

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

+ Crl.A.No.54/2005

% Reserved on: 09th March, 2010
Date of Decision: 11th March, 2010

RAJESH @ RAJBIR Appellant
! Through: Mr. Ravinder Tyagi, Adv.

versus

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

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

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

1. This is an appeal against the judgment dated 7th January 2005 and Order on Sentence dated 11th January 2005, whereby the appellant was convicted under Section 394/397 of IPC and was sentenced to undergo R.I. for 7 years and to pay fine of Rs.25,000/- or to undergo R.I. for three months in default.

2. On 8th November 2001, an information was received at Police Control Room regarding snatching in a bus in front of Liberty Cinema and someone getting injured in that incident.

When the information was conveyed to Police Post Dev Nagar, the Incharge of Police Post SI Yashpal Singh reached Ram Manohar Lohia hospital, where ASI Balbir Singh, Incharge of PCR Van OSCAR 39 met him and informed him that he had got the injured admitted in the hospital. The complainant Vedpal was found admitted in the hospital. The IO recorded his statement. The complainant alleged that on that day, he took a bus from Peera Garhi Chowk and got down at Liberty Cinema, to take another bus. He then boarded bus at Route No. 926. When he was boarding the bus, he was surrounded by 3-4 boys, who started manhandling him and one of them removed Rs.5,300/- which he was carrying in the pocket of his pant. He further stated that as soon as one of the boys removed money from the pocket of his pant, he caught his hand, whereupon that boy handed over some money to his associate. The third person then removed the purse which he had kept in the hip pocket of his pant. The purse contained his identity card, pay slip, some visiting cards and a small diary. The person, whom he had held by hand, was made by him to get down from the bus. Three-four associates of that boy also got down from the bus and started manhandling him.

The boy whom he had made get down from the bus took out a *chhura* and gave a blow above his left knee, as a result of which, he fell down. His other companion gave a knife blow on his pocket. He, however, despite being injured, caught one of them. In the meantime, PCR officials, who were watching this incident from the other side of the road, came running to him, whereupon other persons, including the boy who had given knife blow on his back, ran away. The appellant Rajesh is stated to be the person who was apprehended on the spot. The money belonging to the complainant is alleged to have been recovered from his possession, alongwith a *Chhura*.

3. The prosecution examined 14 witnesses in support of its case. No witness was examined in defence.

4. The complainant Head Constable Ved Pal came in the witness Box as PW-3 and stated that on 08th November, 2001, he was carrying his salary amounting to Rs.5300/- with him. He got down at Liberty Cinema and boarded a bus of route No.926. When he boarded the bus, three-four persons started pushing him. When he objected to it, those persons caught hold of him and one of them inserted his hand in his pocket and was trying to remove money from his pocket. He

immediately caught hold of him. Some of the money, which he had taken from his pocket, was handed over by him to his associate. He dragged that boy from the bus and made him get down. His associates followed him. That boy then took out a knife and gave a blow behind his knee. His accomplices also encircled him and gave a knife blow on his back. As a result of the injuries, he fell down, but he chased them and caught hold of one of them. Seeing one PCR van coming from the other side, his associates ran away towards Sarai Rohilla. The person, whom he had caught, was handed over to the local police. He identified the appellant Rajesh as the person who had given knife blow to him. The complainant stated that Rajesh was arrested on the spot and was having a knife with him at that time. After preparation of sketch Ex.PW-3/M and sealing it, the knife was seized vide memo Ex.PW-3/N. He further stated that Rs.4400/- were recovered from the accused Rajesh which were seized from vide Memo Ex.PW-3/D.

5. PW-9 ASI Balbir Singh stated that on 08th November, 2001, he was in-charge of Police Van OSCAR 39 and was present at Liberty Cinema at about 12.30 pm, he noticed one boy with *chhura* in his hand, trying to cross the road and one

injured chasing him. He caught hold of that boy. In the meantime, he also reached there and immediately overpowered that boy alongwith *chhura*. He made both of them sit in the PCR van and took them to RML Hospital. He further stated that Rs.4400/- were recovered from the possession of the boy who was having *chhura* in his hand. He identified the appellant Rajesh as the boy who was having *chhura* in his hand and from whom Rs.4400/- were recovered. According to him, the money was handed over by him to the *chowki* In-charge who had reached the hospital. He has *chhura* identified Ex.P-3 as the knife which was recovered from the possession of the appellant Rajesh.

6. PW-11 Constable Raj Kumar went to RML Hospital with the IO on 08th November, 2001. He has stated that ASI Balbir Singh was present there and he met them in the hospital and produced the accused Rajesh and cash amounting to Rs.4400/-. The *chhura* and cash were seized vide memos vide Ex.PW-3/M and Ex.PW-3/N. He has identified Ex.P-3 which was handed over by him to the hospital.

7. PW-13 SI Yashpal Singh stated that on 08th November, 2001, he reached the place of occurrence near Liberty Cinema

on receipt of copy of DD No.21. He came to know that the injured had been taken to RML Hospital in PCR van. He thereupon reached RML Hospital where ASI Balbir Singh was found present. ASI Balbir Singh produced the accused Rajesh before him alongwith a *chhura* and currency notes of Rs.4400/-. The *chhura* as well as currency notes were seized by him after sealing them.

8. In his statement under Section 313 Cr.P.C., the appellant Rajesh denied all the allegations against him and claimed that he was lifted from his residence and falsely implicated in this case.

9. The learned counsel for the appellants pointed out certain contradiction in the testimony of prosecution witnesses and has on that basis pointed out that the prosecution has failed to prove its case beyond reasonable doubt. It has been pointed out that according to PW-2 Naubat Ram, conductor of the bus, in which the complainant was travelling, the bus was boarded by the complainant at Sarai Rohilla Bus Stand, whereas according to the complainant he had boarded the bus at route No. 926 at Liberty Cinema. It has been further pointed out that according to the complainant it was he who had produced

the appellant Rajesh to the police along with the knife, whereas the case of the prosecution is that the knife as well as the appellant were handed over to the Investigating Officer by PW-9 ASI Balbir Singh in Ram Manohar Lohia Hospital. It was also pointed out that according to the complainant, he had handed over the knife to the IO on the spot and the IO had taken Rs.4400/- from the pocket of the appellant in the presence, though the case of the prosecution is that the money was handed over to the IO by PW-9 ASI Balbir Singh along with the knife alleged to have been seized from the appellant. It was also submitted that according to the complainant it was he who had caught the complainant, whereas according to PW-9, the appellant was apprehended by him.

10. It is true that according to PW-2 Naubat Ram, about 15-20 passengers had boarded the bus from Sarai Rohilla Bus Stand and on hearing noise of quarrel, he had got the bus stopped before the next stand. But, according to the bus driver, PW-8 Gian Singh, the passengers had boarded the bus at the Bus Stop of Liberty and the bus was stopped by him after a short distance from that Bus Stand. Therefore, the testimony of PW-8 corroborates the deposition of the

complainant as regards the place from where he had boarded bus. The testimony of PW-9 ASI Balbir Singh also corroborates his deposition as regards the place where this incident took place. Therefore, mistake on the part of PW-2 in stating the place from where the bus was boarded by the complainant cannot be said to be material and no significance can be attached to this minor contradiction.

11. I find no contradiction in the testimony of PW-5 and PW-9 as regards the person who apprehended the appellant Rajesh. The complainant has specifically stated that he had caught hold of the appellant and snatched the knife from his hand. Even according to PW-9, it was the complainant, who was chasing the appellant and had caught hold of him. Since PW-9 came rushing from other direction, he also must have helped the complainant in overpowering the appellant and in allowing him to escape. It is, therefore, immaterial as to whether knife/*churra* from the hand of the appellant was taken by the complainant or by PW-9 ASI Balbir Singh. What is relevant is that both of them are witness to the appellant having been caught with a knife and a *churra*/knife being found with him.

12. It is true that the deposition of the complainant gives an

indication as if the knife was handed over by him to the IO on the spot and that the cash was seized by the IO from the Rajesh in his presence, whereas the case of the prosecution is that the knife as well as the cash were handed over to the IO by PW-9, ASI Balbir Singh in the hospital. A perusal of the Seizure Memo Ex.PW-3/P dated 08th November, 2001 shows that the cash was handed over to the IO by ASI Balbir Singh in the RML Hospital. Similarly, the Seizure Memo of the knife Ex.PW-3/N dated 08th November, 2001 also shows that the knife was handed over to the IO by ASI Balbir in RML Hospital. Both these documents having been prepared on 08th November, 2001 and being signed by the witnesses, there is no good reason to not rely upon them. PW-9 ASI Balbir Singh and the PW-13 SI Yashpal Singh have corroborated testimony of each other as regards the place where the cash and knife were seized as well as regarding the person who had handed over to the IO. The complainant himself admits that PW-9 ASI Balbir Singh had taken him to RML Hospital in a PCR van. A perusal of the MLC of the complainant Ex.PW-12/A also shows that it was PW-9 ASI Balbir Singh of PCR van OSCAR-39 who had brought him to the hospital. It is quite unlikely that even after

meeting PW-9 ASI Balbir Singh, the complainant would have kept the knife and cash seized from the appellant with him. PW-9 being a police officer, in all probability, he must have taken charge of the knife as well as the cash from the complainant and then handed them over to the IO in the hospital. Moreover, the complainant being an injured condition, he was not likely to retain the knife and cash with him, when a police officer was accompanying him to the hospital. Therefore, discrepancy in the deposition of the complainant, as regards the place where the cash and knife were handed over to the IO as well as his claim that the knife was handed over by him and the cash was recovered by the IO from the appellant in his presence, can be safely attributed to poor recollection of the event on his part, due to lapse of time between the date of incident and the date on which he was examined in the Court. The Courts need to appreciate that normally the witnesses are not examined in the Court soon after the incident witnessed by them and, therefore, it may not always be possible for every person to correctly recall all the details of the incident witnesses. Of course, he is not likely to forget the main incident of this nature, experienced by him.

Normally, discrepancy on the matters which are peripheral or rather trivial and do not form the core of the case do not affect the credibility of a witness and it is not proper to reject his testimony on account of such minor variations or infirmities in trivial details. The Courts need to recognize that not everyone has equal capacity of observation, retention and recollection, which varies from individual to individual and it is not natural for the honest and otherwise reliable witnesses to differ on some minor details, which by themselves, do not constitute the main incident witnessed by them. It is also a settled legal proposition that if the Trial Court which had the opportunity to observe the demeanour of the witness has found him reliable and accepted his testimony, the Appellate Court should not take a contrary view on the reliability of such a witness, except for strong reasons. As observed by the Hon'ble Supreme Court in **Krishna Mochi vs. State**, 2002 IV AD (SC) 45, normal discrepancies are those which are due to normal errors of observation, normal errors of memory due to passage of time due to mental disposition such as shock and horror and are always present, however, truthful witness may be. It is observed by Hon'ble Supreme Court in *Leela Ram (Dead)*

through **Duli Chand Vs. State of Haryana and Anr.**, AIR 1999 SC 3717 that the discrepancies unless they are vital in nature cannot by itself affect the credibility of a witness and unless contradictions are on material dimension they should not be used to Jettison the evidence in its entirety and trivial discrepancies ought not to obliterate otherwise acceptable testimony of a witness. It was observed in **Dhanvir and Others vs. The State**, 85(2000) DLT 711, human memory is not mere a computer where memory can be fed or restored for all times to come and later on when retrieved it would be verbatim the same. A human being, when he describes some incident in natural course, some variation is bound to take place so long as the variations are not natural they ought to be ignored. Therefore, the contradictions highlighted by the learned counsel for the appellant by themselves do not destroy the credibility and reliability of the complainant whose testimony finds corroboration from the testimony of PW-9 ASI Balbir Singh.

13. It was submitted by the learned counsel for the appellant that though the complainant claims that he was carrying Rs.5300/-, only Rs.4400/- are alleged to have been recovered

from him and there is no explanation for this discrepancy in the case of the prosecution. In my view, the contention is totally misconceived. According to the complainant, the appellant had handed over some of the money which he had taken from his pocket to his associate. Since part of the money removed from the pocket of the complainant had been handed over by the appellant to one of his associates, the entire money could obviously not have been found with him.

14. It was contended by the learned counsel for the appellant that since no opinion of the doctor has been obtained to the effect that injury found on the person of the complainant could have been caused by the knife Ex.P-3 alleged to have been recovered from the possession of the appellant, Section 397 of IPC does not apply in his case. In my view, the contention is totally misconceived. Even if a person simply carries a deadly weapon and it is seen by the victim at the time of commission of robbery that also amounts to use of the weapon in commission of robbery. It was held by the Hon'ble Supreme Court in **Phool Kumar Vs. Delhi Administration**, AIR 1975 SC 905 if the accused armed with a knife and his associate armed with a small gun terrorise the employees of a service

station to hand over the keys and after opening the office, they decamped with cash, it was sufficient to bring the case within the purview of Section 397 of IPC.

15. The testimony of PW-2 Naubat Ram, which has not been assailed by the appellant, corroborates the deposition of the complainant as regards snatching in the bus. According to him, he saw one passenger getting down from the bus and throwing stones. He also saw another passenger getting down from the bus and chasing him, saying that his pocket had been picked. Thus, snatching of money cannot be disputed. The injuries found on the person of the complainant also corroborate his version. The appellant has not given any reason or motive either for the complainant or for PW-9 ASI Balbir Singh to falsely identify him as the person who had committed robbery and caused injury to the complainant. The appellant does not claim any enmity or ill-will between him on the one hand and either PW-3 or PW-9 on the other hand. He claims that he was picked up from his house and falsely implicated in this case. But, he does not give any reason for the police to target him for the purpose of making him responsible for the robbery committed in this case. He does

not claim that he was an anti-social element of the area and, therefore, was picked up on suspicion and implicated in this case. He does not claim that he is a previous convict in cases of robbery or snatching and for that reason, the police suspected him to be involved in this case and, therefore, lifted him from his residence and implicated him in this case. The testimony of PW-3-complainant, Head Constable Ved Pal and PW-9 ASI Balbir Singh leaves no reasonable doubt that it was the appellant Rajesh who had removed cash from the pocket of the complainant and had also caused injury to him with a knife. The theft of cash from the pocket of the complainant amounts to robbery as defined in Section 390 of IPC since injuries were caused to the complainant in carrying away the money obtained by theft. In **Phool Kumar** (supra) 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.

16. In the present case, the appellant actually used a knife for causing injuries to the complainant and, therefore, the case of the prosecution in this case stands on a stronger footing. In any case a perusal of the sketch of the knife Ex.PW-3/M would show that the knife recovered from the possession of the appellant was having a blade having length of 20.5 cm and width of 2.7 cm. Therefore, this is not a kitchen knife and such a knife if used as a weapon of offence is likely to cause death of the person against whom it is used as a weapon. Therefore, the knife recovered from the possession of the appellant was definitely a deadly weapon.

17. For the reasons given in the preceding paragraph, I see no ground to interfere with the conviction of the appellant under Section 394 IPC read with Section 397 thereof. The

appellant has been awarded the minimum prescribed sentence of seven years and hence, there is no scope for reducing the substantive sentence awarded to him by the Trial Court. The amount of the fine imposed upon the appellant is also very minimal and does not call for any reduction. It is, however, directed that in default of payment of fine, the appellant will go SI for 15 days instead of rigorous imprisonment for three months, awarded by the Trial Court.

The appeal stands disposed of with this modification. The appellant is directed to surrender forthwith before the Trial Court, to undergo the remaining part of the sentence awarded to him. If he does not surrender forthwith, the Trial Court will take necessary steps to procure his presence and commit him to custody to undergo the remaining sentence. Trial Court Record be sent back within three days alongwith a copy of this judgment, for information and compliance.

(V.K.JAIN)
JUDGE

MARCH 11 , 2010
ag/bg