

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

% *Judgment reserved on :31.08.2015*
Judgment delivered on : 02.09.2015.

+ CRL.A.722/2013
VIKAS

..... Appellant
Through Ms.Prabha Sharma, Adv.

versus

STATE

..... Respondent
Through Mr. Kewal Singh Ahuja,
APP for the State along
with Inspector Rishi Pal
Rana.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

This appeal is directed against the impugned judgment and order on sentence dated 20.02.2013 and 28.02.2013 respectively wherein the appellant stood convicted under Section 392 read with Section 397 of the IPC. He had been sentenced to undergo RI for a period of 7 years and to pay a fine of Rs.2,000/- and in default of payment of fine, to undergo SI for 15 days. Benefit of Section 428 of the Cr.PC had been granted to the appellant.

Nominal roll of the appellant reflects that as on 28.08.2015, he
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has undergone incarceration of 3 years and 10 months.

The version of the prosecution was unfolded in the testimony of the complainant Deepak Kumar examined as PW-3. He had deposed that he being a tailor by profession; on the fateful day i.e. on 30.07.2012 at 06:00 PM when he was coming from Budh Vihar and going towards his house by bus and on reaching the Depali Chowk, when he stepped down from the bus to change the bus for his house, he was accosted by two boys. One of them caught hold of his hands and the other had put a knife on his neck and asked him for all his belongings. The boy who had caught hold him, took out his purse and mobile phone. His purse contained Rs.250/-. His mobile was of MTS make. Both the persons thereafter started running away. One police vehicle having two police persons (examined as PW-4 & PW-6) also reached the spot. The two boys were apprehended. From the possession of Vikas (the appellant), a knife was recovered; he was identified as the person who had put a knife on the neck of the complainant and demanded the money from him. From the other boy, the purse and mobile phone were recovered. He was a juvenile and was tried by the Juvenile Court.

Apart from the testimony of PW-3, the statement of HC Narayan
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(PW-4) and constable Monu (PW-6) was also recorded. They were on patrol duty and they were the persons who had apprehended the accused persons. Investigation was marked to SI Pawan Kumar (PW-7) who was accompanied by constable Amit (PW-2). PW-7 had deposed that the accused persons were already apprehended by PW-4 & PW-6 when he reached the spot along with PW-2. A knife having two blades was recovered from the appellant and from the other accused, the mobile phone and purse containing Rs.250/- were recovered. These articles were taken into possession vide separate memos. Site plan (Ex.PW-7/B) was prepared. The accused persons were arrested after their personal search had been conducted; the knife which was the subject matter of the offence was also sketched and taken into possession vide memo Ex. PW-6/A; it had a length of 35 cms; it was double bladed; one blade measured 14.4 cms and the second blade measured 9.8 cms.

Challan was filed. Seven witnesses were examined by the prosecution. In the statement of the accused recorded under Section 313 of the Cr.PC, the accused had pleaded innocence. No evidence was led in defence.

On behalf of the appellant, learned counsel submits that even

presuming that a knife had been put on the neck of the complainant, no injury had been suffered by the complainant; it was not a “use” of the knife in the strict sense; knife does not fall in the category of a ‘deadly weapon’ and does not qualify as such; the version of PW-3 further discloses that he was not meted any threat even at the time when the alleged weapon was used. Ingredients of Section 397 are not made out; at best it would be an offence under Section 392 of the IPC and as such the period of incarceration already suffered by the appellant which is almost 4 years be treated as the sentence imposed upon the appellant. It has additionally been argued that the subject matter of the theft was a petty amount of Rs.250/- and a mobile phone which was not really valuable.

Arguments have been refuted. It is stated that on no count, does the impugned judgment call for any interference.

Testimony of PW-3 has been appreciated. The version has been discussed supra. PW-3 has categorically and clearly disclosed the incident in the manner in which it had occurred. He had deposed that on the fateful day when he was getting down from the bus, he was stopped by two persons one of whom was the present appellant. The role

attributed to the present appellant is that he had put a knife on his neck and asked for all his belongings; the other boy had taken out his purse containing Rs.250/- and mobile phone. The appellant was nabbed along with his co-accused by PW-4 & PW-6. PW-4 was HC Narayan who was on patrol duty along with constable Monu PW-6. Their version is also categorical. Both of them have clearly deposed that while posted at police station Rani Bagh and being on patrol duty at that time at 06:00 pm when they were going from Madhuban Chowk to Deepali Chowk they saw two persons running whom they chased. They apprehended the two persons and from the possession of the appellant, a knife was recovered. From the other accused, the purse containing Rs.250/- and the mobile phone was recovered. The local police station was informed.

DD No. 24 had been registered on 30.07.2012 informing the local police station about the aforementioned incident. This DD was marked to PW-7 (SI Pawan Kumar-Investigating Officer) who along with constable Amit (PW-2) reached the spot. The version of both these witnesses is also categorical. Nothing has been pointed out in their cross-examination to discredit their version. The Investigating Officer along with PW-2 had reached the spot and had seized the knife from the

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appellant and prepared a sketch of the same. This sketch has been proved as Ex.PW-2/B and the design and dimensions of the knife have been noted supra. This knife was a double bladed knife; this had also been disclosed by PW-3 in his statement. The total length of the knife was 35 cms. The two blades measured 14.4 and 9.8 cms respectively. This recovery was witnessed by PW-3, PW-4 and PW-7 and all the aforementioned witnesses have testified to the said effect. The accused were arrested at the spot.

The word 'use' as appearing in Section 397 of the IPC has been the subject matter of various judicial discussions. It has now been held by a catena of judgments that where the offence of robbery was committed by an offender armed with a deadly weapon which was within the vision of the victim and capable of creating terror in his mind he must be deemed to have used the deadly weapon. This had been held by the Apex Court in AIR 1975 SC 905 Phool Kumar Vs. Delhi Administration. To satisfy the word 'uses' for the purpose of Section 397 of the IPC, it need not be shown that there was an actual injury suffered by the victim.

In 2004(2)ACR1169(SC) Ashfaq Vs. State (Govt. of NCT of Delhi

the observations of the Court in this context are relevant and read as under:-

“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.”

A deadly weapon has not been defined in the IPC but it is the size, its dimensions and design which could be decisive of the factor as to whether it is deadly or not within the meaning of Section 397 of the IPC.

A perusal of the sketch of the knife and its dimensions which have been detailed supra; it being a double bladed weapon having a length of 14.4 cms and 9.8 cms respectively; having a sharp edge and its total length being more than 35 cms, can by no stretch of imagination not be said to be a ‘deadly weapon’ within the meaning of Section 397 of the IPC.

The conviction of the appellant on all counts calls for no interference. A conviction under Section 397 of the IPC has prescribes a minimum sentence of 7 years which the Court may for the special reason reduce but in the factual matrix of this case, this Court is at a loss

to understand that what could be the special reason for reducing the minimum.

Appeal is without any merit. Dismissed.

INDERMEET KAUR, J

SEPTEMBER 02, 2015

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