

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

+ **CRL.A. 1358/2012**

Judgment reserved on : 13th March, 2014

% Judgment pronounced on : 01st April, 2014

SUKHVINDER SINGH Appellant

Through: Ms.Saahila Lamba, Advocate.

versus

THE STATE (GOVT. OF NCT OF DELHI) Respondent

Through: Mr.O.P. Saxena, APP for the State.

CORAM:
HON'BLE MS. JUSTICE DEEPA SHARMA

JUDGMENT:

1. The present appeal arises from the order of conviction and sentence dated 03.08.2012 and 04.08.2012 in the Sessions Case No.154/2011 arising out of FIR No.250/2011, Police Station Dwarka South. Vide judgment dated 3.8.2012, the appellant was convicted for the offence under Section 392/394/397 IPC. Vide order dated 4.8.2012 he was sentenced to undergo Rigorous Imprisonment for seven years with fine of Rs.5,000/- for the offence under Section 392/397 IPC, in default Simple Imprisonment for three months and Rigorous Imprisonment for five years with fine of Rs.5000/- for the offence under Section 394 IPC, in default Simple

Imprisonment for three months.

2. The brief facts of the case are that on 02.09.2011, appellant followed Ms.Poonam (PW5) and when she reached near Apoorva Apartment in Dwarka and was talking on the phone, the appellant snatched her mobile phone. PW5, however, caught hold the hand of the appellant and at that time the appellant took out a knife and stabbed her on her right hand and ran away with her mobile and purse containing Rs.360/-. She raised the alarm and the appellant was caught by the public and was beaten. The incident was also witnessed by a girl named Lalita (PW3). She rang up the police on No.100. PCR van reached the spot and the injured PW5 as well as the appellant were removed to Deen Dayal Upadhyay hospital. On receiving the information in PS Dwarka South at about 4.17 p.m. vide D.D.No.29A, ASI Rajinder Singh along with SI Virender Singh reached the spot and from there went to DDU hospital on learning at the spot that the injured and the appellant had been taken to the hospital. He found PW5 under treatment vide MLC No.17883/2011. The nature of injury was mentioned as simple but sharp. The appellant was arrested in the case. Statements of the other witnesses were recorded. The knife was seized vide memo Ex.PW3/B and sketch of the knife Ex.PW3/A was prepared.

3. All the prosecution witnesses were examined and they have fully

supported the prosecution case. On the basis of unflinching evidences on record, the appellant-accused was convicted and sentenced by learned trial court.

4. Learned counsel for the appellant has challenged the said order of conviction on various grounds. During the course of arguments, however, learned counsel on instructions of the appellant voluntarily conceded the conviction of the appellant for the offences under Section 392 and 394 IPC. It has however been urged on behalf of the appellant that the sentence of the appellant under Section 397 IPC is misconceived as the knife used in robbery was not a deadly weapon but was a vegetable knife. It is also urged that the knife was used by the appellant only when the complainant caught hold of his hands and it was used to escape from the clutches of the complainant and that there was one injury inflicted on the right arm of the complainant (PW5) and so, it cannot be said that the knife had been used as a deadly weapon.

5. It is further argued that the sentence of five years under Section 394 IPC is harsh in the light of the evidences that the appellant took out the knife only when the complainant (PW5) grabbed his hand and slapped him. The blow of knife was given only on the arms of PW5 and not on any vital part of her body.

6. Learned APP on the other hand has argued that Section 397 requires the use of deadly weapon and the knife is a deadly weapon and, therefore, sentencing the accused under Section 397 is justified.

7. The appellant-accused has conceded his conviction for the offence under Section 392 and 394 IPC. He has also not disputed the use of knife in the event. He has also not disputed the recovery of knife. The knife is exhibited as Ex.P-2. The sketch of the knife is Ex.PW3/A. Total length of knife was 17 c.m., the handle was of 9.5 c.m and the blade was of 7.7 c.m

8. The sole question for determination, therefore, is whether such a knife can be termed as 'a deadly weapon' within the meaning of expression used in Section 397 IPC. Section 397 IPC does not make out any substantive offence. It is rather used as a corollary to Section 392 IPC and where while committing the robbery or dacoity, the offender uses any deadly weapon then on conviction he can be sentenced with an imprisonment of not less than seven years using Section 397 IPC.

9. Term 'deadly weapon' has been discussed by this court in various cases. In case titled as ***Balik Ram vs. State*** (1983 CrL.L.J. 1438 DEL) the FIR was registered by one Ganga Ram who was driving his scooter DHR 8204. He had reported that he was hired by two persons from Railway Station, Delhi Main, for Chanakya Puri, but when they reached near

Chanakya Cinema, they asked him to stop for some time and then directed him to proceed towards Jesus and Marry College. There one of them caught hold of him from the back by his collar and another placed knife at his abdomen and made him descend from the scooter. One of them removed his wrist watch and the purse containing Rs.335/- and thereafter they ran away with the scooter. They were, however, apprehended with scooter and appellant on search was found in possession of spring actuated knife. On these facts, the court has observed as under:

“5. Knives are weapons available in various sizes and may just cause little hurt or may be the deadliest. They are not deadly weapons per se such as would ordinarily result in death by their use. What would make a knife deadly is its design or the manner of its use such as is calculated to or is likely to produce death. It is, therefore, a question of fact to be proved and prosecution should prove that the knife used by the accused was a deadly one. Though the knife that was recovered from the accused a few hours of the occurrence, was no doubt a deadly one on account of its size and design but it was not shown to the victim when he came to depose nor has he given any description of the knife so that it could be held that the knife alleged to have been placed by the accused on his abdomen was the one recovered or the one similar to that one. The accused can, therefore, legitimately claim that the weapon used by him has not been proved to be a deadly one. And if there is want of proper proof, the benefit should go to the accused and the prosecution cannot invoke section 397, IPC to fix him up in the minimum sentence of seven years.”

10. In another case reported in 1983 (1) Crimes 155 titled as ***Bishan vs.***

The State this court has followed the law laid down in **Balik Ram's** case (supra) and held as under:

Para 5 “..... According to the recovery memo, the knives that were recovered from both the accused were knives meant for cutting vegetables, though the blade of one was 6” long and of the other was 3” long. Can such weapon be described as deadly weapons?”

Para 6 x x x x x x x x x
“..... It is proved in this case from the recovery memo itself that the knives were designed for cutting vegetables and could not be considered to be deadly. Their manner of use was also not such as was likely to cause death. I am, therefore, unable to agree that the accused can be sentenced under Section 397 Indian Penal Code. In the interests of justice, I think the sentence of four years will meet the ends of justice for an offence under Section 392 IPC.”

11. In another case reported in **1987 (13) DJ 176** titled as **Mohan Singh vs. State**, this court while following the law laid down in **Balik Ram's** case (supra) reached to the conclusion:

Para 12. “.... Applying the said principle on the facts of the present case I find that there is not an iota of evidence on record to suggest that the knife used by the accused was a deadly weapon. Even Sham Lata Goel has not given its description. We are probably in the dark to conclude if the knife was a but tender knife, a kitchen knife or a pen knife or the knife used could possible cause the death of the victim, in the absence of such an evidence and particularly the non-recovery of the weapon will certainly bring the case of the accused out of the ambit of Section 397 Indian Penal Code. The accused could, under the

circumstances, be convicted under Section 392 Indian Penal Code.”

12. In another judgment reported in **1985 Cri.L.J. 1621** titled as ***Jagdish and etc. vs. The State*** while discussing the provisions of Section 397 IPC this court has held as under:

Para 8. “ Lastly, the question would arise us to whether the appellants are liable to enhance punishment under Section 397, I.P.C. Needless to say that the said section does not create any substantive offence and it simply prescribes a minimum sentence for the offence of robbery under the aggravating circumstances mentioned therein. While there can be no shadow of doubt that both the appellants carried knives and they aimed the same at their victims, namely, Rajinder Parshad and Krishan Kumar, there is no satisfactory evidence to establish that those knives could be termed "deadly weapons" as envisaged under Section 397. Rajinder Parshad and Krishan Kumar have simply stated that both the appellants were carrying a knife each in their hands. However, according to Raj Kishore the knives carried by them were small. In the FIR the knives were described as vegetable cutting knives. The question would, therefore, arise whether in the absence of anything more the said knives can be said to be deadly weapons.

Para9. “A deadly weapon is a thing designed to cause death, for instance, a gun, a bomb, a rifle, a sword or even a knife. A thing not so designed may also be used as a weapon to cause bodily injury and even death. It will be a question of fact in each case whether the particular weapon which may even be a knife can be said to be a deadly weapon. In the instant case, there is evidence to the effect that the knives which the accused were having were small in size. They were ordinary vegetable cutting knives. This renders the possibility of those knives being deadly weapons highly doubtful and as

such the appellants shall be entitled to benefit thereof. Consequently it would be unfair to impose the minimum sentence contemplated in Section 397 on the appellants merely because they used those knives in the commission of the crime.”

13. In a case reported in **1988 CrL.J.NOC 28 (Delhi)** titled as ***Charan Singh vs. The State***, the Single Judge of this court has held as under:

“At the time of committing dacoity one of the offenders caused injury by knife on the hand of the victim but the said knife was not recovered. In order to bring home a charge under Section 397, the prosecution must produce convincing evidence that the knife used by the accused was a deadly weapon. What would make knife deadly is its design or the method of its use such as is calculated to or is likely to produce death. It is, therefore, a question of fact to be proved by the prosecution that the knife use by the accused was a deadly weapon. In the absence of such an evidence and particularly, the non-recovery of the weapon would certainly bring the case out of the ambit of Section 397. The accused could be convicted under Section 392.”

14. In a case reported in 2012 (3) JCC 2213 in CrL. A. 515/2010 titled as ***Gulab @ Bablu vs. The State (NCT of Delhi)***, this court while setting aside the conviction under Section 397 IPC has held as under:

“7. A perusal of the aforesaid provision makes it clear that if an offender at the time of committing robbery or dacoity, uses any deadly weapon or causes grievous hurt or attempts to cause death or grievous hurt to any person the imprisonment with which such offender shall be punished shall not be less than seven years. This provision prescribes minimum sentence which shall be handed down to such an offender. In this case neither the victim has sustained

grievous hurt nor there is an evidence that attempt was made to cause death or grievous hurt to the victim nor is there any evidence to show that the knife used at the time of committing robbery was a 'deadly weapon'. Simple injuries have been sustained by the victim on his thigh.”

15. In a very recent judgment of the year 2013 reported in **2013 vii AD (Delhi) 359** titled as ***Rajender Yadav vs. The State (NCT of Delhi)***, this court has held that where the prosecution case itself is that only vegetable knife was found in the possession of the accused, the knife cannot be considered a deadly weapon to award the sentence of seven years which is a minimum sentence to be given with the aid of Section 397 IPC.

16. From the above discussed case laws, it is apparent that the use of a knife at the time of robbery does not ipso facto bring the case under Section 397 IPC. The prosecution is required to prove that the knife used falls in the category of ‘deadly weapon’ within the meaning of Section 397 IPC. In this case from the statement of the complainant (PW5), it is clear that when the sealed parcel containing the knife used in the commission of the robbery was taken out, the court had observed that it was a kitchen knife. The sketch of the knife which is Ex.PW3/A shows that the total length of knife was 17 cm., the handle was of 9.5 c.m and the blade was of 7.7 c.m. The injury inflicted upon the injured as shown in her MLC Ex.PW2/A is simple in nature caused on the right hand of the injured. She has also clearly stated

that the appellant took out the knife and injured her when she caught hold of him and slapped him twice and thrice. By the manner in which the knife was used by appellant it cannot be inferred that it was used as a deadly weapon.

17. All these facts clearly show that the knife which was a vegetable knife cannot be termed as 'a deadly weapon'. While upholding the conviction of the appellant under Section 392 IPC, the sentence of the appellant under Section 397 is set aside.

18. From the above facts which show the use of knife at a later stage, when the complainant grabbed the hand of the appellant and also slapped him twice or thrice, and when it is shown that the appellant is a first offender and not involved in any other crime, the sentence awarded to the appellant for the offence under Section 394 IPC is towards higher side.

19. Keeping in view all these facts and circumstances of the case, while upholding the conviction under Section 392 IPC and 394 IPC, I sentence the appellant to undergo Rigorous Imprisonment for three years for the offence under Section 392 IPC and impose a fine of Rs.2,000/-, in default Simple Imprisonment for one month and to undergo Rigorous Imprisonment for a period of three years and fine of Rs.2000/- for the offence under Section 394 IPC. Both the sentences shall run concurrently. The benefit under Section 428 Cr.P.C. be also give to the appellant.

20. The trial court record be sent back along with the copy of this order.
21. The Registry is directed to send a copy of the order to the Jail Superintendent, Central Jail, Tihar for compliance and to supply the same to the appellant.

DEEPA SHARMA, J.

APRIL 01, 2014
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