



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

% Reserved on : 23.07.2025
Pronounced on : 28.07.2024

+ **CRL.A. 521/2003**

SUBHAN

.....Appellant

Through: Mr. Gaurav Sharma, Ms Sakshi Jha
and Ms. Aakanksha Sharma, Adv.

versus

STATE (GNCT) OF DELHI

.....Respondent

Through: Ms. Shubhi Gupta, APP for State with
SI Komal, P.S. Subhash Place.

+ **CRL.A. 551/2003**

MASOOM

.....Appellant

Through: Mr. Gaurav Sharma, Ms Sakshi Jha
and Ms. Aakanksha Sharma, Adv.

versus

THE STATE OF NCT OF DELHI

.....Respondent

Through: Ms. Shubhi Gupta, APP for State with
SI Komal, P.S. Subhash Place.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The appellants have instituted the present appeals seeking setting aside of the impugned judgment of conviction dated 24.02.2003 and order on sentence dated 25.02.2003 passed in Sessions Case No.110/1999 arising out of the FIR No.238/1999 under Sections 395/397/398/411/34 IPC



registered at PS Saraswati Vihar, Delhi.

2. As the present appeals arise out of the same impugned judgement and common submissions have been addressed on behalf of both the appellants, both the appeals are decided by a common judgment. Notably, along with the present appellants, another convict Jahangir @ Afzal @ Rakesh also impugned the judgment of conviction vide Crl. Appeal No. 276/2003, which was dismissed for non-prosecution by the Coordinate Bench of this Court vide order dated 06.09.2009.

At this stage, it is pertinent to note that the sentence of the appellants *Subhan* and *Masoom* was suspended vide orders dated 19.02.2004 and 10.05.2005 respectively, whereafter they failed to appear before this Court and despite notices issued to the appellants as well as their sureties, the same remained unserved with the remarks 'address does not exist'. The efforts to trace the appellants remained unsuccessful. In this eventuality, Mr. Gaurav Sharma, learned counsel for the appellants who is on the panel of Delhi High Court Legal Services Committee was appointed to represent the appellants vide order dated 31.01.2024.

3. The facts in brief, as noted by the learned Trial Court, are that on the intervening night of 05/06.04.1999 at about 3 a.m. in the night, the complainant *Rameshwar Dayal* was sleeping in his house along with his family members at House No.103, Sharda Niketan, Delhi, when he was woken up by someone, and found himself surrounded by five young boys and they were carrying pistols, *Katta*, knives, *Khurki*, screw driver etc. and they asked him to tell as to where the valuables were lying. He was taken to the back side room where his father *Ram Narain* and brother *Rakesh* were sleeping and they searched his almirah and took out Rs.500/- lying there.



Thereafter, they went to the room where his mother and his sister *Madhu* were present and from that room they removed two golden chains, one golden ring, one pair of golden tops, one nose pin. Thereafter, they went to the room of *Rajesh* and they stabbed *Rajesh* with a knife. *Rameshwar Dayal* was also attacked with the butt of the *katta* and thereafter all the five accused persons ran away.

4. The appellants pleaded not guilty to the charge and claimed trial.

5. The prosecution has examined a total of 17 witnesses. One of the co-accused *Jahangir* has examined one witness in his defence.

6. Learned counsel for the appellants while assailing the impugned judgment contends that the testimonies of witnesses are not only inconsistent but also does not corroborate each other on material facts. In this regard, it is contended that while some witnesses have stated that the appellant/*Subhan* was allegedly holding a knife, the others have mentioned it to be a screw driver.

7. It is next contended on behalf of the appellants that the identity of the appellants was not conclusively established before the Trial Court and in this regard, reference is made to the testimony of Smt. *Madhu* (PW-5) who had stated that she had not seen the faces of the intruders as their faces were covered. Further, learned counsel for the appellants have also drawn the attention of the Court to the testimony of Smt. *Som Wati* (PW-4) who had also stated that she had not seen the faces of the intruders and therefore could not identify them in the trial.

8. It is further contended on behalf of the appellants that as per the prosecution case on the night of the offence, the intruders left behind a *katta* and knife, which were used in the incident. The chance prints were taken



and sent to FSL for forensic examination and as per the testimony of *Narender Singh*, ASI, Finger Print Bureau (PW-10), the chance prints did not match with the fingerprints of the appellants.

9. Learned APP for the State, on the other hand, has defended the impugned judgment. It is submitted that at the time of the incident, besides the complainant, five other family members were present and barring *Madhu* and *Somwati*, the others categorically identified the appellants as the accused persons. It is further submitted that the incident took place in the intervening night of 05/06.04.1999 at about 03:00 AM and as such, the presence of family members in the house was natural. One of the witnesses, namely, *Rajesh* (PW-3) received injuries which were proved on record through his MLC and the same were opined to be dangerous.

10. The FIR was registered on the complaint of *Rameshwar Dayal*, who was examined as PW-1. He deposed that on the intervening night of 05/06.04.1999, he was sleeping in the drawing room of his house, when at midnight, five accused persons entered his house. They woke him up and slapped him. Then they asked him to handover the gold and silver ornaments kept in the house. He identified the present appellants as well as other convict, namely *Jahangir*. He further deposed that while appellant *Masoom* and *Subhan* were carrying knife, *Jahangir* was having a *katta*. The accused persons thereafter took him to the room where his father *Ram Narain* and brother *Rakesh* were sleeping. They were also woken up, and shown *Katta* by the accused persons. The entire room was searched and from the almirah, Rs.500/- were removed, whereafter they went to the store room, however, nothing was found there. The accused persons next proceeded to the room where the complainant's mother and sister were present and from there, one



pouch of jewellery containing two gold chains, one gold ring, one pair of top and one nose ring were robbed. After this, the accused persons went to the room of *Rajesh*, brother of the complainant, where a quarrel ensued, and when the complainant tried to snatch *Katta* from *Jahangir*, he was hit on the forehead. *Rajesh* also suffered various injuries and was taken to the hospital. Another brother namely, *Rakesh* also witnessed the incident. The next day, appellant *Masoom* was apprehended near the park of D-Block and on interrogation, he led to the arrest of accused *Jahangir* and *Subhan*.

11. When the witness was recalled for cross-examination by the learned APP for the State, he stated that from appellant *Masoom* a 'rexine bag' containing a gold ring, a pair of top and an ear ring were recovered, which were later released on *superdari*. The recovered articles were exhibited as Ex.P1 to P3. The rexine bag was exhibited as Ex.P4. On the personal search of appellant/*Subhan*, a gold chain was recovered from the back pocket of his pant, which was exhibited as Ex. P6. The said chain also was later on released on *superdari*. The complainant identified all the recovered articles and stated that all the articles belonged to his sister. *Rakesh*, brother of the complainant, was examined as PW-2. His testimony is also cumulative to the testimony of *Rameshwar Dayal*. He not only identified the appellants but also deposed that they were holding weapons like *katta*, a knife and screwdriver in their hands. He also proved the TIP proceedings of all the accused persons as well as of the case property.

12. Mr. *Rajesh Sharma*, another brother of the complainant was examined as PW-3. He also identifies the appellants as well as ascribed their role in commission of offence. He received stab injuries on his person while he was trying to resist the accused persons. He was taken to Balaji Hospital. He



identified *Masoom* as the person who had stabbed him with knife. In the MLC, the injuries were opined to be dangerous in nature. The said witness was not cross-examined by the defence despite opportunity. Complainant's mother and sister namely *Somwati* and *Madhu* were examined as PW-4 and PW-5 respectively. Though, they did not identify the appellants however, stated that five persons had entered their house and removed jewellery articles, which articles they identified in trial. *Ram Narain Sharma* (father of the complainant) was examined as PW-8. His testimony is also cumulative to the testimony of the complainant and corroborates it on material particulars. He also identified the present appellants as the assailants.

13. *ASI Om Prakash* and *SI Manoj Kumar* were examined as PW-15 and PW-17. They deposed that on the next day of the incident, the appellant *Masoom* was apprehended from the park. He was apprehended on the identification of the complainant and from him a rexine bag containing gold articles were recovered. Later, appellant *Subhan* was also apprehended and a gold chain was recovered from the back pocket of his pant.

14. Interestingly, on behalf of the accused persons, suggestions were given to the witnesses that on the day of incident, a quarrel had taken place between them in which the accused persons had received injuries. In fact, accused *Jahangir* summoned the record clerk from DDU Hospital to prove his injuries. As per the record produced, his MLC was exhibited as DW1/A. The admission record of accused *Jahangir* shows that he was admitted on 06.04.1999 and discharged on 12.04.1999. His medical treatment records were exhibited as Ex.DW1/B1 to 14.

15. All the prosecution witnesses have consistently stated about the occurrence of incident on the intervening night of 05/06.04.1999. All of



them deposed that the intruders were five in number. The present appellants were identified to be amongst them by four of the witnesses who have not only identified the appellants but also stated that the appellants were carrying weapons in their hands. Pertinently, one of the witnesses, namely, *Rajesh*, is an injured witness, who also received injuries in the incident.

16. Though an attempt was made on behalf of the appellants to contend that the testimonies of prosecution witnesses, being inconsistent on identification, do not inspire confidence. The identities of the appellants and their carrying weapons in their hands stand fully proved in light of the testimonies of complainant, *Rakesh*, *Rajesh* and *Ram Narain*. The appellants were arrested on the very next day and recovery of gold articles was carried out, which were identified in the Test Identification Parade (TIP) proceedings as well as in the Court proceedings. As noted above, the suggestions given to the prosecution witnesses rather suggest that the accused persons were admitting to their presence at the spot. The reference to the report on finger prints is of no help to the appellants as it had come on record that all the accused persons were carrying knives/screwdrivers and none of the witnesses stated that the present appellants left behind the knife. The appellants have not been able to discredit the testimony of witnesses on any material point.

16. In view of the aforesaid facts and circumstances, this Court finds no ground to interfere with conclusion arrived at by the learned Trial Court. As a necessary *sequitur*, the appeals are dismissed and the appellants' conviction and sentence awarded to them is upheld.

17. The appellants' bail bonds and surety bonds are cancelled and the appellants are directed to be taken in custody as and when arrested to serve



2025:DHC:6130



the remaining sentence.

18. A copy of this order be communicated to the concerned Trial Court as well as to the concerned Jail Superintendent for information and to take consequent necessary action.

**MANOJ KUMAR OHRI
(JUDGE)**

JULY 28, 2025/rd