tamil Nadu.²

20. Since in the present case, the complainant was already shown the appellant in the police station, his identification in the TIP or before Court comes under a cloud of suspicion and not much value can be attached to the same. Though the wife of the complainant identified the appellant in Court, it is pertinent to note that her deposition was recorded after more than a year of the complainant's testimony and she admitted to coming to court along with her husband. Moreover, as per prosecution case, she had not stepped out of the car and further, that the appellant was standing on the driver side while the co-accused was standing on her side i.e., towards the passenger seat. There are also material omissions in her deposition, as she has not

² CRIMINAL APPEAL NO. 1741 OF 2010 decided on 16.03.2023



stated that the appellant tried to snatch the ring from the fingers of the complainant or that the complainant was hit by the butt of the pistol.

21. In so far as *Neeraj Agarwal* (PW5)'s identification of the appellant is concerned; he could only depose to the incident witnessed by him and that does not automatically establish the presence of the appellant at the spot of the incident in the present case.

22. Thus, a shadow of doubt has been created over the identity of the appellant and his presence at the spot of incidence and the benefit of the doubt has to be extended to him. He is consequently held to be acquitted for the offences under Sections 392/394/397/34 IPC. However, the recovery of the robbed articles has been duly proved by the testimony of the aforesaid police official and recovered articles have been identified by the complainant and also released on *superdari*. Besides, the first statement recorded during investigation mentions the factum of artificial jewelry being kept in black bag. In view of the aforesaid, the conviction under Section 411 IPC as well as the corresponding order on sentence, including fine, is maintained. The appellant shall pay the fine imposed under Section 411 IPC within 4 weeks, failing which he would undergo the default sentence.

23. The appeal is partly allowed. Appellant's bail bonds are cancelled and sureties discharged.

24. A copy of this judgment be communicated to the concerned Trial Court as well as Jail Superintendent.

25. Copy of this judgment be also uploaded on the website forthwith.

MANOJ KUMAR OHRI
(JUDGE)

NOVEMBER 11, 2025

pmc