

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

Judgment Reserved on: May 23, 2016

% *Judgment Delivered on: June 03, 2016*

+ **CRL.A. 88/2015**

RAVINDER

..... Appellant

Represented by: Mr.K.K.Manan, Sr.Advocate with
Ms.Anjali Rajput, Mr.Puneet Dhir,
Mr.Eric Karau and Mr.Saurabh
Kapoor, Advocates.

versus

STATE (NCT OF DELHI)

..... Respondent

Represented by: Ms.Rajni Gupta, APP for the State
with SI Dharmendra Pratap Singh, PS
Samaipur Badli.

+ **CRL.A. 117/2016**

AVINASH

..... Appellant

Represented by: Ms.Anjali Rajput, Amicus Curiae.

versus

STATE (NCT OF DELHI)

..... Respondent

Represented by: Ms.Rajni Gupta, APP for the State
with SI Dharmendra Pratap Singh, PS
Samaipur Badli.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. By the common impugned judgement dated November 14, 2014 both Ravinder and Avinash have been held guilty for offence punishable under Sections 392/34 IPC besides Avinash was also held guilty for offence punishable under Section 397 IPC. Vide order on sentence dated November

14, 2014 Ravinder has been awarded sentence of simple imprisonment for a period of four years besides the fine of ₹5,000/- and Avinash has been awarded simple imprisonment for a period of seven years besides a fine of ₹5,000/- in default whereof both the appellants have been directed to undergo simple imprisonment for a period of 30 days. Sumit @ Bachichi and Yogesh @ Kalu who were also charged along with Ravinder and Avinash have been acquitted by the impugned judgment. In the absence of any challenge to their acquittal, this Court is only concerned with the convictions of Ravinder and Avinash in the present appeals.

2. Process of law was set into motion when HC Chintamani, PW-7 sent a PCR message at 8.45 PM on December 22, 2009 recorded vide DD No.28A at PS Samaipur Badli, informing that three boys were beating and robbing one boy, a pistol has been found and HC Chintamani was coming along with the boys to the police station. At the Police Station, statement of Dharmender Ex.PW-2/B was recorded wherein he stated that he was residing at Nehru Enclave and was working in a private company at Gurgaon. He took bus from Karnal by-pass and got down near the Siraspur Gurudwara bus stand. While he was walking down towards his house at around 8.30 PM suddenly four boys came towards him swiftly and gheraoed him. Before he could understand anything, one of the boys took out a pistol like instrument which he came to know later was an airgun and kept it on his left ear. The three other boys caught hold of him. The boy who had kept the airgun on his ear asked him to take out whatever was in possession of the complainant. The boys also assaulted him with slaps and fists. Being afraid, the complainant gave his purse which was snatched away immediately by the boy who was carrying the pistol. The other boy took out

his mobile phone Nokia from his pocket. The boy who was having the pistol gave the purse to another boy whereafter the fourth boy snatched the bag from his shoulder. While the four boys were running away, Dharmender shouted due to which two police officers came running from the PCR van which was at some distance and they caught hold of two boys out of the four. The name of the boy who had kept the airgun on his ear was revealed as Avinash s/o Bahadur Singh and the other boy who had taken out the mobile was revealed as Ravinder s/o Inderjeet. Thereafter the PCR police officials took him and the two boys to the Police Station where his statement was recorded.

3. Before Court Dharmender deposed in sync with his statement on the basis of which FIR was registered, which was also supported by HC Chintamani PW-7, the officer who apprehended the two boys at the spot.

4. Learned Senior counsel opening up his arguments contends that the conviction in the present case under Section 397 IPC is required to be set aside only on the ground that the airgun is not a deadly weapon and thus the ingredients of Section 397 IPC are not fulfilled. Reliance is placed on the decision of the Division Bench of this Court reported as ILR (2010) 6 Del 596 Rakesh vs. State of NCT of Delhi. Addressing arguments on merits it is contended that the appellants have been falsely implicated which fact is apparent from the signatures of Dharmender obtained on the documents, that is, seizure memos of mobile phone, air gun and purse of the complainant, Ex.PW-4/A, PW-4/B1 and PW-4/K4 respectively and the sketch of the airgun Ex.PW-4/B. Apparently the signatures have been taken on blank papers and no parentage, name, address etc. was noted. Despite the fact that the case of the complainant is that he was talking on the phone when the

incident took place, his version is not corroborated by producing CDRs of mobile phone which would have shown his location. The airgun was not sent to FSL as admitted by the Investigating Officer Inspector Mukesh Antil, PW-9. Though the complainant stated that he was beaten however, no MLC of the complainant was got prepared much less proved and exhibited. Despite DD No.28A sent by HC Chintamani noting that three accused and one complainant were being brought to the Police Station however, when he reaches the Police Station there were only two accused and one complainant. Thus the appellants are required to be acquitted of the charges framed.

5. Learned APP for the State contends that no case of false implication is made out because the appellants were apprehended at the spot and taken to the Police Station. Neither in the Rukka nor in his deposition before the Court, Dharmender stated that while he was talking on the telephone he was gheraod by four persons. Thus there was no requirement of seeking corroboration of his presence at the spot by call detail records. In any case, the version of Dharmender has been duly corroborated by HC Chintamani who deposed that he was In-charge PCR Van Libra-97 and along with staff was at Siraspur Gurudwara, near main GT Karnal Road when at 8.30 PM he heard the noise and found that one boy who was standing near Peer Baba Ki Mazaar crying '*bachao bacaho, mujhe loot liya*'. He also found some boys running towards opposite side. Thus HC Shyam Raj, Gunman ran towards the side where the said boys were running and apprehended the two boys. The names of the two boys were revealed as Avinash and Ravinder and from the search of Avinash, one airgun was recovered from his pant's right pocket and from Ravinder one Nokia mobile phone was recovered. He informed the details to the control room and on their directions he took them to the

Police Station and produced them.

6. The contention that signatures of Dharmender on seizure memos of mobile phone, airgun and purse and sketch of pistol were taken on blank paper is contrary to the suggestion given to Inspector Mukesh Antil, PW-9, the Investigating Officer to whom it was suggested that the signatures of the complainant were obtained in the Police Station. No such suggestion has been given to Dharmender that his signatures were taken on blank papers which were later exhibited as Ex.PW-4/A, PW-4/B1 and PW-4/K4. In fact in his evidence this witness clearly identifies his signatures on the various exhibits, seizure memos and sketch. Since the appellants have been apprehended at the spot and immediately taken to the Police Station and the testimonies of both Dharmender and HC Chintamani are free from blemish, the conviction of the appellants under Section 392/34 IPC is upheld.

7. The contention of learned senior counsel for the appellant that air gun is not a deadly weapon, thus does not attract Section 397 IPC is required to be looked into from the functionality of an air gun and its impact on the person on whom this weapon is used. The Division Bench of this Court in the decision reported as 2011 (180) DLT 460 DB People for Animals vs. Union of India & Ors. while dealing with the validity of the notification dated 13th July, 1962 whereby the exemption granted by the Central Government from regulation and control under the Arms Act qua air guns or air rifles and air pistols was quashed, held:

“Air guns/ rifles/ pistols are not mere toys

19. The Respondents have argued that the air guns/ air rifles or air pistols used for the purposes of target practice are not firearms, as defined under the Act, but merely toys

and as such these do not fall under the purview of the licencing regime under the Act. Section 2(e) of the Act defines "firearms":

"firearms" means arms of any description designed or adapted to discharge a projectile or projectiles of any kind by the action of any explosive or other forms of energy, and includes,-

(i) Artillery, hand-grenades, riot-pistols or weapons of any kind designed or adapted for the discharge of noxious liquid, gas or other such things,

(ii) accessories for such firearms designed or adapted to diminish the noise or flash caused by firing thereof,

(iii) parts of, and machinery for manufacturing, firearms, and

(iv) carriages, platforms and appliances for mounting, transporting and serving artillery.

An air gun/ air rifle/ air pistols uses the energy or force produced from compressed air or other gas for discharging of the pellet or projectile. Normally these air guns, etc. use metal projectiles and the ones which use plastic projectiles are Air (soft) Guns. General internet search on air guns reveals that these are distinguished from firearms, which burn a propellant in order to shoot the projectile but under the definition of firearms, as provided under the Act and as extracted above, it is clear that the air guns/ air rifles/ air pistols are also covered, for not only the arms which discharge projectile(s) by action of any explosive are covered under the definition, but also arms which use other forms of energy, in this case being the energy or force generated from compressed air or gas. Thus, it is safe to conclude that air guns/air rifles/air pistols are not mere toys, as against the assertion of the Respondents and they

are very much subject to the provisions of the Act, being firearms.

8. “Deadly weapon” has not been defined under the Indian Penal Code and as defined in Black’s Law Dictionary at Page 1731 it means:

“deadly weapon. (16c) Any firearm or other device, instrument, material, or substance that, from the manner in which it is used or is intended to be used, is calculated or likely to produce death. In some states, the definition encompasses the likelihood of causing either death or serious physical injury.”

9. Since an air gun or an air pistol uses energy and force produced from compressed air or other gas for discharging of the pellet or projectile and can cause hurt, it would fall within the definition of a “deadly weapon”.

10. Section 397 of the Indian Penal Code provides for imprisonment which shall not be less than seven years if, at the time of committing robbery or dacoity, offender uses any deadly weapon or caused grievous hurt to any person or attempts to cause death or grievous hurt to any person.

11. Interpreting the term ‘uses’ under Section 397 IPC, the Supreme Court in the decision reported as AIR 1975 SC 905 Phool Kumar vs. Delhi Administration held that if a person merely brandishes the deadly weapon the same is sufficient to attract Section 397 IPC as that is enough to frighten or terrorise the victim and any overt act with the weapon to cause grievous hurt is not necessary. It was held:

5. *Section 392 of the Penal Code provides:*

“Whoever commits robbery shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to

fine; and, if the robbery be committed on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years.”

The sentence of imprisonment to be awarded under Section 392 cannot be less than 7 years if at the time of committing robbery the offender uses any deadly weapon or causes grievous hurt to any person or attempts to cause death or grievous hurt to any person : vide Section 397. A difficulty arose in several High Courts as to the meaning of the word "uses" in Section 397. The term 'offender' in that section, as rightly held by several High Courts, is confined to the offender who uses any deadly weapon- The use of a deadly weapon by one offender at the time of committing robbery cannot attract Section 397 for the imposition of the minimum punishment no another offender who had not used any deadly weapon. In that view of the matter use of the gun by one of the culprits whether he was accused Ram Kumar or somebody else, (surely one was there who had fired three shots) could not be and has not been the basis of sentencing the appellant with the aid of Section 397. So far as he is concerned he is said to be armed with a knife which is also a deadly weapon. To be more precise from the evidence of P.W. 16 "Phool Kumar had a knife in his hand". He was therefore carrying a deadly weapon open to the view of the victims sufficient to-frighten or terrorize them. Any other overt act, such as, brandishing of the knife or causing of grievous hurt with it was not necessary to bring the offender within the ambit of Section 397 of the Penal Code.

12. The Supreme Court in the decision reported as AIR 2004 SC 1253 Ashfaq vs. State (Govt. of NCT of Delhi) held:

“8. Thus, what is essential to satisfy the word "Uses" for the purposes of Section 397 IPC is the robbery being committed by an offender who was armed with a deadly weapon which

was within the vision of the victim so as to be capable of creating a terror in the mind of victim and not that it should be further shown to have been actually used for cutting, stabbing, shooting, as the case may be.”

13. Thus possession of a deadly weapon which impacts the state of mind of the victim so as to scare or terrorise him would be treated as use of the deadly weapon and is sufficient to attract Section 397 IPC. As noted above, the complainant deposed that Avinash kept the pistol like thing which he later came to know as airgun on his ear, thus Avinash has been rightly convicted for offence punishable under Section 397 IPC.

14. Appeals are dismissed. Appellants will undergo the remaining sentence.

15. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record.

16. TCR be returned.

(MUKTA GUPTA)
JUDGE

JUNE 03, 2016
‘vn’