

**THE COURT OF SH. KAPIL KUMAR
METROPOLITAN MAGISTRATE-05, CENTRAL,
TIS HAZARI COURTS, DELHI**

CNR No. DL CT-02-009947-2017

CIS No. 4853/17

FIR No. 107/16

PS. Nabi Karim

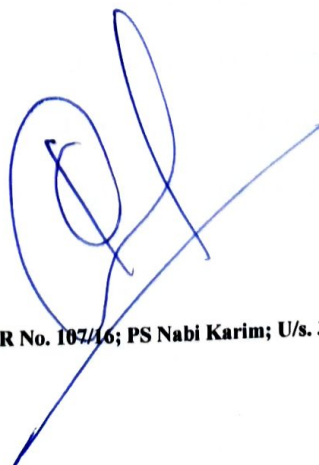
State Vs Intekab Alam

U/s. 380 IPC

**JUDGMENT
(Through VC)**

- | | |
|--------------------------------------|--|
| 1) The date of commission of offence | : 28.05.2016 |
| 2) The name of the complainant | : Ms Tarrannum
W/o Mohd Zahir |
| 3) The name & parentage of accused | : Intekab Alam
S/o Khalil-ur Rehman |
| 4) Offence complained of | : 380 IPC |
| 5) The plea of accused | : Pleaded not guilty |
| 6) Final order | : Acquitted |
| 7) The date of such order | : 13.07.2020 |

Judgment announced on : 13.07.2020



THE BRIEF REASONS FOR THE JUDGMENT:

- 1) The case of prosecution against the accused is that on 28.05.2016 between 5 PM to 5:40 PM at house no. 6871, Quila Kadam Sharif, Nabi Karim, Delhi, he committed theft of Rs 25,000/-, one gold chain and one pair of silver anklet belonging to the complainant Smt Tarrannum.
- 2) After completion of investigation, charge sheet was filed against the accused. In compliance of Sec. 207 Cr.PC, documents supplied to the accused. Arguments on point of charge were heard. Vide order dated 14.03.2018, a charge u/s. 380 IPC was framed upon the accused, to which he pleaded not guilty and claimed trial.
- 3) In support of its case, prosecution has examined six witnesses. After conclusion of prosecution evidence statement of accused was recorded U/s 313 Cr.PC(as per section 281(1) Cr.PC) in which accused denied all the allegations and opted not to lead DE.
- 4) I have heard the arguments of Ld. APP for State and Ld Counsel for accused. I have also perused the record carefully.
- 5) It is the cardinal principle of criminal justice delivery system that the prosecution has to prove the guilt of the accused beyond reasonable doubts. No matter how weak the defence of accused is but the golden rule of the criminal jurisprudence is that the case of prosecution has to stand on its own legs.
- 6) The complainant of the present case namely Ms Tarrannum was examined as PW1 by the prosecution. The entire case of the prosecution is dependent upon the testimony of the complainant as she is the only one who allegedly seen the accused at the time of the offence. It is imperative in the facts of the present case that the testimony of complainant be appreciated

minutely to see as to whether the prosecution is able to discharge its burden of proof or not.

7) PW2 deposed that on 28.05.2016 she was residing in house no. 6871, Quila Kadam Sharif along with her husband. She deposed that on that day at about 5 PM she went to the shop of Dr Arshad for purchasing medicine while the children of her sister-in-law were present in the house. She deposed that at about 5:45 PM when she came back to her house she found accused (correctly identified) inside her house. She deposed that accused pushed her and ran away. She deposed that she went inside the room and found the almirah opened and the cash and jewellery lying there were missing. She deposed that she called her husband and went to the police station for lodging the complaint. She deposed that her statement Ex.PW1/A was recorded and the site plan Ex.PW1/B was prepared.

8) PW2 further deposed that after around one month i.e on 26.06.2016 she found accused near her house. She deposed that she called her husband and thereafter the accused was apprehended by her husband with the help of neighbours. She deposed that she identified the accused as the person who committed theft in her house. She deposed that police was informed and the accused was arrested.

9) At this stage, the testimony of the husband of the complainant namely Mohd Zahid examined as PW3 by the prosecution required to be appreciated. He deposed that on 26.05.2016 he was informed by his wife about the theft in the house and thereafter he informed the police. He deposed that after around one month his wife made a call to him that the accused standing at the cross road. He deposed that he apprehended the accused and thereafter the accused was arrested by the police.

10) PW4 Ct Kanha Ram and PW6 SI Randhir deposed as to the receiving of complaint Ex.PW1/A from the complainant on the basis of which the rukka was prepared and FIR was registered. They deposed as to the arrest of the accused on 26.06.2016 at the instance of the complainant and proceedings subsequent thereto. They deposed that police custody remand of the accused was obtained but no case property was recovered.

11) When the accused was examined u/s 313 Cr.PC he stated that he is a rickshaw puller and the complainant availed his services but refuse to make the payment of entire fare for which dispute arose between them and the complainant roped him in the present false case.

12) After going through the testimony of complainant, her husband and the police officials this court is of the considered opinion that the prosecution is not able to discharge its burden of proof completely. The facts as emerged on record clearly makes out the circumstances in which the benefit of doubt must be given to the accused. The reasons for the same will be discussed in this part of the judgment.

13) The conduct of the complainant is required to be appreciated. In the cross-examination complainant deposed that when the accused ran away after pushing her she did not raise any alarm. This is quite strange. It is not seems possible that a person found thief in his house and even that he will not raise any alarm. This fact makes the entire case a little doubtful. Further the complainant did not inform any neighbour nor any spontaneous inquiry was made from any neighbour. If the neighbours could be allegedly called at the time of alleged apprehension of the accused after around one month of the incident than why the neighbours were not approached by the complainant immediately at the time of the incident moreso when the

complainant was allegedly able to see the face of the accused.

14) Further, if the accused opened the almirah allegedly lying in the room of the complainant than there must have been chance fingerprints on the almirah. The accused must have opened the door of the room also. There was every possibility of the availability of chance fingerprints but there is no report as to the availability or non-availability of chance fingerprints in the room of the complainant. This defect in investigation is crucial.

15) There is no crime team report on record. Perusal of testimony of complainant and that of investigating officer reveals that the crime team was not even called to inspect the alleged scene of crime. In the facts of the present case it was imperative for the investigating officer to take the aid of the crime team. This lapse on the part of IO is beyond comprehension.

16) There was no effort on the part of investigating officer to find out the CCTV Cameras near by the spot of crime or at the place where the accused was allegedly apprehended after one month of the alleged incident.

17) Complainant admitted that at the time of the incident the children of her sister-in-law were present in her room. These children were not made as witnesses. It is revealed from the testimonies of the prosecution witnesses that no effort was made by the investigating officer to put any query to children. The one child was around 8 years of age. Had the IO made any query to the child the crucial facts qua the alleged offence would have surfaced. This was not done by the IO for the reasons best known to him.

18) Another crucial fact came on record that no recovery of stolen article effected from the possession of the accused when the accused was taken on police custody remand. Further, this court does not found it trustworthy that the accused was roaming near the house of the complainant after around

one month of the incident when he knew that he was seen by the complainant. The alleged presence of the accused near the house of the complainant after one month of the incident is not trustworthy.

19) As per the complainant the accused was apprehended with the assistance of neighbours. No neighbour of the complainant has been examined as witness despite the fact that they would have been best witnesses for the prosecution being the independent witnesses. The fact that the independent witnesses were left unexamined leads to further doubt in the entire case put forth by the prosecution.

20) It is well settled law that suspicion, however grave it may be, cannot take the place of proof and there is huge difference between something that 'may be proved' and 'will be proved'. In criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. The large gap between 'may be true' and 'must be true', must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution before the accused could be condemned as convict. Reliance could be place upon Judgments titled as *Hanumant Govind Nargundkar & anr. Vs State of M.P., AIR 1952 SC 343*; *Shivaji Sahabrao Bobade & Anr. Vs. State of Maharashtra, AIR 1973 SC 2622*; *Sharad Birdhichand Sarda Vs. State of Maharashtra, AIR 1984 SC 1622*; *Subhash Chand Vs State of Rajasthan, (2002) 1 SCC 702*; *Ashish Batham vs State of MP AIR 2002 SC 3206*; *Narendera Singh & Anr Vs State of MP, AIR 2004 SC3249*; *State through CBI Vs Mahender Singh Dahiya, AIR 2011 SC 1017*; and *Ramesh Harijan Vs State of U.P AIR 2012 SC 1979*.

21) Thus in view of above discussion, the prosecution is not able to discharge its burden of proof. Accordingly accused Intekab Alam is entitled

to have benefit of doubt and is hereby acquitted from the present case. File be consigned to Record Room subject to compliance of section 437 A Cr.PC.

**Announced through VC
on 13.07.2020**

**(Kapil Kumar)
MM-5/Central District
Tis Hazari Courts/Delhi,**

CNR No. DL CT-02-009947-2017
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(Through VC)

Present: Ld APP for the State.

Accused is present with counsel Sh S.D Tiwari.

Further final arguments heard.

Heard submission.

Accused and his counsel are connected through the computer system of the Reader of the court.

Vide separate judgment of even date, announced through video conferencing, accused Intekab Alam S/o Khalir-ur Rehman is hereby acquitted from the present case.

At this stage, application moved to the effect that, the bail bond furnished during the trial be extended for further 6 months in view of section 437 A Cr.PC.

Heard. Application allowed. Previous bail bonds extended in view of section 437 A Cr.PC.

The soft copy of the judgment has been provided to the computer branch for necessary uploading the same on CIS.

It is to be noted that digital signature of undersigned has been expired for which the necessary intimation has been sent to the computer office. Necessary entries be made on CIS as to the pronouncement of this judgment today.

File be consigned to Record Room after due compliance.

(KAPIL KUMAR)
MM-05/Central:
Delhi/13.07.2020