

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

+ **Crl.A. No. 600/2004**

Date of Order: 19th January 2010

VIJAY Appellant
! Through: Mr. Sumeet Verma, Adv.

versus

\$ STATE Respondent
^ Through: Jaideep Malik, APP.

+ **Crl.A. No. 781/2004**

DEEPAK Appellant
! Through: Mr. Sumeet Verma, Adv.

versus

\$ STATE Respondent
^ Through: Jaideep Malik, APP.

And

+ **Crl.A. No. 117/2005**

AJAY Appellant
! Through: Mr. Ranjeet Kr. Jha, Adv.

versus

\$ STATE Respondent
^ Through: Jaideep Malik, APP.

* **CORAM:**
HON'BLE MR. JUSTICE V.K. JAIN

1. Whether the Reporters of local papers
may be allowed to see the judgment? No

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| 2. | To be referred to the Reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

: V.K. JAIN, J. (Oral)

1. These three appeals arise from a common judgment dated 7th April 2004 and Order on Sentence dated 8th April 2004 whereby the appellants were convicted under Section 397/34 of IPC and were sentenced to undergo R.I. for 10 years, each and to pay fine of Rs.500/- or to undergo S.I. for one month, each in default. Manoj, the appellant in Criminal Appeal 513/2004, who was also tried along with these appellants was sentenced to undergo R.I. for 7 years and to pay fine of Rs.500/- or to undergo S.I. for one month, in default.

2. The case of the prosecution, in nutshell, is that PW-2 Bijender Singh, who is an Ortho Surgeon, was going to New Delhi Railway Station by foot on 8th August 2003. When he reached Outer Circle, Connaught Place, opposite Petrol Pump of H Block at about 9.40 PM, all the four accused accosted him near the Petrol Pump. One of them caught hold of his shirt, whereas remaining three gave him fist blows and abused him.

The appellant Deepak used a razor in commission of robbery. One mobile phone, wrist watch, purse containing some cash and identity card, etc. of complainant were removed from his possession. The appellants Ajay and Deepak were apprehended on the spot. The stolen purse was recovered from the possession of Ajay, whereas the razor used in the robbery was recovered from the possession of Deepak. The appellant Vijay was arrested from Panchkuian Road and the stolen mobile phone was recovered from his possession.

3. The complainant came in the witness box as PW-2 and supported the case set up by him in the FIR. He stated that on 8th August 2003, when he was going to Railway Station via Outer Circle of Connaught Place and reached near Petrol Pump at about 9.40 PM, all the four accused persons in the Court pounced upon him, all of a sudden. The appellant Ajay caught hold of him by collar and rest of the accused gave him fist blows and thrashed him down. The appellant Vijay snatched away his mobile and ran away. The appellant Ajay snatched away his wrist watch, whereas Manoj removed the purse from his pocket. He further stated that the appellant Deepak brought out a razor and threatened to thrash it in his belly. When he raised alarm,

the accused persons started running away towards Inner Circle of Connaught Place. He caught hold of Manoj, whereas two other were caught hold by police. The appellant Vijay ran away from the spot. Manoj had handed over the watch to Vijay before he could run away. According to him, his purse Ex.P-1 was recovered from the possession of Ajay, whereas his mobile Ex.P-2 was recovered subsequently. He further stated that razor was recovered from the possession of Deepak. The complainant also stated that the police took him to Punchkuian Road, where the appellant Vijay was arrested and his mobile phone was recovered from his possession.

4. PW-5 SI Rakesh Chand has corroborated the deposition of the complainant as regards arrest of the appellant Vijay from Punchkuian Road and recovery of the stolen mobile phone from his possession. PW-4 Const. S.N. Ingle has corroborated the deposition of the complainant and has stated that he himself had chased and apprehended the appellant Vijay, whereas Const. Arun, who accompanied him, had apprehended another boy.

5. The learned counsels for the appellants stated that considering the evidence produced against the appellants during trial, they do not challenge their conviction on merits, as far as

commission of robbery is concerned. The learned counsel for the appellant Deepak only requests for taking a lenient view in the case of sentence awarded to him, whereas the learned counsel representing the appellants Ajay and Vijay state that Section 397 of the Indian Penal Code cannot be applied against them as neither of them was armed with a deadly weapon at the time of common of robbery nor any grievous hurt was caused to any person or any attempt was made to cause death or to cause grievous hurt to any person.

6. It is by now settled proposition of law that Section 397 of IPC, which by itself does not create an offence and only prescribes a minimum punishment, can be applied, while awarding sentence, only in respect of that person, who uses a deadly weapon at the time of commission of the offence or who causes grievous hurt or attempts to cause death or grievous hurt to any person. This very view was taken by the Hon'ble Supreme Court in '**Phool Kumar vs. Delhi Administration**', AIR 1975 SC 905 and in '**Ashfaq vs. State**' 2003 (10) 732. The Hon'ble Supreme Court inter alia observed as under:

“For that reason, no doubt the provision postulates only the individual act of the accused to be relevant to attract Section 397 IPC and thereby inevitably negates the

use of the principle of constructive or vicarious liability engrafted in Section 34 IPC.”

The proposition of law, which one gathers from the decision in the case of Ashfaq (supra), is the same as was laid down in the case of Phool Kumar (supra) that Section 397 of IPC can be applied only in case of a person, who himself had used a deadly weapon at the time of commission of the robbery.

7. In the present case, admittedly neither the appellant Ajay nor the appellant Vijay was armed with any weapon at the time of commission of the robbery. There is no allegation of either of them having attempted to cause death of anyone or of having attempted to cause grievous hurt to the complainant. The injuries caused to the complainant were simple as only fist blows were given to him and no grievous hurt, as defined in Section 321 of IPC was caused to him. Therefore, Section 397 of IPC could not have been applied either against the appellant Ajay or against the appellant Vijay. However, since hurt was caused to the complainant in commission of robbery, Section 394 of IPC comes into play and, therefore, the offence under Section 394 of IPC read with Section 34 thereof has been proved against the appellants Ajay and Vijay.

8. Taking into consideration all the facts and circumstances of the case, the appellant Deepak is convicted under Section 394 of IPC read with Section 397 thereof and is sentenced to undergo R.I. for 7 years and to pay fine of Rs.1,000/- or to undergo S.I. for 15 days, in default. The appellants Ajay and Vijay, who have been in custody for more than six years each, are sentenced to undergo R.I. for 5 years, each and to pay fine of Rs.1,000/- each or to undergo S.I. for 15 days, each in default.

Crl.A. No. 600/2004, 781/2004 and 117/2005 stand dispose of.

**V.K. JAIN
(JUDGE)**

JANUARY 19, 2010

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