

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

+ CRL.A. 247/2006

Reserved on: October 14, 2009

Pronounced on: October 23rd, 2009

PRAVEEN KUMAR Appellant

! Through: Mr. Ajay Verma, Advocate.

Versus

\$ STATE Respondent

^ Through: Mr. Amit Sharma, Addl. PP for
the State.

CORAM:

HON'BLE MR. JUSTICE V.K. JAIN

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

V.K.Jain, J.

This is an appeal against the Judgment dated 13.10.2005 and Order on Sentence dated 15.10.2005 whereby the appellant was convicted under Section 394/34 of I.P.C. read with Section 397 thereof and was sentenced to undergo rigorous imprisonment for

eight years and to pay a fine of Rs.1,000/- or to undergo simple imprisonment for two months in default.

2. The case of the prosecution is that on 21.9.2004, complainant Sanjay, who was dropped by his employer at Ring Road, near Pitam Pura Police Lines, was going on foot towards village Karala as he could not get any transport at that hour of the night. When he reached near Sulabh Shochalayin Y-Block Mangolpuri, the appellant, who was carrying a knife in his hand and his co-accused Krishan Kumar held him and asked him to take out whatever he had with him. When the complainant covered his pocket with his hand, the appellant gave a knife blow on the left side of his chest as well as on his left hand, Driving licence of the complainant and Rs.80/- which he was carrying with him were removed and both the culprits ran away towards Y-Block, Mangolpuri park.

3. The appeal filed by Krishan Kumar, co-accused of the appellant, was disposed of vide order dated 11.5.2009 convicting him under Section 394 of IPC and sentencing him to imprisonment for the period already undergone by him.

4. During trial, the complainant came in the witness box as PW-3 and stated that on the night intervening 20/21.9.2004, he came

to Delhi from Jammu driving a Quails vehicle. His employer Atul Aggarwal left him near Police Lines, Ring Road. Since he had to go to village Karala where his cousin was residing, he proceeded towards Mangolpuri-Sultanpuri Road after waiting for a while for a bus. When he reached near Y-Block, the appellant and his co-accused Krishan Kumar stopped him and asked him to handover whatever he had with him. The taller boy gave him two knife blows and snatched his Driving Licence and cash amounting to Rs.80/-. Both of them then ran towards park.

The complainant was taken to hospital in an ambulance, called by an auto-rikshaw driver. After his medical examination and recording of his statement in the hospital, he came to the spot with the Investigating Officer and from there, they proceeded in search of the culprits. When they reached near bushes of Y Block park, he noticed the handle of a knife kept in the dub of taller boy. Both of them were apprehended. Driving Licence and a sum of Rs. 40/- belonging to him were recovered from the pocket of shirt of the appellant. Remaining amount of Rs.40/- was recovered from his co-accused. The witness has identified the knife as well as his driving licence which was seized from the appellant.

5. The testimony of the complainant as regards arrest of the appellant and his co accused and recovery of knife, driving licence of the complainant and currency notes has been corroborated by PW-2 Ct. Kulvinder Kumar and PW-7 ASI Karambir Singh. Both of them have stated that the appellant and his co accused Krishan Kumar were found resting in the park of Y Block, Mangol Puri and were arrested. They have identified the knife/dagger Ex. P-1 and Driving Licence of the complainant Ex. P-3 which were recovered from the possession of the appellant.

6. PW-4 Dr. Anju Garg examined the complainant in hospital on 21.9.04 and found one incised wound of 1.5 x 2 cm on the left side of his chest and an incised wound of 3 x 0.5 cm on his left hand. She has opined that these injuries could be caused by a sharp edged weapon.

7. In his statement under Section 313 of Cr. P.C., the appellant denied the allegations against him and stated that he has been falsely implicated in a false case.

8. I see no reason to disbelieve the complainant as regards the commission of robbery. In fact, this is not the case of the appellant that no incident of robbery had at all, taken place with the complainant. The testimony of the complainant finds ample

corroboration from his medical examination. This is not the case of the appellant that the complainant had suffered these injuries in some other incident. Therefore, the prosecution has been able to prove that the complainant was robbed of his Driving Licence and cash amounting to Rs 80/- and also that a knife was used in commission of the robbery.

9. Ex. P-3 is the Driving Licence of the complainant, which was stolen during robbery. The robbery took place at about 1.15 am. The Driving Licence along with some cash was recovered from the possession of the appellant at about 5 am on the same date. Thus, it stands proved that to stolen driving Licence, was recovered from the possession of the appellant soon after its theft. The appellant has not given any explanation for the Driving Licence of the complainant being found in his possession. This is also not his case that he had found the driving licence of the complainant lying somewhere and kept it for safe custody or for sending it to its holder. His defence is that the driving licence was not at all recovered from his possession. Since there is no reason to disbelieve the complainant as regards the recovery of driving licence from the possession of the appellant, and his testimony also finds corroboration from the deposition of PW-2 Ct. Kulvinder

Kumar and PW-7 ASI Karambir Singh, and there is no explanation from the appellant for possession of the driving licence soon after its theft, it can be safely presumed, as provided in Section 114 (a) of Evidence Act, that either he had committed theft of the driving licence or he had received it knowing it to be a stolen property. Since this is not the case of the appellant that he had received the driving licence of the complainant from someone, the appropriate presumption in this case should be that he had committed theft of this driving licence from the possession of the complainant.

10. The deposition of the complainant proves that a knife was used in commission of robbery. The expression 'deadly weapon', used in Section 397 of IPC has not been defined in the Act. In common parlance, it would mean an instrument, which, if used as a weapon, can cause death of a person. A perusal of the sketch of the knife shows that it is not a knife meant for domestic use. Its length is 37 cms and the length of its blade is 26 cms. A dagger having a blade of 26 cms, if used, as a weapon of offence, can result in the death of the person to whom the blow from such a dagger is given and, therefore, is definitely, a deadly weapon.

11 In *Phool Kumar Vs. Delhi Admn.* AIR 1975 SC 905 the accused was carrying a knife in his hand at the time the robbery

was committed. It was found from the deposition of PW-16 that the appellant/accused Phool Kumar had a knife in his hand. The Hon'ble Supreme Court held that he was therefore carrying a deadly weapon. In *Salim Vs. State* 1987 (3) Crimes 794 the Hon'ble High Court of Delhi held that to categorise knife or to fix its size for it to be a deadly weapon may not be appropriate. It was held that to say that a knife to be a deadly weapon should be of a particular size would not be a correct statement. In *State of Maharashtra Vs. Vinayak* 1997 Cr.L.J. 3988 Bombay High Court held that knife is a deadly weapon within the ambit of expression 'deadly weapon' used in section 397 of IPC. Therefore, irrespective of the size, any knife is a deadly weapon and therefore, accused Sanjay is liable to be punished under Section 397 of IPC. In any case, in the present case, the size of the blade of the dagger itself is sufficient to show that it is a deadly weapon. The knife is a 'deadly weapon'.

12. It was pointed out by learned counsel for the appellant that there is contradiction in the deposition of the complainant on the one hand and that of PW-2 Constable Kulvinder Kumar and PW-7 ASI Karambir Singh on the other hand, as regard, the time at which the appellant was apprehended from the park. According to

the complainant, he remained in Hospital till 5 AM and then he came to the place of occurrence with IO where they remained for 1-1/2 hour. On the other hand, according to PW-2 and PW-7, the appellant was arrested at about 5-10A.M. In my view, such a contradiction cannot be said to be material. It has also to be kept in mind that answers to such questions are given by estimates only. No one notes down the time at which he went to a particular place on a particular date. No one is expected to remember the exact time of his movements or the exact time spent by him on a particular spot. It is true that one doesn't undergo such experiences every day. Still, a truthful witness when he is examined at a later date is not expected to remember the exact time of such peripheral happenings after lapse of a considerable period. Such minor discrepancies are bound to occur as memory fades with the passage of time and recalling minute details becomes rather difficult. Therefore, variation in the deposition of the witnesses as regard the time at which the appellant was arrested from the part is not material in the facts of the present case, particularly when in his statement under Section 313 of Cr.P.C., the appellant does not give any specific time of his arrest. In fact during cross-examination of PW-3, no suggestion was given to him that the appellant was not arrested from the park.

13. It was pointed out by the learned counsel for the appellant that the vest of the complainant was not seized and no cut was found on his shirt. The deposition of the complainant would show that the buttons of his shirt had opened before knife blows were given to him. The injury was caused on the chest and left arm of the complainant. That explains the absence of cut marks on his shirt. There is no evidence that the vest had any cut mark or blood mark on it. Therefore, failure to seize the vest of the complainant had no significance.

It was also pointed out that the knife was not sent to FSL. The injuries on the body of the complainant stand proved from his MLC, and there is no evidence that the dagger had blood stains on it, when it was seized. In fact there was no cross-examination of IO on the aspect and he was not asked as to why he did not seize vest of the complainant and did not send the dagger to FSL. In the absence of any cross-examination, no adverse inference can be drawn against the prosecution in such matters. Nothing really turns on to Investigating Officer not sending the knife to FSL.

14. The plea taken by the appellant in his statement under section 313 Cr.P.C. is that this is a false case and he has been falsely implicated. He has not suggested any motive for the

complainant to concoct a false story of robbery. The amount stolen from the possession of the appellant was a meagre amount of Rs.80/-. It cannot be accepted that the complainant would have gone to the extent of causing injuries to himself, going to a Hospital, getting admitted there and lodging a report with the police for a petty amount of Rs.80/-.

15. The appellant has not given any reason as to why the complainant chose to target him in this case. He has not alleged any previous enmity or ill-will between him and the complainant. Therefore, there could have been no reason for the complainant to implicate him in a false case. Being not only the victim of robbery but also an injured, the complainant was most unlikely to spare the real culprit and implicate an innocent person. This is more so, when he has nothing to gain by doing so. The victim of a crime would infact be most anxious to ensure that only the person who committed the crime is brought to justice and is suitably punished. The appellant has also not given any reason or motive for the police officials to depose falsely against him and implicate him in a false case. This is not the case of the appellant that he was arrested on suspicion and implicated in this case. This is also not his case that in fact the case property was recovered from some

other person and was planted on him. Therefore, they had no reason to depose against the appellant and implicate him in a false case of robbery.

16. For the reasons given in the preceding paragraph, I find no reason to interfere with the conviction of the appellant under Section 394 of IPC r/w Section 34 and 397 thereof. This conviction is maintained accordingly. Keeping in view all the facts and circumstances, including social background of the appellant and the period already spent by him in custody, his sentence is reduced to RI for seven years. The amount of fine is however maintained. One copy of the order be sent to trial court and the other be sent to the appellant, through concerned Jail Superintendent.

(V.K. JAIN)
JUDGE

October 23rd, 2009
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